

Decision to conclude investigation into Royal Mail's compliance with its quality of service performance standards in 2017/18

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1. Introduction

1.1 This Decision (the “Decision”) is addressed to Royal Mail Group Limited (“Royal Mail”), whose registered company number is 04138203. Royal Mail’s registered office is 100 Victoria Embankment, London, United Kingdom EC4Y 0HQ.

1.2 The structure of this Decision is as follows:

- In Section 2, we set out the legislation, regulation and European Standard relevant to this investigation. We also explain how Royal Mail monitors its quality of service performance.
- In Section 3, we consider Royal Mail’s submissions about adjustments to its performance and explain our reasons for deciding to take into account the confidence interval and adjust Royal Mail’s performance for the severe weather in February and March 2018.
- In Section 4, we explain our reasons for determining that in 2017/18 Royal Mail contravened its obligations in relation to First Class mail and complied with its obligations in relation to Second Class mail.
- In Section 5, we summarise Royal Mail’s submissions that a penalty is not appropriate or proportionate in this case and set out our decision that, in the specific circumstances of this case, it is not appropriate to impose a penalty on Royal Mail.

2. Regulatory framework in relation to Royal Mail's quality of service obligations

2.1 In this Section, we outline the regulatory framework, setting out the regulatory rules, legislation and European Standard relevant to this investigation. We also explain how Royal Mail monitors its quality of service performance.

Regulatory framework

2.2 Royal Mail is required by regulation imposed by Ofcom to achieve certain quality of service standards in the delivery of particular Universal Service products. It is also required to monitor its performance against these standards and publish, for each quarter and for each financial year, its performance against the standards. If Royal Mail fails to meet the standards, Ofcom has powers to take enforcement action against Royal Mail.

Overview of the quality of service regulation

2.3 On 27 March 2012, we published a statement entitled "Securing the Universal Postal Service: Decision on the new regulatory framework"¹ (the "2012 Statement") in which we, among other things, designated Royal Mail as the Designated Universal Service Provider ("DUSP") and imposed DUSP conditions on Royal Mail in accordance with section 36 of, and paragraph 3 of Schedule 6 to, the Postal Services Act 2011 (the "Act").²

2.4 The DUSP conditions³ set out the Universal Service products that Royal Mail is required to provide. DUSP condition 1.6.1(a) requires Royal Mail to provide 'USO priority services' with a target routing time of one working day for conveying postal packets from the deemed date of collection to the date of delivery (also known as "D+1"). Royal Mail refers to products in this category as First Class products. For ease of reference, we have also adopted the term 'First Class products' in this document.

2.5 DUSP condition 1.6.1(b) requires Royal Mail to provide 'USO standard services' with a target routing time of three working days (also known as "D+3"). Royal Mail refers to products in this category as Second Class products. For ease of reference, we have also adopted the term 'Second Class products' in this document.

2.6 DUSP condition 1.9.1 requires Royal Mail to meet certain quality of service performance standards, including:

- a First Class national performance standard, which requires at least 93% of First Class mail to be deemed to have been delivered with an actual routing time of no more than one working day i.e. within one working day of collection;

¹ Ofcom, [Securing the Universal Postal Service Decision on the new regulatory framework](#), 27 March 2012.

² The DUSP conditions can be viewed on [Ofcom's website](#).

³ As amended on 1 April 2014.

- a First Class Postcode Area⁴ (“PCA”) performance standard, which requires at least 91.5% of First Class products, which have been purchased by postage stamp and by meter, to be deemed to have been delivered with an actual routing time of no more than one working day in each postcode area in the UK apart from HS,⁵ KW⁶ and ZE⁷ (118 out of the 121 in the UK); and
 - a Second Class national performance standard, which requires at least 98.5% of Second Class mail to be deemed to have been delivered with an actual routing time of no more than three working days.
- 2.7 DUSP condition 1.9.1 requires Royal Mail to meet these standards in respect of each annual period ending on 31 March, with the exception of the ‘Christmas period’, which is defined as the period beginning on the first Monday in December and ending on the New Year public holiday in the following January.⁸
- 2.8 DUSP condition 1.9.2 requires Royal Mail to monitor, or to procure the monitoring of, its performance in relation to the specified quality of service standards using an appropriate testing methodology. The approach used by Royal Mail to do so is explained below.
- 2.9 Royal Mail has been subject to equivalent regulatory obligations since 2001, including the national performance and PCA performance standards.⁹ The levels of the standards were initially based on Royal Mail’s then internal quality of service targets.¹⁰ Royal Mail subsequently agreed to an increase in the standards and by 2005/06 the present levels applied.¹¹ In establishing a new regulatory framework in 2012 we decided to maintain quality of service regulation at these levels. We noted that “[h]istorical performance suggests that all of the targets are achievable.”¹²

Ofcom’s investigatory and enforcement powers

- 2.10 Ofcom’s powers to take enforcement action against Royal Mail in relation to its compliance with the quality of service performance standards imposed on it are set out in Schedule 7 to the Act.
- 2.11 Under section 54 of, and paragraph 2 of Schedule 7 to, the Act, if Ofcom determines that there are reasonable grounds for believing that Royal Mail is contravening, or has contravened, a regulatory requirement, Ofcom may give Royal Mail a notification. The notification must:

⁴ Postcode Areas are geographic segments of the UK and each segment has a name and a code made up of one or two letters. These codes are used as the beginning letters of every UK postcode. There are 121 postcode areas in the UK.

⁵ The Outer Hebrides postcode area, which covers the islands making up the Outer Hebrides Island archipelago.

⁶ The Kirkwall postcode area, which covers certain areas in the North of Scotland, including the Orkney Islands.

⁷ The Lerwick postcode area, which covers the Shetland Islands in Scotland.

⁸ In Scotland, the Christmas period extends to the Scottish New Year public holiday.

⁹ Condition 4 of [Royal Mail’s licence](#) granted on 23 March 2001.

¹⁰ See Postcomm, [Licence for Consignia plc – A consultation document and notice](#), January 2001, page 13, paragraph 2.12.

¹¹ See Postcomm, [Review of Consignia plc’s Price and Service Quality Regulation](#), October 2002, page 82, paragraph 7.5.

Royal Mail’s licence was amended on 31 March 2003 to reflect the revised standards.

¹² Ofcom, [Securing the Universal Postal Service – Proposals for the future framework for economic regulation](#), 20 October 2011, page 33, paragraph 5.43.

- a) set out the determination made by Ofcom;
 - b) specify the requirement and contravention in respect of which that determination has been made; and
 - c) specify the period during which Royal Mail has an opportunity to make representations about the notified determination.
- 2.12 Following the issue of such a notification, there are a number of further enforcement actions that Ofcom may consider taking. As this case relates to Royal Mail's performance during 2017/18, some of these actions, including the imposition of an enforcement notification together with a direction setting out steps to be taken to remedy the breach (provided for under paragraph 5 of Schedule 7 to the Act), are not applicable since it would not be possible for Royal Mail to remedy any breach on a retrospective basis.
- 2.13 If, following a notification under paragraph 2, Ofcom is satisfied that Royal Mail has, in one or more of the notified respects, been in contravention of the notified regulatory requirement, Ofcom may impose a financial penalty on Royal Mail, in accordance with paragraph 6 of Schedule 7 to the Act. The amount of any penalty should be appropriate and proportionate to the contravention(s) for which it is imposed and may not exceed 10% of the turnover of Royal Mail's postal service business for the relevant period. In determining the amount of any financial penalty, Ofcom is also required to have regard to its guidelines on financial penalties.¹³

European Standard for First Class mail

- 2.14 In carrying out this investigation, we have also had regard to the European Standard for First Class mail which sets how quality of service should be monitored. It also identifies circumstances, known as *force majeure* events, the impact of which may be removed from the results of that monitoring, which has the effect of uplifting overall performance.

Measuring quality of service

- 2.15 The European Committee for Standardization, known as CEN, is an association that brings together the National Standardization Bodies of 34 European countries. CEN is one of the European Standardization Organizations that has been officially recognised by the European Union and by the European Free Trade Association (EFTA) as being responsible for developing and defining voluntary standards at a European level.
- 2.16 CEN has approved European Standard EN 13850:2012 (the "First Class standard"), which was implemented in the UK by The British Standards Institute, guides postal operators in measuring the quality of service of single piece priority or first class mail falling within the scope of universal service obligations. It does this by providing a detailed methodology for estimating the quality of service – in relation to journey times – of these priority mail services. Although there is a separate standard relating to second class mail (EN 14508),

¹³ See Ofcom, [Penalty Guidelines – Section 392 Communications Act 2003](#), 14 September 2017.

Royal Mail has confirmed that it “structures its measurement of both First and Second Class Universal Service quality of service as one over-arching survey, designed and deployed in accordance with the more comprehensive First Class Standard EN 13850.”¹⁴

- 2.17 As noted above, DUSP condition 1.9.2 requires Royal Mail to monitor, or to procure the monitoring of, its performance in relation to the applicable quality of service standards using an appropriate testing methodology. Royal Mail complies with this requirement by way of a series of surveys involving test mail items. These are designed by Royal Mail in compliance with the First Class standard and carried out by the market research agency TNS Global Ltd (“TNS”). To carry out the survey, TNS recruits a panel of private individuals and businesses across the UK who are directed by TNS to post items of test mail to each other. Royal Mail explains that panellists record the dates on which test items are posted and the dates on which test items are delivered. The test items are not identifiable to Royal Mail and the participants in the survey are anonymous to Royal Mail.
- 2.18 The delivery performance of these test items can be extrapolated to estimate the performance across all mailed items. In particular, the First Class standard provides a statistical methodology which enables Royal Mail to calculate a margin of error (known as the “*confidence interval*”) around the performance of the sample items within which there can be confidence Royal Mail’s overall performance lies.¹⁵

Force majeure

- 2.19 The First Class standard outlines certain circumstances, known as “*force majeure*” events, which may provide a reason for postal operators to remove certain samples from its performance assessment. Section 5.2 of the First Class standard, entitled “Transit time calculation”, discusses *force majeure* events. It reads as follows:

“5.2.2 Continuity of measurement

The measurement system shall be continuous. Posting shall cover all months and weeks of the year and at least all collection days of the week in accordance with the definition of the measurement unit and the transit-time calculation rule. All periods of the year shall be included as well as Christmas, Easter and summer holiday periods.

