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COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko

ISBN NUMBER 978-1-997321-92-7

Interest Free Device Repayment Plan Guidelines

Issued to the telecommunications industry under section 234 of the Telecommunications Act 2001

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Publication: 4 November 2026



Associated Documents

Publication date	Reference	Title
9 December 2021	978-1-869459-63-5	Commerce Commission: Improving Retail Service Quality Final Baseline Report

Defined terms

In these Guidelines, unless the context otherwise requires:

Act	means the Telecommunications Act 2001;
Commission	means the Commerce Commission;
Commission RSQ code	has the same meaning as given in section 5 of the Act;
Consumer	has the same meaning as given in section 232 of the Act;
Guidelines	means these guidelines;
IFP	means interest free device repayment plan, an agreement where a consumer purchases a mobile phone, router or other device and repays the retail price in instalments over a fixed term with no interest charges applied, typically conditional upon the consumer maintaining an associated telecommunications service plan for the duration of the repayment period;
Industry RSQ code	has the same meaning as given in section 5 of the Act;
Key Facts	means the disclosure document referred to in these guidelines to be developed by RSPs;
MNO	means a mobile network operator, being a service provider who provides mobile services and owns or controls the mobile infrastructure required to deliver a mobile phone service (and includes 2degrees, One NZ, and Spark and their sub brands);
Mobile	means a network service or connection providing services via cellular technology including prioritised and deprioritised services;
Outcomes	means the outcomes set out in these guidelines;
Plan	means an agreement between a consumer and an RSP for the provision of a retail telecommunications service under a standard form contract. The plan specifies, without limitation, the technology, product, speed, allowances, user type, pricing structure (recurring, variable, controlled, time of day), and payment structure (pay-monthly or prepaid), as relevant;
Principles	means the principles set out in these guidelines;
Purpose	means the purpose set out in these guidelines;
RSP	means retail service provider, being a provider of retail telecommunications services;
RSQ	means retail service quality, and has the same meaning as given in section 5 of the Act;
Service	has the same meaning as given in section 2 of the Consumer Guarantees Act 1993; and
Standard Plan	means a plan marketed at the majority of retail consumers, and excludes any subsidised plans aimed at specific groups such as children or beneficiaries.

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Introduction

These Guidelines are issued by the Commerce Commission (**Commission**) under section 234 of the Telecommunications Act 2001 (**the Act**).

The main purpose of this Act is to regulate the supply of telecommunications services.[1] However, in 2018, Parliament amended the Act to introduce *Part 7: Consumer matters*, aimed at improving RSQ.[2]

The Commission's responsibilities under Part 7 of the Act include promoting RSQ for telecommunications consumers and supporting informed consumer choice. These Guidelines set out the Commission's views on good RSQ practices in relation to interest free device repayment plans (IFPs).

The Guidelines are intended to support consumers to better understand IFP arrangements, compare available options, and make informed decisions about mobile services and device financing. They also provide guidance to RSPs on practices that, in the Commission's view, promote transparency, consumer understanding, and confidence in the use of IFPs.

The Commission considers that consumers are better able to make informed choices where:

- information about IFP arrangements is clear, accessible and consistent;
- consumers are prompted to consider the affordability and suitability of an IFP before entering into an arrangement; and
- device financing arrangements do not unnecessarily limit a consumer's ability to select the mobile plan that best meets their needs.

The outcomes and principles in these Guidelines should be interpreted and applied in a manner that promotes consumer understanding, informed decision-making, transparency, and retail service quality.

[1] Refer section 3(1) of the Act.
[2] Telecommunications (New Regulatory Framework) Amendment Act 2018; Telecommunications Act 2001, pt 7.

Nature and status of these Guidelines

These Guidelines are not legally binding and do not create legal obligations. They nevertheless set out the Commission's expectations regarding practices that are likely to support the outcomes of the Act. They do not replace or modify the Act, any Retail Service Quality Code, or any other applicable legal requirement. In the event of any inconsistency, legislation or applicable codes prevail.

These Guidelines are not intended to be prescriptive or exhaustive. RSPs may adopt different approaches where those approaches effectively achieve the outcomes described in these Guidelines.

Whether conduct complies with the Act will depend on the particular facts and circumstances of each case. The interpretation and application of legislation is ultimately a matter for the courts.

