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## Consumer Protection Condition 2

Postal Common Operational Procedures

Statement

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## About this document

This document sets out our decision on the future regulation that applies to Postal Common Operational Procedures (PCOP) under Consumer Protection Condition 2. The purpose of Consumer Protection Condition 2 is to deal with circumstances where postal items end up in the wrong postal operator's network, and to minimise the risk of this mail not getting to the correct postal operator, sending customer or addressee.

We set out our provisional proposals in relation to PCOP in the May 2016 Consultation on the Review of the Regulation of Royal Mail. After assessing the responses we received from stakeholders, we published the Review of the Regulation of Royal Mail statement in March 2017. In this document we proposed an alternative approach to the regulation of Postal Common Operational Procedures under Consumer Protection Condition 2, and sought responses to this consultation by 3 April 2017.

We received four responses to this consultation and, after assessing these responses, have decided to impose the revised condition as proposed in the March 2017 Review of the Regulation of Royal Mail statement.

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## Section 1

# PCOP Proposals

## Introduction

- 1.1 The purpose of Consumer Protection Condition 2 (CP 2) is to deal with circumstances where postal items end up in the wrong postal operator's network, and to minimise the risk of misposted, misdirected and miscollected mail not getting to the correct postal operator, sending customer or addressee. Without some form of regulation on operators to co-operate on misposted, misdirected and miscollected mail, there is a risk that such postal items will either be discarded or delayed to the detriment of consumers and recipients.
- 1.2 Postal items can be misposted, misdirected or miscollected in several ways. Mis-collection can occur when a postal operator unintentionally collects postal items that are intended for another operator. Misdirected mail encompasses all mail that ends up in the wrong operator's network (aside from miscollected mail). This includes mail intentionally posted into another operator's access point for example Royal Mail's post boxes. Typically these are Royal Mail's as other operators do not generally have access points accessible by members of the public, for example by the receiving customer where they have had mail delivered that is not for a recipient at their address. In addition, mail can be misdirected by sending customers accidentally mis-posting mail items into the wrong operator's network. This commonly occurs in businesses that use more than one postal operator to send their mail (such as law firms who use a document exchange network as well as sending some mail with Royal Mail). Misposted mail can end up in other operators' networks as well as Royal Mail's network.
- 1.3 The Postal Common Operational Procedures (PCOP) are currently set out in:
  - CP 2;
  - the Postal Common Operational Procedures Code (the "**PCOP Code**") – a code of practice which is set out at section 3 of CP 2; and
  - the Postal Common Operational Procedures Agreement (the "**PCOP Agreement**").<sup>1</sup>
- 1.4 CP 2 requires regulated postal operators to comply with the PCOP Code and to sign up to the PCOP Agreement. The PCOP Agreement, while not part of the regulatory conditions, can currently only be amended through a direction by Ofcom, and among other things, sets out charges for various elements of the repatriation process.

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<sup>1</sup> See Consumer Protection Condition 2 and the Postal Common Operational Procedures Code at <http://stakeholders.ofcom.org.uk/binaries/post120713/con2.pdf>, and the PCOP Agreement at [http://stakeholders.ofcom.org.uk/binaries/post120713/Amended\\_PCOPA\\_as\\_at\\_1\\_June1.pdf](http://stakeholders.ofcom.org.uk/binaries/post120713/Amended_PCOPA_as_at_1_June1.pdf).

## May 2016 proposals

- 1.5 In the May 2016 Consultation we set out our proposals for amendments to be made to CP2:
- To remove the current PCOP Code of Practice and requirement on relevant postal operators to sign up to PCOP Agreement, and move to a more principles-based condition, given the low levels of PCOP mail received by Royal Mail and the fact that a significant entrant in end-to-end letter delivery was unlikely.<sup>2</sup>
  - To amend the scope of CP 2 so that it would apply to end-to-end untracked letter and large letter mail<sup>3</sup> (and no longer apply to items larger than a large letter) as these types of mail are the most likely to end up in the wrong operator's network (because they are 'letterboxable'), untraceable and receivers are not necessarily expecting them.
  - That CP 2 should apply only to Royal Mail, as the owner of the UK's only significant post box network and as such is likely to get the majority of PCOP mail in its network.<sup>4</sup>
- 1.6 We received 13 responses to the consultation in relation to PCOP, which we summarised in the March 2017 Review of the Regulation of Royal Mail Statement (the "**March 2017 Statement**").<sup>5</sup>
- 1.7 Many respondents, including Royal Mail, agreed with our proposals, in particular with the idea of moving to a more flexible, and principles-based approach.
- 1.8 Five respondents<sup>6</sup> disagreed with our proposals, raising concerns about the cost of negotiating new contracts with Royal Mail (given the low volumes) and the lack of protection for other postal operators and consumers.

## March 2017 proposals

- 1.9 Taking into account the responses to the May 2016 Consultation and subsequent discussions with stakeholders,<sup>7</sup> in the March 2017 Statement we decided not to proceed with our initial proposals and instead consulted on new proposed amendments to CP 2. This was because, given the cost to other operators of renegotiating contracts with Royal Mail and any uncertainty this might create for smaller end-to-end operators, we considered that the benefits of introducing the proposed additional flexibility were likely to be outweighed by the costs to all market participants of moving to a new system.

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<sup>2</sup> For example, see the May 2016 Consultation, paragraph 7.51.

<sup>3</sup> For the specific proposed definition of the relevant mail, see the May 2016 Consultation, Annex 14.

<sup>4</sup> See the May 2016 Consultation, paragraphs 7.58-7.65.

<sup>5</sup> Ofcom, Review of the Regulation of Royal Mail 1 March 2017, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf). See paragraphs 6.28-6.39.

<sup>6</sup> CCNI, CFH, Citizens Advice, CWU and the MCF.

<sup>7</sup> These are summarised at paragraphs 6.32-6.36 of the March 2017 Statement.