Non-functioning of the postal operator and days of strikes or industrial disputes shall not be discounted. However, in case of “*force majeure*” events, deduction of corresponding periods may be considered [by the regulatory authority¹⁶]. Any deduction shall be indicated in the reporting and be subject to audit.

[...]

¹⁴ Royal Mail response dated 27 November 2018 to Question 3 of Ofcom’s statutory information request.

¹⁵ See European Standard EN 13850:2012, section A.5.

¹⁶ See European Standard EN 13850:2012, section F.2.2.

For an event to qualify as force majeure, the incident shall fulfil the following minimum requirements. It shall;

- not be caused by the operators involved in the distribution and / or their subcontractors,
- be unforeseeable and,
- be unavoidable by them.

It shall;

- be a rare event,
- have a provable impact on several consecutive days of distribution.

Thus in case of, for example, natural disaster or terror attacks it should be allowed to consider the deduction of the corresponding period during which operation is affected in such a way that transit times cannot be guaranteed by “normal” postal operation.”

2.20 Section H.3.5, entitled “Force majeure”, covers a number of topics related to *force majeure* events. Within this section is the following sub-section:

“H.3.5.4 Examples of force majeure

- natural disasters; earthquake, flooding or other extreme weather conditions (which are unlikely in that region or country) causing damage to e.g. goods, infrastructure, people and making the postal operator unable to perform its obligations,
- war or terrorist activity causing physical damage to e.g. goods, infrastructure, people or creating a psychological distress that results in non-performance,
- general strike; an external strike outside the operators influence and where all major transportation systems are blocked on a nation-wide level.

The following events may not qualify as force majeure:

- strike within the operators influence,
- periods of the year or days with an unusually large volume of mail and / or parcels, independent of the induction point.”

3. Our assessment of Royal Mail's submissions

Royal Mail's reported quality of service performance in 2017/18

- 3.1 On 11 May 2018, Royal Mail announced¹⁷ and published¹⁸ its performance against its quality of service performance standards. Among other results, these showed that Royal Mail had:
- not achieved its First Class national performance standard of 93%, achieving a lower performance of 91.6%;
 - not achieved its First Class PCA performance standard of 91.5% in 46 of the 118 specified PCAs, achieving the standard in 72/118 PCAs; and
 - not achieved its Second Class national performance standard of 98.5%, achieving a lower performance of 98.4%.

Royal Mail's submissions

- 3.2 On 1 June 2018, Ofcom opened an investigation into the three failures identified above¹⁹ and invited Royal Mail to provide a submission on any mitigating circumstances during 2017/18 that Royal Mail would like Ofcom to take into account when considering Royal Mail's compliance with the relevant performance standards. Royal Mail provided a detailed submission to Ofcom on 27 July 2018 ("First Submission"). On 6 November 2018, Ofcom issued a statutory information request to Royal Mail and asked other follow-on questions relating to the First Submission. Royal Mail responded and provided further information to Ofcom on 27 November 2018.
- 3.3 In its First Submission, Royal Mail argues that we should take into account the confidence interval and that its performance in 2017/18 should be adjusted to take account of five mitigating circumstances, namely:
- the severe weather in February and March 2018, which Royal Mail submits was exceptional and had a significant impact on its operations during, and immediately following, those weather events;²⁰
 - the flu outbreak between December 2017 and March 2018, which Royal Mail submits was exceptional and affected its quality of service performance for two weeks in January;²¹

¹⁷ [Royal Mail press release on quality of service in 2017/18](#).

¹⁸ This was in accordance with its obligations under DUSP 1.10.4.

¹⁹ This was publicly announced on Ofcom's [competition and consumer enforcement bulletin](#).

²⁰ First Submission, paragraphs 103-137.

²¹ First Submission, paragraphs 138-154 and Second Submission, paragraphs 13-17.

- the industrial relations climate from April 2017 to January 2018, which was the period between Royal Mail announcing the closure of its defined benefit pension scheme and agreeing a settlement with the Communications Workers Union (“CWU”), and which Royal Mail submits affected its quality of service performance;²²
- Cyber Week, during which Royal Mail experiences higher volumes (which are comparable to volumes during the Christmas Exception Period (“CEP”)²³) which it claims it cannot “reasonably and efficiently resource” and resulted in a negative impact on its quality of service performance;²⁴ and
- other events (specifically air, rail and road network issues and local issues, such as flooding) which Royal Mail submits were beyond its reasonable control and affected its quality of service performance.²⁵

Royal Mail submits that, after adjusting its performance to take account of these factors, it achieved the relevant standards.

- 3.4 After considering the First Submission and the further information provided by Royal Mail, Ofcom issued Royal Mail with a notification under paragraph 2 of Schedule 7 of the Act (the “Notification”). The Notification advised Royal Mail that Ofcom had reasonable grounds to believe that it had contravened DUSP 1.9.1 in 2017/18 by failing to achieve the First Class national and PCA standards. Royal Mail was offered the opportunity to make representations on the matters within the Notification and did so on 1 April 2019 (the “Second Submission”). In addition to responding to our Notification, the Second Submission supplemented the submissions Royal Mail made in the First Submission, in particular relating to Cyber Week.

Assessment Framework

- 3.5 The objective of Royal Mail's quality of service performance standards is to ensure that consumers receive an adequate level of service. These standards are made meaningful and achievable by being set below 100%, in recognition of the fact that events may affect delivery performance which are beyond Royal Mail's control.²⁶ However, Ofcom has discretion to take into account and grant additional allowance, in excess of the allowance already built into the standards, for events which Ofcom considers to be exceptional.²⁷

²² First Submission, paragraphs 37-72.

²³ The Christmas Exemption Period, which is defined in DUSP 1.1.2, is from the first Monday in December until the first working day in January, and DUSP 1.9.1 explains that Royal Mail's performance during this period is excluded when its annual performance is calculated for quality of service purposes. Royal Mail is still required by DUSP 1.10.6 to publish its quality of service performance during the CEP, and does so each year with its Q3 results.

²⁴ First Submission, paragraphs 73-102 and Second Submission, paragraphs 20-42.

²⁵ First Submission, paragraphs 155-166 and Second Submission, paragraphs 43-47.

²⁶ See: Ofcom, [Annual monitoring update on the postal market – Financial year 2012-13](#), page 37, paragraph 5.33; Ofcom, [Annual monitoring update on the postal market – Financial year 2013-14](#), page 45, paragraphs 5.36; Ofcom, [Annual monitoring update on the postal market – Financial year 2014-15](#), page 17, paragraphs 3.32; Ofcom, [Decision to conclude investigation of Royal Mail Group Limited in relation to a contravention of Designated Universal Service Provider Condition 1.9.1](#), 19 October 2016, page 9, paragraph 3.22.

²⁷ Royal Mail agrees that Ofcom has discretion to determine whether and what adjustments should be made for exceptional events – see First Submission, paragraphs 267-275.

- 3.6 Determining whether an event should be considered “exceptional” is a subjective exercise. An event may appear exceptional, for example, because it has never happened before, is rare, or has an unprecedented and unforeseeable impact. However, it does not follow that we should automatically grant an additional allowance for it. This is because Royal Mail's quality of service performance standards are already set below 100% to capture events that are beyond Royal Mail's control, some of which could be considered “exceptional” to the extent the specific nature of the event may not have happened before or is rare. Whether an event is considered “exceptional” cannot therefore be the only relevant factor when determining whether we should grant an additional allowance for a specific event. If it was, then Royal Mail could effectively receive two allowances for the same event; one under the allowance built into its targets - which is intended to cover events beyond Royal Mail's control, including what may be considered “exceptional” events - and one as a result of an ex post investigation.
- 3.7 In exercising our discretion, we have therefore taken a more holistic approach to deciding whether to grant an additional allowance for an event; first, we have considered whether an event is exceptional; second, if it is exceptional, we have considered whether an additional allowance should be granted for it.
- 3.8 When assessing which events in 2017/18 we consider to be exceptional and deciding whether to exercise our discretion and grant an additional allowance for them, we have taken into account the specific circumstances of each event as well as the First Class standard. We have also taken into account the impact the event had on Royal Mail's quality of service as well as whether it is the type of event for which we consider the allowance built into Royal Mail's targets is intended. Where we have decided to grant an additional allowance for a specific event, we have uplifted Royal Mail's performance to account for the impact of the particular event in question.
- 3.9 In its Second Submission, Royal Mail argues that Ofcom should first consider whether an event is exceptional and if it is considered exceptional then Ofcom should grant an additional allowance for that event and adjust Royal Mail's performance accordingly.²⁸ We disagree with this approach. In our view, categorising an event as exceptional is simply a pre-requisite to a decision to grant an additional allowance for it i.e. we do not consider it appropriate to grant an additional allowance for an event unless it is considered exceptional, but we will not necessarily grant an additional allowance for all exceptional events.
- 3.10 Further, if the sole focus was on categorising events as “exceptional” or not, over time this may require us to establish arbitrary boundaries between normal or average events and exceptional events such that two very similar events could be treated differently if they fall either side of the line - Royal Mail could get an allowance for one but not the other. This could result in inconsistent and unsatisfactory outcomes.

²⁸ Second Submission, paragraph 6.

