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# Recovering consumer advocacy costs

## Statement

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### **Statement**

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## About this document

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Ofcom is responsible for recovering the costs of consumer advocacy bodies, such as Citizens Advice, in relation to their work in the postal sector. We first published proposals to change the way in which we recover these costs in July 2017, and then revised our proposals in March 2018. This document sets out our final decision on the way in which we will recover these costs from postal operators.

# Contents

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## Sections

1. Executive summary	1
2. Background and legal framework	4
3. Product scope: the type of postal operators liable to pay consumer advocacy costs	9
4. Revenue thresholds	36
5. Legal tests, impact assessment and equality impact assessment	48
6. Next steps and practical implementation	51

## Annexes

A1. Statutory notification: Modified Consumer Protection Condition 1	57
A2. Guidance to relevant postal operators	67

# 1. Executive summary

- 1.1 The United Kingdom’s Consumer Advocacy Bodies (the “**CABs**”) provide free, confidential and independent advice to, and advocacy on behalf of, citizens of the United Kingdom in relation to their rights as consumers and citizens. Some of the work carried out by the CABs relates to postal services, and the cost of this work is recovered by the CABs through payment from relevant postal operators. The CABs’ costs are mostly made up of advocacy and research on behalf of consumers (“**non-calls costs**”), with a minority of their costs relating to providing a consumer helpline service (“**calls costs**”).
- 1.2 Under section 51 of the Postal Services Act 2011 (“**the Act**”), Ofcom may require all postal operators (or every postal operator of a specified description) to make payments relating to the costs of work carried out by the CABs in relation to postal services. The CABs in the UK are Citizens Advice, Citizens Advice Scotland and the General Consumer Council for Northern Ireland.<sup>1</sup> Those payments are recovered via Ofcom through obligations we impose on specified postal operators liable to pay under Consumer Protection Condition 1 (“**CP1**”).
- 1.3 However, Ofcom has no role in assessing or setting the level of the CABs’ costs to be recovered from postal operators, which is a matter for the Secretary of State. We are simply responsible for determining how fees are recovered, in particular which categories of postal operators should be liable for contributing to these costs; and then recovering such costs on behalf of the Secretary of State.
- 1.4 Currently, the universal service provider (“**USP**”), Royal Mail, is the only operator paying for the CABs’ costs. Under the new cost recovery mechanism set out in this statement, other categories of postal operators will now also be liable to contribute to these costs, in accordance with our guiding criteria of, in particular, cost reflectiveness, fairness and equity and adaptability. We have decided that, as the CABs’ costs are driven by the activities of postal operators beyond Royal Mail, these operators should also contribute to those costs.
- 1.5 We have decided to adopt our proposals in our March 2018 consultation<sup>2</sup> in terms of the categories of postal operators which will now be liable to contribute toward the CABs’ non-calls costs (the vast majority of the CABs’ costs), subject to these operators meeting certain thresholds based on turnover. We have also made some minor modifications to CP1 for additional clarity.

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<sup>1</sup> In this document, where we refer to the “CABs”, we refer (unless the context otherwise suggests) jointly to the National Association of Citizens Advice Bureaux (also known as Citizens Advice), the Scottish Association of Citizens Advice Bureaux (also known as Citizens Advice Scotland, “**CAS**”) and the General Consumer Council for Northern Ireland (also known as the Consumer Council for Northern Ireland, “**CCNI**”).

<sup>2</sup> Ofcom, *Recovering postal regulation and consumer advocacy costs*, Statement and consultation, 29 March 2018 (“**March 2018 Consultation**”), or where we refer to our statement (on recovering postal regulation costs) only, “**March 2018 Statement**”), [https://www.ofcom.org.uk/data/assets/pdf\\_file/0017/112454/statement-consultation-recovering-postal-regulation-costs.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0017/112454/statement-consultation-recovering-postal-regulation-costs.pdf)

- 1.6 Those categories of postal operators which will be liable to contribute towards the CABs' non-calls costs are described in detail in our modified CP1 (see Annex 1), but they broadly correspond to:
- postal operators who provide single piece end-to-end (“E2E”) letter services and/or bulk (excluding access) mail services, and who generate ‘relevant turnover’ exceeding £10 million per annum; and
  - postal operators providing parcel services who generate ‘relevant turnover’ exceeding £350 million per annum.
- 1.7 In practice, at the time of writing, no other E2E letter operator than Royal Mail would be liable for the CAB’s new cost recovery mechanism in the first year of its operation.<sup>3</sup> In the parcels market, this means additional postal operators along with Royal Mail will now be liable to contribute to the CABs’ cost recovery mechanism.
- 1.8 We also confirm that access operators will not be liable to contribute to the costs of the CABs. This is because they are not responsible for the E2E delivery of letters, and therefore do not have a direct interaction with individual customers; as such, they are unlikely to materially contribute to the CABs’ workload.
- 1.9 We have modified CP1 to make some minor clarifications. In particular, we have clarified that Royal Mail should include the revenue obtained from access operators. Moreover, we have further refined our definition of a relevant parcels postal service, to exclude (among other things) businesses fulfilling deliveries of their own products themselves, through their own delivery network.
- 1.10 Relevant postal operators will contribute to the CABs’ non-calls costs according to their share of the total relevant market,<sup>4</sup> calculated by dividing their relevant turnover by the total relevant market. In line with other Ofcom funding mechanisms, the charges will be calculated in relation to a prior ‘assessment year’ (the financial year in the last but one 12-month period prior to the charging year,<sup>5</sup> i.e. two years in the past).<sup>6</sup>
- 1.11 As regards calls costs, operators providing relevant postal services, namely E2E letter operators and parcel operators, will pay a proportion of call costs if calls to the CABs in relation to them exceed £100 per annum.
- 1.12 Our decision to modify CP1 as above will take effect from the year beginning on 1 April 2019 (i.e. the period beginning 1 April 2019 and ending with 31 March 2020). For the

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<sup>3</sup> Collectively, E2E operators other than Royal Mail reported £3 million revenue in 2017-18. This indicates that currently no other E2E operator which reports its revenues to us falls within our threshold (Ofcom, *Annual monitoring update on the postal market - Financial year 2017-18*, Market update, 27 November 2018 (“AMR 2018”), Figure 3.4, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/128268/Annual-monitoring-update-postal-market-2017-18.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/128268/Annual-monitoring-update-postal-market-2017-18.pdf))

<sup>4</sup> The total relevant market is calculated by adding up the relevant turnover from postal operators providing a relevant letters postal service in excess of £10 million and the relevant turnover from postal operators providing a relevant parcels postal service in excess of £350 million.

<sup>5</sup> The charging year is any given year beginning 1 April.

<sup>6</sup> Year one of the new charging mechanism is the financial year from 1 April 2019 to 31 March 2020 (the ‘charging year’), meaning the first ‘assessment year’ is 1 April 2017 to 31 March 2018.

avoidance doubt, the current CP1 will therefore continue to apply until the year ending 31 March 2019.

- 1.13 Ofcom plans to engage with relevant postal operators in the first quarter of the calendar year 2019. We intend to issue information requests to relevant postal operators in early 2019, to determine a relevant postal operators' relevant turnover in the assessment year to determine contributions to non-calls costs. We aim to issue invoices to relevant postal operators in mid-2019, and the amounts due would then become payable a month after invoicing.

