



Guidance for the Advertising of Broadband Speeds in the Isle of Man

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1 Introduction

1.1 Background

1. The "Guidance for the Advertising of Broadband Speeds in the Isle of Man" (the Guidance) covers advertisements which include speed claims for residential broadband services, however, it may be applied more widely where the circumstances of an advertisement for a different type of service, for example, a business broadband service, are sufficiently similar.
2. The Guidance takes effect from 1 October 2019.
3. The Communications Commission ('the Commission') and the Office of Fair Trading ('the OFT'), together referred to as 'we', have jointly released the Guidance. This is due to the fact that the OFT has responsibility for printed advertisements while the responsibility for broadcast advertising lies with the Commission. The Guidance covers both printed and broadcast advertisements.
4. The Commission's powers apply to all broadcasters licensed by the Commission under the Broadcasting Act 1993.
5. For the avoidance of doubt, the Guidance ONLY applies to fixed line services and products, it is **not** applicable to mobile services and products.
6. The Guidance recommends an approach that we consider is likely to be acceptable within the legal framework. For the avoidance of doubt, it does not proscribe other approaches, nor is it intended to stifle innovation in telecommunications marketing. If complaints are received about an advertisement in which an advertiser has chosen to depart from this approach, we will simply expect the advertiser to be able to justify why it did so and why the advertisement is not misleading as a result.

1.2 The Advertising Guidance and the Legislative Framework

7. The OFT controls misleading advertisements by means of the relevant provisions within the Consumer Protection Act 1991 ('the 1991 Act') and the Consumer Protection (Trade Descriptions) Act 1970 ('the 1970 Act')¹.

¹ Legislation which supersedes these provisions is likely to come into force in 2019; the Consumer Protection from Unfair Trading Regulations 2019. The effect will be similar. This guide will be updated in due course.

8. Part VI of the 1991 Act contains the primary controls for misleading advertisements.

It is specified that for the purposes of Part VI: *"an advertisement is misleading if in anyway, including its presentation, it deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and if, by reason of its deceptive nature, it is likely to affect their economic behaviour or, for those reasons, injures or is likely to injure a competitor of the person whose interests the advertisement seeks to promote."*

9. Under Section 6 of the Broadcasting Act 1993, the Commission may create Codes of Practice relating to advertising and sponsorship. The Commission has created a Code of Advertising and Sponsorship (*the Code*) which is published on its website².

In terms of advertising speeds, paragraph 24 (Misleadingness) of the Code states that: *"no advertisement may contain descriptions, claims or illustrations which expressly or by implication mislead about the product or service advertised or about its suitability for the purpose recommended"*.

10. The effect on consumers is considered in the Guidance from the point of view of the average consumer, who is assumed to be reasonably well-informed, reasonably observant and circumspect. If an advertisement is targeted at a particular group of people, it is considered from the point of view of the average member of that group.
11. This Guidance is based on the UK Broadband speed claims guidance published by the Advertising Standards Authority³ which came into effect on the 23rd May 2018.
12. The overarching intention of the Guidance is to provide advertisers with clarity as to the how we interpret the provisions currently controlling advertisements for broadband speeds.
13. In relation to advertisements that are broadcast as part of a Sound Broadcasting Service⁴, the Media Outlet carrying the advertisement should satisfy itself that the claims made can be substantiated in accordance with Paragraph 24 of the Code.

² <https://www.iomcc.im/media/1005/code-of-advertising-and-sponsorship.pdf>. It should be noted that the Commission reserves the right to amend or adjust the Code following a consultation process.

³ See <https://www.asa.org.uk/resource/broadband-speed-claims-guidance.html> ⁴ As defined in the Broadcasting Act 1993 - "sound broadcasting service" means a broadcasting service whose broadcasts consist of transmissions in sound only but does not include a radio multiplex service (within the meaning of Part 3 of the Communications Act 2003 (Act of Parliament)).

