

11 Evesham Street
London
W11 4AR

Celia Pontin
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

By email only to broadband.speeds@ofcom.org.uk

10 November 2017

Dear Celia,

Broadband Speeds Codes of Practice

TalkTalk welcomes the opportunity to comment on Ofcom's proposals to revise the Residential and Business Voluntary Codes of Practice on Broadband Speeds.

TalkTalk has already commented on the earlier drafts of the revised codes circulated by Ofcom in the summer. We will focus the comments in this letter on any new issues or concerns that we have identified from the current formal consultation.

Broadly speaking, it is positive that the draft revised broadband speed codes for consumers and business customers broadly reflect the outcome of the discussions in the industry working groups. We believe the codes meet the requirements of the TSM Regulation¹ by ensuring that the appropriate broadband speed information is presented to the customer as well as providing for a clear process of right of exit if the speed falls below the minimum guarantee.

It is important that the provisions of the codes are both clear and precise to support ISPs in implementing the revised requirements and, importantly, to ensure a consistent consumer

¹ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 231/2012 on roaming on public mobile communications networks within the Union, OJ L310/1, 26.11.2015.

experience across different ISPs. Ofcom must ensure that ISPs are not able to adopt different interpretations of the requirements, including the high-level testing principles, to gain an unfair competitive advantage of other ISPs.

Our specific comments are set out in the following sections.

Implementation time-scales

As mentioned in our previous comments on the draft codes, we would expect an implementation period of 12 months from publication of the final versions of the codes. We believe this period would be consistent with other regulatory changes imposed by Ofcom that have required providers to make system and process changes (e.g. the changes to the switching processes and the non-geographic numbering regime in 2015). This remains our view.

Additionally, we see one specific issue arising if Ofcom were to publish the revised codes before the end of 2017 with an implementation period of 12 months. TalkTalk would be unable to make any system changes during the second half of December (2018) due to a regular system change freeze. It is common practice to have such a change freeze in place over the holiday period. We believe this would mean that the implementation period would logically have to be by the end of January 2019 at the earliest.

Re-contracting customers

We note that the informal draft residential code stated that it did not “*apply to existing customers who simply retain their current service*” (section 1.10). This provision has been changed such that the revised code would apply to re-contracting customers even if their actual speed does not change (except the provision of speed information at the point of sale in accordance with principle 1).²

We understand that Ofcom is trying to strike a balance regarding re-contracting customers as to the application of the existing and revised codes whilst ensuring compliance with the TSM Regulation. We are concerned, however, that providing an entirely new set of speed measures based on throughput speed may risk confusing existing customers. In very practical terms, these customers will know exactly what speed they are getting from their existing provider and this will obviously not change just because they enter into a new contract. We are not sure that blanket adherence to the TSM Regulation is compatible with the wider consumer interest in this particular instance. By way of compromise, we would suggest that providers are given some degree of flexibility as to how they migrate existing customers from the existing code to the new code over a 24-month period (to cover customers who sign up to

² See section 1.11 in the draft revised code.

a new 24-month contract immediately prior to the new code entering into force). This would give providers the opportunity to be more innovative as to the best way of migrating their existing base to the new code (e.g. through separate customer announcements).

Relationship between the code and the TSM Regulation

We have previously made the point that the code text should acknowledge that a provider who complies with the revised code is also deemed to be compliant with the relevant provisions of the TSM Regulation. This point was discussed at the workshops and, we believe, acknowledged by Ofcom as being the case.

We welcome Ofcom's view that *"the after-sale information required under the revised codes is consistent with the information required in contracts under Article 4(d)."*³ This statement relates specifically to after-sale information. We have been unable to find a similarly clear view with regard to point-of-sale information which is also specifically regulated in the TSM Regulation. We note that Ofcom wants *"to align the speed information required under the codes at point of sale, with the speed information required in contracts by the Regulation."*⁴ This statement falls short of declaring that the code is consistent with the TSM Regulation also in so far as point-of-sale information is concerned. Please could Ofcom therefore explain whether or not it considers the revised codes to be compliant with the TSM Regulation in relation to all relevant broadband speed requirements.

Lack of broadband speed information

We note section 2.4 of the draft revised residential code which stipulates that *"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."* In the previous draft code, the equivalent provision included the scenario where broadband speed information is not available at the point of sale, e.g. for temporary technical reasons, in which case the ISP would be able to proceed with the sale if they obtained the customer's express consent to do so.

In contrast we note that the draft business code retains this provision by stating that *"In cases where the speed information on one or more lines may be unavailable at the first point of contact with the customer, e.g. in face to face meetings, ISPs must seek the customer's consent to proceed with the purchase of the service after the speed information is provided."* We believe the same provision should be included in the residential code as it would otherwise risk creating counter-intuitive scenarios where an ISP would have to stop the sales

³ Ofcom consultation document, paragraph 3.5.

⁴ Ofcom consultation document, paragraph 3.4.

process even if the customer agreed (or even insisted) to proceed. There is also no reason in our view as to why the two codes (residential and business) should be different in this regard.

In addition, as set out in our comments on the earlier draft code, Ofcom needs to clarify what it means or expects by the term “expressly” both in relation to telephone and online sales environments. This is important to ensure that an ISP is clear on what it needs to change in its sales processes to be compliant with the code (and ultimately to ensure consistency of application across all ISPs).

Engineering charges

We believe Section 2.56 of the code needs to be amended to ensure that ISPs are not required to incur a disproportionate amount of engineering charges. The draft text says that *“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.”* The ISP should be able to require the customer to carry out all necessary diagnosis at their home (in so far as possible and reasonable) and only be required to send out an engineer free-of-charge to the customer as a matter of last resort. Engineer visits are expensive to carry out and it is reasonable for ISPs to seek to minimise them as far as possible. Similarly it would be reasonable to require a customer to pay for the engineer visit if the fault causing the slow broadband speed is down to the customer’s own equipment.

Reporting requirements

Annex 3 sets out the proposed reporting requirements for ISPs. We are concerned that the number of data items is disproportionate to what the code is looking to achieve in terms of ensuring that the customer has access to effective redress in the event their speed falls below the minimum guaranteed speed. As such we do not believe it is necessary for ISP to report on every instance where the customer has contacted them in relation to a speed problem. It should be sufficient to limit the reporting requirement to those instances where the ISP has confirmed that the customer’s speed is below the minimum guaranteed speed and the customer’s right to exit may be triggered if the ISP cannot address the problem with the 30-day period.

Please do not hesitate to contact me should you have any questions regarding the above.

Yours sincerely,

Rickard Granberg
Head of Regulation and Compliance

Tel 020 3417 1000

Fax 020 3417 1001

Web talktalk.co.uk