## 2. Background and legal framework

### Our powers to recover the relevant CABs' costs

- 2.1 The CABs provide free, confidential and independent advice to, and advocacy on behalf of, citizens of the United Kingdom in relation to their rights as consumers and citizens. Some of the work carried out by the CABs relates to postal services. Their work on postal services is consequently focused on the services which consumers most use. The CABs ensure that consumers are represented in relevant policy decisions, for example by responding to public consultations, as well as advocating on behalf of consumers based on research they carried out and published.
- 2.2 Under section 51 of the Act, Ofcom may impose consumer protection conditions on every postal operator,<sup>7</sup> or every postal operator of a specified description, to do one or more of the things laid down in section 51(2), including:
- to make payments relating to qualifying consumer expenses of Citizens Advice or the General Consumer Council for Northern Ireland of such proportion of the expenses as the Secretary of State considers reasonable;
  - to make payments relating to such amounts as the Secretary of State considers reasonable in respect of the provision, in or as regards Scotland, of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office, in relation to users of postal services; and
  - to make payments relating to qualifying consumer expenses of the Secretary of State of such proportion of the expenses as the Secretary of State considers reasonable.
- 2.3 Therefore, section 51 of the Act permits Ofcom to impose a condition that allows us to recover the relevant expenses of those bodies involved in consumer advocacy (including the Secretary of State) of such proportions as the Secretary of State determines annually. Section 51 goes on, however, to specify what those expenses are. Broadly speaking, they are such a proportion of the following expenses as the Secretary of State considers reasonable:
- expenses of Citizens Advice<sup>8</sup> relating to:<sup>9</sup>
    - its functions in relation to users of postal services;
    - a transfer scheme made in respect of the National Consumer Council;

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<sup>7</sup> In Annex 2, we set out our definition and guidance of what constitutes a 'postal operator'.

<sup>8</sup> i.e. the National Association of Citizens Advice Bureaux (which is distinct from the Scottish Association of Citizens Advice Bureaux).

<sup>9</sup> These "qualifying consumer expenses of Citizens Advice" are specified in section 51(a) to (c) of the Act.

- its support of any “qualifying public consumer advice scheme”;<sup>10</sup>
  - expenses of the General Consumer Council for Northern Ireland relating to its functions in relation to users of postal services;<sup>11</sup>
  - payments relating to the provision, in or as regards Scotland, of such consumer advocacy and advice as is referred to in section 51(2)(ca) of the Act (see above); and
  - the “qualifying consumer expenses of the Secretary of State”, which are detailed in section 51(4ZA) of the Act.
- 2.4 The CABs have informed us that their role also includes work in relation to the Post Office network. However, the Act only allows Ofcom to recover qualifying consumer expenses from postal operators. Royal Mail and Post Office Limited became separate companies on 1 April 2012, and Post Office Limited is not a postal operator within the meaning of section 27(3) of the Act. Given that our powers to impose the conditions under section 51 only apply to postal operators, we can only recover the costs incurred by the CABs in relation to their work concerning the Post Office network from relevant postal operators and not from Post Office Limited.
- 2.5 Since March 2012, Ofcom has recovered the CABs’ costs by imposing obligations on regulated postal operators (which, in practice, means Royal Mail only) under CP1.<sup>12</sup> In other words, it is through this condition that Ofcom requires postal operators of a specified description to make payments in relation to the relevant costs of the CABs.
- 2.6 The definition of ‘postal operator’ (which applies to CP1) is set out in section 27(3) of the Act. It provides that:
- “Postal operator” means a person who provides—*
- (a) the service of conveying postal packets<sup>13</sup> from one place to another by post, or*
  - (b) any of the incidental services of receiving, collecting, sorting and delivering postal packets.*
- 2.7 The definition of ‘postal operator’ is broad and has the potential to capture a wide variety of persons operating in the postal market. This statement sets out our decision relating to which ‘relevant postal operators’ are liable to contribute to the CABs’ costs, intentionally narrowing the definition for the purpose of this charging mechanism. We provide guidance on what constitutes a ‘relevant postal operator’ in Annex 2.

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<sup>10</sup> i.e. “a scheme that is supported by Citizens Advice in a manner that the Office of Fair Trading [which is now the Competition and Markets Authority (CMA)] is prohibited from using by section 8A of the Enterprise Act 2002”: section 51(4A) of the 2011 Act.

<sup>11</sup> Section 51((4)(g) of the Act.

<sup>12</sup> We have amended CP1 three times since we first imposed the condition on 27 March 2012. Changes were made on two occasions to reflect a transfer of responsibilities or functions between different organisations in relation to consumer advocacy, and once to rectify a drafting error.

<sup>13</sup> Section 27(2) defines a ‘postal packet’ to mean a letter, parcel, packet or other article transmissible by post.

2.8 We also provide guidance in Annex 2 relating to how postal operators should approach their own assessment as to whether CP1 applies to them and whether they are a ‘relevant postal operator’. Annex 2 also includes guidance on any cost allocation and reporting requirements that will be necessary when responding to Ofcom requests for information associated with the application of CP1.

## Ofcom’s Statement of Charging Principles

2.9 In 2014, Ofcom published our preliminary consultation reviewing our statement of charging principles applying to the electronic communications, postal, radio and television sectors (the “**2014 SoCP Review**”).<sup>14</sup> The 2014 SoCP Review set out the following guiding criteria in setting fees and charges for the sectors we regulate:

- **Fairness and equity:** the charging structure should raise Ofcom’s required funding across the regulated sectors in a manner which is fair and equitable;
- **Simplicity and transparency:** charges should be as simple and as clear as possible for stakeholders, and wherever practicable use data that stakeholders would anyway gather for their own management purposes. Charges should also be relatively simple to administer for Ofcom;
- **Cost-reflective:** Ofcom is required to ensure that revenues from each individual sector meet the costs of regulation for that sector. Furthermore, we also seek to ensure, so far as possible, that charges should broadly reflect the underlying cost of regulating each type of licence or regulatory activity within the sectors where such category types exist;
- **Verifiable:** the information required for the setting of charges should be easily verifiable to ensure industry-wide compliance;
- **Adaptable:** charging principles and structures should be capable of adapting to a changing market environment and be consistent with wider policy;
- **Relevance:** charges should be based on an operator’s activities that flow from the licence or authorisation, but only those activities;
- **Reliability:** the charging base should be stable over time, and not prone to erratic movements. Charges should not move substantially each year so long as the overall regulatory costs for that sector remain steady; and
- **Harmonisation:** the harmonisation of fee setting methods across the sectors, where it is practicable to do so, can help to ensure consistency and simplification, especially in an increasingly convergent communications industry.

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<sup>14</sup> Ofcom, *Principles for setting license fees and administrative charges: Review of Ofcom’s Statement of Charging Principles*, Preliminary Consultation, 27 March 2014, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0017/83060/socp\\_review\\_preliminary\\_consultation.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0017/83060/socp_review_preliminary_consultation.pdf)

- 2.10 As stated in our March 2018 consultation,<sup>15</sup> whilst the guiding criteria are specifically relevant to the way in which we recover our own costs, we were, and remain, of the opinion that these criteria serve as a useful guide for the recovery of the CABs' costs. We believe that these criteria are fair and reasonable in assessing potential options for the recovery of consumer advocacy costs, whilst also maintaining consistency (and therefore certainty for stakeholders) with the criteria Ofcom use for recovering fees and charges across the sectors it regulates.
- 2.11 We also continue to believe that the three criteria we attached particular importance to in our March 2018 consultation<sup>16</sup> (i.e. cost-reflectiveness, adaptability and fairness and equity) remain particularly important when considering our decision in this statement, and we continue to believe that of all the criteria, it is most important to ensure the CABs' costs are recovered on a cost-reflective basis, as through achieving cost-reflectiveness, fairness and equity is also achieved. Whilst stakeholder responses suggested that our proposals could be more cost reflective or more adaptable, no stakeholder disagreed with the importance we attached to the three guiding criteria in recovering the CABs' costs.

