

# **Marketing alternative telecommunications services during the transition away from copper**

**Guidelines to the telecommunications industry under section 234 of the  
Telecommunications Act 2001**

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## Associated documents

Publication date	Title
4 August 2021	<a href="#"><u>Marketing of alternative services to consumers during copper and PSTN withdrawal – open letter</u></a>
7 October 2021	<a href="#"><u>Decision to publish guidelines on the marketing of alternative services to consumers during copper and PSTN withdrawal</u></a>

## Defined terms and Interpretation

### Defined terms

In this document, unless the context otherwise requires:

<b>Act</b>	means the Telecommunications Act 2001
<b>Alternative telecommunications service</b>	means any service available to a consumer moving off copper-based services, using an access technology other than copper, including fibre, hybrid fibre coaxial cable and wireless broadband services.
<b>Alternative service</b>	has the same meaning as “alternative telecommunications service”.
<b>BYO</b>	means bring your own.
<b>Copper-based service</b>	means any voice or broadband service provided over a copper access line.
<b>HFC</b>	means hybrid fibre coaxial.
<b>Marketing</b>	means any communication relating to the description, promotion, advertising or sale of products or services to consumers including online, print, television, radio, in-store and door-to-door descriptions, promotions, advertising and selling.
<b>MBNZ</b>	Means the Measuring Broadband New Zealand programme.
<b>Outcomes</b>	means the outcomes set out in these guidelines.
<b>Principles</b>	means the principles set out in these guidelines.
<b>PSTN</b>	means public switched telephone network.
<b>RSQ</b>	means retail service quality.
<b>RSP</b>	means retail service provider.
<b>TCF</b>	means the New Zealand Telecommunications Forum Inc.
<b>TDRS</b>	means the Telecommunications Dispute Resolution Scheme.
<b>Wireless broadband service</b>	means a service provided by means of fixed wireless access technology.

## Interpretation

In this document:

- Words and phrases have the meaning given to them in this definitions and interpretation section, or if not defined, the meaning given to them in the Act.
- If words and phrases can be interpreted in more than one way, the word or phrase should be read in the way that best promotes the purpose of RSQ codes under the Act.<sup>1</sup>
- All statutory references are to the Act unless otherwise specified.
- A reference to include means includes, without limitation.

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<sup>1</sup> Section 233 provides the purpose of an RSQ code is to improve retail service quality to reflect the demands of end-users of telecommunications services.

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## Introduction

### Purpose and structure

1. These guidelines are issued to the telecommunications industry under section 234 of the Telecommunications Act 2001 (**the Act**).
2. The guidelines are intended to provide advice on matters to be included in an industry retail service quality (**RSQ**) Code. The purpose of the RSQ Code is to ensure that consumers transitioning off copper-based services are able to make fully-informed decisions about what alternative telecommunications service is best for them and to improve the marketing of services to consumers in this regard.
3. This document is structured in the following sections:
  - 3.1 **Introduction** including purpose, scope, background, legal framework, general guidance, and information regarding Measuring Broadband New Zealand; and
  - 3.2 **Outcomes and principles** for a RSQ code.
4. In these guidelines, for the avoidance of doubt:
  - 4.1 When we refer to alternative telecommunications services, we mean services using fibre, fixed wireless, or HFC cable technologies rather than copper-based services; and
  - 4.2 When we refer to marketing, we mean any communications that could directly or indirectly influence the decisions of consumers transitioning off copper-based services, including targeted campaigns and general marketing in relation to alternative telecommunications services.

### Scope

5. We published an open letter on the marketing of alternative telecommunications services to consumers on 4 August 2021 and invited submissions on draft outcomes and principles to address our concerns in this area. We have taken the submissions and feedback we received into account in finalising these guidelines.<sup>2</sup>
6. Our expectation is that the outcomes and principles set out in these guidelines will be implemented by way of an industry RSQ code. These guidelines are therefore intended to assist industry in understanding our expectations and implementing an effective RSQ code.
7. We have included commentary to provide additional guidance on the interpretation of the outcomes and principles and include examples of matters that we expect to be addressed in the development of a code.

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<sup>2</sup> We have published our response to submissions and feedback on our webpage here: <https://comcom.govt.nz/regulated-industries/telecommunications/projects/marketing-of-alternative-services-to-consumers-during-copperpstn-withdrawal>.