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14. Advertisers in this document refers to any parties responsible for the commissioning or dissemination of advertisements for broadband products and services. This can include the Network Operator and/or the Media Outlet in the context of the legislation or code of conduct that may be applicable. A Media Outlet is a print, broadcast or online media entity.

2 The Guidance on Broadband Speeds

2.1 Factors Affecting Broadband Speeds

15. In practice, different customers of the same provider achieve different broadband speeds. The variation in speeds can be negligible or highly significant depending on a number of different factors. This has implications for how broadband speed claims may be communicated by advertisers.
16. Some of factors that affect the speeds achievable by individual customers are:
 - a. The variation in achievable speeds from customer to customer caused by signal attenuation⁵ on xDSL⁶ networks is likely to be very significant;
 - b. Individual users' speeds also vary over time on all platforms due to factors such as contention⁷, traffic management and network capacity;
 - c. In some instances the equipment used in the consumer's premises can be the determining factor, for example, older equipment may not be capable of delivering the speeds advertised on new services⁸; and
 - d. It is acknowledged that in some instances the placement of equipment in the consumers premises, and the premises itself, may have a detrimental effect on the consumer's experience, for example, in a building with thick stone walls or

⁵ Signal attenuation is the depreciation of signal strength between the end user and their local telephone exchange as the broadband signal travels over copper wire, this is largely dependent on the distance the consumer is from the nearest cabinet or exchange. However in some circumstances the condition and/or quality of the cable may be the significant factor.

⁶ xDSL is an acronym used to describe any products that utilise the Digital Subscriber Line technology; for example ADSL, VDSL, etc.

⁷ Contention is the effect of multiple users sharing the same bandwidth on a provider's network.

⁸ This is particularly applicable for WiFi enabled devices, for example WiFi cannot generally deliver the same speeds and quality as a fixed line can, and older WiFi equipment may be using older, slower protocols. In some circumstances the speed being delivered on the line into the premises may be higher than a consumer achieves on such devices.

one with substantial metal content, a consumer using WiFi may experience considerably lower speeds than is being delivered at the input to the modem.

17. Along with possible variations in performance between different platforms, there may be variations in performance between different providers on the same platform. Given the possibility exists that consumers could have very different experiences of the same product there is a risk that advertisements that simply provide a theoretical maximum speed would be misconstrued.
18. As such there is a requirement for guidance that Advertisers can refer to when preparing advertisements that contain claims of achievable broadband speeds.

3 Speed claims

3.1 Principle

19. It follows from the previous section that the current convention of advertising speeds 'up to' a theoretical maximum is misleading and could result in an average consumer purchasing a product under false assumptions. In practice the number of consumers that actually achieve the advertised maximum speed is likely to be minimal.
20. Advertisers should be able to demonstrate that the speeds they advertise can be achieved by a reasonable proportion of the provider's customers.

3.2 Policy

21. We have formed the view that all advertisements should include appropriate qualifying information to accompany the speed claim to ensure the average consumer is not likely to be misled.
22. Advertisements where claims are made in relation to a numerical value for either download or upload speeds should be prepared with due consideration to the Guidance.
23. **We recommend that it should be possible for the advertiser to demonstrate that the claimed speed is achievable for at least 50% of the relevant customer base at 'peak time' (defined as between 8pm and 10pm)⁹.**

⁹ If speed claims are to be made on a different basis there should be sufficient evidence to demonstrate that their approach is not likely to mislead consumers.

24. The Guidance applies to relevant claims wherever they form the name, or part of the name, of the product or service, for example, a consumer buying a product partly or wholly named 'Gigabit' would likely form a reasonable expectation of achieving such speeds. It is possible for advertisers to round speed claims down to a figure that is more convenient for marketing purposes.

4 Qualifying speed claims

4.1 Principle

25. It is a general principle of the Guidance that advertisers must not mislead consumers by including or omitting information, if the inclusion or omission of that information is likely to cause consumers to make a decision they would not otherwise have taken in relation to purchasing a product or service.
26. Below are several different qualifications that are likely to be necessary depending on the level of variation in speeds achieved by customers of a provider:

4.1.1 "Average"

27. Where advertisers claim a speed achievable for at least 50% of their customer base, the speed should be described as an "average" or another descriptor conveying the same meaning. If the speed has been measured within a particular geographical area, i.e. it is not applicable to the Isle of Man level as a whole, the advertiser should make this clear.