## How the CABs' costs are recovered

- 2.12 The CABs are funded through a grant from the Department for Business, Energy and Industrial Strategy ("BEIS"). In order to secure this funding, the CABs submit each year their proposed annual work plans, following public consultation, to the Secretary of State or the Scottish Government as appropriate. The Secretary of State then determines whether the proposed work plan and budget are reasonable and then either BEIS or the Scottish Government (as appropriate) issues a grant letter to each CAB setting out the approved funding for the year, and any associated conditions. BEIS then annually instructs Ofcom to recover the qualifying costs from industry, which we do by imposing regulatory obligations on certain postal operators to pay to Ofcom such amounts under CP1.
- 2.13 In doing so, Ofcom has no role in assessing or setting the level of the costs to be recovered from postal operators, which is a matter for the Secretary of State. We are simply responsible for determining from whom and the basis on which the CABs' costs should be recovered and recovering such costs on behalf of the Secretary of State. By making decisions about such matters, Ofcom has no role in deciding the CABs' work remit, their priorities, or the way they carry out their work, in relation to the postal sector. Accordingly, our views in this statement regarding CABs' costs recoverable from the relevant postal operators should not be taken as any suggestion by Ofcom about the CABs' proper remit. Rather, we are solely focused here on assessing from whom we believe it is appropriate to impose regulatory obligations to contribute towards the CABs' costs.
- 2.14 Whilst I did comment that the CABs' costs are "extremely high" and stated that "Ofcom should use its discretion not to pass these onto industry".<sup>17</sup> As stated above, Ofcom has no

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<sup>15</sup> Ofcom, March 2018 Consultation, paragraph 2.20 and footnote 58.

<sup>16</sup> Ofcom, March 2018 Consultation, paragraphs 2.20, 4.7 and 4.47.

<sup>17</sup> Whilst I response to March 2018 Consultation, pages 1-2.

role in assessing or setting the level of the costs that the CABs incur in relation to their consumer advocacy work in the postal sector. As regards Whistl's other point about Ofcom using its discretion not to pass on the CABs' costs, it should be noted that while Ofcom has discretion under section 51 of the Act as regards the description of postal operators from whom it considers it appropriate to require contributions to the CABs' costs, we have no discretion in refusing to recover the CABs' costs when so instructed by BEIS annually.

2.15 As explained in our March 2018 consultation, CP1 currently restricts contributions to the CABs' costs from only those operators previously holding a licence with a relevant turnover over £10 million. In practice, only Royal Mail currently contributes to the relevant costs incurred by the CABs.

## The two categories of the CABs' costs

2.16 As explained in our March 2018 consultation,<sup>18</sup> the CABs' costs broadly fall into the following two categories (which distinction is reflected in the obligations under CP1):

- **Non-calls costs** – these costs relate to the expenses of the CABs and the Secretary of State, likely to be incurred during the relevant year in relation to postal services in respect of functions other than providing public consumer advice scheme (e.g. advocacy and research on behalf of consumers). Every year, these non-calls costs typically make up the majority (c. 99%) of the total costs incurred by the CABs in relation to the postal sector.
- **Calls costs** – these costs are specifically incurred by the CABs in respect of their function of providing a public consumer advice scheme via a caller helpline, where those calls relate to the provision of postal services. Every year, these calls costs typically make up a small proportion (less than 1%) of the total costs incurred by the CABs.

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<sup>18</sup> Ofcom, March 2018 Consultation, paragraphs 4.8-4.14.

## 3. Product scope: the type of postal operators liable to pay consumer advocacy costs

### Introduction

- 3.1 In this Section, we set out our assessment of the responses to our March 2018 consultation proposals on the categories of postal operators which, in principle, are liable to pay the CABs' costs. Our decisions are reflected in the modifications we have made to CP1, which are set out in the notification published in Annex 1 to this statement.
- 3.2 In the next Section, we explain the relevant revenue threshold which will determine which relevant postal operators are liable to pay. We will also set out our decision on how relevant operators will contribute to calls costs.

### Our consultation proposals

#### Our July 2017 consultation proposals

- 3.3 In the July 2017 consultation,<sup>19</sup> we proposed to amend the current funding arrangements for the CABs' consumer advocacy work on post as part of a joint review with the funding of Ofcom's postal regulation costs.
- 3.4 Our July 2017 consultation proposed to modify CP1, so that we would no longer recover the CABs' non-calls costs from 'regulated postal operators' (in practice, CP1 has focused on the Universal Service Provider (USP), Royal Mail). Instead, we proposed to require postal operators who provided single piece end to end letter services and/or provide bulk mail or access mail services, and generate annual relevant revenues of at least £5 million or more, to contribute to the payment of such costs. We also proposed that calls costs be recovered from relevant postal operators, subject to them accounting for at least £100 worth of calls costs.
- 3.5 We proposed these changes as we believed at that time that using the same approach for the recovery of consumer advocacy costs and for our own administrative fee would be both simpler and clearer for industry and Ofcom if there was a shared mechanism. We also stated that such an approach would be administratively more efficient for Ofcom as we would only have to gather and assess one set of information, resulting in resource savings for both Ofcom and stakeholders. Finally, we noted that a single approach would require a

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<sup>19</sup> Ofcom, *Recovering postal regulation and consumer advocacy costs – a review*, Consultation, 27 July 2017 ("July 2017 Consultation"), [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/105238/consultation-postal-regulation-review.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/105238/consultation-postal-regulation-review.pdf)

single set of verification requirements, which would improve consistency and predictability over time.<sup>20</sup>

- 3.6 There was widespread disagreement from stakeholders with our initial proposal for the recovery of the CABs' costs. Most respondents disagreed with our proposal to include revenues from access services, stating such services are business-to-business ("B2B"), which are not available to end users and therefore are very unlikely to significantly influence the work of the CABs.<sup>21</sup> Respondents also disagreed with our exclusion of parcel services from the funding mechanism. The CABs argued that a significant, and increasing, proportion of their work relates to parcel services, and that parcels delivery is part of their remit; other stakeholders also noted the CABs' costs are mainly concerned with the parcels market.<sup>22</sup>
- 3.7 Having reviewed stakeholder responses to the July 2017 consultation, we considered that the benefits of our initial proposals (namely, administrative efficiency for Ofcom to administer one funding mechanism and reduced verification requirements on stakeholders) were outweighed by the concerns raised by stakeholders about the lack of cost-reflectivity and fairness and equity. Therefore, we issued revised proposals in our March 2018 consultation.<sup>23</sup>

## Our March 2018 consultation proposals

- 3.8 In order to help us inform our revised proposals set out in our March 2018 consultation, we:
- a) explained that, in designing the CAB funding mechanism, we would attach particular importance to meeting the guiding criteria of cost-reflectiveness, adaptability and fairness and equity,<sup>24</sup> and *"of these three criteria, we consider that it is paramount that the basis on which costs are recovered is cost-reflective of the work undertaken as this ensures fairness and equity in the way that charges are apportioned"*<sup>25</sup>; and
  - b) requested the CABs to provide a breakdown of the types of postal services they incur external expenditure on. We noted that the CABs cannot provide a breakdown of their staff costs, which are the majority of their costs, but that external project spend from the CABs provide an indication of the types of issues which drive their costs. CABs' external expenditure data showed that between 2014/15 and 2017/18, CABs' postal

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<sup>20</sup> Ofcom, March 2018 Consultation, paragraphs 4.15-4.20.