8. An effective RSQ code addressing these matters will improve RSQ to reflect the demands of end-users of telecommunications services.

### **Background**

9. With New Zealand transitioning away from copper-based services, including those delivered over the PSTN, consumers are being required to switch to alternative telecommunications services, such as fibre, HFC cable, and wireless broadband in order to remain connected.
10. Telecommunications service providers are offering new and expanded services, each with different capabilities, specifications and expected performance, as they seek to retain existing customers and attract new ones.
11. We are concerned that the information being provided to consumers facing this switching decision can be incomplete, confusing, or potentially misleading.
12. Consumers need to be able to make fully-informed decisions about what alternative telecommunications service is best for them using the information reasonably required for that purpose.
13. This is particularly true for consumers who are vulnerable, elderly or less technologically aware. These consumers may be switching services for the first time and it may be the only change they make. This makes it vital that they choose the right service for their needs.
14. In our view, an RSQ code that adequately addresses these matters is important so that consumers are:
  - 14.1 made aware of the full range of options available to them when being presented with offers to move to alternative telecommunications services;
  - 14.2 given appropriate notice of any change to their copper-based services and do not have to make decisions under pressure;
  - 14.3 given accurate and complete information in order to purchase an alternative telecommunications service that meets their requirements and expectations; and
  - 14.4 given appropriate information and not misled about the performance characteristics of alternative telecommunications services.

## Legal framework

15. Section 234 provides that we may issue guidelines to the telecommunications industry on any matters relating to RSQ codes, including advice on what matters are appropriately dealt with by RSQ codes.
16. An RSQ code means a code of conduct relating to RSQ that applies to the provision of one or more types of telecommunications service.<sup>3</sup>
17. The purpose of an RSQ code is to improve RSQ to reflect the demands of end-users of telecommunications services.<sup>4</sup>
18. In addition to issuing guidelines, Part 7 sets out provisions for us to review industry RSQ codes and create Commission RSQ codes.<sup>5,6</sup>
19. Under s 9A we must also monitor RSQ in relation to telecommunications services and make available reports, summaries, and information about RSQ in a way that informs consumer choice.<sup>7</sup>

## General guidance

20. The guidelines are presented in the form of outcomes and principles. The outcomes and principles reflect what we consider should be achieved by the code. By acting in accordance with the code, we expect that telecommunications providers will give effect to the principles and achieve the outcomes set out in the guidelines.
21. The outcomes and principles are intended to apply to all relevant marketing conduct.
22. When drafting the code, the TCF should consider the accessibility of any information consumers receive from RSPs and how to ensure consumers understand that information. In particular, where relevant, RSPs should provide information in:
  - 22.1 Plain English;
  - 22.2 Multiple formats (including non-digital);
  - 22.3 Alternative languages; and
  - 22.4 Machine read-able forms.
23. The TCF should also ensure that the code has effective compliance and enforcement mechanisms, including appropriate monitoring and reporting provisions.
24. We consider the outcomes and principles set out in these guidelines are applicable to, and could be adopted by, any party marketing alternative telecommunications

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<sup>3</sup> Telecommunications Act 2001, s 5.

<sup>4</sup> Telecommunications Act 2001, s 233.

<sup>5</sup> Telecommunications Act 2001, s 235.

<sup>6</sup> Telecommunications Act 2001, s 236.

<sup>7</sup> Telecommunications Act 2001, s 9A(e) and (f).



services to consumers, including wholesale providers who may not sell telecommunications services directly to consumers.

25. The marketing of alternative telecommunications services is covered by general consumer protection law, including the Fair Trading Act 1986, which the Commission is responsible for administering.
26. Telecommunications providers are expected to comply in all respects with their obligations under the Fair Trading Act, the Consumer Guarantees Act and other applicable law.
27. One of the factors the Commission may consider in assessing future enforcement matters in this area is the extent to which a telecommunications provider has taken steps to comply with an RSQ code.