- 3.11 Royal Mail also disagrees that we should take into account the impact of an event when deciding whether to grant an additional allowance for it and suggests this “risks creating perverse incentives. For example, Royal Mail may be better off not mitigating this type of event as effectively as it could, as a bigger impact may increase the likelihood of an additional allowance being granted by Ofcom.”²⁹
- 3.12 We disagree. As explained in paragraph 3.6 above, whether an event is considered “exceptional” cannot be the only relevant factor when determining whether we should grant an additional allowance for a specific event; in our view, the impact of an event is an important characteristic that is also relevant to the question of whether we should grant an additional allowance for it.
- 3.13 In terms of whether taking into account the impact of an event will create perverse incentives, the impact of an event is just one factor we will consider amongst others. We will not decide whether or not to grant an additional allowance for an event solely based on its impact. In any event, any investigation into Royal Mail's failure to meet its quality of service targets will include consideration of what mitigations Royal Mail has implemented to reduce the impact of events affecting its quality of service. If Royal Mail is unable to satisfy us that it took all reasonable steps to mitigate the impact of an event, we may decide not to grant any additional allowance for it. We also note that Royal Mail will not know the full effect of an event on its quality of service performance until sometime after the event has occurred. As a result, electing not to mitigate as effectively as possible may result in Royal Mail failing its annual targets when it might otherwise have passed which could result in enforcement action, and a financial penalty being imposed.
- 3.14 In this Section, we consider each of Royal Mail's submissions on mitigating circumstances for which its performance should be adjusted, as identified in the First Submission and supplemented by the Second Submission. In the specific circumstances of this case, we explain our reasons for deciding to take into account the confidence interval and adjust Royal Mail's performance for the severe weather in early 2018. We refer to the First Submission, Royal Mail's response dated 27 November 2018 and the Second Submission collectively as the “Submissions”.

Confidence interval

- 3.15 As noted above in Section 2, Royal Mail's quality of service performance is based on its performance in delivering a certain number of test items. In order to extrapolate overall performance from the performance of the sample, it is necessary to apply a confidence interval. This results in a range within which there is a 95% probability that the true performance lies, although it is not possible to determine where in that range Royal Mail's actual performance lies. The performance figure reported by Royal Mail is the middle of

²⁹ Second Submission, paragraph 7.

the confidence interval. The range or degree of the confidence interval is determined by (i) the measured quality of service achieved for the sample; and (ii) the sample size.³⁰

- 3.16 In its Submissions, Royal Mail argues that “Ofcom should take full account of [the confidence interval] when considering [its] performance”.³¹ Royal Mail points out that the confidence interval is “explicitly recognised in the [First Class standard], which states that the upper limit of [the confidence interval] must be taken into account when determining if a target has been missed”.³² By this, Royal Mail means that its performance should be considered, for enforcement purposes, as being at the top of the confidence interval. This is because any result within the confidence interval has the same probability of being Royal Mail's true performance, and Ofcom must be certain that there has been a contravention in order to take enforcement action. Royal Mail points out that Ofcom “has previously applied this approach in its 2016 Decision and its 2013-14 and 2014-15 Annual Monitoring Reports.”³³

Ofcom's assessment

- 3.17 Since imposing the DUSP condition in 2012, we have consistently acknowledged the confidence interval associated with Royal Mail's quality of service performance figures. This means that where Royal Mail's performance – adjusted to the high point of the confidence interval – meets the relevant standard, we have not intervened or investigated further. This is because, in these circumstances, “it could not be ascertained whether Royal Mail had missed the target or not.”³⁴ Accordingly, we have taken into account the confidence interval in our assessment of Royal Mail's performance in 2017/18.
- 3.18 The impact of this is described in Section 4 below.

Severe weather

- 3.19 Royal Mail has submitted that “the truly exceptional nature of [the] extreme adverse weather” in February and March 2018 had a significant impact on its operations. Royal Mail contends that if we grant an additional allowance for the impact of the adverse weather, its performance against its First Class national standard would increase by 1%, its performance against the Second Class standard would increase by 0.4% and, once the confidence interval is taken into account, its performance against the First Class PCA standard would increase to 114/118 PCAs.³⁵

³⁰ First Submission, Appendix 2.

³¹ First Submission, paragraph 15. See also paragraphs 24.

³² First Submission, paragraph 30.

³³ Ibid.

³⁴ Ofcom, [Annual monitoring update on the postal market – Financial year 2014-15](#), paragraph 3.35. Also see Ofcom, [Annual monitoring update on the postal market – Financial year 2013-14](#), 2 December 2014, paragraph 5.40; Ofcom, [Decision to conclude investigation of Royal Mail Group Limited in relation to a contravention of Designated Universal Service Provider Condition 1.9.1, CW/01183/05/16](#), 19 October 2016, Table 2 and paragraphs 3.28.

³⁵ First Submission, paragraphs 104 and 135-137.

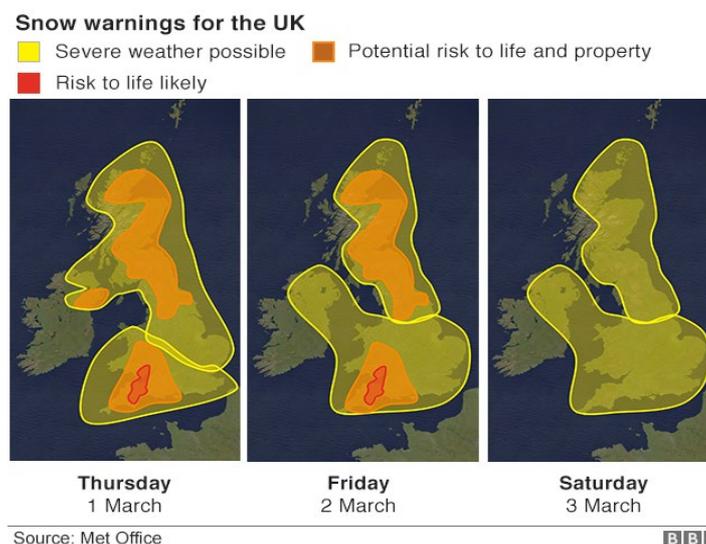
Royal Mail’s Submissions

- 3.20 The weather from late February until early March 2018, which included the “Beast from the East” and “Storm Emma”, was more severe when compared to the weather in previous years. In its report in mid-March, the Met Office described it as “a spell of severe winter weather” that was “the most significant spell of snow and low temperatures for the UK overall since December 2010”.³⁶ Royal Mail makes a number of observations to illustrate this.
- 3.21 The Met Office issued its second and third red weather warnings (the most serious warning) since the warning system was introduced in 2011 during the period. The Met Office describes what a red warning means as follows:

“Dangerous weather is expected and, if you haven’t already done so, you should take action now to keep yourself and others safe from the impact of the severe weather. It is very likely that there will be a risk to life, with substantial disruption to travel, energy supplies and possibly widespread damage to property and infrastructure. You should avoid travelling, where possible, and follow the advice of the emergency services and local authorities.”³⁷

Most of the rest of the UK was issued yellow³⁸ and amber³⁹ warnings for days during the period, as illustrated in Figure 3.1 below showing weather warnings on 1-3 March 2018.

Figure 3.1: Map of UK showing Met Office weather warnings on 1 March 2018



Source: [BBC website](#)

³⁶ Met Office, [Snow and low temperatures February to March 2018](#) [last updated 13 March 2018].

³⁷ Met Office, [Weather warnings guide](#) [accessed 12 December 2018].

³⁸ Often issued when it is likely that the weather will cause some low-level impacts, including some disruption to travel in a few places. Some yellow warnings are issued when the weather could bring much more severe impacts to the majority of people but the certainty of those impacts occurring is much lower.

³⁹ Indicates an increased likelihood of impacts from severe weather, such as travel delays, road and rail closures, power cuts and the potential risk to life and property.

- 3.22 Additionally, the Met Office issued a level 3 cold weather alert for 26 February through to 3 March 2018. Royal Mail explains that “the Met Office triggers cold weather alerts when wintry weather could negatively affect the public in some way. The severity of the alerts range from level 1, the least serious, to level 4, a national emergency. A level 3 alert is triggered by the Met Office when mean temperatures fall below 2°C for two or more days, or when there is heavy snow or widespread ice.”⁴⁰ These temperatures between 26 February and 3 March 2018 were significantly lower than averages for February and March, by as much as eight degrees or more in large parts of the UK between 28 February and 2 March 2018.⁴¹
- 3.23 According to Royal Mail, “the impact of this severe weather was [...] extensive”.⁴² This was as a result of its impact on Royal Mail’s workforce and on the air, rail and road transport networks. People and fast-flowing air, rail and road networks are key for Royal Mail to achieve its quality of service performance standards.
- 3.24 During the period, staffing levels fell dramatically as a direct result of the severe weather when compared with 2016/17 levels. Royal Mail explains that staff were unable to get into work due to road closures and public transport cancellations.⁴³ For those that did make it to work, they could only deliver and collect mail where access was possible and it was safe to do so.⁴⁴ In addition, hundreds of schools closing around the UK⁴⁵ meant that staff had to remain at home to look after their children. According to Royal Mail, over [X] hours of work were lost as a result of the weather during the week commencing Monday 26 February 2018, after taking account of overtime and agency work. Moreover, we understand that this figure does not necessarily reflect the full extent of the loss. This is because, according to Royal Mail, agency workers are less efficient than permanent staff due to being less familiar with the tasks being performed and the equipment used. This is likely to have reduced Royal Mail’s capacity to collect, process and deliver mail during the period.
- 3.25 Royal Mail relies heavily on transport networks to move mail around the UK. The air and rail networks, as the quicker means of transporting mail, are particularly important to deliver First Class mail on time. In its First Submission, Royal Mail provided Figure 3.2 below to show that the number of flight and rail cancellations as a result of adverse weather increased dramatically in 2017/18.

⁴⁰ First Submission, paragraph 109.

⁴¹ See Met Office, [Snow and low temperatures February to March 2018](#). Met Office comparison was made with 1981-2010 average for February and March.

⁴² First Submission, paragraph 112.

⁴³ First Submission, paragraph 116.

⁴⁴ First Submission, paragraph 132.

⁴⁵ See BBC, [What is a red weather warning?](#), 1 March 2018.