<sup>21</sup> Whistl response to July 2017 Consultation, paragraphs 4.4.2, 4.3.1.2, 4.5.1-4.5.4; Citipost response to July 2017 Consultation, page 2; OnePost response to July 2017 Consultation, pages 3-4; Secured Mail response to July 2017 Consultation, pages 3-4; UK Mail response to July 2017 Consultation, paragraphs 3.35-3.37, 3.46; MCF response to July 2017 Consultation, page 2.

<sup>22</sup> CCNI response to July 2017 Consultation, paragraphs 3.2.1-3.2.4, 3.3.1; Citizens Advice response to July 2017 Consultation, pages 2-7; CAS response to July 2017 Consultation, pages 4-5; Royal Mail response to July 2017 Consultation, paragraphs 7.9-7.15, Figures 2-3; Citipost response to July 2017 Consultation, page 2; UK Mail response to July 2017 Consultation, paragraph 3.44; Secured Mail response to July 2017 Consultation, pages 3-4.

<sup>23</sup> Ofcom, March 2018 Consultation, paragraphs 4.36-4.39.

<sup>24</sup> Except in relation to the issue of recovering costs from the Post Office – see paragraph 3.11 below.

<sup>25</sup> Ofcom, March 2018 Consultation, paragraph 2.20.

project costs were distributed among ‘consumer needs and future developments’, ‘USO and letters’, ‘parcels’ and ‘Post Office’ activities.

3.9 Having analysed the information we received in response to our information request (including the information reflected in the breakdown of CABs’ costs based on external project spending - Figure 3 in our March 2018 consultation - and the CABs’ workplans), and in light of our guiding criteria, we proposed in the March 2018 consultation to revise our proposals regarding from which postal operator non-calls costs are recovered. In summary, we proposed in our March 2018 consultation that three broad categories of postal operators should, in principle, be liable to contribute to the recovery of non-calls costs, namely:

- a) those providing single piece E2E letter services;
- b) those providing E2E bulk mail services (but excluding access mail services); and
- c) those providing parcel services.

3.10 We also noted from the information received in response to our information request that a significant proportion of the CABs’ non-calls external costs related to work on the Post Office. We explained that only Royal Mail have access to the Post Office network, due to an exclusivity arrangement between Royal Mail and Post Office Ltd until 2022, and therefore there was an argument that Royal Mail should bear all Post Office related costs.

3.11 However, as mentioned above, we also noted that the CABs are unable to break down their staff costs<sup>26</sup> (i.e. the majority of their total consumer advocacy costs on post) to identify Post Office-related costs. Thus, we explained that allocating Post Office-related costs to Royal Mail was unlikely to meet our reliability, simplicity, transparency or verifiability guiding criteria. Moreover, we stated that, in practice, Royal Mail’s share of relevant revenue would ensure it continues to pay the majority of the CABs costs. We therefore proposed to recover all costs related to the Post Office from all postal operators who would be liable to contribute to the CAB funding mechanism on the grounds of simplicity, transparency, reliability and verifiability.<sup>27</sup>

3.12 We explained in the March 2018 consultation that we maintained our view from the July 2017 consultation that a threshold based on postal operators’ relevant turnovers was required to reduce the risk of a contribution to the costs of CABs acting as a barrier to entry to new market entrants. However, we considered that the letters and parcels markets are significantly different to each other, and we therefore proposed two different thresholds for the two different markets, namely:

- a) a revenue threshold of £10 million for E2E letter services: we proposed that threshold because, in our view, a postal operator with less than £10 million annual revenues from such services is unlikely to be operating on such a scale as to impact the work of the CABs. We also believed that, if an operator was to reach the scale of Whistl when it

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<sup>26</sup> This was because the CABs informed us that they do not have a time recording system to allow them to do this – see Ofcom, March 2018 Consultation, footnote 85.

<sup>27</sup> Ofcom, March 2018 Consultation, paragraphs 4.64-4.70.

was an E2E operator (c.£15 million in 2013-14), then it was likely to start having sufficient contact with consumers and that it might begin to generate work for the CABs, and noted that since Whistl has exited the single piece E2E letters market, alternative E2E letter operators total revenues have been very small (c.£6 million in 2016/17, or 0.2% of the total market revenue).<sup>28</sup>

- b) a revenue threshold of £350 million for parcel services: we proposed that threshold based on our analysis of 2016-17 parcel revenue data, and our judgement that parcel operators with a share of the market by revenue which is greater than 5% are most likely to influence the work of the CABs, as well as parcel operators with a market share of below 5% being predominantly B2B parcel services of little or no relevance to the work of the CABs.<sup>29</sup>

3.13 We received nine responses from stakeholders to our March 2018 consultation, namely: Citizens Advice, the General Consumer Council for Northern Ireland, Citizens Advice Scotland, Royal Mail, the Mail Competition Forum (MCF), DPD, Hermes, Whistl and the Association of International Courier and Express Services (AICES).<sup>30</sup>

3.14 We summarise below the stakeholder responses we received for each main element of our consultation proposals and we then set out our assessment and conclusions.

## Assessing the CABs' postal activities and costs

3.15 In our March 2018 consultation, in order to inform our revised assessment of what types of postal services should, in principle, be considered as relevant turnover in recovering the CABs' consumer advocacy costs, we gathered information from the CABs' regarding the expenditure they incur in relation to consumer advocacy in postal services. The CABs told us they were not able to allocate administrative costs, such as salaries or other management overheads, to particular projects as staff time is not recorded in such a way that would facilitate this. Therefore, only expenditure on external research was made available to us on a project-by-project basis.

3.16 In order to ensure that we have the most up to date and accurate reflection of the CABs' postal projects and work in reaching our conclusions, we recently asked the CABs to update their previous information request responses to include the most recent expenditure available. Given the data relates to project spend by three unevenly sized advocacy bodies, we have also decided to change our methodology in how we calculate the proportion of spend on different categories of projects, from using an unweighted mean to using a weighted average mean. We have made this change in our methodology as we believe it is a more accurate approach, in that it better reflects project resourcing and spend based on which of the three CABs undertakes the work.

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<sup>28</sup> Ofcom, March 2018 Consultation, paragraphs 4.76-4.81.