- 1.10 Rather than moving to a more principles-based condition, we proposed to retain the existing condition and the requirement for all relevant postal operators to follow the PCOP Code of Practice and to sign up to the PCOP Agreement (in the absence of having entered into appropriate alternative arrangements for the repatriation of mail).
- 1.11 We proposed to amend the scope of the condition so that it would apply to all postal operators who handle untracked and value added end-to-end letter and large letter services as this is the type of mail which is most likely to require repatriation. This would include document exchange mail given the likelihood that a small proportion of it would end up in Royal Mail's network, but would exclude express and secured services<sup>8</sup>, access mail and other closed user group networks<sup>9</sup> (such as Royal Mail's Relay service).<sup>10</sup> In relation to access mail, we remained of the view that it is not necessary to apply CP 2 to such mail, as we considered that the relevant contractual arrangements between access operators and Royal Mail would already provide for the repatriation of access mail.
- 1.12 We proposed to introduce some further flexibility into the way changes can be made to the PCOP Agreement (as set out in CP 2.2.5), so that the relevant postal operators who are parties to that Agreement would be able to introduce changes which they agree among themselves, without having to seek a direction from Ofcom. Instead, we proposed that Ofcom would need to be notified of the proposed changes to the Agreement, and would retain the power to intervene by issuing a direction to make changes to the Agreement in the event that it considered such changes were necessary in order to achieve the Code Objectives.
- 1.13 We considered that this would provide greater flexibility for changes to be introduced where there is general agreement among the parties to the Agreement, while also ensuring there is an appropriate level of regulatory oversight. While we acknowledged that these proposed changes would require some amendments to the existing clauses in the Agreement relating to how variations of the terms of the Agreement may be made, we do not expect these to be costly or burdensome for the parties to the Agreement to introduce. We would expect the parties to the Agreement to negotiate and agree among themselves how these changes to the Agreement should be implemented. We would expect this to involve appropriate consultation among all parties to the Agreement and sufficient publicity for the proposed changes, before these are notified to Ofcom.
- 1.14 We also remained of the view that there is scope to reduce the reporting requirements on relevant operators. Therefore, we proposed to remove the

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<sup>8</sup> These are defined as services which offer a guarantee for delivery by a certain time or date and/or offer a facility enabling the sender and the recipient to monitor the progress of the postal packet through the postal operator's network, including confirmation of delivery.

<sup>9</sup> This is defined as a system (other than a document exchange) providing for the conveyance of postal packets between (i) the premises of one firm and another firm, (ii) a government department and a third party firm; (iii) branches and/or units in the same firm; or (iv) government departments, where both the sender and the recipient have entered into specific arrangements with the postal operator for the conveyance of postal packets to or from other members of that system.

<sup>10</sup> This involves scheduled collection and delivery to and from different sites within a business and we consider the likelihood that mail of this type will end up in another postal network (including the universal service network) is very low.

requirement on operators to submit annual reports, but to add a requirement to keep appropriate records for three years following the date on which they handle the relevant PCOP mail, and to provide copies of any records made as soon as reasonably practicable to Ofcom on request.

- 1.15 We proposed to retain the current requirements in relation to code identifiers, meaning that Ofcom would remain responsible for managing and distributing code identifiers. We note that it is not necessary for document exchange networks to have a CL code on their mail (as is current industry practice) as the address itself makes it clear who the intended operator is.<sup>11</sup> We therefore proposed to designate the code identifier for any of the document exchange networks as the pre-fix to their relevant unique addresses (for example, DX [ABC XYZ]).
- 1.16 Finally, we proposed to make some further changes to the drafting of CP 2 and the PCOP Code of Practice which we consider are redundant. Specifically, we proposed:
  - 1.16.1 To delete the requirement for the costs of the postal operator who acts as the Secretary to the PCOP Agreement to be reimbursed by Ofcom. Currently, Ofcom has nominated Royal Mail to act as Secretary to the PCOP Agreement.<sup>12</sup> The Secretary to the PCOP Agreement is responsible for fulfilling the contractual requirements for allowing new postal operators to become parties to the Agreement and giving effect to the withdrawal of parties from the Agreement. We do not consider it appropriate for Ofcom to reimburse Royal Mail (or any other postal operator) for the costs of fulfilling this function. We would expect the costs involved in fulfilling this role to be relatively low, and consider that it would be more appropriate for the parties to the Agreement to decide between themselves how to cover the costs of this function. We note that the Secretary to the PCOP Agreement has not sought any reimbursement from Ofcom for costs incurred in fulfilling this role to date.
  - 1.16.2 To delete reference to the application of the PCOP Code of Practice to access operators and intermediaries (as set out in the current CP 2.3.9 - CP 2.3.10), as we intend to clarify that the CP 2 does not apply to access operators or intermediaries, and we consider that all relevant postal operators who would be within the scope of CP 2 would need to use code identifiers as allocated by Ofcom (or Postcomm as relevant), in line with current practice.
  - 1.16.3 To delete reference to the voluntary application of the PCOP Code of Practice to other types of mail (i.e. which would not fall under the definition of untracked letter and large letter mail). We do not

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<sup>11</sup> Code identifiers are codes which are printed onto letters covered by the PCOP Code so that the intended operator can be identified. Under the current CP 2, all postal operators within the scope of the condition are required to put a code identifier on the mail in order to identify mail that is subject to the PCOP code and the intended operator. All of the code identifiers managed by Ofcom currently begin with the letters 'CL', we therefore refer to CL codes here.

<sup>12</sup> See Ofcom's direction under CP 2 of 27 March 2012, as published as part of the March 2012 Statement, Annex 8, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/71685/annex8.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/71685/annex8.pdf).

consider it necessary for it to be set out in CP 2 or in the PCOP Code of Practice that relevant postal operators may choose to use the same arrangements for handling other types of mail which would fall outside of the scope of CP 2. We note that it would remain open to parties to the PCOP Agreement (or any other postal operators not subject to CP 2) to agree between themselves to handle other types of mail in accordance with terms and conditions of the Agreement and in accordance with the standards required by the PCOP Code of Practice if they so choose.

