



## Broadband Speeds Code of Practice

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

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June 2022

Sky agrees with Ofcom's proposal – set out in its consultation titled: *'Broadband Speeds Code of Practice: Proposals to revise the Residential and Business Voluntary Codes of Practice on Broadband Speeds (May 2022)*<sup>1</sup> (the "**Consultation**") - to align the scope of both the residential and business codes of practice on broadband speeds (in respect of small business customers only) (the "**Codes**") with the new definition of 'bundle' implemented by Ofcom via revised General Conditions of Entitlement ("**General Conditions**") implementing the European Electronic Communications Code ("**EECC**")<sup>2</sup> from 17 December 2021.

Sky also agrees that the development work needed to implement these changes should be minimal and therefore a 3 month implementation period, starting from the date Ofcom publishes its final decision statement and the revised Codes, is reasonable.

Sky considers it vitally important that regulatory rules, and consumer remedies, are **clear, consistent and easy for consumers to understand, without imposing unnecessary or disproportionate burdens on industry.**

Without the proposed changes, there would be two different regimes governing consumer rights in respect of telecommunications and related products (in addition to general consumer law), particularly in respect of the right to exit without penalty in certain circumstances:

1. under the General Conditions and associated definition of 'bundle', where customers benefit from the protection that any change made to one element of a bundle that is not exclusively to their benefit triggers a right to leave all the services in the bundle without penalty<sup>3</sup>; and
2. under the Codes, where customers only benefit from the protection of a right to exit electronic communications services other than broadband (including, in relevant circumstances, pay-TV), without penalty, where a broadband speed issue arises if that other service is supplied by the same provider and technically dependent on the broadband service for its delivery, or
  - a. in respect of consumers, that other service is pay-TV and it is purchased, or the contract is renewed, at the same time;
  - b. in respect of small business, that other service is standard voice and it is purchased, or the contract is renewed, at the same time, (irrespective of whether the pay-TV/standard voice and broadband are in any other way 'linked').

As Ofcom has identified in its Consultation, this would give rise to a **significant risk of misunderstanding and misinterpretation** by both consumers and broadband providers. It could also give rise to significant dissatisfaction whereby in some circumstances customers can leave their entire bundle without penalty but in others they cannot. Sky therefore welcomes the proposed simplification.

Not only is the proposed approach more **consistent and simpler to understand**, it aligns with the **policy objectives** behind both the right to exit set out in current Codes and the introduction of the new definition of 'bundle' under the EECC.

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<sup>1</sup> [Broadband Speeds Code of Practice: Proposals to revise the Residential and Business Voluntary Code of Practice on Broadband Speeds \(ofcom.org.uk\)](https://www.ofcom.gov.uk/consult/condocs/broadband/broadband-speeds-code-of-practice-proposals-to-revise-the-residential-and-business-voluntary-code-of-practice-on-broadband-speeds/)

<sup>2</sup> Subsequently replaced by the revised General Conditions of Entitlement further implementing the European Electronic Communications Code on 17 June 2022.

<sup>3</sup> Unless such change is of a purely administrative nature and has no negative effect on the customer, or is directly imposed by law (GC C1.14).

These policy objectives were set out by Ofcom in its 2017 consultation on 'Proposals to revise the Residential and Business Voluntary Codes of Practice on Broadband Speeds' by, amongst other things, introducing a right to exit 'bundled services'<sup>4</sup>, where Ofcom said:

"A1.38 For [customers purchasing a broadband service alongside a landline and/or pay TV service from the same provider] these customers, being released from the broadband [because of a broadband speed issue] but not the landline and pay-TV services in their contract may make switching to a new provider unattractive and mean that they are unwilling to take up the right to exit. This may be the case if, for example:

- a) switching only the broadband part of the bundle leads to an increase in price for the remaining landline and /or pay-TV services; or
- b) switching provider for the whole bundle of services leads to early termination charges relating to landline and/or pay-TV services;"

Likewise:

"A1.40 In addition, there are some services that can only be provided over a broadband service with the same provider (dependent services). Therefore, if the broadband service stops, the customer cannot continue to receive the dependent service. For example, some payTV services require the customer to take broadband from the same provider."

...

"A1.43 The aim of this approach is to ensure that customers are not discouraged from exercising their right to exit, on the basis that they are not able to exercise that right for all the elements of their package. Eliminating such obstacles, actual or perceived, to the exercise of the right to exit aims to improve its effectiveness."

Further, Recital 283 to the EEC states:

"...While bundles often bring about benefits for consumers, they can make switching more difficult or costly and raise risks of contractual 'lock-in'. Where different services and terminal equipment within a bundle are subject to divergent rules on contract termination and switching or on contractual commitments regarding the acquisition of terminal equipment, consumers are effectively hampered in their rights under this Directive to switch to competitive offers for the entire bundle or parts of it... a right to terminate any element of a bundle comprising at least an internet access service or a publicly available number-based interpersonal communications service before the end of the agreed contract term because of a lack of conformity or a failure to supply should give a consumer the right to terminate all elements of the bundle..."

As can be seen from these extracts, it is the **impact on switching** and **likelihood of the customer taking up their regulatory rights** (the right to exit) that Ofcom and the EEC are primarily concerned with.

In respect of non-technically dependent products, it is not the mere fact the services were purchased at the same time that makes switching one, but not the other, unattractive or reduces the likelihood of the customer exercising their right to exit. Instead, it is the fact the **remaining service is negatively impacted** if it is kept or the

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<sup>4</sup> [Consultation: Broadband Speeds Code of Practice \(ofcom.org.uk\)](https://www.ofcom.gov.uk/consult/condocs/broadband/broadband_speeds_code_of_practice/broadband_speeds_code_of_practice.pdf)

customer is **negatively impacted financially** if it is also switched (such as by the imposition of early termination charges).

Likewise, in respect of technically dependent products it is the *forced cancellation* of the non-broadband product that deters the switching or cancellation of the broadband product.

If there is no negative impact on the customer or retained service, and no forced cancellation, there can, by definition, be no risk of discouraging a customer from exercising their right to exit the under-performing broadband service. In other words, it is the fact two services are “*closely related or linked*”, as per the definition of a ‘bundle’, that acts as a potential disincentive to switching following a speed issue arising and not the mere fact two services were purchased at the same time. Extending the right to exit to services falling within the new definition of ‘bundle’ addresses this harm.

The approach under the current Codes also gives rise to a **gap in consumer protection** whereby a customer does not benefit from protection – in the form of a right to exit without penalty following broadband speeds issues – where the broadband and another service are in some way ‘closely related or linked’ (for example, there is a technical linkage) but one is not technically dependent on the other for its delivery and they were not purchased, or the contracts were not renewed, at the same time. This **gap would be closed** by the proposed changes.

Finally, Sky welcomes the guidance Ofcom has given relating to the most common types of links (or dependencies) between services and/or terminal equipment, set out at paragraphs 2.17 and 2.18 of the Consultation and paragraphs A11.63 and A11.131 of its guidance on General Condition C1<sup>5</sup>. Sky strongly encourages Ofcom to retain this guidance in the form of the new definitions to be included in the revised Codes, as set out at Annex 7 of the Consultation, as it is unlikely consumers or small business customers will be familiar with the definition of ‘bundle’ in the new General Conditions or Ofcom’s past statements on this topic.

Sky

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<sup>5</sup> [Annex 11: Revised guidance on GC C1 contract requirements June 2022 \(ofcom.org.uk\)](#), pages 14 and 27 respectively.