4.1.2 Significant factors that limit speeds achieved by customers

28. If an advertisement does not mention factors that may cause some customers to receive speeds significantly below the claimed speed, the advertisement may be considered to be misleading. Significant factors affecting a service should therefore be stated. For example:
 - a. Providers should include a qualification referring to the effects of signal attenuation on broadband services where applicable; and,
 - b. Some forms of traffic management result in a proportion of customers receiving speeds at certain times that are significantly below the advertised speed.
29. The wording of a qualification should make clear, in terms easily understood by an average consumer, the likely effect of the relevant factor on achieving an advertised

speed. In particular, advertisers should avoid technical terms unless they are widely understood by consumers or are explained clearly within the advertisement.

30. Qualifications should be prominent, appearing in the body copy of non-broadcast advertisements and the equivalent for claims appearing in broadcast advertisements.
31. **Advertisers are advised to include a statement urging consumers to check their likely speed at their address by using the relevant typical speed range checker.**

4.1.3 [Criteria for further qualifying information](#)

32. In certain instances, a significant proportion of a Network Operator's customer base may receive a speed that is much lower than the advertised speed. This may prevent such customers from carrying out the types of online activity that they might reasonably expect to undertake on the advertised product or service. Where this is applicable, advertisers should include further qualifying information that bears out, in terms easily understood by consumers, the likelihood of the service not being able to meet reasonable expectations. To address this issue advertisers might include statements similar as follows:
 - a. A statement that a proportion of customers can expect to achieve speeds below a certain speed. For example, "X% of our customers receive speeds below YMbit/s";
or
 - b. A statement that a proportion of customers can expect to achieve speeds above a certain speed. For example, "X% of our customers receive speeds above YMbit/s"; or
 - c. A statement that a proportion of customers can expect to achieve speeds within a certain range, for example, "X% of our customers receive speeds between YMbit/s and ZMbit/s".
33. The qualification should be prominent, appearing in the body copy of non-broadcast marketing communications and the equivalent for claims appearing in broadcast advertisements.
34. If an advertisement for a broadband product or service contains information of the kind described above, that will obviate the need to refer to the effects of signal attenuation in the marketing communication.

4.2 Other claims

4.2.1 Non-numerical speed claims

35. Terms that are likely to significantly influence a consumer's expectation of the speed of a service such as "superfast" should, where relevant, be in line with sub-section 4.1.2. We are of the preliminary view that such statements could be misconstrued under particular circumstances, and reserve the right to assess non-numerical speed claims on a case-by-case basis.

4.2.2 Upload speed claims

36. The Guidance is primarily focused on download speeds, as these are the speeds most commonly presented in broadband marketing communications, however, for the avoidance of doubt, it applies in equal measure to advertised upload speeds. We would assess claims in relation to upload speeds against the same standards and criteria as download speeds.

4.2.3 Comparisons

37. It is important when developing advertisements making comparisons with identifiable competitors, or their products, that the methodologies used are based on the same principles as the comparator. Any such advertisement should include sufficient information to allow the consumer to verify the comparison. If the comparison is not being made on a like-for-like basis the differences in methodology should be made explicitly clear to the consumer.

4.3 Substantiation

4.3.1 Principle

38. The substantiation required for speed claims must be robust and reasonably representative of actual performance. Data used to support claims should be relevant to the audience targeted by the advertisement. If there are discrepancies between the advertised product or service and the advertisement, for example, if it is a new to the market and data from a similar product is being used to illustrate expected performance, this should be clear in the advertisement.

39. We reserve the right to adjudicate on individual advertisements on a case-by-case basis, taking into account the context in which speed claims are used in the advertisement.