1.16.4 To remove the requirement for relevant postal operators to take all reasonable steps to ensure they have sufficient personnel properly trained to handle complaints or other enquiries which relate to misdirected letters or miscollected letters for which they are not the intended operator. We consider this is an unnecessary level of detail for the purposes of the PCOP Code of Practice, and that it is for the relevant postal operators to ensure that they have in place suitable arrangements for ensuring that their obligations in relation to complaints handling under the PCOP Code of Practice are fulfilled.

1.17 The March 2017 Statement also included the notification of the proposed modification to CP 2.<sup>13</sup>

1.18 We asked stakeholders the following question:

*'Do you agree with our proposal to retain the PCOP Code of Practice and the PCOP Agreement and the proposed drafting of the revised condition, as set out at Annex 10? Please provide a written response to Ofcom by 3 April 2017 setting out your reasons.'*

1.19 In Section 2 below we summarise the responses we received and our assessment.

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<sup>13</sup> Ofcom, Review of the Regulation of Royal Mail, 1 March 2017, Annex 10 - [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0035/97856/Annex-10-CP2.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0035/97856/Annex-10-CP2.pdf)



## Section 2

# Summary of consultation responses and final decision

## Stakeholder responses

- 2.1 We received responses to the proposals in the March 2017 Statement from:
- Royal Mail;
  - The Consumer Advocacy Bodies (Citizens Advice, Citizens Advice Scotland and the Consumer Council for Northern Ireland); and
  - Mail Competition Forum (MCF)
  - BBC Licence Fee Unit.
- 2.2 The four responses are published on Ofcom's website here: <https://www.ofcom.org.uk/consultations-and-statements/category-1/royal-mail-review2016>
- 2.3 The MCF, BBC Licence Fee Unit and the Consumer Advocacy Bodies all fully supported the proposals outlined by Ofcom in relation to PCOP.
- 2.4 Royal Mail stated that it did not agree with our proposal to retain the PCOP Code of Practice and the PCOP Agreement. It reiterated its view that the current regulation is too rigid to promote innovation and argued that it has actually reduced the incentive to develop better solutions to repatriate mail and is inflexible to market developments. Royal Mail considered that our original May 2016 proposals would "future-proof" PCOP, allowing the industry to ensure the process continues effectively, however the market develops in future.
- 2.5 Royal Mail claimed that despite significant disparity in the amount of PCOP traffic found at different sites, the existing arrangements do not incentivise the development of regional solutions. Royal Mail further claimed that given the relatively low volumes of PCOP items that currently enter its network, detailed, prescriptive regulations are unnecessary to repatriate such small volumes of mail, and a more flexible approach would allow Royal Mail to agree and develop solutions to repatriate mail that fit with an operator's size and requirements.
- 2.6 Royal Mail also argued that the implementation costs associated with moving away from the current system would be a one-off transition cost, while the benefits from a more flexible condition would be realised on an ongoing basis. It considered that failure to reform now was short-sighted, and that if reform was needed in future, implementation costs would only be delayed, not avoided.
- 2.7 Royal Mail suggested that all industry participants should be subject to the requirement to perform to the same standards that the regulatory regime

requires of Royal Mail with regards to employing 'sufficient personnel properly trained in order to handle complaints or other enquiries'.

- 2.8 Royal Mail stated that the current arrangement whereby the Secretary of the PCOP Agreement is able to recover costs incurred when fulfilling functions on behalf of the whole industry should be retained. However, if this was not the case it alternatively suggested that the role of Secretary could rotate between the parties to the Agreement, in order to share the financial burden.
- 2.9 Royal Mail encouraged Ofcom to ensure that relevant postal operators who have entered the market sign up and adhere to the Agreement to display a clearly identifiable logo, or similar on their letters.
- 2.10 Royal Mail sought clarification from Ofcom on how misdirected access mail would be treated under the revised proposals, and suggested that the condition should be left as originally drafted.
- 2.11 Royal Mail welcomed our proposal to remove the requirement on operators to submit annual reports, but suggested that the requirement to keep records for three years could also be reduced.
- 2.12 Royal Mail made some more detailed points on the drafting of the Condition:
  - That under CP 2.1.2 (y) "working day" is defined as "any day which is not a Saturday, a Sunday or a public holiday" and said that this is inconsistent with the definition used in DUSP Condition 1 and the USP Access Condition.
  - Whether the definition CP 2.1.2 (v) vi. is drafted as intended. Royal Mail suggested that there was a mistake in the wording.

## **Our assessment and final decision**

- 2.13 In the March 2017 Statement we proposed to retain the existing condition and the requirement for all relevant postal operators to follow the PCOP Code of Practice and to sign up to the PCOP Agreement (in the absence of having entered into appropriate alternative arrangements for the repatriation of mail).
- 2.14 We acknowledge Royal Mail's point that the current arrangements are disproportionate given the low volume of PCOP mail.<sup>14</sup> However, we have also taken into account that in response to the May 2016 Consultation, and as reiterated by MCF in their response to the March 2017 Statement, a number of other postal operators considered that the current arrangements worked without problem and were not burdensome, and objected to the costs and uncertainty that they would incur as a result of the changes we had proposed. In addition, we noted that Royal Mail's key concern in its response to our March 2017 Statement appeared to be that changes to the PCOP arrangements might be needed in future, rather than that the current arrangements were not working well.