#### **Information regarding Measuring Broadband New Zealand**

28. The Measuring Broadband New Zealand (**MBNZ**) programme provides an objective comparison of different technologies, services and service providers in the New Zealand market, independent from providers.
29. The outcomes and principles contemplate the use of MBNZ information, where available, for the purpose of speed indications in marketing.
30. Where MBNZ information is not available for particular services, the outcomes and principles contemplate the TCF developing an interim approach to speed indications, which can be used by RSPs until MBNZ information becomes available for those services.
31. We encourage RSPs to scale up their involvement in the MBNZ programme over time to enable the independent comparison of services not yet covered by the programme.

## Outcomes and principles

**Outcome 1: Consumers are given appropriate notice of any change to their copper-based services and should not have to make decisions under pressure.**

### Explanatory Comments

- When we refer to a change to a copper-based service, we mean copper withdrawal, PSTN withdrawal or a decision by an RSP to cease supply of copper-based services to a consumer's premises for any reason whatsoever.
- When we refer to copper withdrawal, we mean Chorus stopping supply of copper fixed line access services in relation to a specified area or at a specified premise; and a relevant copper withdrawal notice is a notice given by Chorus under the Copper Withdrawal Code of the date of on which it intends to stop supply of copper fixed line access services in that area or at that premise.
- When we refer to PSTN withdrawal, we mean Spark stopping supply of its copper-based PSTN services in a specified area or at a specified premise; and a relevant PSTN withdrawal notice is notice given by Spark of a specified date on which it intends to cease supply of its copper-based PSTN services in that area or at that premise.
- References to withdrawal notice and formal withdrawal are to be interpreted accordingly provided that if notice given by Spark of PSTN withdrawal is longer than 6 months, the relevant notice period and formal withdrawal commences on the date 6 months prior to the notified withdrawal date.

### *Principles*

- (a) RSPs should provide consumers with as much notice as possible, and not less than four months' notice, of any change to a copper-based service.

### Explanatory Comments

- Four months' notice is a minimum and RSPs are encouraged to provide longer notice wherever possible.
- Spark has indicated it intends to provide similar notice periods for wholesale PSTN withdrawal as apply to Chorus under the Copper Withdrawal Code.

- (b) RSPs should explain clearly to consumers the reasons why they need to move off their copper-based service and onto an alternative telecommunications service.
- (c) RSPs should not give copper or PSTN withdrawal as a reason for moving unless they can point to a formal notification from Chorus or Spark relating to that consumer's premises.

#### **Explanatory Comments**

- RSPs are free to stop providing copper-based services as a commercial matter but should not create the impression their decision is related to copper or PSTN withdrawal in the absence of a relevant withdrawal notice to the affected consumer.
- For example, if an RSP decides to stop supplying copper-based services in a particular area or at a particular premises, then the RSP should be upfront about that decision, and not suggest that the decision is related to formal copper or PSTN withdrawal when that area or premises is not subject to any relevant withdrawal notice.

- (d) RSPs should avoid creating the impression that copper-based services (including re-sold PSTN services) are not available to consumers just because that RSP has decided to cease supplying them ahead of formal withdrawal by Chorus or Spark.

#### **Explanatory Comments**

- For example, if an RSP decides to stop supplying copper-based services ahead of Chorus' copper withdrawal, then the RSP should not create the impression that consumers need to move to an alternative telecommunications service. Copper-based services may still be available through other providers in such a situation until copper is formally withdrawn.

- (e) RSPs should avoid actions that risk creating a sense of pressure or obligation on consumers, or confusion for consumers, in relation to alternative telecommunications services.

#### **Explanatory Comments**

- Sending modems for alternative telecommunications services to consumers during the transition away from copper risks:
  - Creating a sense of pressure or obligation to use the modem, even if the modem is provided on a "use it or throw it away" basis; and

- Causing confusion for consumers who may assume it is a replacement for an existing device and not realise that it relates to a different service.
- If RSPs send unsolicited modems, RSPs should therefore make it immediately and prominently obvious, such as on the modem itself, that the modem is being provided for the purpose of an unsolicited telecommunications service and where the consumer can find the terms of that service.
- To avoid confusion, consumers should be required to take a process step that results in them engaging directly with the RSP (which may be online or by way of a customer app) before becoming liable for any costs associated with the alternative telecommunications service.
- RSPs should also be mindful of the provisions of the Fair Trading Act that apply in such a situation. For example, sections 21A– 21C of the Fair Trading Act set out the rules that apply when sending unsolicited goods and services or seeking payment for them.