4.3.2 Acceptable approaches

40. There are different approaches to measurement, sampling and normalisation and statistical methods that can be combined to produce data that meets the criteria outlined in the paragraphs below. Advertisers should be in a position to describe how they designed their speed testing regime and verify the validity of same.
41. While the Guidance does not specify a preferential method or approach to gathering and processing speed testing data, advertisers should use a methodology that is recognised as valid and appropriate. Advertisers should take note of the following in that regard:
 - a. It is possible to accept data gathered and processed on behalf of providers by independent third parties and from provider's own tests. In principle, we are of the view that data based on either approach is acceptable;
 - b. We recognise that many services have large customer bases which may make it impractical or cost-prohibitive to test the lines of all customers. It is therefore considered acceptable to use a statistically relevant sample of a particular customer base and apply appropriate statistical methods to extrapolate expected performance;
 - c. While it is acknowledged that some degradation of the consumer's experience is outside the control of Network Operators (see paragraph 16) we consider it reasonable for Advertisers to reasonably account for known limitations of particular technologies when making claims in relation to expected speeds. This could be in the form of an appropriate caveat.

4.4 Relevant factors

42. Advertisers should account for all the relevant factors that may cause a reduction or variations in speeds. A non-exhaustive example of such factors is:
 - a. Signal attenuation;
 - b. Congestion/contention;
 - c. Traffic/network management;

- d. Protocol overheads; and,
- e. Environmental factors.

43. As a minimum we would expect to see the above listed factors given due consideration, with additional factors that may be unique to the advertised product or service being considered as appropriate. It is at the advertisers' discretion as to which factors they consider when designing a speed testing regime for a particular claim, however, they should be able to provide objective justification as to why any factor omitted was not relevant as required.

4.4.1 Factors beyond advertisers' control

44. Factors beyond an advertiser's control would not ordinarily need to be taken into account by a testing regime; this excludes the known limitations of a particular technology as outlined above. For example, if a customer is using or accessing a service in an inappropriate or unintended manner, or has in some way modified equipment in a way that degrades the performance.

4.4.2 Measurement

45. There is no internationally recognised standard for testing broadband speeds. Advertisers should therefore use methods based on accepted best practice.

46. Measurements used to support advertised claims should be appropriate to the claims made, for instance:

- a. Specific claims, such as "50Mb Download speed", should be based on tests of protocols relevant to downloading large files; or
- b. Speed claims for a service in general should be based on speed testing that is representative of the activities that consumers could reasonably expect to undertake.

4.5 Sampling

47. We are likely to accept testing based on a sample of performance from the relevant customer base in the context of the claims being made. It should be noted that this is based on an understanding that the sample would be statistically relevant to the overall customer base.

48. The selection of lines, exchanges or areas tested should be representative of the target consumers.

Advertisers should ensure that:

- a. A general campaign intended for a broad or Isle of Man audience should use data relevant to the whole customer base of a particular service.
 - b. A campaign targeted at a specific area might use data from tests carried out in that area. Any other data used should not be unrepresentative of performance in the area targeted by the campaign.
49. Advertisers should also be able to demonstrate that the lines chosen for testing are not unrepresentative. Advertisers should avoid 'cherry-picking' lines when conducting measurements, for example, only testing lines that are less than 12 months old in a particular area would likely result in a distorted prediction of expected performance. If such an approach was adopted we would expect to see the selective nature of the testing and the potential ramifications clearly outlined in the advertisement.

4.6 Normalisation and statistical methods

50. Advertisers may use statistical methods to account for the impact of certain limiting factors either to enhance the accuracy of testing data or as an alternative to testing for a particular factor. For example:
 - a. For xDSL technology, where signal attenuation caused by line-length is the primary determinant of a users' speed, marketers might use normalisation to make the results of their testing of a sample of lines representative of the wider customer base. If the target audience is Isle of Man or general, they should use a normalisation curve based on the national profile of line lengths.
 - b. Data may be adjusted to account for protocol overheads such as IP headers to ensure that it is representative of what users actually achieve.

5 Contact Details

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