



Communications Consumer Panel and ACOD response to Ofcom's consultation on its Broadband Speeds Codes of Practice

The Communications Consumer Panel (the Panel) and the Advisory Committee for Older and Disabled People (ACOD) welcome the opportunity to respond to this consultation on Ofcom's Broadband Speeds Codes of Practice.

The Panel works to protect and promote people's interests in the communications sector, including the postal sector. We are an independent statutory body set up under the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, governments, the EU, industry and others to look at issues through the eyes of consumers, citizens and microbusinesses.

The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of micro businesses, which have many of the same problems as individual consumers.

Four members of the Panel also represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively. They liaise with the key stakeholders in the Nations to understand the perspectives of consumers in all parts of the UK and input these perspectives to the Panel's consideration of issues. Following the alignment of ACOD with the Panel, the Panel is more alert than ever to the interests of older and disabled consumers and citizens.

Response

The Panel has long called for the advertising and promotion of broadband speeds to be fair, meaningful and realistic. We have been pleased to see Ofcom, broadband providers and the ASA's CAP and BCAP work towards this and welcome the opportunity to comment on the revised codes of practice.

In our response to CAP and BCAP's consultation in July 2017, we highlighted what we consider to be the unfair practice that has been adopted as acceptable across the broadband sector: that is, labelling services as "up to" a certain speed, because that speed could be obtained by 10% of consumers of that service. Aside from the 10% threshold being, in our view, far too low this wording is itself potentially misleading - it does not guarantee the majority of potential consumers the service that they might reasonably believe they were paying for.

We have consistently urged Ofcom and the ASA to encourage providers to change their language to match the reasonable expectations of consumers and to advertise on the basis of speeds of "at least" the headline speed. This would offer consumers certainty and promote trust in their provider. It would also make it easier for consumers to understand where failings had occurred and seek redress from their providers.

We have encouraged providers to consider other means of providing the consumer with the



speed for which they have subscribed, such as free tethering when necessary. But in cases where the consumer cannot receive the speed they are paying for - and where this cannot be remedied - we have suggested that providers implement proportional billing, so that the consumer is only expected to pay for the service they receive and not for the unfulfilled theoretical promise of more.

Fair, realistic and meaningful information

The Panel strongly supports Ofcom's proposals to improve information provided proactively by broadband providers on speeds, both at the point of sale and in contracts. Reflecting the range of slower speeds broadband users may experience during 'peak' times is, we believe, honest and realistic. A requirement for providers to supply a minimum guaranteed speed is a way of giving consumers equal access to the information the providers have - empowering them to make an informed decision about the services they choose.

We would also advise providers to make their advertising more meaningful by demonstrating to consumers what they will be able to do at those speeds. This will enable them to choose whether they need to upgrade to a faster service - where available - and should remove the issue where consumers pay for a faster service than they need, as an insurance measure, because they don't understand what speeds are necessary to do what they want or need to do.

We encourage Ofcom and broadband providers to provide better point of sale information across all consumer communication channels, so that no-one misses out.

It is now easier than previously for broadband providers to be able to determine what speeds consumers in a specified location are likely to get, with a higher level of accuracy. More information is also publicly-available through impartial sources such as Ofcom coverage checker apps and tools. We would encourage Ofcom to build into the codes a requirement for providers to promote those tools, including Ofcom's small business portal¹, for the use of small and micro businesses. We would also strongly recommend that these tools are highlighted in the consumer information guide that Ofcom will be putting together, which we look forward to contributing to.

Broadband is now widely seen as a utility and consumers' needs and expectations have and will continue to increase. This also increases the burden on some micro businesses, employing ten or fewer people. These businesses are subject the same service issues as consumers - but in terms of remaining contactable, their business may be at stake. In sectors such as catering and hospitality, the detriment may be compounded, where customers of the micro business are also in-house users of the broadband service. For micro businesses in the creative and media industries, their entire staff may rely on broadband to do their jobs. It is essential that micro businesses are well-informed and able to act quickly to restore or exit their service, or they may lose valuable business to larger competitors which are better equipped with in-house IT and legal departments. Bearing this in mind, we see the proposed 30 days as an absolute maximum time for providers to be able to improve their speeds; we would encourage providers to set

¹ <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2014/sme-portal>



themselves higher internal performance metrics to reduce the 30-day minimum target. We also recommend that alternative remedies to the right to exit are in place for cases where exiting a contract is not practicable or realistic, i.e. 'proportional billing' - billing that is proportional to the actual service received.