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<sup>14</sup> It referred to its response to Ofcom's Review of Mail Integrity and the Postal Common Operational Procedures in this context,  
[https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0026/58850/royal\\_mail\\_pcop.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0026/58850/royal_mail_pcop.pdf)

- 2.15 We note that much of the change that has taken place in recent years (at least in relation to the amount of PCOP mail that ends up in Royal Mail's network and the processes used to identify and extract it) has been due to Whistl's entry and subsequent exit from the end-to-end letter delivery market in May 2015. Since Whistl stopped its letter delivery operations, the volume of PCOP mail has reduced by around 95%. In addition, as set out in the May 2016 Consultation, we now consider it unlikely that a significant end-to-end letter delivery operator will enter the UK market. In this context, the benefits of more flexible PCOP arrangements are likely to be lower than was the case prior to Whistl's exit.
- 2.16 Taking all the above considerations into account, we do not agree with Royal Mail's argument that one-off implementation costs are likely to be outweighed by benefits from a more flexible condition on an on-going basis. Given the cost to other operators of renegotiating contracts with Royal Mail, and any uncertainty that removing the current PCOP agreement and PCOP Code of Practice might create for smaller end-to-end operators, we consider that the benefits that this additional flexibility would bring are likely to be outweighed by the costs to all market participants of moving to a new system.
- 2.17 We also note that the current arrangements do not preclude bilateral arrangements between postal operators which meet the Code Objectives (see CP 2.2.2). In addition, we intend, in line with our proposals in the March 2017 Statement, to introduce some further flexibility into the way changes can be made to the PCOP Agreement (as set out in CP 2.2.5), so that the relevant postal operators who are parties to that Agreement would be able to introduce changes which they agree among themselves, without having to seek a direction from Ofcom. We consider that this provides additional flexibility to implement changes which may be needed to the PCOP Agreement in future.
- 2.18 Royal Mail argued for the retention of an obligation in the PCOP Code of Practice requiring postal operators to take all reasonable steps to ensure that they have "sufficient personnel properly trained (and with access to all relevant information) in order to handle complaints or other enquiries". We consider that this is an unnecessary level of detail for the purposes of the PCOP Code of Practice. The provisions of the Code which relate to the treatment of customer service enquiries will be retained in an amended form under our revised proposals, which means that operators will remain subject to obligations to ensure complaints are properly dealt with. We consider that the precise means by which operators fulfil their obligations in relation to complaints handling is an operational matter best left to the relevant postal operator.
- 2.19 We do not consider it to be appropriate for Ofcom to reimburse Royal Mail (or any other postal operator) for the costs of fulfilling the role of Secretary to the Agreement. We expect the costs involved in fulfilling this role to be relatively low, and consider that it would be more appropriate for the parties to the Agreement to decide between themselves how to cover the costs of this function. We note that the Secretary to the PCOP Agreement<sup>15</sup> has not

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<sup>15</sup> Royal Mail is currently designated as the Secretary to the PCOP Agreement by an Ofcom direction dated 27 March 2012:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/71685/annex8.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/71685/annex8.pdf)

sought any reimbursement from Ofcom for costs incurred in fulfilling this role to date.

- 2.20 With regards to Royal Mail's suggestion that the role of Secretary could rotate between postal operators, Ofcom would be open to considering whether this was a viable solution, however, before doing so we would need to understand whether there would be support among the other relevant postal operators for such a proposal and whether such an amendment would be likely to further the Code Objectives.
- 2.21 With regards to Royal Mail's suggestion that Ofcom should ensure that new entrants sign up and adhere to the Agreement to display a clearly identifiable logo, or similar on their letters, we consider that it is the responsibility of new entrants falling within the scope of CP 2 to ensure that they adhere to the requirements.
- 2.22 We also consider it is important that records of any misdirected or miscollected letters, and any charges made in respect of returning or otherwise handling misdirected letters, are retained by relevant postal operators in case a potential compliance issue should arise which requires Ofcom to request such records. We consider that three years is a reasonable period of time for records to be kept for this purpose and that the costs incurred by operators in retaining such records for this period of time (compared to a reduced period of time) are not likely to be significant this is the same approach that we took for Essential Condition 1.<sup>16</sup>
- 2.23 We use the term 'working day' only in CP 2.2.5(b), which prevents the parties to the Agreement from modifying the Agreement in circumstances where Ofcom intends to consult on issuing a direction modifying the terms of the Agreement. Therefore, given that the reference to "working day" is in the context of the activity of Ofcom, and we consider Saturday to be a non-working day, we consider the definition to be correct as drafted.
- 2.24 We note that "working day" is used in a different context in DUSP Condition 1, the Access Condition and the Essential Condition, namely in connection to deliveries by Royal Mail. As the universal service provider, Royal Mail is required to deliver mail on a Saturday and it is therefore a working day for Royal Mail in this context. We therefore considered that it was appropriate to include Saturday in the definition of a 'working day' for the purpose of these conditions.
- 2.25 Having considered Royal Mail's comment on the drafting of CP 2.1.2 (v)(vi), we can confirm that the drafting is correct and is consistent with the definitions used in other conditions (see for example the Essential Condition, E1.1.2(o)(vi)).
- 2.26 With regards to Royal Mail seeking clarification of how it should treat misdirected access mail, we note that access mail is not currently within the scope of CP 2 so we do not consider that our proposed changes will have any effect on how misdirected access mail is dealt with. We consider that the contracts agreed by access operators and Royal Mail should include provisions for the return of misdirected mail, particularly as Royal Mail is

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<sup>16</sup> See E1.5.1 [https://www.ofcom.org.uk/data/assets/pdf\\_file/0034/97855/Annexes-8-and-9-Essential-Condition-1.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0034/97855/Annexes-8-and-9-Essential-Condition-1.pdf)

responsible for the delivery of these items. Furthermore, we have never had any concerns expressed to us about misdirected or miscollected access mail.

- 2.27 Having taken into account these consultation responses, we consider that the proposals outlined in the March 2017 Statement remain the best approach for the future regulation of PCOP. We have therefore decided to impose the regulations as set out in the March 2017 Statement and outlined above.