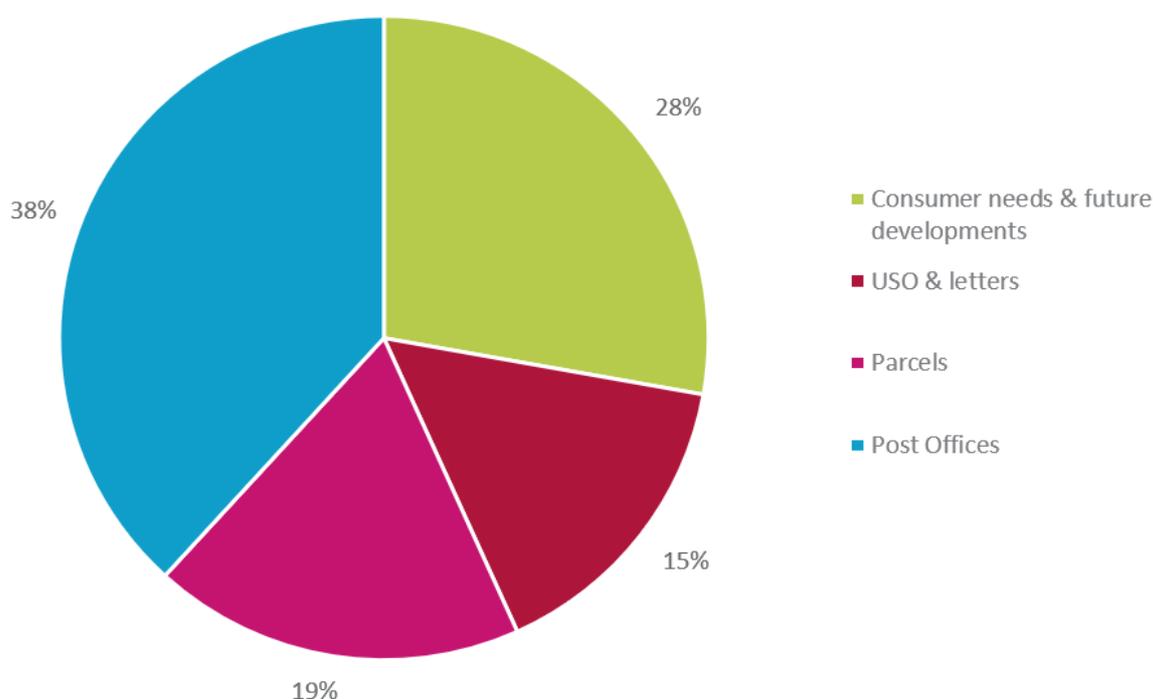
<sup>29</sup> Ofcom, March 2018 Consultation, paragraphs 4.82-4.91.

<sup>30</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/recovering-postal-regulation-costs>

3.17 However, this change in calculation does not affect our analysis and reasoning. While using a weighted average means that the proportion of Post Office project spend is larger than if we calculated it using the unweighted average, crucially, it also shows that all four postal project categories continue to represent a significant proportion of project costs. We also note that project spend gives an indication of the type of work undertaken by the CABs, rather a precise spend allocation, given that the majority of CABs’ costs (staff costs) cannot be allocated to specific categories.

3.18 For the avoidance of doubt, as we explain later in this document,<sup>31</sup> the relative proportions of the CABs’ work on postal projects in Figure 3.1 have no impact on what a liable relevant postal operator would be required to contribute towards the CABs’ costs.

**Figure 3.1 - Consumer advocacy postal costs by external spend on projects, 2014/15 to 2018/19**



*Source: Ofcom analysis, formal information requests to Citizens Advice, Citizens Advice Scotland and Consumer Council for Northern Ireland.*

## Postal operators providing single piece E2E letter services

### Our March 2018 consultation proposals

3.19 We proposed that single piece E2E letter services should be taken into account for the purposes of recovering consumer advocacy funding, as we stated that such services,

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<sup>31</sup> See paragraphs 4.14, 4.47 and 6.11-6.20 below.

provided by Royal Mail, and some smaller postal operators, were primarily used by consumers. We noted that it was clear from the CABs' consumer research costs that a significant proportion of the CABs' costs related to the universal service and consumers' use of letter services.<sup>32</sup>

- 3.20 Furthermore, we also noted that the workplans for the CABs all featured postal work relating to single piece E2E letter services (e.g. the universal postal service). Therefore, in line with our three guiding criteria of cost reflectivity, fairness and equity and adaptability, we determined that such operators should be liable, in principle, to contribute towards the CABs fees.<sup>33</sup>

## Stakeholder responses

- 3.21 There was agreement with our proposal and reasoning from stakeholders.<sup>34</sup>
- 3.22 Royal Mail noted that single piece E2E letter services are substitutable for letter services provided as part of the universal postal service in the geographical areas they are offered, and "as such, users of these services benefit from CAB activities" and thus "it is therefore right that [they] should be taken into account".<sup>35</sup>

## Our conclusions

- 3.23 Single piece E2E letter services are used by consumers and small businesses, in both a sender and recipient capacity. Single piece E2E letter services are provided by Royal Mail (mainly through its universal service products) and some smaller, more focused operators offering single piece E2E letter services.<sup>36</sup>
- 3.24 End-users continue to view these services as important,<sup>37</sup> therefore CABs undertake advocacy, research and case work on letter services, and are likely to continue to do so. Accordingly, consumers' use of these services (both as a recipient and sender) are likely to impact the work of the CABs.
- 3.25 A proportion (15%) of the CABs' external costs on projects relate to the provision of the universal postal service (USO) and letter services. Moreover, some of the work of the CABs' on consumer needs and future developments is also likely to be relevant to single piece E2E letters. Therefore, on the grounds of cost reflectivity and fairness and equity, it is

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<sup>32</sup> Ofcom, March 2018 Consultation, paragraph 4.48.

<sup>33</sup> Ofcom, March 2018 Consultation, paragraphs 4.48-4.49.

<sup>34</sup> Whistl response to March 2018 Consultation, page 1; CCNI response to March 2018 Consultation, paragraphs 2.1-2.2; Royal Mail response to March 2018 Consultation, paragraphs 2.1-2.3; MCF response to March 2018 Consultation, page 2; CAS response to March 2018 Consultation, page 1; MCF response to March 2018 Consultation, page 2.

<sup>35</sup> Royal Mail response to March 2018 Consultation, paragraph 2.2.

<sup>36</sup> Ofcom, AMR 2018, paragraph 3.8.

<sup>37</sup> For instance, consumers remain reliant on the postal service for sending and receiving letters/cards - 77% in 2017/18, up 2% from 2016/17 (Ofcom, Residential Postal Tracker Q3 2017 to Q2 2018, September 2018, *QG1. How much would you say you rely on the postal services for sending and receiving ...letters/cards?* Base: All respondents Q3 2017-Q2 2018 (n= 5,836) All respondents Q3 2016 – Q2 2017 (n=6,097), [https://www.ofcom.org.uk/data/assets/pdf\\_file/0034/118996/-tables.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0034/118996/-tables.pdf)).

appropriate that single piece E2E letter services should be liable to contribute towards consumer advocacy costs.

- 3.26 We also note that no stakeholder argued that single piece E2E letter services should not be considered for the recovery of consumer advocacy fees.
- 3.27 In relation to smaller single piece E2E letter operators in specific geographical areas benefiting from the CABs' work, we consider this issue in our assessment of setting the level of the thresholds, as here we are determining which services should, in principle, contribute.
- 3.28 In light of the above, we have decided to adopt our proposal in the March 2018 consultation so that postal operators providing single piece E2E letter delivery services will, in principle, be required to contribute towards the CABs' costs, if they exceed the associated revenue threshold discussed in the next Section. Thus, our modifications to CP1 (see Annex 1) captures these single piece E2E letter delivery services in its definition of 'relevant letters postal service' under CP 1.1.2.
- 3.29 We have considered the relevant legal tests set out in Section 5 and are satisfied that our decision meets them. We also consider this outcome would be consistent with Ofcom's principal duty in section 29 of the Act to secure the provision of the universal postal service and our general duties in section of the Communications Act 2003, in particular to further the interests of citizens and consumers.