Figure 3.2: Air and rail network failures due to adverse weather (2015/16 to 2017/18)

Year	Percentage of air network failures ⁴⁶ due to adverse weather	Percentage of rail network failures ⁴⁷ due to adverse weather
2017/18	[REDACTED]	[REDACTED]
2016/17	[REDACTED]	[REDACTED]
2015/16	[REDACTED]	[REDACTED]

Source: Royal Mail

- 3.26 Finally, in relation to the road network, Royal Mail explains that the April 2017 to February 2018 average of items affected daily by road network failures was in the region of [REDACTED]. In contrast, between 28 February and 14 March 2018 the number of daily failures was higher in almost every day, with [REDACTED] items failing on eight days and the number of failures reaching [REDACTED] on 2 March 2018.⁴⁸
- 3.27 In its First Submission, Royal Mail provided Figure 3.3 below to demonstrate the significant impact the severe weather had on Royal Mail.

Figure 3.3: First and Second Class performance during the period of severe weather

[REDACTED]

Source: Royal Mail

- 3.28 As illustrated by Figure 3.3 and explained by Royal Mail, the impact of the severe weather was not simply on the days of the worst weather. The mismatch between the forecast volumes (which are used to determine the level of resource from day to day)⁴⁹ and actual volumes, and the backlog of mail (mail stored that could not be delivered) meant that quality of service took days to recover after the worst of the weather.
- 3.29 In its First Submission, Royal Mail notes that it took a number of steps to mitigate and recover from the impact of this severe weather:
- Royal Mail had a contingency plan for severe weather that assisted its recovery by, among other things, positioning contingency aircraft and vehicles to best advantage and booking an additional 210 large goods vehicles to move mail around the country.⁵⁰

⁴⁶ [REDACTED]

⁴⁷ [REDACTED]

⁴⁸ First Submission, Figure 15.

⁴⁹ See First Submission, paragraph 113, in which Royal Mail explains that customers posted higher volumes of mail as they cleared their own weather-related backlogs.

⁵⁰ First Submission, paragraphs 124 and 127.

- Royal Mail opened the [redacted] outhouse building⁵¹ on 28 February and [redacted] and [redacted] parcel sort centres on 1 March 2018, to provide additional sorting and storage, at a cost of around £[redacted].⁵²
- By the morning of Sunday 11 March 2018, Royal Mail had had its yards gritted or snow ploughed nearly 58,000 times, at a cost of around £[redacted].⁵³
- Royal Mail was publicly recognised for its response to the “Beast from the East”, as “an excellent example of an effective recovery showing the quality of the planning, a response that led to the effective recovery and the enhanced resilience achieved as a result” when it was shortlisted in the most effective recovery category at the BCI’s European Awards in 2018.
- Royal Mail increased overtime after the snow to clear the backlog as quickly as possible, at a cost of £[redacted].⁵⁴

Ofcom’s assessment

- 3.30 In the specific circumstances of this case, we have decided that an additional allowance should be granted for the severe weather in February and March 2018. In exercising our discretion and reaching this conclusion, we have taken into account the following factors: the severe weather in this period was outside of Royal Mail’s control and was exceptional relative to previous years; it had a provable and unavoidable impact on several consecutive days of operation; and such severe weather is not the type of event for which we consider the allowance built in to Royal Mail’s targets is intended to cover.
- 3.31 We note that the First Class standard lists “extreme weather conditions” as an example of a *force majeure* event. This supports our decision that Royal Mail should be granted an additional allowance for the severe weather in February and March 2018.
- 3.32 The impact of this adjustment is described in Section 4 below.

Outbreak of Australian flu

- 3.33 Royal Mail has submitted that the flu crisis between December 2017 and March 2018 was the worst in 20 years and that this particularly affected its quality of service performance for two weeks in January. Royal Mail contends that if we grant an additional allowance for the impact of this flu crisis, its performance against its First Class national standard would increase by 0.1%, but its performance against the First Class PCA standard is unaffected.⁵⁵

Royal Mail’s Submissions

- 3.34 The UK suffered “its worst flu crisis in 20 years”⁵⁶ in the winter of 2017/18, with Public Health England declaring that the virus was rendering the largest number of people

⁵¹ An outhouse is an additional Royal Mail building that does not form part of Royal Mail’s usual operational estate but is used as required on a ‘pop up’ basis.

⁵² First Submission, paragraph 128.

⁵³ First Submission, paragraph 129.

⁵⁴ First Submission, paragraph 127-131.

⁵⁵ First Submission, paragraphs 138-139 and 154.

⁵⁶ First Submission, paragraph 138.

seriously unwell since the winter of 2010/11.⁵⁷ Royal Mail explains that this was driven by an outbreak of Australian flu, an “extremely virulent and also extremely contagious” strain of flu.⁵⁸

3.35 The flu viruses circulating during the winter of 2017/18 were also more serious than in recent years and led to many more deaths. There were 120 deaths from flu in 2017/18 by the middle of January, more than double the number in any of the previous four years and similar to the total number of fatalities in the previous four years combined.⁵⁹

3.36 Royal Mail submits that the impact of this flu outbreak was most acute during January 2018, illustrating this in its First Submission through published figures on GP visits by members of the public with flu:

- In England, 21 people out of every 100,000 went to their GP with flu in the last week of December 2017. That more than doubled to 53.1 in the week that ended on Sunday 14 January 2018, according to data collected by Public Health England.
- In Wales, rates almost quadrupled over the same fortnight from 16.7 to 64.9 per 100,000 people.
- Scotland and Northern Ireland saw smaller but still major rises, from 44.9 to 114 and 22.7 to 65.2 out of every 100,000 of the population respectively.⁶⁰

3.37 Royal Mail submits that it also felt the effects of this surge in January 2018. Absences due to flu or flu-like symptoms reached almost [redacted] hours in frontline staff in January 2018, five times the number of sick absence hours in November and December 2017. Royal Mail provided Figure 3.4 below to demonstrate this.⁶¹

3.38 Royal Mail also points out that Figure 3.4 below shows that the number of sick absence hours in January 2018 was over double that of the previous two years.

Figure 3.4: Number of sick absence hours due to flu or flu-like symptoms in frontline staff (2015-16 to 2017-18)

[redacted]

Source: Royal Mail

3.39 In its Second Submission, Royal Mail provided Figure 3.5 below to show that the spike in sick absence in January was larger in 2017/18 than in each of the four years prior.

Figure 3.5: Sick absence from 2013/14 to 2017/18

[redacted]

Source: Royal Mail

⁵⁷ See The Guardian, [Flu outbreak: UK deaths triple with GPs seeing major rise in patients](#), 18 January 2018.

⁵⁸ First Submission, paragraph 141.

⁵⁹ Ibid and First Submission, paragraph 142.

⁶⁰ First Submission, paragraph 142.

⁶¹ First Submission, Figure 20.

- 3.40 Royal Mail submits that this increase in sick absence impacted its performance because it could not entirely replace the resource lost to flu during the period.
- 3.41 In its Second Submission, Royal Mail acknowledges that “employee sickness occurs throughout the year and normal levels of sickness should be covered by the allowance in the Targets.”⁶² However, Royal Mail submits that the period in 2017/18 “was in fact worse than severe – it was unprecedented and clearly outside the bounds of what would be considered average employee sickness levels. Therefore, this event is clearly exceptional.”⁶³
- 3.42 Royal Mail notes in its First Submission that it mitigated the impact of this flu outbreak by:
- increasing the use of agency resource, specifically by investing £[redacted]⁶⁴ more year-on-year on agency staff compared to 2016-17 in delivery in the second half of the year, including deploying an additional c. [redacted] agency workers to support the deliveries in the first two weeks of January 2018;
 - increasing flu awareness communications to staff; and
 - offering reimbursement of the cost of flu vaccinations.⁶⁵

Ofcom's assessment

- 3.43 We have decided that Royal Mail should not be granted an additional allowance for the flu outbreak in January 2018. In exercising our discretion and reaching this conclusion, we have taken into account a number of factors. The flu outbreak was not caused by Royal Mail and was severe relative to the four years prior, such that it could be considered “exceptional” by comparison. However, it had a small impact on quality of service of only 0.1% and we consider that employee sickness at the level seen in 2017/18 is the type of event for which the allowance built in to Royal Mail's targets is intended to cover. We also note that demarcating between average and exceptional sickness levels would require Ofcom to establish some form of arbitrary boundary such that a small number of additional sick absence hours could be the difference between Royal Mail being granted an allowance for employee sickness in a particular year and not.

Industrial relations climate

- 3.44 Royal Mail has submitted that the announcement of the closure of its defined benefit pension scheme and its proposed changes to working practices resulted in a lengthy period of industrial unrest that “brought Royal Mail to the brink of a national strike and had a major negative impact on staff productivity, morale and goodwill”. Royal Mail contends that this inevitably impacted its quality of service performance and estimates that if we grant an additional allowance for the impact of this industrial relations climate, its performance against its First Class national standard would increase by between 0.17% and

⁶² Second Submission, paragraph 14.

⁶³ Second Submission, paragraph 15.

⁶⁴ This figure also includes investment in agency staff to cover the Extended Christmas Period.

⁶⁵ First Submission, paragraph 149.

0.52% and, once the confidence interval is taken into account, its performance against the First Class PCA standard would increase to between 97 and 108 out of 118 PCAs.⁶⁶

Royal Mail's Submissions

Context

- 3.45 In its First Submission, Royal Mail sets out the following chronology of the period for which it claims that an additional allowance should be granted for the effect of the industrial relations climate.
- 3.46 In April 2017, Royal Mail publicly announced its intention to close its defined benefit pension scheme in March 2018. The closure of the scheme was a unique event in Royal Mail's history and Royal Mail has said it had little alternative but to close it, claiming that if it remained open, it would become unaffordable.⁶⁷
- 3.47 The closure of Royal Mail's defined benefit pension scheme was already the subject of negotiations which had started a month beforehand between Royal Mail and the CWU, of which 87% of Royal Mail's frontline staff are members. These negotiations also included discussions about a range of "significant transformation[al] changes",⁶⁸ both operational and technological, to Royal Mail's working practices.⁶⁹ Royal Mail explains that these changes were needed to continually evolve its network and operations to respond to the structural decline of letter volumes and the increase in competition in parcel delivery services.⁷⁰ Royal Mail describes the proposed changes as being [redacted].⁷¹ Royal Mail explains that this reaction stemmed from that fact that the proposals, if implemented, would [redacted].⁷²
- 3.48 In July 2017, the CWU passed an emergency motion objecting to Royal Mail's proposal to close the pension scheme. Negotiations continued into August 2017, but with no breakthrough. During September 2017, the CWU campaigned and balloted its members for strike action and on 3 October 2017 announced that its members had voted overwhelmingly in favour of taking such action – with a 73.7% turnout and 89% in favour.⁷³ The CWU served notice on Royal Mail of its intention to hold two days of industrial strike action from 19 to 21 October 2017.⁷⁴ This was the first successful vote on industrial action since October 2009⁷⁵ and the CWU's Deputy General Secretary said that the overwhelming support for strike action reflected that people were "extremely angry".⁷⁶

⁶⁶ First Submission, paragraphs 38-39 and 69-70.