## **Legal tests**

- 2.28 We explain below why we consider our decisions satisfy the relevant tests set out in Schedule 6 of the PSA 2011 which must be met where we impose or modify a regulatory condition, namely that they:

- are objectively justifiable;
- do not unduly discriminate against a particular person of a particular description of persons;
- are proportionate; and
- are transparent in relation to what it is intended to achieve.

### Objectively justifiable

- 2.29 We believe that our amendments to the scope of CP 2 are objectively justifiable because they will ensure, for the reasons discussed above, that our regulation is targeted at the most appropriate postal operators and postal items in order to meet our regulatory objectives.
- 2.30 We further consider that the amendments to CP 2 are justified, for the reasons set out above, in order to ensure that the obligations which are imposed under this condition are no more onerous than necessary to meet the objectives of ensuring that miscollected or misdirected mail items are returned to the correct postal operator or otherwise handled appropriately (such as being delivered to the relevant addressee).

### Not unduly discriminatory

- 2.31 We consider that our changes to CP 2 are not unduly discriminatory because they will ensure that our regulation is targeted at the most appropriate postal operators and postal items in order to meet our regulatory objectives.

### Proportionate

- 2.32 We believe that our changes to CP 2 are proportionate because they will ensure that our regulation is targeted at the most appropriate postal operators and postal items in order to meet our regulatory objectives. They will only impose requirements that we consider are necessary to meet our regulatory objectives, without imposing undue burden on the relevant postal operators which are subject to these obligations.

## Transparent

- 2.33 We consider that our changes to the scope of CP 2 are transparent because the revised conditions set out clearly and transparently the postal operators and postal items which are within the scope of the condition. We also consider that our changes clearly and transparently set out the revised obligations which would apply under the condition. The precise wording of the revised condition can be found at Annex 1.

## Annex 1

# Statutory Notification: new Consumer Protection Condition 2

## Notification of the imposition of a new consumer protection condition 2 pursuant to section 51 of, and in accordance with section 53 of, and paragraph 3 of Schedule 6 to, the Postal Services Act 2011

### BACKGROUND

- (A) On 27 March 2012, following a consultation, Ofcom published a statement entitled "*Securing the Universal Postal Service: Decision on the new regulatory framework*"<sup>17</sup> (the "**2012 Statement**") setting out various decisions, including the imposition of consumer protection conditions to make provision for matters set out in section 51 of the Act. These conditions included Consumer Protection Condition 2 ("**CP 2**").
- (B) On 1 April 2014, following a consultation, Ofcom published a statement entitled "*Amendments to regulatory conditions DUSP 1.8 and CP 1 and minor amendments to other regulatory conditions*"<sup>18</sup> setting out various decisions, including the decision to modify CP 2 (the "**2014 Modification**").<sup>19</sup> In the 2014 Modification, Ofcom explained that this revised version replaced the previous published version notified in the 2012 Statement and took effect when this notification was published.
- (C) On 25 May 2016 Ofcom published a consultation entitled "*Review of the Regulation of Royal Mail*"<sup>20</sup> (the "**2016 Consultation**") setting out a notification of Ofcom's proposal to revoke CP 2 and replace it with a new consumer protection condition to make further provision about matters set out in section 51 of the Act (the "First Notification").
- (D) A copy of the First Notification was sent to the Secretary of State in accordance with Schedule 6 paragraph 5(1)(a) of the Act.
- (E) Ofcom invited representations about the proposals set out in the First Notification (and the 2016 Consultation) by 3 August 2016.
- (F) Following consideration of responses to the First Notification and 2016 Consultation, Ofcom proposed further amendments to the proposed new consumer protection condition on which it consulted in the 2016 Consultation.

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<sup>17</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0029/74279/Securing-the-Universal-Postal-Service-statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0029/74279/Securing-the-Universal-Postal-Service-statement.pdf)

<sup>18</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0018/55530/statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0018/55530/statement.pdf)

<sup>19</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0031/46786/cp2\\_3.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0031/46786/cp2_3.pdf)

<sup>20</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-1/royal-mail-review2016>

- (G) On 1 March 2017 Ofcom published a statement and consultation document entitled “*Review of the regulation of Royal Mail*”<sup>21</sup> (the “**2017 Consultation**”), setting out Ofcom’s intention not to proceed with its proposals under the First Notification and setting out a notification of Ofcom’s new proposals to revoke CP 2 and replace it with a new consumer protection condition to make further provision about matters set out in section 51 of the Act (the “**Second Notification**”).
- (H) A copy of the Second Notification was sent to the Secretary of State in accordance with Schedule 6 paragraph 5(1)(a) of the Act.
- (I) Ofcom invited representations about the proposals set out in the Second Notification (and the 2017 Consultation) by 3 April 2017.
- (J) Ofcom received responses to the Second Notification and has considered every such representation made to it in respect of the proposals set out in the Second Notification and the 2017 Consultation in accordance with paragraph 3(5) of Schedule 6 to the Act. The Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose.

## **DECISION**

1. In accordance with section 53 of, and paragraph 3 of Schedule 6 to, the Act and pursuant to powers and duties in section 51 of the Act:
  - (a) Ofcom hereby revokes CP 2 with effect from the date of publication of a notification under section 53 of, and paragraph 3 of Schedule 6 to, the Act; and
  - (b) Ofcom hereby imposes a new consumer protection condition, as specified in the Schedule to this Notification, to make provision for matters set out in section 51 of the Act, which shall take effect from the date of publication of this Notification and shall have effect until the publication of a notification under the Act revoking such condition.
2. The effect of, and Ofcom’s reasons for making, these proposals are set out in the accompanying consultation document.