## Postal operators providing bulk and access mail services

### Our March 2018 consultation proposals

- 3.30 We proposed that bulk mail services (namely, Royal Mail's retail bulk services), provided on an E2E basis, should be included in the recovery of the CABs' consumer advocacy costs. This is because we considered, where Royal Mail collects and receives such E2E retail bulk mail from the sender (usually a business), it is responsible also for ensuring the delivery of such mail to consumers. We stated that, in our view, the driver for any work undertaken by the CABs in relation to bulk mail is likely to relate to the recipient's experience in delivery.
- 3.31 In contrast, we proposed that other postal operators providing access mail services should be excluded from the recovery of CABs' costs. This was because we considered that such operators are generally active only in the upstream part of the supply chain and do not have a direct relationship (through delivery) to end consumers. Specifically, access operators provide B2B services to bulk mailers (e.g. a bank) to arrange to send their mail through Royal Mail, but such operators are not involved in the delivery of such mail. We also noted that Citizens Advice response to our July 2017 consultation mentioned that their work rarely considers the work of bulk mailers and access operators directly. Therefore, as access operators are not involved in the delivery of letters and do not have an interaction with end consumers who are recipients of mail, we proposed that access

operators should be excluded from being liable to contribute to the recovery of CABs' costs.<sup>38</sup>

## Stakeholder responses

- 3.32 Stakeholders agreed with our proposal and reasoning to include bulk mail services, with Royal Mail, the MCF and CAS agreeing with our reasoning about recipients of bulk mail possibly resulting in advocacy work for the CABs.<sup>39</sup>
- 3.33 In regard to our proposals for the exclusion of access mail services, there was a mixed view from stakeholders. Several responses stated we had not considered the CABs' original response (in full) to our July 2017 consultation, where they stated that, as a result of their remit, some of their work may include access mail.<sup>40</sup> Citizens Advice argued that access operators are also relevant to "advice and campaigns we run on issues such as lost and delayed mail".<sup>41</sup>
- 3.34 Royal Mail and Citizens Advice also argued that problems with mail can occur at any stage of the delivery process, including when with the access operator.<sup>42</sup>
- 3.35 Royal Mail highlighted the "growing trend" of access operators offering services to residential consumers and that consumers are "no longer simply recipients of access mail but increasingly senders", and that the work of the CABs benefits and relates to the services offered by access operators.<sup>43</sup>
- 3.36 Whistl and the MCF agreed with our exclusion of access mail services, and our reasoning of access mail resulting from a B2B relationship. However, Whistl made the point that Royal Mail only has an interaction with consumers when it provides E2E bulk mail, and noted that, as access mail has the same interaction with consumers as bulk mail, Royal Mail's access revenues (that it receives from access operators as part of providing a mandated access service) should be included.<sup>44</sup>

## Our conclusions

### Bulk mail

- 3.37 Bulk mail includes postal products that are subject to discounts compared with standard prices for single piece letters (paid for by stamps, for instance) for factors such as the volume of mail sent, the way the mail has been presented (for example, using specific fonts to make it easier for the machine to read the address), applying machine bar codes, or the

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<sup>38</sup> Ofcom, March 2018 Consultation, paragraphs 4.52-4.56.

<sup>39</sup> MCF response to March 2018 Consultation, page 2; Royal Mail response to March 2018 Consultation, paragraph 2.5; CAS response to March 2018 Consultation, page 2.

<sup>40</sup> CCNI response to March 2018 Consultation, paragraph 2.3; Citizens Advice response to March 2018 Consultation, pages 5-6; CAS response to March 2018 Consultation, page 2; Royal Mail response to March 2018 Consultation, paragraph 2.7.

<sup>41</sup> Citizens Advice response to March 2018 Consultation, pages 6-7.

<sup>42</sup> Royal Mail response to March 2018 Consultation, paragraph 2.6; Citizens Advice response to March 2018 Consultation, pages 6-7.

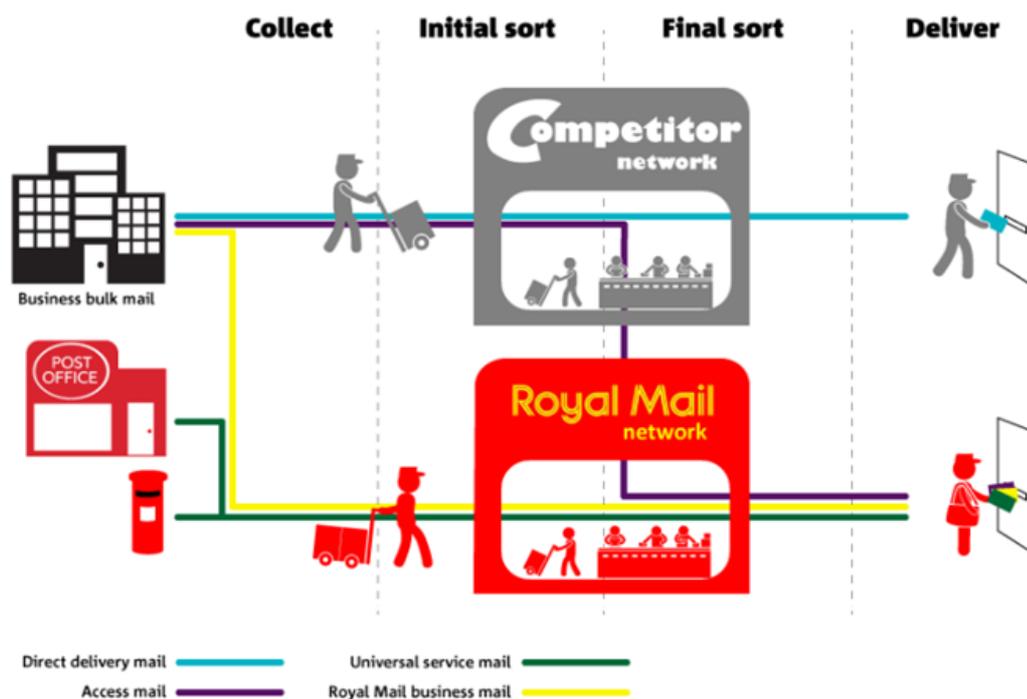
<sup>43</sup> Royal Mail response to March 2018 Consultation, paragraph 2.6.

<sup>44</sup> Whistl response to March 2018 consultation, page 1; MCF response to March 2018 Consultation, page 2.

level of sortation (i.e. unsorted, low sort and high sort). It is a service primarily used by businesses and public bodies.