- (f) RSPs should not move consumers onto alternative telecommunications services without the consumer’s express consent.

#### **Explanatory Comments**

- Consumers should decide for themselves what alternative telecommunications service is best for them. They should not find out, after the event, that they have been moved to an alternative service by their RSP.
- This situation is different from RSPs grandfathering existing plans and moving consumers onto replacement services that are equivalent or no less favourable using the same access technology. The transition off copper-based services involves a more fundamental decision that needs to be made independently by the consumer.

- (g) RSPs should respond in a timely and accurate manner to all requests for clarification or further information from consumers.

**Outcome 2: Consumers are made aware of the range of the alternative telecommunications services available to them as they transition off copper-based services.**

*Principles*

- (a) RSPs should remind consumers that they are likely to have the choice of several alternative telecommunications service options depending on their location.

**Explanatory Comments**

- Consumers need to be aware that they have other options available to them in addition to the particular service their current provider wants to sell as they transition off copper-based services.
- RSPs do not need to refer to their competitors' services but they should highlight the fact that there are other options available in the market.
- For example, a reminder notice might state: *"Remember, you have other choices available to you, so make sure you look around to find out what's best for your needs."*

- (b) RSPs should encourage consumers to use independent information to see what alternative telecommunications services are available at their location.

**Explanatory Comments**

- RSPs should refer consumers to suitable sources of address-based information or other tools that can be used to help inform consumer choice.
- Tools available to help inform consumers about the technologies and service providers available include:
  - Internet New Zealand's Broadband Map;
  - Broadband comparison websites (such as that operated by Consumer New Zealand).
- RSPs should include direct links to these tools as far as possible but should also include other contact details (such as telephone numbers) for consumers who prefer alternative methods of contact or inquiry.

- (c) RSPs should inform consumers that they are able to keep their phone number when changing service providers.

- (d) RSPs should ensure that existing customers have information on their broadband usage and spend profile so that they can meaningfully compare different services and service providers.

- (e) RSPs should prompt all consumers to use the information available to them to decide what alternative telecommunications service is best for meeting their requirements.

**Explanatory Comments**

- For example, “information available to them” may mean the consumer’s usage and spend, along with the comparative price and performance of alternative telecommunications services.

**Outcome 3: Consumers are given clear, accurate and up-to-date information about the technical and performance characteristics of alternative telecommunications services.**

*Principles*

- (a) RSPs should set appropriate expectations about what their alternative telecommunications services are likely to deliver for consumers.

**Explanatory Comments**

- Consumers find the marketing of new technologies to be inconsistent and confusing. The failure to deliver advertised speeds is also a significant pain point for consumers.
- RSPs should therefore be responsible for marketing on the basis of a consumer's likely actual experience of a service and in a way that enables meaningful comparison and choice of services.

- (b) RSPs should ensure consumers are given upfront information about the principal factors known to affect the service performance of alternative telecommunications services.

**Explanatory Comments**

- Various factors are known to impact the performance of different technologies and services.
- Examples include signal attenuation, congestion/contention, traffic/network management, protocol overheads, and customer distance from the mobile mast.
- Consumers should be made aware of such factors, in a way that they can understand, when relevant to the likely actual performance of the marketed service.
- These factors should be disclosed in a prominent and obvious way to consumers in all relevant communications and before any decision to buy has been made.
- Where an alternative telecommunications service is only available in limited geographical areas, this limitation should be stated prominently in any marketing outside the relevant areas, particularly in national marketing.

- (c) RSPs should avoid making "up to" speed claims or using maximum theoretical speeds in marketing.

- (d) RSPs should use likely actual peak time download and upload speeds when making speed representations in marketing so that consumers understand what they can expect before making their purchasing decision.

#### **Explanatory Comments**

- This principle applies when RSPs choose to use speed indications in their marketing.
- Some RSPs do not refer to speeds and prefer instead to use “personas”, or indications of the types of activities that can be undertaken by different numbers of people in the same household on different plans.
- These activities can include internet browsing, email, downloading media files, and streaming music/movies in standard and high definition quality.
- RSPs should take care to ensure that marketing on the basis of “personas” is objectively justified and demonstrably reasonable (including on the basis of what combinations of activities are possible at peak times).
- The TCF could standardise the approach to “persona” based usage indications so that consumers are given consistent and comparable information across providers and plans.