⁶⁷ See BBC, [Strike threat after Royal Mail closes pension scheme](#), 13 April 2017.

⁶⁸ First Submission, paragraph 44.

⁶⁹ These included proposals for later delivery start times, trialing new delivery methods, the introduction of new technology to automate certain processes, and matching hours worked to traffic.

⁷⁰ First Submission, paragraph 44.

⁷¹ First Submission, paragraph 37.

⁷² First Submission, paragraph 38.

⁷³ See The Guardian, [Royal Mail workers vote for industrial action](#), 3 October 2017.

⁷⁴ See The Guardian, [Royal Mail workers vote for industrial action](#), 5 October 2017.

⁷⁵ See BBC, [Royal Mail workers vote to strike](#), 8 October 2009.

⁷⁶ See The Guardian, [Royal Mail workers vote for industrial action](#), 5 October 2017.

- 3.49 Having written to the CWU to trigger an external mediation process agreed between Royal Mail and the CWU in 2013,⁷⁷ Royal Mail then sought and was granted an injunction by the High Court on 12 October 2017, blocking the CWU from strike action “until the external mediation process ha[d] been exhausted”.⁷⁸ However, in its First Submission, Royal Mail points out that the risk of industrial action did not pass, as the CWU’s Deputy General Secretary responded to the judgment by saying that the CWU was “putting Royal Mail on notice of further action should the mediation fail”.⁷⁹
- 3.50 The mediation process led to further negotiations that culminated in an agreed solution in relation to the closure of Royal Mail’s defined benefit pension scheme on 26 January 2018. CWU members voted to accept the agreement on 28 January 2018 by a ratio of nine to one.⁸⁰

Impact of the industrial relations climate

- 3.51 Royal Mail contends that there was a “tense industrial relations environment”⁸¹ between April 2017 and January 2018, triggered by its announcement to close its defined benefit pension scheme and amplified by the negotiations over “highly controversial and deeply unpopular” changes to operational working practices, the strike ballot and the High Court proceedings. Royal Mail argues that this had a “major negative impact on staff productivity, morale and goodwill” throughout the period,⁸² which manifested itself through higher levels of sick absence (due to staff having a lower threshold for calling in sick), increased levels of un-balloted (i.e. unofficial or unlawful) industrial action and growing inflexibility from frontline staff to cover extra work during spare duty time and do overtime, as Royal Mail would normally expect.⁸³
- 3.52 In its First Submission, Royal Mail provided Figure 3.6 below to illustrate the impact of the industrial relations climate on sick absence in the following ways:
- Sick absence hours were lower in 2017/18 than in the previous year from April to June 2017 but overtook 2016/17 in July 2017 (the same month as the CWU passed its emergency motion objecting to Royal Mail’s proposal to close its defined benefit pension scheme) and remained higher until the end of 2017.
 - The difference between 2017/18 and the previous two years grows each month from August to October 2017 and absence levels in September and October 2017 were 10% higher than in 2016 - it was during this period that the CWU campaigned and balloted for strike action and Royal Mail obtained the High Court injunction.

⁷⁷ This was part of the Agenda for Growth agreement.

⁷⁸ See BBC, [Royal Mail wins strike injunction](#), 12 October 2017.

⁷⁹ CWU, [Press Release – CWU reacts to High Court Judgement](#), 12 October 2017.

⁸⁰ First Submission, paragraph 54.

⁸¹ First Submission, paragraph 61.

⁸² First Submission, paragraph 38.

⁸³ First Submission, paragraph 38.

Figure 3.6: P1-P9 sick absence hours (2015-16 to 2017-18)

[REDACTED]

Source: Royal Mail

3.53 In relation to un-balloted (i.e. unofficial or unlawful) industrial action, Royal Mail has explained that during 2017/18 there was a fivefold increase in days lost to un-balloted industrial action compared to 2015/16 and more than double the previous year. Royal Mail has explained that in 2015/16, [REDACTED] days were lost to industrial action, of which [REDACTED] were un-balloted. In 2016/17, [REDACTED] days were lost to industrial action, of which [REDACTED] were un-balloted – [REDACTED] of these days relate to specific incidents in Swindon and Crosby. In 2017/18, [REDACTED] days were lost to industrial action, all of which were un-balloted.

3.54 Finally, in relation to the inflexibility from frontline staff, Royal Mail explains the situation during this period as follows:

“Under normal circumstances, our employees are very receptive to performing extra hours at short notice. However, due to the worsening industrial relations situation, there was a growing inflexibility from frontline staff to lapse and absorb [increased workloads (e.g. cover additional delivery routes when colleagues are absent, using the spare duty time created by the lower workload)] and an inability to secure sufficient overtime volunteers to cover these trends (exacerbated by the fewer operational staff available in July and August). We also had examples where employees were reluctant to perform additional hours to meet customer service. We therefore utilised agency workers, to reduce the impact on loss of customer service. However, in some cases, this caused further disruption to service through industrial action and a stronger resistance in particular operational units of employees failing to pick up overtime to meet the daily workload.”⁸⁴

3.55 As noted above in relation to the severe weather and the outbreak of Australian flu, people play a vital role in Royal Mail's network and in Royal Mail achieving its quality of service standards. Royal Mail contends that the higher levels of sick absence, un-balloted industrial action and inflexibility on the part of staff, impacted its performance over the period to such an extent that its performance should be adjusted accordingly.

3.56 In its First Submission, Royal Mail explains that it did the following to (a) counteract the negative impact of the “tense” industrial relations climate on staff productivity, morale and goodwill; and (b) mitigate the impact of higher levels of sick absence, un-balloted industrial action and growing inflexibility from frontline staff:

- spent nearly £[REDACTED] on an engagement programme during which it attempted to keep staff informed throughout negotiations by:
 - holding around 1,000 town hall briefing sessions across the country, reaching over 43,000 employees;

⁸⁴ First Submission, paragraph 64.

- communicating with employees via regular emails, senior engagement programmes, manager briefing sessions, “RMTV specials” on Royal Mail’s internal television channel, conference calls, articles in Courier (Royal Mail’s internal newspaper), letters, posters and postcards; and
- briefing around 2,500 frontline managers through a series of face-to-face events across the UK;⁸⁵
- used agency staff where possible;
- increased its recruitment order book (i.e. the number of vacancies) by [3<];
- refocussed regional HR teams on helping managers deal with sick absence (such as coaching on how to have difficult conversations with employees with high sickness levels) and recruitment; and
- carried out a review of its fixed/variable hours model and, following this review, increased the number of fixed hours employees are required to work.⁸⁶

3.57 Despite these actions, Royal Mail has estimated that, as a result of the industrial relations climate described above, its performance against its First Class national standard was reduced by between 0.17% and 0.52% and, once the confidence interval is taken into account, its performance against the First Class PCA standard was reduced by between 25 and 36 PCAs.⁸⁷ Royal Mail contends that these estimates are credible and conservative.⁸⁸

⁸⁵ First Submission, paragraph 60.

⁸⁶ First Submission, paragraph 59.

⁸⁷ First Submission, paragraphs 38-39 and 69-70.

⁸⁸ Second Submission, paragraph 18.

Ofcom's assessment

- 3.58 We have decided that an additional allowance should not be granted for the effects of the industrial relations climate between April 2017 and January 2018. In exercising our discretion and reaching this decision, we have taken into account a number of factors. We have previously acknowledged that there was a need for Royal Mail to reform its defined benefit pension scheme, as the arrangement as it was then had “the potential to significantly undermine [Royal Mail's] future financial sustainability.”⁸⁹ We also acknowledge that the closure of Royal Mail's defined benefit pension scheme was a unique event in Royal Mail's history, such that it could be considered “exceptional”. However, because of the way Royal Mail claims the industrial action manifested itself, particularly through increased levels of sickness and the inflexibility of staff, it is not possible for Royal Mail to demonstrate a provable impact on its quality of service performance. Royal Mail's estimates of the impact – while helpful insofar as they provide some indication of the possible scale of the impact and appear to be conservative estimates – are based on assumptions that do not accurately quantify the impact of the industrial action on Royal Mail's quality of service performance in accordance with the First Class standard. In our view, it is impossible to identify sick absence or inflexibility that would not have occurred but for the industrial relations climate.
- 3.59 We note that the First Class standard lists “strike within the operators influence” as an event that may not qualify as *force majeure*. This supports our view that an additional allowance should not be granted for the industrial relations climate described by Royal Mail, namely industrial unrest falling short of a general strike.
- 3.60 Notwithstanding our decision not to grant an additional allowance, we acknowledge that these events meant 2017/18 was a unique year in Royal Mail's history and the need to find a resolution to the issues under discussion were of great importance to both Royal Mail and all of its staff. In this context, we accept that there may have been an impact on quality of service. We have taken account of this in Section 5 below in reaching our decision not to impose a financial penalty on Royal Mail on this occasion. In its Second Submission, Royal Mail agrees “that where an event has had an impact on [its] quality of service performance but the impact is difficult to accurately quantify, Ofcom's approach of taking this event into consideration when considering whether to impose a fine (and if so, at what level) is appropriate.”⁹⁰

Cyber Week

- 3.61 Royal Mail has submitted that its performance during Cyber Week, during which Royal Mail sees parcel volumes spike to levels akin only to the Christmas Exemption Period (the “CEP”),⁹¹ should be removed from its annual performance results in the same way as the

⁸⁹ Ofcom, [Review of the Regulation of Royal Mail – Consultation](#), 25 May 2016, paragraph 4.35

⁹⁰ Second Submission, paragraph 19.