- 3.38 Bulk letter services include Royal Mail's E2E retail bulk mail services and its access services, where it delivers letters on behalf of access operators (services provided by access operators are discussed below).
- 3.39 Royal Mail's retail bulk mail services are provided on an E2E basis, where Royal Mail collects or receives mail from the sender (usually a business) and is responsible for ensuring the delivery of such mail to the recipient.
- 3.40 We remain of the view set out in our March 2018 consultation that consumers' interaction with bulk mail is only likely to arise materially as recipients, rather than as senders. Therefore, we consider that, for the purposes of reaching our decision on which postal operators should be liable to contribute to the CABs' costs, bulk mail should only be relevant to the CABs' work insofar as it is necessary for them to advocate on behalf of such consumers who are users of such mail. However, consumers (unlike large senders of bulk mail) do not have a contractual relationship with Royal Mail, and therefore, where they may have any issues with regard to the delivery of retail bulk mail, they may take their issue to the CABs, who may conduct advocacy on behalf of such recipients.
- 3.41 We have therefore decided that bulk mail services should form part of the services which the CABs' costs are recovered from. Thus, our modifications to CP1 (see Annex 1) capture these retail bulk mail services in the definition of 'relevant letters postal service' under CP 1.1.2, which is discussed further below.
- 3.42 In reaching this decision, we have placed particular importance on our guiding criteria of cost reflectiveness, fairness and equity and adaptability, and that imposing such a liability on such operators under CP1 satisfies the relevant legal tests discussed in Section 5. We also consider this outcome would be consistent with Ofcom's principal duty in section 29 of the Act and our general duties in section of the Communications Act 2003, in particular to furthering the interests of citizens and consumers.
- 3.43 For clarity, our original reasoning on bulk mail also includes the access services provided by Royal Mail. Access mail includes Royal Mail's letters and large letter services provided under the USP Access Condition. Access operators collect mail from the customer, sort it and then transport it to Royal Mail's Inward Mail Centres, where it is handed over to Royal Mail for 'final mile' delivery.

Figure 3.2 - Access mail, bulk mail and single piece end to end mail services



Source: Ofcom

3.44 As such, whilst the access operator is responsible for the access mail when in the upstream part of the network, Royal Mail is responsible for the access mail from the Inward Mail Centre to the delivery of the mail to the consumer. This part of the delivery, and the relationship to the individual recipient (Business-to-Consumer, “B2C”), is the same as for E2E bulk mail services. The part of the postal network responsible for consumers interaction with access mail is Royal Mail, who complete final mile delivery from their Inward Mail Centres. Recipients do not have a contractual relationship with Royal Mail, and therefore, there is a possibility that consumers may take any issues they have regarding the delivery of mail to the CABs, who may conduct advocacy on behalf of such recipients.

3.45 We have now clarified and amended our exclusion of access mail services to clarify, for the avoidance of doubt, that Royal Mail’s access service is included in the definition of a relevant service. Consequently, we have amended CP1 to clarify that revenues paid to the universal postal operator for access to its postal network will be included in its calculation of relevant turnover.

### Access operators’ services

3.46 As set out in our consultation, consumers have no interaction with access mail when in the upstream part of the postal network and therefore it is unlikely that access mail (when with the access operator) will result in the CABs undertaking advocacy on behalf of such consumers.

3.47 Access operators make arrangements with Royal Mail for the delivery of mail to the end customer based on standardised terms. This access contract sets out the minimum

standards an access operator can expect from Royal Mail in delivery. As such, Royal Mail assumes responsibility for delivery from the point the mail is inserted into its network (Inward Mail Centres) to the mail recipient (the consumer).

- 3.48 Some stakeholders commented that problems could occur at any point in the postal network – including where access operators are responsible in the upstream part of the supply chain. However, Royal Mail’s Access Letters User Guide for Inward Mail Centre suggests that Royal Mail will refer complainants to the originating sender rather than the access operator, or will deal with the issue if the issue concerns delivery procedures, where consumers as recipients interact with the mail. It states: *“Should we receive enquiries/complaints from recipients of Mailing Items (the addressee) sent under your Contract, the addressee will be advised to contact the originating sender (except where the issue concerns delivery procedures e.g. mis-delivery when we will deal directly with the recipient).”*<sup>45</sup>
- 3.49 Moreover, the aforementioned User Guide suggests Royal Mail may reject mailing items which “its staff subsequently discover (prior to acceptance) to be damaged or in generally poor condition” and that it visually checks mail containers.<sup>46</sup> This suggests that potentially damaged mail may well be caught before entering Royal Mail’s network, and therefore the incidence of an issue for the end consumer/recipient that requires subsequent consumer advocacy would be lower.
- 3.50 We also consider that the number of issues arising when access mail is with an access operator is likely to be low, and therefore not significantly influencing the work of the CABs. In 2017/18, access operators letters accounted for the largest volume of mail sent (63% of the total letters market by volume)<sup>47</sup>; in our Review of Royal Mail Regulation in 2017, access letters accounted for 58% of the letters market in 2015/16, but our analysis on mail integrity showed the percentage of access mail items generating complaints was very small (0.00001%),<sup>48</sup> leading us to conclude at the time that there was very little evidence to believe mail integrity was an issue with access operators. We have no evidence suggesting the situation has changed materially since our analysis two years ago. Therefore, while problems can occur at any point of the network or delivery process, we have not seen evidence suggesting that problems occurring in the upstream part are material enough to lead to end customer enquiries or complaints and have an impact on consumer advocacy work.
- 3.51 We note the comments from Citizens Advice about the CABs’ mandate to represent small and medium-sized consumers, *“who may be engaging directly with bulk or access*

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<sup>45</sup> Royal Mail, *Access Letters User Guide for Inward Mail Center*, Section 4 - Enquiries and Complaints, <https://dms.royalmailwholesale.com/document/1>

<sup>46</sup> Royal Mail, *Access Letters User Guide for Inward Mail Center*, Section 15 - Procedures for Handling Non-compliant Postings, <https://dms.royalmailwholesale.com/document/1>

<sup>47</sup> Ofcom, *AMR 2018*, paragraph 3.14.

<sup>48</sup> Ofcom, *Review of the Regulation of Royal Mail*, Statement, 1 March 2017, paragraph 6.14, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf)

operators”.<sup>49</sup> As stated above, Ofcom has no role in deciding the CABs’ work remit; we are solely focused here on making an assessment on from whom we believe it is appropriate to impose regulatory obligations to contribute towards the CABs’ costs. In that respect, we note that access mail customers, including medium-sized businesses, may establish contractual arrangements (such as SLAs and SLGs)<sup>50</sup>, thereby providing alternative routes to redress directly with the access operator.<sup>51</sup>

- 3.52 Royal Mail’s commented that access operators mail contribute to at least [X] of scam mail. However, in making our decision here, the postal issues we are considering are those associated with the delivery of mail<sup>52</sup> - not the content of the mail. The CABs’ work on scam issues is broader than a postal issue, because it is likely to cover several sectors of the CABs work on fraud (e.g. misleading advertising, telephone banking fraud, etc.).
- 3.53 In regard to Royal Mail’s arguments regarding consumers using access mail services as senders,<sup>53</sup> we believe this is more the exception than the norm amongst individual consumers (both residential and SMEs). For example, Parcel2Go’s access mail service has a minimum spend of £20 (excluding VAT), which is the equivalent of 53 letters, or 33 large letters (up to 100g), and we consider it unlikely that consumers are sending such volumes of mail in one posting.<sup>54</sup> Moreover, we believe that access services being offered directly to consumers remain small, localised examples.
- 3.54 Therefore, under our guiding criteria of cost-reflectiveness, adaptability and fairness and equity, and in light of the above, we have decided to adopt our proposal in the March 2018 consultation so that access operators’ services should not be required to contribute towards the CABs’ costs. Thus, our modification to CP1 (see Annex 1) excludes these access letter delivery services in its definition of ‘relevant letters postal service’ under CP 1.1.2, which is discussed further below.
- 3.55 We have considered the relevant legal tests discussed in Section 5 and are satisfied that our decision meets them. We also consider this outcome would be consistent with Ofcom’s principal duty in section 29 of the Act to secure the provision of the universal postal service and our general duties in section of the Communications Act 2003, in particular to furthering the interests of citizens and consumers.