PART ONE – GENERAL

A. Commencement date

1. These Guidelines take effect on the date of publication.

B. Application

2. These Guidelines apply to any Retail Service Provider (RSP) that offers IFPs to residential mobile consumers.

3. RSPs demonstrate alignment with these Guidelines by applying the Principles in a way that achieves the Outcomes.

4. These Guidelines do not affect an RSP's obligation under applicable law or codes, including:

    4.1. the Telecommunications Act 2001;

    4.2. the Fair Trading Act 1986;

    4.3. the Consumer Guarantees Act 1993;

    4.4. Commission RSQ codes; and

    4.5. industry RSQ codes (if applicable).

5. If there is a conflict between these Guidelines and legislation or a Commission RSQ code, the legislation or Commission RSQ code will take precedence over these Guidelines to the extent of the conflict.

6. These Guidelines should be read alongside the Commission's other RSQ Guidelines.

C. Purpose

7. The purpose of these Guidelines is to improve RSQ by:

   7.1. enhancing transparency for consumers regarding the financial commitments associated with IFPs;

   7.2. ensuring consumers are clearly informed about the total cost, repayment terms, and implications of switching providers or plans when they have an IFP;

   7.3. standardising pre-contract disclosures for IFPs to enable consumers to compare offers on a like-for-like basis; and

   7.4. supporting the availability of IFP arrangements across Standard Plans, so that limited availability does not unduly skew consumer choice towards higher-cost plans.

D. Interpretation

8. In these Guidelines:

   8.1. words and phrases have the meaning given to them in section D, or if not defined there, the meaning given to them in the Act;

   8.2. 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 these Guidelines in section C;

   8.3. a reference to “include” (or “including”) means “include (or including) without limitation”;

   8.4. references to sections and clauses are to sections and clauses of these Guidelines unless otherwise specified; and

   8.5. section headings are for ease of reference and are not intended to affect the interpretation of the clauses.

PART TWO – INTEREST FREE DEVICE REPAYMENT PLAN GUIDELINES

Outcomes and Principles

Outcome 1: Consumers should be able to choose a standard plan that is right for them regardless of IFP.

Principles

a) RSPs should, as far as reasonably possible, ensure that consumers:

i. can choose any device made available by the RSP on an IFP on any Standard Plan offered by that RSP; and

ii. can change their Standard Plan with that RSP to another Standard Plan offered by that RSP without having to repay the remaining IFP balance in full as a condition of changing plan.

Explanatory Comments

- The right mobile plan for a consumer will depend on their usage needs and choice of any additional discounts or subscriptions bundled with that plan.
- We want to ensure, as far as possible, that (a) when devices are made available on an IFP that they are available on all Standard Plans and (b) consumers are not required to take a higher cost plan than they need to obtain a particular device.
- However, we also recognise that there is a cost to RSPs for offering IFPs and there may be cases when the economic benefit to RSPs on some lower cost plans may not offset that cost.
- When a device is made available on an IFP on some but not all Standard Plans we may ask RSPs to provide reasons why this was not reasonably possible including by reference to the commercial costs and benefits to understand that decision.
- Note: For clarity, nothing in this section is intended to prevent RSPs offering different levels of discount for an IFP device on different Standard Plans (provided the device is available on as many Standard Plans as reasonably possible).

Outcome 2: Consumers are prompted to consider the Need to Know before entering an IFP contract.

Principles

a) RSPs should present consumers with a summary of the key points they need to know ("Need to Know") before entering into an IFP contract.

b) The Need to Know should cover the key terms that can be misunderstood including:

   i. how any discounts are applied;

   ii. the point at which they cannot return the device;

   iii. whether or not they will need to keep paying off the IFP if the device is lost, stolen or damaged;

   iv. whether they can return the device to stop the payments; and

   v. the consequences of ending the arrangement early, including through cancellation, changing plans, or switching to another provider.

c) The Need to Know should be provided either verbally for phone sales or in writing via display or printed copy for other sales channels.

d) More detailed information should be included in an IFP offer summary available to consumers.

e) RSPs should require consumers to confirm that they have received and been prompted to consider the Need to Know before the IFP agreement is finalised.