⁹¹ The Christmas Exemption Period, which is defined in DUSP 1.1.2, is from the first Monday in December until the first working day in January, and DUSP 1.9.1 explains that Royal Mail's performance during this period is excluded when its

CEP. Royal Mail's rationale is that the volumes during Cyber Week are similar to the volumes during the CEP and are similarly “beyond those for which Royal Mail could reasonably and efficiently resource”.⁹² Royal Mail contends that if we grant an additional allowance for the impact of Cyber Week, its performance against its First Class national standard would increase by 0.14% and, once the confidence interval is taken into account, its performance against the First Class PCA standard would increase to 97/118 PCAs.⁹³

Royal Mail's Submissions

- 3.62 Starting on Black Friday, which is the Friday after the fourth Thursday in November, Cyber Week is a week-long period that sees many retailers advertise significant discounts to attract consumers to their shops and websites.
- 3.63 In its Submissions, Royal Mail provided graphs and statistics showing that parcel volumes increase significantly during Cyber Week when compared to the rest of the year, rising to levels similar to those seen during the CEP.⁹⁴ For example, Royal Mail provided Figure 3.7 below which shows that parcel volumes increased by [redacted]% in week 36 of 2017/18 compared with the week 26-35 average and [redacted]% compared to week 35, reaching very similar levels to weeks 37 and 38 in December, which are within the CEP. Royal Mail acknowledges that parcel volumes have in fact fallen since 2015/16 but indicates that this is not determinative of a reduced impact on quality of service, pointing out that “cross-docks at distribution centres actually increased in week 36 in 2017 compared to 2015.”⁹⁵ Royal Mail also provided Figure 3.8 below which shows that Cyber Week is now an annual event.

Figure 3.7: Royal Mail total parcel traffic by week for 2017/18

[redacted]

Source: Royal Mail

Figure 3.8: Royal Mail total parcel traffic 2015 to 2017 (weeks 30 to 40)

[redacted]

Source: Royal Mail

- 3.64 In its First Submission, Royal Mail also contends that parcels take more resource (time, space and equipment) to handle.⁹⁶ For example, Royal Mail explains that parcels carry far higher workload requirements than letters during the processing phase – which encompasses collection and the journey to the relevant delivery office – given their size, weight and difficulty to automate. Additionally, Royal Mail explains that they are more time consuming to deliver as they often cannot fit through letterboxes; postmen and

annual performance is calculated for quality of service purposes. Royal Mail is still required by DUSP 1.10.6 to publish its quality of service performance during the CEP, and does so each year with its Q3 results.

⁹² First Submission, paragraph 73.

⁹³ First Submission, paragraphs 73-102.

⁹⁴ First Submission, paragraphs 80-86.

⁹⁵ Second Submission, paragraph 40.

⁹⁶ First Submission, paragraphs 87-93.

women must either deliver them to a person at the address or a neighbouring address, or leave a card.⁹⁷

3.65 These two claims – that parcel volumes spike during Cyber Week and that parcels consume more resource than letters – are aimed at explaining why Cyber Week depresses Royal Mail's quality of service performance. Underpinning this explanation is the fact that limits exist at various points in the network.⁹⁸ For example, postmen and women have limits on how much mail they can collect and deliver on a single run; trains, lorries and planes have limits on the amount of mail they can carry on a single journey; and processing centres have limits on how much mail they can process in any period of time. Additionally, as a whole, the network has a limited amount of personnel (including postmen and woman and processing staff), equipment and machines, and vehicles (including trains, lorries and planes) at its disposal. When these limits are reached, some mail takes longer to reach its destination because it has to wait until resource becomes available to handle it. This reduces Royal Mail's performance against its performance standards. In its Submissions, Royal Mail argues that these limits were reached during Cyber Week 2017, resulting in a reduction of its quality of service performance. This, Royal Mail contends, is despite the many actions on Royal Mail's part to mitigate the impact, including:

- bringing in around [X] temporary workers over Christmas, at a cost of £[X];
- recruiting [X] large goods vehicle drivers on a temporary basis, increasing contractor resource by [X]% at the peak point of hires;
- increasing the number of runs from distribution centres to mail centres each day by [X];
- increasing the number of large goods vehicles by [X] and smaller vehicles for delivery by [X];
- spending £[X] hiring additional property in advance of Cyber Week, [X];
- opening additional parcel sort centres between the beginning and middle of November 2017, all of which were ready for outward mail delivery by 20 November in preparation for Cyber Week;
- purchasing [X] new Yorks⁹⁹ and releasing an additional [X] Yorks from storage to support the additional traffic in its network; and
- spending £[X] over the Extended Christmas Period,¹⁰⁰ which was a £[X] increase on the previous year.¹⁰¹

3.66 Royal Mail further claims that Cyber Week “is evolving each year, in terms of participation, duration and scale”,¹⁰² which makes “it difficult for Royal Mail to predict how [its]

⁹⁷ First Submission, paragraph 87.

⁹⁸ Second Submission, paragraph 21.

⁹⁹ Yorks are containers used by Royal Mail to store and move mail around its buildings.

¹⁰⁰ Royal Mail refers to the Extended Christmas Period as “[t]he period in which Royal Mail sees Christmas-like volumes. We see Christmas-like volumes from Cyber Week through to just before Christmas Day but Royal Mail sees increases in parcel volumes from mid-November”; First Submission, paragraph 76.

¹⁰¹ First Submission, paragraph 97.

¹⁰² Second Submission, paragraph 29.

operations will be impacted from year to year and therefore to resource accordingly.”¹⁰³

Royal Mail explains that underestimating volumes results in insufficient resource to handle the mail which impacts quality of service, while overestimating volumes results in stranded costs and inefficiency.¹⁰⁴

- 3.67 The start of Cyber Week precedes the CEP by either two or eight days, and in years when there is only two days between them, most of Cyber Week is not taken into account when considering Royal Mail's annual performance against its performance standards because of the overlap with the CEP. Royal Mail points out that in 2017/18, Cyber Week “had the maximum negative impact” because it preceded the CEP by eight days, meaning there was no overlap with the CEP.¹⁰⁵
- 3.68 Royal Mail suggests that an additional allowance should be granted for Cyber Week because the parcel volumes entering its network are “beyond those for which Royal Mail could reasonably and efficiently resource”¹⁰⁶. Royal Mail draws a parallel with the CEP, which it claims exists “in recognition of the fact that volumes during this period are beyond those for which Royal Mail could reasonably and efficiently resource”.¹⁰⁷
- 3.69 Royal Mail also points out that Ofcom accepted Cyber Week as a mitigating factor beyond Royal Mail's reasonable control when concluding its investigation into Royal Mail's quality of service performance in 2015/16.¹⁰⁸ Royal Mail argues that “the impact of Cyber Week on volumes and Royal Mail's 2017-18 performance is similar to the impact of Cyber Week in 2015-16”¹⁰⁹ and that the reasoning set out in Ofcom's 2016 decision – that the logic underpinning the CEP also appears to apply to Cyber Week – still holds true¹¹⁰ such that Ofcom should again grant an allowance for Cyber Week.

Ofcom's assessment

- 3.70 We consider that an additional allowance should not be granted for Cyber Week. In exercising our discretion and reaching this decision, we have taken into account a number of factors.
- 3.71 We acknowledge that in our previous Decision, dated 19 October 2016, finding Royal Mail in contravention of its First Class performance standards, we took “*account of cyber week as a mitigating circumstance beyond Royal Mail's reasonable control when considering Royal Mail's compliance with the minimum quality of service standards in 2015/16.*”¹¹¹ At the time, we considered it appropriate to draw a parallel with the CEP and grant an additional allowance for Cyber Week. In 2015, Cyber Week was in its infancy (in the UK) and given the difficulty Royal Mail is likely to have faced in predicting and mitigating the

¹⁰³ Second Submission, paragraph 32; see also paragraphs 29-34.

¹⁰⁴ Second Submission, paragraph 33.

¹⁰⁵ First Submission, paragraph 73.

¹⁰⁶ First Submission, paragraph 73.

¹⁰⁷ First Submission, paragraph 73.

¹⁰⁸ First Submission, paragraph 79.

¹⁰⁹ Ibid. See also Second Submission, paragraphs 36-37.

¹¹⁰ Second Submission, paragraph 20.

¹¹¹ Paragraph 3.14.

impact of a new marketing event, it was appropriate in that context to grant an additional allowance for the effects of Cyber Week. However, Cyber Week has now been a fixture of the UK retail calendar since 2014 and, although elements of Cyber Week may be evolving every year, Royal Mail is aware of the week in which it will occur and its likely impact. We do not therefore consider that Cyber Week is an exceptional event as of 2017.

- 3.72 In any event, Royal Mail should have the resource and capability to adapt and manage the impact of Cyber Week within the allowance that it already built into its targets. We note that the total number of gross hours worked during week 36 in 2017 was significantly less than in 2015¹¹² and that Royal Mail has reduced the impact of Cyber Week on its quality of service from 0.23% in 2015 to 0.14% in 2017,¹¹³ indicating that Royal Mail has already adapted to Cyber Week. While we accept that physical limits exist within Royal Mail's network, we do not agree that Cyber Week should impact on Royal Mail's annual quality of service performance such that it cannot meet its targets. Royal Mail is aware of the week in which Cyber Week is likely to occur and its likely impact and can take this into account when considering how it can ensure it meets its quality of service targets on an annual basis. It is important that Royal Mail continues to be incentivised to adapt and manage the impact of Cyber Week on its quality of service.
- 3.73 In this regard, we are conscious of the fact that it is the processing and delivery of high volumes of e-commerce parcels - that are unlikely to be subject to regulatory quality of service targets - that is claimed to result in Royal Mail failing to meet its annual quality of service targets for universal service products (which are primarily letters). If we were to grant an additional allowance for the impact of Cyber Week, this may undermine Royal Mail's incentives to meet its quality of service targets associated with universal service products.