### **Ofcom’s duties and legal tests**

3. Ofcom is satisfied that these proposals satisfy the general test in paragraph 1 of Schedule 6 to the Act.
4. In making these proposals, Ofcom has considered and acted in accordance with its principal duty in section 29 of the Act and its general duties in section 3 of the Communications Act 2003.

### **Interpretation**

5. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word

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<sup>21</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-1/royal-mail-review2016>



or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Act or for the purpose of CP 2 (as relevant).

6. In this Notification—
- (a) “**2012 Statement**” has the meaning given to it in recital (A) to this Notification;
  - (b) “**2014 Modification**” has the meaning given to it in recital (B) to this Notification;
  - (c) “**2016 Consultation**” has the meaning given to it in recital (C) to this Notification;
  - (d) “**2017 Consultation**” has the meaning given to it in recital (G) to this Notification;
  - (e) “**Act**” means the Postal Services Act 2011 (c.5);
  - (f) “**CP 2**” means consumer protection condition referred to in recital (A) to this Notification as modified and replaced by the 2014 Modification;
  - (g) “**First Notification**” has the meaning given to it in recital (C) to this Notification;
  - (h) “**Second Notification**” has the meaning given to it in recital (G) to this Notification; and
  - (i) “**Ofcom**” means the Office of Communications.
7. For the purpose of interpreting this Notification—
- (a) headings and titles shall be disregarded;
  - (b) expressions cognate with those referred to in this Notification shall be construed accordingly;
  - (c) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.
8. The Schedule to this Notification shall form part of this Notification.

Signed by



**Jonathan Oxley**

**Group Director, Competition Group**

A person duly authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

22 May 2017

## Schedule

# CP2

### CONSUMER PROTECTION CONDITION 2: POSTAL COMMON OPERATIONAL PROCEDURES

#### 1. Application, Definitions and Interpretation

CP 2.1.1	This consumer protection condition (“ <b>CP Condition</b> ”) shall apply to <u>relevant postal operators</u> .
CP 2.1.2	<p>In this CP Condition—</p> <p>(a) “<b>access operator</b>” means a postal operator that is party to a USP Access Agreement with the universal service provider;</p> <p>(b) “<b>Act</b>” means the Postal Services Act 2011 (c.5);</p> <p>(c) “<b>appointed day</b>” means 1 October 2011;</p> <p>(d) “<b>closed user group network</b>” means a system, other than a <u>document exchange</u>, providing for the conveyance of <u>postal packets</u> (and the incidental services of receiving, collecting, sorting and delivering <u>postal packets</u>) between:</p> <ul style="list-style-type: none"><li>i. the premises of one firm and another firm;</li><li>ii. a government department and a third party firm;</li><li>iii. branches and/or units in the same firm; or</li><li>iv. government departments,</li></ul> <p>where both the sender and the recipient of the postal packets have entered into specific arrangements with the <u>postal operator</u> for the conveyance of <u>postal packets</u> to or from other members of that system;</p> <p>(e) “<b>code identifier</b>” means such mark, number or other identifier unique to each <u>relevant postal operator</u> as may be allocated and notified to each <u>relevant postal operator</u> from time to time prior to the <u>appointed day</u> by the Postal Services Commission or, from the <u>appointed day</u>, by <u>OFCOM</u>;</p> <p>(f) “<b>Code Objectives</b>” means the objectives set out in CP 2.3.1;</p> <p>(g) “<b>complainant</b>” means a person who has made a <u>complaint</u>;</p> <p>(h) “<b>complaint</b>” means any expression of dissatisfaction made to a <u>postal operator</u>, related to one or more of its products or services or the manner in which the <u>postal operator</u> has dealt with any such expression of dissatisfaction, where a response is explicitly or implicitly required or expected to be provided;</p> <p>(i) “<b>document exchange</b>” means a system providing for the conveyance of <u>postal packets</u> by reference to numbered boxes at document exchange points between <u>users</u> subscribing to the specific document exchange mail network and which uses addresses which are unique to the specific document</p>