Users of video and text relay/Next Generation Text services

It is important that consumers with hearing and/or speech impairments (and those who want or need to contact them), who may rely heavily on these services know at point of sale whether the broadband service they are signing up to will guarantee them speeds high enough to use those services reliably.

The roll-out of video relay across Scotland's public services makes this especially significant in Scottish rural areas, where speed and coverage is not as high as the UK average.

It is vital that consumers, and especially those people who may be in vulnerable circumstances, are not misled and can buy a service that is relevant to their needs.

The right to exit

Equipping consumers with knowledge about the speeds they are likely to get should help to enable consumers to engage with their provider, ask for and receive redress where relevant, and where possible and necessary, to switch provider.

It is vital that all consumers are able to access complaints and redress processes and that providers record, learn from and act on feedback. Our research '*Going Round in Circles*'² on complaint handling and '*We're Not All the Same*'³ focusing on the customer service experiences of older and disabled consumers, showed the difficulties consumers can face when negotiating with their providers and that the situation is worse for people who are already in vulnerable circumstances in terms of navigating the market. We welcome the strengthening of a consumer's right to exit, without penalty, if speeds fall below minimum guaranteed speeds and providers are unable to make improvements within 30 days.

We also applaud the move to extend this right to include phone and pay-TV services bought in a bundle with broadband. This is fair not only because the consumer is released from all services at the same time, but also because slow broadband speeds may impact the delivery of the other services (depending on the technology that is used to deliver them).

As mentioned above, the right to exit may not be a right that is relevant to a consumer or micro business owner that is not able to switch to another service - either because there is no affordable competitive service, or because of fear of loss of service during changeover. In these instances, we repeat our strong belief that providers should commit to apply

² <https://www.communicationsconsumerpanel.org.uk/going-round-in-circles/going-round-in-circles> (Updated research on complaint handling is to be undertaken with a new report to be published in 2018)

³ <https://www.communicationsconsumerpanel.org.uk/research-and-reports/we-re-not-all-the-same-inclusive-communications>

proportional billing for those consumers for the remainder of the contract term.

Other technologies

We are pleased to see that the revised codes apply to all networks and therefore all broadband consumers, regardless of the technology used by their providers.

Compliance Monitoring

As advised in our response to the ASA's CAP and BCAP's consultation on broadband speeds advertising, the foremost concern of the Panel is naturally with consumers. However we would also argue that the current situation creates a series of costs for providers. There is not only the reputational cost of dissatisfied consumers, but there is also the operational cost of creating, and having to deal with, an area of contention and customer complaint.

Reducing the potential for customer complaints would clearly create an operational benefit for suppliers but it is also beneficial for consumers, not just because of the emotional stress and time required in seeing through a complaint but also because providers' complaint services do not always live up to expectations.

As previously stated, we welcome the positive engagement between Ofcom and broadband providers to deliver updated voluntary codes that strengthen protections for broadband consumers and micro businesses. We see the reasons above as incentives for providers to comply with the codes. But while the codes are voluntary, it will be vital that Ofcom monitors compliance and takes prompt and public action to protect consumers. We welcome annual reviews by Ofcom and the potential to consider a mandatory approach should providers renege on their commitments. We would also recommend that Ofcom consider other means of monitoring such as mystery shopping and analysing complaints.

Summary

- We strongly support the commitment by code signatories - across all broadband network types - to provide information on broadband speeds that offers a minimum guaranteed speed and a realistic indication of service capabilities at peak times;
- We consider that the terminology used in advertising should be updated from 'up to' to 'at least', to reflect the minimum guaranteed speed;
- We agree with the strengthening of the consumer's right to exit from a contract (including a bundle) if their provider has not improved their service within 30 days, without penalty - we urge providers to consider this a **minimum** target;
- We consider proportional billing a reasonable alternative remedy in situations where the right to exit is meaningless (where there is no realistic competitor or the consumer does not want to switch provider);
- We welcome Ofcom's commitment to monitor compliance regularly and act promptly on behalf of consumers;
- We look forward to contributing to Ofcom's 'customer guide' and would also highlight the needs of specific consumers, such as users of video and text relay/Next Generation Text services - and those of micro businesses.