Other events beyond Royal Mail's reasonable control

Royal Mail's Submissions

- 3.74 In its Submissions, Royal Mail explains that there were 177 other incidents during 2017/18 which impacted its performance that it considers were "beyond its reasonable control" and which it could not fully mitigate through its robust contingency planning.¹¹⁴ These events include "air, rail and road network issues and local issues (such as flooding at Croydon mail centre)".¹¹⁵ In Royal Mail's view, these events were exceptional¹¹⁶ and it considers its performance should be adjusted accordingly. Royal Mail explains that some of these events (for example, Storm Ophelia) had an impact on several consecutive days, even if the actual event only lasted a day or less.¹¹⁷ Royal Mail states that these 177 events equate to

¹¹² Second Submission, Figure 5.

¹¹³ Second Submission, Table 1.

¹¹⁴ First Submission, paragraph 159 and Second Submission, paragraph 43.

¹¹⁵ First Submission, paragraphs 155 and 159.

¹¹⁶ Second Submission, paragraph 43.

¹¹⁷ Second Submission, paragraph 45.

4% of incidents it considers were outside of its reasonable control and explains that it is not claiming for the vast majority of incidents including those relating to the Highways England's current road maintenance programme and most poor weather.¹¹⁸

- 3.75 Royal Mail contends that if we grant an additional allowance for the impact of this 4% of other events, its performance against its First Class national standard would increase by 0.1% and, once the confidence interval is taken into account, its performance against the First Class PCA standard would increase to 98/118 PCAs.

Ofcom's assessment

- 3.76 We consider that an additional allowance should not be granted for these other events outside of Royal Mail's control. In exercising our discretion and reaching this conclusion, we have taken into account a number of factors.
- 3.77 We accept that these events are not caused by Royal Mail, are likely to be unforeseeable and unavoidable, and some could be considered "exceptional".¹¹⁹ However, most of these events - including the vast majority of flight and train delays and cancellations and road traffic collisions¹²⁰ - are not rare and we not consider them to be exceptional events that an additional allowance may be granted for.
- 3.78 In any event, individually these events had a very small impact on annual performance and are the type of events for which we consider the allowance built into Royal Mail's targets is intended and which Royal Mail should be able to manage within that allowance. This allowance is intended to capture events in a way that does not require Ofcom to either assess multiple individual events put forward by Royal Mail and determine whether an additional allowance should be granted for each of them or simply accept some form of sweep-up category of events put forward by Royal Mail based on its own modelling in order to uplift its performance.

Conclusion

- 3.79 In exercising our discretion, and after having carefully considered all of Royal Mail's Submissions and balanced various factors, in the specific circumstances of this case, we have decided to adjust Royal Mail's performance for the severe weather in February and March 2018. In assessing whether there are reasonable grounds for believing that Royal Mail has met its quality of service standards, we have also taken into account the confidence interval associated with the reported figures.

¹¹⁸ First Submission, paragraph 161.

¹¹⁹ For example "a. a gas leak at Preston station; b. flooding at Croydon Mail Centre; c. flooding at East Midlands airport and separately the runway at this airport being closed due to a DHL plane that had gone on to the grass; d. the airport runway at Stansted airport being closed to protesters; and e. a trespasser on the runway at Edinburgh airport" – Second Submission, paragraph 44.

¹²⁰ First Submission, paragraph 159.

4. Finding of contraventions of DUSP 1.9.1

4.1 In this Section, we explain our reasons for determining that we have reasonable grounds for believing that in 2017/18 Royal Mail:

- contravened its obligations in relation to First Class mail; and
- complied with its obligations in relation to Second Class mail.

Compliance with the First and Second Class national performance standards

4.2 As set out in Section 3 above, we have decided that Royal Mail should be granted an additional allowance for the severe weather in February and March 2018 by adjusting its performance to account for its impact.

4.3 Royal Mail estimates that the severe weather reduced its First Class national quality of service performance by 1% and its Second Class national quality of service performance by 0.4% - these figures have been estimated by removing samples posted during the period.^{121, 122}

4.4 After adjusting its performance to account for the severe weather and taking into account the confidence interval – which in this case is 0.1% for both First and Second Class – Royal Mail's performance against the First and Second Class national performance standards, was:

- 92.6% (+/-0.1%) against a standard of 93% for First Class mail; and
- 98.8% (+/-0.1%) against a standard of 98.5% for Second Class mail.

4.5 Accordingly, we have determined that there are reasonable grounds for believing that Royal Mail contravened DUSP 1.9.1 in 2017/18 by failing to achieve the First Class national standard.

4.6 We are also satisfied that Royal Mail achieved the Second Class national standard in 2017/18.

4.7 In its Second Submission, Royal Mail argues that it achieved the Second Class national standard when the confidence interval is taken into account (and even without any adjustment for the severe weather). Accordingly, Royal Mail argues that Ofcom should not have included the Second Class national standard within the scope of its investigation.

4.8 Our view is that the Second Class national standard was rightly included in the scope of the investigation. Royal Mail's performance against this standard to three decimal places was

¹²¹ This is a recognised method for estimating the impact of exceptional events and is in accordance with the First Class standard. All performance measurements are carried out on behalf of Royal Mail by an independent third party and are audited by auditors appointed by Ofcom to ensure their accuracy.

¹²² The estimate was made by removing the [3<] UK test items (including successful survey items) (of the total of [3<] First Class test items posted between Monday 26 February and Saturday 10 March 2018 inclusive and items posted on Saturday 17 March for delivery in the South West only.

98.359% (+/-0.092%), making its performance between 98.267% and 98.451%. The high point of the confidence interval therefore still fell short of the 98.5% standard. Second Class mail covers Royal Mail's end-to-end network at a national and local level and a failure to meet its Second Class target can have a significant consumer impact. We therefore considered it appropriate to include Royal Mail's failure to meet its Second Class national standard in the scope of our investigation.

Compliance with the First Class PCA performance standard

- 4.9 As set out in Section 3 above, we have decided that Royal Mail should be granted an additional allowance for the severe weather in February and March 2018 by adjusting its performance to account for its impact.
- 4.10 The impact of the severe weather differed in each PCA. After adjusting its performance in each PCA to account for the severe weather and uplifting it further to the top of the confidence interval, Royal Mail achieved the First Class PCA performance standard of 91.5% in 114 out of the 118 PCAs that are subject to the same standard.
- 4.11 Accordingly, we have determined that there are reasonable grounds for believing that Royal Mail contravened DUSP 1.9.1 in 2017/18 by failing to achieve the First Class PCA standard in four PCAs, namely Northern Ireland, Inverness, Northamptonshire and Watford.

5. Consideration of financial penalty

- 5.1 Given our findings, we have carefully considered whether it would be appropriate to impose a financial penalty on Royal Mail.
- 5.2 In this Section, we:
- summarise Royal Mail's Submissions that a penalty is not appropriate or proportionate in this case; and
 - set out our decision that it is not appropriate to impose a penalty on Royal Mail in the specific circumstances of this case.

Royal Mail's Submissions

- 5.3 In its Submissions, Royal Mail argues that it met the First and Second Class national performance standards once the confidence interval and mitigating circumstances it put forward are taken into account, and only narrowly missed the First Class PCA standard.¹²³ Royal Mail also submits that, in the event that Ofcom considers there to have been one or more contraventions, a penalty would not be appropriate or proportionate for the following reasons:
- Royal Mail performed very strongly during periods without significant unrest or other major disruptions – its performance in April, November and February of 2017/18 were its best to date.¹²⁴
 - Royal Mail's performance against the Second Class standard was 98.8% for the first 11 months of the year, only falling below the 98.5% standard due to the extreme weather in March 2018.¹²⁵
 - Once adjusted for exceptional circumstances, Royal Mail only missed the First Class PCA standard by a very small margin.¹²⁶
 - Royal Mail "took extensive action to plan for and mitigate the impact of the exceptional events that affected [its] quality of service", and "[w]hen these events occurred, [it] invested significantly in order to ensure that any impact on [its] quality of service was mitigated to the greatest extent possible."¹²⁷
 - Royal Mail does not need to be incentivised to meet its performance standards; quality of service is a Key Performance Indicator and informs its management's bonuses.¹²⁸
 - The performance standards are more difficult to achieve now than they were when they were first set, given the growth in the number of households, the use of more vehicles, the increase in the volume and size of parcels and the merger of printed postage impression mail with First Class.

¹²³ First Submission, paragraph 234.

¹²⁴ First Submission, paragraph 236.

¹²⁵ First Submission, paragraph 236.

¹²⁶ First Submission, paragraph 237.

¹²⁷ First Submission, paragraph 238.

¹²⁸ First Submission, paragraph 239.