	<p>exchange mail network;</p> <p>(j) <b>“express and secured service”</b> means a service involving the conveyance of <u>postal packets</u> and any incidental services of collecting, sorting and delivering those <u>postal packets</u> which has at least one of the following features:</p> <ol style="list-style-type: none"> <li>i. a guarantee for delivery by a certain time or date;</li> <li>ii. a facility enabling the sender and the recipient to monitor the progress of a <u>postal packet</u> through the <u>postal operator’s</u> network, including confirmation of delivery;</li> </ol> <p>(k) <b>“intended operator”</b> means the <u>relevant postal operator</u> which, in accordance with arrangements agreed between that <u>relevant postal operator</u> and its customer, is responsible for the conveyance and delivery of the <u>relevant letters</u>;</p> <p>(l) <b>“intermediary postal operator”</b> means an <u>access operator</u> or any other <u>postal operator</u> that hands over <u>postal packets</u> to another <u>postal operator</u> (including but not limited to the <u>universal service provider</u>) for subsequent conveyance and delivery to the intended recipients of the <u>postal packets</u>;</p> <p>(m) <b>“miscollected letters”</b> means <u>relevant letters</u> which have been collected in error by a <u>relevant postal operator</u> which is not the <u>intended operator</u>;</p> <p>(n) <b>“misdirected letters”</b> means <u>relevant letters</u>, other than <u>miscollected letters</u> (but, for the avoidance of doubt, including <u>misposted letters</u>), which have entered the <u>postal facilities</u> of a <u>relevant postal operator</u> which is not the <u>intended operator</u> in respect of those <u>relevant letters</u>;</p> <p>(o) <b>“misposted letters”</b> means <u>relevant letters</u> which due to customer error have entered the <u>postal facilities</u> of a <u>relevant postal operator</u> which is not the <u>intended operator</u> in respect of those <u>relevant letters</u> and which have not been delivered to the relevant addressee;</p> <p>(p) <b>“Postal Common Operational Procedures Agreement”</b> or <b>“the Agreement”</b> means the agreement known as the ‘Postal Common Operational Procedures Agreement’ which sets out the terms and conditions on which <u>relevant postal operators</u> are to treat <u>misdirected letters</u> and <u>miscollected letters</u> insofar as <u>relevant postal operators</u> do not have alternative arrangements in place in accordance with CP 2.2.2, as modified by direction given by Ofcom on 1 June 2016, and as may be amended from time to time;</p> <p>(q) <b>“Postal Common Operational Procedures Code”</b> or <b>“the Code”</b> means the Code of Practice in section 3 of this Condition;</p> <p>(r) <b>“postal facilities”</b> means the physical and human resources deployed by a <u>relevant postal operator</u> (and, where relevant, by its contractors and agents) for the purpose of providing <u>postal services</u>;</p> <p>(s) <b>“public holiday”</b> means Christmas Day, Good Friday and a day which is a bank holiday under the Banking and Financial</p>
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	<p>Dealings Act 1971 in any part of the United Kingdom;</p> <p>(t) <b>“receiving operator”</b> means the <u>relevant postal operator</u> whose <u>postal facilities</u> the <u>relevant letters</u> (in respect of which it is not the <u>intended operator</u>) have entered;</p> <p>(u) <b>“relevant letter”</b> means a <u>postal packet</u> that is up to no more than 353mm in length, up to no more than 250mm in width, up to no more than 25mm thick and which weighs up to no more than 750g;</p> <p>(v) <b>“relevant postal operator”</b> means a <u>postal operator</u> that provides a <u>relevant postal service</u>;</p> <p>(w) <b>“relevant postal service”</b> means a service of conveying <u>relevant letters</u> from one place to another by post and the incidental services of receiving, collecting, sorting and delivering <u>relevant letters</u>, excluding:</p> <ul style="list-style-type: none"> <li>i. services for which the <u>postal operator</u> has not received any payment, reward, profit or advantage with respect to the conveyance of the <u>relevant letters</u>;</li> <li>ii. services provided by a charity which comprise solely the collection, conveyance and delivery of Christmas cards;</li> <li>iii. <u>express and secured services</u>;</li> <li>iv. services consisting of the conveyance of <u>relevant letters</u> within a <u>closed user group network</u>;</li> <li>v. services provided while acting in the capacity of an <u>intermediary postal operator</u>; and</li> <li>vi. services consisting of conveying <u>relevant letters</u>, which have been sent from a location outside of the United Kingdom and which are addressed for delivery to a location outside of the United Kingdom, out of the United Kingdom.</li> </ul> <p>(x) <b>“sender”</b> in relation to any letter or other communication, means the person whose communication it is;</p> <p>(y) <b>“USP Access Agreement”</b> means an agreement under which the <u>universal service provider</u> provides access to its <u>postal network</u> in accordance with requirements set out in a condition imposed under section 38 of the Act.</p> <p>(z) <b>“working day”</b> means any day which is not a Saturday, a Sunday or a <u>public holiday</u>.</p>
<p><b>CP 2.1.3</b></p>	<p>For the purpose of interpreting this CP Condition—</p> <p>(a) except in so far as the context otherwise requires, any word or expression shall have the meaning set out in CP 2.1.2 above and otherwise the same meaning as it has been ascribed for the purpose of Part 3 of the Act;</p> <p>(b) headings and titles shall be disregarded;</p> <p>(c) expressions cognate with those referred to in this CP Condition shall be construed accordingly; and</p> <p>(d) the Interpretation Act 1978 (c. 30) shall apply as if this CP Condition were an Act of Parliament.</p>

## **2. Obligation to abide by the Postal Common Operational Procedures Code**

<b>CP 2.2.1</b>	Unless <u>OFCOM</u> otherwise consent, each <u>relevant postal operator</u> shall comply with the <u>Postal Common Operational Procedures Code</u> .
<b>CP 2.2.2</b>	Unless <u>OFCOM</u> otherwise consent, a <u>relevant postal operator</u> shall become and remain a party to the <u>Postal Common Operational Procedures Agreement</u> which shall apply insofar as the <u>relevant postal operator</u> has not established alternative arrangements with other <u>relevant postal operators</u> relating to the treatment of <u>misdirected letters</u> and <u>miscollected letters</u> which are consistent with the <u>Code Objectives</u> .
<b>CP 2.2.3</b>	Unless <u>OFCOM</u> otherwise consent, a <u>relevant postal operator</u> shall at all times refrain from acting in a manner which is <u>inconsistent with the Code Objectives</u> or which is likely to prejudice the effective functioning of the <u>Postal Common Operational Procedures Code</u> .
<b>CP 2.2.4</b>	If a <u>relevant postal operator</u> is nominated by <u>OFCOM</u> by a direction given for the purposes of this Condition to the office of Secretary of the <u>Postal Common Operational Procedures Agreement</u> , that <u>relevant postal operator</u> shall perform the functions of that office in an efficient, timely, impartial and professional manner.
<b>CP 2.2.5</b>	The parties to the <u>Postal Common Operational Procedures Agreement</u> may agree to modify the <u>Agreement</u> in accordance with the terms of the <u>Agreement</u> , provided that:  (a) <u>OFCOM</u> is notified of the proposed amendments to the terms of the <u>Agreement</u> in the manner, and containing the information, provided for in the <u>Agreement</u> ; and  (b) <u>OFCOM</u> does not notify the Secretary of the <u>Agreement</u> within 30 working days of receiving the notification of the proposed amendment that it intends to consult on issuing a direction modifying the terms of the <u>Agreement</u> in accordance with CP 2.2.6.
<b>CP 2.2.6</b>	<u>OFCOM</u> may issue a direction requiring such modifications to the terms of the <u>Postal Common Operational Procedures Agreement</u> as <u>OFCOM</u> considers are appropriate and proportionate in order to ensure the <u>Code Objectives</u> are fulfilled.