Explanatory Comments

- Research indicates consumers often misunderstand features of the arrangement, such as believing they can return a device to exit a contract or that the commitment ends if the phone is lost, when this is not the case. Explicit disclosure addresses these gaps.
- A layered approach, with a short set of Need to Know information and a more detailed offer summary available on request, ensures disclosures are proportionate and tailored to the sales channel, while avoiding consumer disengagement from an overly long checkout disclosure.
- Disclosing how any discounts are applied (e.g. up front or across the term) helps consumers understand what they need to do to receive them.
- Disclosing the consequences of ending the contract early (by cancellation, changing plan or changing provider) helps consumers understand whether the device needs to be repaid in full or whether payments will continue and how any discounts are treated.

- Requiring confirmation provides objective evidence that the key facts were presented and that the consumer was prompted to consider them, without requiring the RSP to assess the consumer's subjective understanding.

Outcome 3: Consumers are supported to make informed decisions regarding affordability and financial commitment before entering an IFP contract.

Principles

a) RSPs should present consumers with an affordability prompt that encourages them to consider whether the monthly repayments are likely to fit within their budget over the entire term of the agreement.

b) The affordability prompt may be part of the same document as the Need to Know but must have a distinct confirmation component and should not be included solely within the IFP Terms and Conditions.

c) The affordability prompt should be provided either verbally for phone sales or in writing via display or printed copy for other sales channels.

d) RSPs should require consumers to confirm they have considered the affordability of the repayments separately from confirming that they have received and considered the Need to Know, before the IFP agreement is finalised. For written or digital sales, this should require two separate confirmation steps (for example, two boxes to be ticked); for phone sales, the RSP should obtain two distinct verbal confirmations.

Explanatory Comments

- RSPs are expected to actively support consumers in considering their budget to prevent financial hardship.
- It is useful for consumers to consider their ability to meet the monthly repayments including if the cost of their plan increases or there are changes in their income or household expenses.
- Separate confirmations create a clear, auditable record that the consumer was prompted to consider both the Need to Know and affordability before entering the agreement.

Outcome 4: Consumers are provided with ongoing information about their IFP.

Principles

a) RSPs should provide IFP information to consumers through one or more channels such as their bills, app, online customer portal or another readily accessible channel.

b) The IFP information should, at a minimum, enable consumers to see the remaining balance of their IFP, the remaining number of repayments, the next payment date and the expected completion date.

c) The IFP information should be easy to locate and access. Where provided through an app or online customer portal, consumers should generally be able to access the information within two clicks from the home page.

Explanatory Comments

- By providing consumers with their IFP information, they can make informed decisions about how to manage their commitment over time.
- By making this information easy to find in an app or online portal, consumers can check it quickly whenever they need.

Outcome 5: Consumers receive consistent and standardised IFP information across all RSPs.

Principles

a) The Telecommunications Forum (TCF) should make available a standardised Need to Know template, affordability prompt and an IFP offer summary for use by participating RSPs. These materials should be written in plain language and be easy for consumers to understand.

b) The Need to Know should be updated by the TCF if new areas of confusion are identified.

Explanatory comments

- Standardised industry disclosures ensure all consumers receive the same information in order to make informed decisions.
- While many providers supply consumers with this information already, introducing consistent language prevents confusion and allows consumers to compare IFP offers on a like-for-like basis between providers.

PART THREE – IMPLEMENTATION SCHEDULE

RSPs operating at the commencement date are expected to comply with these Guidelines as follows:

- Spark, One NZ and 2degrees (the RSPs offering IFPs at the time of publication of these Guidelines) should work together to agree on the Need to Know, affordability prompt, and IFP offer summary within six months of the publication of these Guidelines. These should focus on aspects of IFP arrangements that consumers commonly misunderstand or overlook as identified in the Commission's consumer research.
- The TCF should make available the Need to Know, affordability prompt, and IFP offer summary to all RSPs as soon as possible after they have been agreed by Spark, One NZ and 2degrees.
- RSPs currently offering IFPs should integrate the Need to Know, affordability prompt, and IFP offer summary into their sales processes within 12 months of publication of these Guidelines.
- RSPs that begin offering IFPs after the commencement date of these Guidelines are expected to comply with all relevant aspects of these Guidelines within six months of first offering an IFP.