- 5.4 Royal Mail also submits that a penalty would not be in accordance with Ofcom's Penalty Guidelines for the following reasons:
- Deterrence is not a relevant policy objective in this case; Royal Mail (and its senior management) take its responsibility to comply with its regulatory obligations very seriously and took all reasonable and proportionate steps to comply with its quality of service obligations during 2017/18. A general deterrent effect is not a factor in this case as no other postal operator has quality of service targets.¹²⁹
 - Royal Mail's contraventions, should Ofcom find any, "did not lead to increased costs for consumers or other market participants".¹³⁰
 - Royal Mail made no gain, financial or otherwise as a result of missing the targets.¹³¹
 - Royal Mail implemented measures to meet the standards and to "minimise the impact of any incidents affecting performance including Cyber Week, the severe weather and the outbreak of Australian flu".¹³²
 - "Any contravention in this case was not deliberate or reckless, but was caused largely by events outside of Royal Mail's control."¹³³
 - Royal Mail has only had one prior finding of infringement in 2015/16.¹³⁴
 - Royal Mail has cooperated and will continue to cooperate fully with Ofcom throughout its investigation.¹³⁵
- 5.5 Royal Mail also explains that its Voice of the Customer consumer satisfaction surveys did not record an increase in customer dissatisfaction in 2017/18 and actually showed "that customer satisfaction improved from 2016/17 to 2017/18, despite the dip in quality of service." Royal Mail suggests "[t]his may be reflective of some understanding by customers that, at peak times like Christmas and Cyber Week, items may take longer to be fulfilled (by the supplier) and delivered (by Royal Mail)."¹³⁶
- 5.6 Finally, Royal Mail submits that if Ofcom considers that a fine is appropriate and proportionate, the penalty should be small "in recognition of the exceptional nature of the incidents which affected [its] performance in 2017-18 and the steps Royal Mail took to mitigate them."¹³⁷

Ofcom's assessment

- 5.7 In determining whether to impose a penalty for a contravention, and the size of that penalty, we have had regard to Ofcom's Penalty Guidelines.¹³⁸

¹²⁹ First Submission, paragraphs 244-246.

¹³⁰ First Submission, paragraph 247b.

¹³¹ First Submission, paragraph 247c.

¹³² First Submission, paragraph 247e.

¹³³ First Submission, paragraph 247f.

¹³⁴ First Submission, paragraph 247g.

¹³⁵ First Submission, paragraph 247h.

¹³⁶ Second Submission, paragraph 50.

¹³⁷ First Submission, paragraph 248.

¹³⁸ Ofcom, [Penalty Guidelines – Section 392 Communications Act 2003](#), 14 September 2017.

- 5.8 In accordance with the Act,¹³⁹ and the Penalty Guidelines,¹⁴⁰ any penalty we impose must be appropriate and proportionate to the contravention(s) in respect of which it is imposed.
- 5.9 Ofcom's Penalty Guidelines state that the central objective of imposing a penalty is deterrence. The level of any penalty must be sufficient to deter the business from contravening regulatory requirements, and to deter the wider industry from doing so.¹⁴¹
- 5.10 In the context of this case, the primary objective of imposing a financial penalty would be to incentivise Royal Mail to comply with its quality of service standards in future years. In practice, this means incentivising Royal Mail to implement the necessary changes to its business practices to ensure improved overall performance, which would be reflected by better measurable outcomes.

Relevant factors

- 5.11 In the following paragraphs, we set out our assessment of the factors that appear to us most relevant in determining whether to impose a penalty in this case, and if so, an amount that is appropriate and proportionate to the contraventions we have found.

Seriousness and degree of harm

- 5.12 The quality of service standards are minimum service levels that Royal Mail is required to achieve and, accordingly, DUSP condition 1.9.1 imposes these as clear regulatory requirements. In light of their objective to ensure that consumers receive an adequate level of service, we consider that any failure to meet quality of service standards in respect of First Class products is inherently serious. This is because of the actual effect that it has on consumers, in that many consumers purchasing a next day service do not receive what they have paid for. The greater the number of consumers that fail to receive the service they have paid for, the greater the consumer harm is likely to be.
- 5.13 That said, after adjusting Royal Mail's performance to take account of the severe weather in February and March 2018, we recognise that Royal Mail missed the First Class national performance and PCA standards by relatively small margins – 0.4% (+/-0.1%) in relation to the First Class national standard and 4/118 PCAs (3% of PCAs) in relation First Class PCA standard. We consider that on balance any harm flowing from the contraventions is likely to have been limited, and thus less serious.
- 5.14 We noted above in Section 3, when discussing Royal Mail's Submissions regarding the industrial relations climate, that 2017/18 was a unique year in Royal Mail's history, in particular due to the announcement of the closure of its defined benefit pension scheme, the strike ballot held by the CWU and the High Court proceedings in which Royal Mail sought and obtained an injunction against strike action. Royal Mail is a business in which a large number of staff play a vital role in every part of the network. We acknowledge that these events are likely to have had an impact on staff, and that this is likely to have

¹³⁹ Paragraph 7(1) of Schedule 7 to the Act.

¹⁴⁰ *Penalty Guidelines*, paragraph 1.11.

¹⁴¹ *Ibid*, paragraph 1.4.

negatively affected Royal Mail's quality of service performance in a way that is difficult to robustly quantify. We have taken these events into account when assessing the seriousness of the contraventions.

Deterrence and steps taken to mitigate the impact of events outside of its control

- 5.15 As noted above, the central objective of imposing a penalty is deterrence. The level of any penalty must be sufficient to deter Royal Mail from contravening regulatory requirements, and to deter the wider industry – including any regulated company on which Ofcom has imposed quality of service targets – from doing so. In this case, the primary objective of imposing a financial penalty would be to incentivise Royal Mail to comply with its quality of service standards in future years, including by planning and implementing effective resilience and recovery strategies and processes to mitigate the impact of events that affect quality of service performance. We note that Royal Mail processes and delivers high volumes of e-commerce parcels at certain times of the year – that are unlikely to be subject to regulatory quality of service targets – and it is important that Royal Mail remains incentivised to meet its quality of service targets.
- 5.16 Contrary to Royal Mail's Submissions, deterrence is therefore an important policy objective in this case. In this regard, we have taken into account the various steps Royal Mail took to mitigate the impact of events outside of its control that occurred in 2017/18.¹⁴² Additionally, we have taken into account the fact that the effects of the industrial relations climate between April 2017 and January 2018 may have had an impact of quality of service that was both significant and difficult to fully mitigate.
- 5.17 We have also taken into account the steps that Royal Mail has taken to comply with its quality of service standards in future years, namely:
- Royal Mail's Submissions that it has already implemented changes to protect its performance from flu outbreaks in future years. During 2017/18, as well as its usual annual flu awareness communications, Royal Mail initiated a flu jab reimbursement scheme in January 2018 to reduce the effects of flu sickness. However, the reimbursement scheme had a negligible effect, with only [3<] members of staff taking up the offer. Recognising the need to "take a more proactive and improved approach", Royal Mail has explained that in 2018/19 it will be launching its communications campaign in August and following this up in September by issuing vouchers to every employee for a free flu vaccination at a specific high street pharmacy with a nationwide reach.¹⁴³
 - Royal Mail's Submissions that it has already taken or is taking significant steps to improve its future performance in two of the PCAs which failed in 2017/18, Northern Ireland and Inverness.

¹⁴² See paragraphs 3.29 (severe weather), 3.42 (outbreak of Australian flu), 3.56 (industrial relations climate) and 3.65 (Cyber Week).

¹⁴³ First Submission, paragraphs 150-153.

- In relation to Northern Ireland (BT), Royal Mail's performance in this PCA was 90.4% when adjusted for the severe weather and the confidence interval. Royal Mail has explained that its 2017/18 performance for First Class mail posted from within the PCA (which encompasses the whole of Northern Ireland) to another BT address was 94.5%, but that mail from the UK Mainland to BT depresses the PCA result. Royal Mail has explained that it has invested in additional Monday and Tuesday night flights to relieve capacity issues in an effort to boost performance in future years.¹⁴⁴
- In relation to Inverness (IV), Royal Mail's adjusted performance in this PCA was also 90.4% and Royal Mail has also fallen short of the required standard in each of the last three years. Royal Mail has explained that it has taken a number of steps over the last two years to improve its performance in this PCA, but that those steps have only delivered incremental performance improvements. Royal Mail explains that, as a result, in 2017/18, a business case was developed for the transfer to a new mail centre in 2018/19. This case was approved and £6.8 million of funding was secured for this new site that offers, amongst other virtues, an increased operational floor space allowing for the use of mechanised processing equipment. The new mail centre was operational from March 2019.¹⁴⁵
- Royal Mail's proactive approach to improving First Class quality of service in PCAs that are falling short on a regular basis. During the course of this investigation, in relation to three other PCAs in which Royal Mail has performed poorly in recent years – Gloucester (GL), South East London (SE) and Taunton (TA) – Royal Mail has explained that the causes of lower than required performance in past years are understood and have been or are being addressed.

Other factors

5.18 We have also taken into account the following factors:

- The contraventions were not deliberate or reckless. In this case, Royal Mail took various action to mitigate the impact of events before this enforcement action was initiated.
- There is no evidence to suggest that Royal Mail has made any gain (financial or otherwise) as a result of its contraventions. We also note that Royal Mail has made a number of significant investments to improve its performance against the minimum quality of service standards.
- This is the second time we have taken formal enforcement action under Schedule 7 to the Act in relation to Royal Mail's quality of service performance.
- Royal Mail has cooperated fully with us throughout this investigation.

¹⁴⁴ First Submission, paragraph 166.

¹⁴⁵ First Submission, paragraphs 172-184.

Conclusion on penalty

- 5.19 Notwithstanding the seriousness with which Ofcom generally regards a failure to comply with the First Class national and PCA performance standards, in the specific circumstances of this case, and for the reasons set out above, we have decided that it would not be appropriate to impose a penalty on Royal Mail for its contraventions of DUSP Condition 1.9.1, in particular because:
- after granting an additional allowance for the severe weather in February and March 2018, Royal Mail missed its First Class national performance and PCA standards by a relatively small amount;
 - the closure of Royal Mail's defined benefit pension scheme meant 2017/18 was a unique year in Royal's Mail's history; and
 - Royal Mail took various steps to mitigate the impact of events outside of its control that occurred in 2017/18 and has taken a number of proactive steps to mitigate the impact of events going forward.
- 5.20 We note, however, that this is the second time that formal enforcement action has been taken against Royal Mail in respect of its quality of service performance relating to First Class mail. We take compliance with quality of service requirements seriously and expect Royal Mail to comply with its regulatory obligations. If Royal Mail again fails to meet its quality of service for First Class products, in circumstances where we are not satisfied with the mitigation put forward by Royal Mail, we may impose a significant financial penalty.

Interpretation

- 5.21 Words or expressions used in this Decision have the same meaning as in the Act except as otherwise stated in this Decision.

Martin Ballantyne

Legal Director

31 May 2019