## **3. The Postal Common Operational Procedures Code**

### **Introduction**

- CP 2.3.1 This is the Code of Practice covering common operational procedures for handling misdirected letters and miscollected letters and misdirected complaints or other enquiries about relevant letters. Its purpose is to achieve the following objectives in respect of such matters (the “**Code Objectives**”):
- (a) the furtherance of the interests of users of postal services;
  - (b) ensuring that miscollected letters and misdirected letters are:

- (i) returned to the intended operator; or
- (ii) if such return is not reasonably practicable, otherwise handled (including, where appropriate, delivered to the intended user),

in either case in an efficient, economic and timely manner;

- (c) ensuring complaints or other enquiries (including from customers) in relation to relevant letters made to a relevant postal operator which is not the relevant postal operator to which the complaint or other enquiry should have been made, are handled in an efficient, economic and timely manner; and
- (d) so far as is consistent with sub-paragraphs (a) to (c), the promotion of effective competition between relevant postal operators.

CP 2.3.2 The Code sets out the requirements and procedures to be followed in order to satisfy the Code Objectives.

CP 2.3.3 This Code applies to all relevant postal operators. Compliance is obligatory for all relevant postal operators in accordance with this condition CP 2.

CP 2.3.4 Relevant postal operators will need to enter into contractual arrangements separate to this Code in order to comply with and give effect to the provisions of the Code: for example, day-to-day arrangements for the repatriation of misdirected mail and any charges payable for that service will need to be established. Subject to CP 2.2.2, relevant postal operators are required to be party to a separate "default agreement" – the Postal Common Operational Procedures Agreement – so as to ensure that in the absence of any bespoke negotiated arrangements between relevant postal operators, relevant postal operators will be able to comply with this Code.

CP 2.3.5 This Code shall not be interpreted in any way which is inconsistent with the Code Objectives.

## **Code identifiers**

### *General*

CP 2.3.6 Each relevant postal operator must take all reasonable steps to ensure that its code identifier is clearly and legibly marked in accordance with industry practice on each relevant letter in respect of which it is the intended operator.

### *The universal service provider*

CP 2.3.7 The universal service provider will be taken to have satisfied its obligations under CP 2.3.6(a) if a relevant letter in respect of which the universal service provider is the intended operator bears:

- (a) a postage stamp of the universal service provider; or
- (b) a mark or impression which includes the words "Royal Mail" or other reasonably recognisable text or symbol of the universal service provider.

CP 2.3.8 In relation to all other relevant letters in respect of which the universal service provider is the intended operator which do not meet the requirements of CP 2.3.7, the universal service provider must comply with CP 2.3.6.

### **Treatment of misdirected letters**

CP 2.3.9 Relevant postal operators must take all reasonable steps to ensure that misdirected letters are:

- (a) returned to the intended operator; or
- (b) if such return is not reasonably practicable, otherwise handled (including, where appropriate, delivered to the intended user),

in either case, in an efficient, economic and timely manner.

CP 2.3.10 Relevant postal operators may:

- (a) charge the relevant intended operator for the reasonable costs properly and reasonably incurred in returning or otherwise handling the relevant misdirected letter in accordance with CP 2.3.9;
- (b) where in accordance with CP 2.3.9 they deliver or return the relevant misdirected letter to the relevant intended user or sender, as the case may be, charge the user or sender for such delivery or return on the same basis that they would be entitled to charge if they were the intended operator of the relevant misdirected letter.

### **Treatment of miscollected letters**

CP 2.3.11 Relevant postal operators must take all reasonable steps to ensure that miscollected letters are returned to the intended operator or its customer, in either case, in an efficient, economic and timely manner.

CP 2.3.12 Relevant postal operators may not charge for returning the relevant miscollected letters in accordance with CP 2.3.11

### **Customer Service Enquiries**

CP 2.3.13 If a relevant postal operator receives a complaint or other enquiry in relation to a relevant letter that should have been made to another relevant postal operator, the relevant postal operator receiving the complaint or other enquiry shall:

- (a) treat that complaint or other enquiry with the same degree of care and importance that it would if the complaint or other enquiry should have been made to that relevant postal operator;
- (b) explain to the complainant that the complainant should contact the other relevant postal operator; and
- (c) provide to the complainant the contact details of that other relevant postal operator.

CP 2.3.14 If a relevant postal operator receives a complaint or other enquiry where the identity of the relevant postal operator to which that complaint or other enquiry should have been made is not discernible from the relevant letter, the relevant



postal operator receiving the complaint or other enquiry is only required to refer the complainant to the sender of the relevant letter.

### **Obligation to keep records**

CP 2.3.15 Relevant postal operators shall keep records of:

- (a) any misdirected letters or miscollected letters which they have handled in accordance with the Code; and
- (b) any charges they have made to the intended operator in respect of returning or otherwise handling misdirected letters,

for a period of three years following the date on which they handled the relevant misdirected letters or miscollected letters.

CP 2.3.16 Relevant postal operators shall provide copies of any records made for the purposes of CP 2.3.20 as soon as reasonably practicable in response to a request by OFCOM for such records.

### **Table of terms defined in the Act**

*This table is provided for information and does not form a part of this condition. We make no representations as to its accuracy or completeness. Please refer to the Act.*

<b>Defined term</b>	<b>Section of the Act</b>
<i>OFCOM</i>	<i>s.90</i>
<i>postal operator</i>	<i>s.27(3)</i>
<i>postal network</i>	<i>s.38(3)</i>
<i>postal packet</i>	<i>s.27(2)</i>
<i>postal services</i>	<i>s.27(1)</i>
<i>universal service provider</i>	<i>s.65(1) and Schedule 9, paragraph 3</i>
<i>user</i>	<i>s.65(1)</i>