- (e) Likely actual peak time download and upload speed indications should be objectively justified, demonstrably reasonable, and independently verifiable, by reference to the MBNZ programme.

#### **Explanatory Comments**

- MBNZ data should be used for speed indications where available.
- MBNZ data should be presented, consistent with MBNZ reports, as national averages at peak times for the relevant services.
- MBNZ data for individual RSPs should be used by those RSPs where available.
- In all cases, the most recent MBNZ results should be used.
- Individual customers should be advised if the RSP has cause to believe that MBNZ data speeds may not be achievable at that customer’s premise.



- MBNZ reported averages provide the best available indication of what speeds are likely to be achieved, but RSPs should note that actual speeds can still vary for individual consumers.
- For example, the Fibre 100 service could be represented as:
  - *“Average busy time speeds of 100 Mbps (download) and 20 Mbps (upload) – results may vary for individual consumers”.*
- For example, 4G wireless broadband services could be represented as: *“Average busy time speeds of 27 Mbps (download) and 15 Mbps (upload) – results may vary for individual consumers.”*

(f) Where MBNZ data is not available for particular services, the TCF may agree an interim approach to speed indications provided that:

- (i) the approach is consistent with MBNZ methodology; and
- (ii) RSPs use such an approach for no longer than necessary until MBNZ results become available.

#### **Explanatory Comments**

- 4G wireless broadband services are currently reported by MBNZ, but 5G wireless broadband services are not.
- The TCF could agree an interim approach to speed indications for 5G wireless broadband services that could be used by RSPs until MBNZ results become available.
- For the avoidance of doubt, RSPs should not use speed indications in marketing unless based on MBNZ reported results or any TCF agreed interim approach for services where MBNZ reported results are not available, as appropriate.
- Consistency of advertised speeds with Australia, where similar speed-related principles apply, should be used as a cross-check on any interim TCF approach.

(g) RSPs should allow consumers to move to a different service, or exit their service, without penalty, if the selected service materially fails to meet expected requirements and this cannot be remedied within 30 days of a customer complaint.

### Explanatory Comments

- RSPs are expected to stand behind the speeds they choose to use when marketing alternative telecommunications services and work with consumers to address any material gap between performance and expectations.
- Materiality is an issue of frequency and degree that should be viewed through a consumer lens and assessed in terms of the consumer's actual experience of the service relative to what they were led to expect.
- For example, a customer signs up for a two-year wireless broadband contract with an RSP. A few months into the contract term, the service starts to degrade at peak times and regularly performs at only half of the advertised speed, resulting in a customer complaint. The RSP has 30 days in which to address any underlying issues, such as congestion at the serving cell site, failing which the consumer should be able to change or exit the service.
- However, in the same example, if the deterioration in performance is only temporary (as a result of repairs to the cell site), or if the deterioration is only marginal (such that a reasonable consumer, with knowledge of the problem, but otherwise in the same position as the complaining customer, is still likely to have signed up for the service), then the impact on the consumer may not be material.
- The TCF could develop a standard test or approach to the issue of materiality for the purpose of implementing these guidelines.
- Any issues in relation to the performance of the service that cannot be resolved between the RSP and the consumer should be referred to the TDRS for adjudication.

(h) RSPs should avoid using undefined speed-related descriptors or images without clear information, such as likely actual peak time speeds, to help moderate the consumers' understanding of these descriptors or images.

### Explanatory Comments

- For example, claims such as "fast", "super fast", "ultra fast", "blistering", or images with a similar connotation, should not be used without specifying the likely actual peak time download and upload speeds for the relevant service. In this situation, the expectation is that the likely actual speeds justify the use of the language on a comparative basis.

- (i) Any claims and comparisons made by RSPs should be objectively justified, demonstrably reasonable, and independently verifiable.

#### **Explanatory Comments**

- For example, claiming that a broadband service delivering a likely actual peak time speed of 25 Mbps is “super fast” is not likely to be justified or reasonable when the speed expectation set for most consumers by the most commonly used broadband service is 100 Mbps.

- (j) RSPs should avoid making claims or comparisons about one service that are liable to mislead consumers directly or indirectly in relation to the performance or characteristics of another service.

#### **Explanatory Comments**

- For example, when making a comparison with another service, claiming that a service does not require landlord consent may mislead when consent is not ordinarily required for the other service.
- Similarly, when making a comparison with another service, claiming that there are no installation costs for a service may mislead when there is no charge for standard installations for the other service.

- (k) Consumers should be provided with information regarding the factors that may affect service performance that are outside the control of the RSP (such as positioning of in-home Wi-Fi modems, and consumer equipment specifications and maintenance).

#### **Explanatory Comments**

- MBNZ measures speeds from the network to the modem in the consumer’s premises.
- RSPs are responsible for ensuring that consumers understand that, beyond the modem, various factors can influence a consumer’s in-home broadband experience.
- For example, if a fixed connection is used from the modem to a consumer device, there is unlikely to be any significant degradation in speed. However, if a Wi-Fi connection is used, speeds tend to degrade, even if a

fully compatible modem and end-user device are used.

- RSPs should be prepared to advise consumers on possible solutions to the most common issues associated with in-home broadband experience.
- For example, “mesh” solutions can improve in-home experience by reducing dependence on the placement of a single modem and providing more consistent performance across the entire home.

- (l) If a modem with particular specifications is required to achieve the full speeds of a marketed plan, and that modem is not included in the cost of the marketed plan, this should be prominently drawn to the attention of the consumer.

#### **Explanatory Comments**

- Any modem supplied by an RSP should be capable of delivering the marketed speed (i.e., a compatible modem).
- RSPs should make it clear when a compatible modem is not included and that consumers are responsible for using or obtaining a compatible device.
- RSPs should also ensure that consumers understand that the use of an incompatible modem is likely to degrade the performance of their broadband service.

- (m) Conditions, qualifications and disclaimers in marketing should not alter the nature of the service the consumer is otherwise led to expect from the headline or body of the advertisement.

**Outcome 4: RSPs comply with all related obligations when consumers are transitioning from copper-based services and in the marketing of alternative telecommunications services.**

**Explanatory Comments**

- This outcome and the related principles are not intended to create new obligations on RSPs. They are intended to be a reminder of key existing obligations relevant during the transition away from copper.
- To achieve this outcome, it may be useful for the RSQ Code that is produced from these guidelines to cross-reference the existing obligations on RSPs under other codes.

*Principles*

- (a) RSPs provide consumers with clear information on how transitioning from copper-based services to alternative telecommunications services could impact the operation of their in-home equipment, in accordance with the Commission 111 Contact Code.
- (b) RSPs ensure vulnerable consumers are made aware of their rights, in accordance with the Commission 111 Contact Code.
- (c) RSPs provide consumers with clear information about the costs or fees associated with transitioning from copper-based services to alternative telecommunications services, in accordance with the Broadband Product Disclosure Code.

**Outcome 5: Consumers know where to go for the prompt resolution of any issues associated with the marketing or performance of alternative telecommunications services.**

**Explanatory Comments**

- RSPs are expected to have systems in place to support the timely diagnosis and resolution of performance issues for consumers.
- RSPs should accept customer complaints about the speed or performance of their services, or customer premises equipment provided by that RSP, and all such complaints should be dealt with promptly.

*Principles*

- (d) RSPs should provide consumers with clear information on how to raise and resolve issues in relation to the marketing or performance of alternative telecommunications services.

**Explanatory Comments**

- For example, RSPs may create dedicated communication channels or phone numbers for consumers to call about a switch off / migration rather than requiring customers to fall back on a general 0800 customer service number.

- (e) RSPs should remind consumers that they have access to independent dispute resolution services, including the Telecommunications Dispute Resolution service, if they cannot reach a resolution with their RSP.

- (f) RSPs should inform consumers of the existence of the RSQ code produced from these guidelines, and what consumers should expect from their RSP under it.

**Explanatory Comments**

- The purpose of this principle is to empower consumers to know what to expect from their RSP and to know if a complaint about the marketing or performance of alternative telecommunications services is warranted.
- RSPs should ensure that their customers have ready access to information about the code and what consumers are entitled to expect from it including on their websites.
- The TCF could develop a standard “fact sheet” to be used by RSPs for this purpose.