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<sup>49</sup> Citizens Advice response to March 2018 Consultation, page 7.

<sup>50</sup> SLAs, or Service Level Agreements, are a contractual commitment provided by two businesses (one business providing a service, and one business receiving/paying for a service) about service standards. SLGs, or Service Level Guarantees, are a contractual commitment between two businesses specifying the amount of compensation payable by the business providing a service to the business receiving/paying for the service for a failure to adhere to an SLA.

<sup>51</sup> For instance, we note that in Whistl’s customer guide for its Premier Service, it says “*specific service levels agreed with customers will be incorporated into the contract agreement signed between Whistl and the customer concerned*” (Whistl, Premier Customer Guide, July 2018, [https://www.whistl.co.uk/files/9515/3452/0081/Whistl\\_Premier\\_Customer\\_Guide\\_-\\_July\\_2018\\_V2.pdf](https://www.whistl.co.uk/files/9515/3452/0081/Whistl_Premier_Customer_Guide_-_July_2018_V2.pdf)).

<sup>52</sup> For example, lost or damaged mail.

<sup>53</sup> Royal Mail response to March 2018 Consultation, paragraph 2.6.

<sup>54</sup> <https://www.parcel2go.com/service/whistl>

## Exclusions for relevant letters postal services

### Our March 2018 consultation proposals

- 3.56 In our March 2018 consultation we proposed to create a new term of a ‘relevant postal operator’, which would determine whether a postal operator was liable, in principle, to contribute to consumer advocacy costs. We proposed to define a ‘relevant postal operator’ as “a postal operator that provides a relevant letters postal service” and “a postal operator that provides a relevant parcels postal service”. We address our decision on a ‘relevant parcels postal service’ below.
- 3.57 In the proposed new draft CP1, we proposed to exclude certain specific services from the meaning of a ‘relevant letters postal service’, i.e. the services provided by relevant operators to align with our policy proposals and the wording of standard exclusions in other postal conditions; namely:
- a) services for which the postal operator has not received any payment, reward, profit or advantage with respect to the conveyance of the relevant letters;
  - b) services provided by a charity which comprise solely the collection, conveyance and delivery of Christmas cards;
  - c) express and secured services;
  - d) services consisting of the conveyance of relevant letters within a closed user group network;
  - e) services provided while acting in the capacity of an intermediary postal operator, that is to say a postal operator that hands over postal packets to another postal operator (including but not limited to the universal service provider) for subsequent conveyance and delivery to the intended recipients of the postal packets;
  - f) services consisting of conveying relevant letters, which have been sent from a location outside of the United Kingdom and which are addressed for delivery to a location outside of the United Kingdom, out of the United Kingdom; and,
  - g) services provided by a party to a USP Access Agreement with the universal service provider, including by the universal service provider itself, to other postal operators and users of postal services by obtaining access to the universal service provider’s postal network under, or as a result of, the party’s USP Access Agreement.

### Stakeholder responses

- 3.58 As set out above, Whistl stated that Royal Mail’s access mail service has the same interaction with consumers as bulk mail services, and therefore Royal Mail’s activities in

relation to the delivery of postal items inserted into its delivery network by access operators should be included in the definition of a ‘relevant letters postal service’.<sup>55</sup>

3.59 There was no comment in relation to the additional exclusions quoted in paragraph 3.57.

## Our decision

3.60 We consider there is a need to continue to exclude certain services from a relevant letters postal service. This is because we believe these services are unlikely to materially drive the CABs’ work. Therefore, paying particular importance to our guiding criteria of cost reflectivity and fairness and equity, we believe services which are unlikely to materially drive the CABs’ work should not be made liable to contribute towards the CABs’ costs.

3.61 We set out in Table 3.3 below our exclusions and our reasons for maintaining them in our final decision. We have already discussed access mail services above, and the relevant exclusion required.

**Table 3.3 - Letter service exclusions set out in the legal instrument**

Number in CP1	Exclusion	Our reasons
(m) (1)	services for which the postal operator has not received any payment, reward, profit or advantage with respect to the conveyance of the relevant letters	In the absence of payment, there is unlikely to be consumer advocacy and there will be no relevant turnover.
(m) (2)	services provided by a charity which comprise solely the collection, conveyance and delivery of Christmas cards	Given this is a free service (in the absence of payment) and for a charitable purpose, we do not believe this service is appropriate to include.
(m) (3)	express and secured services	Such services already have higher consumer protection (e.g. insurance), and therefore, are unlikely to materially contribute towards issues regarding delivery.
(m) (4)	services consisting of the conveyance of relevant letters within a closed user group network	In a closed user group, the delivery arrangements are likely to be internal (e.g. between branches in the same company, or between government departments, or

<sup>55</sup> Whistl response to March 2018 Consultation, pages 2-3.

		between companies part of a closed user group), and are therefore unlikely to impact the CABs’ consumer advocacy work.
<b>(m) (5)</b>	services provided while acting in the capacity of an intermediary postal operator, that is to say a postal operator that hands over postal packets to another postal operator (including but not limited to the universal service provider) for subsequent conveyance and delivery to the intended recipients of the postal packets	For the same reasons outlined in relation to access mail services above, in this instance, consumers have no interaction with an intermediary postal operator, and therefore, this is unlikely to drive or impact the work of the CABs.
<b>(m) (6)</b>	services consisting of conveying relevant letters, which have been sent from a location outside of the United Kingdom and which are addressed for delivery to a location outside of the United Kingdom, out of the United Kingdom	This is international mail that passes through the UK (i.e. where both the recipient and receiver are outside the UK) and thus is unlikely to impact the work of the CABs (who focus on UK consumers).
<b>(m) (7)</b>	services provided by a party to a USP Access Agreement with the universal service provider to other postal operators and users of postal services by obtaining access to the universal service provider’s postal network under, or as a result of, the party’s USP Access Agreement; for the avoidance of doubt, services provided by the universal service provider itself to a party to a USP Access Agreement do not fall under this exclusion	Amended as set out above and at paragraph 3.58.

## Postal operators providing parcel services

### Our March 2018 consultation proposals

3.62 We proposed in the March 2018 consultation that postal operators providing parcel services should, in principle, be within scope of recovering the CABs’ costs. In that regard, we noted, in particular, that the CABs responses to our July 2017 consultation stated they did consumer work advocacy work on parcels, and expected this area of postal work to increase in the future in line with consumers growing use of online shopping and e-

commerce.<sup>56</sup> Moreover, we noted that 23% of the consumer research costs incurred by the CABs related to work directly attributable to parcels, and we noted that parcel services benefit from parcels-related work that was also allocated to the ‘universal service and letters’ and ‘consumer needs and future developments’ categories. We also noted that the CABs’ workplans for 2018-19 all contained parcels-related work.

- 3.63 We noted that consumers’ use of parcel services has grown in recent years with the rise of online shopping, and that Ofcom’s annual update on the postal sector showed a growing parcels market in 2016-17. We also stated that research showed this growth and demand was expected to increase in the future, especially in the B2C market, and we considered it was likely that parcels work was likely to remain relevant to the work of the CABs in the future.<sup>57</sup>

## Stakeholder responses

- 3.64 Stakeholders broadly agreed with our proposal to include parcel services. Stakeholders particularly agreed with our view that parcels are increasingly important to consumers, now and in the future, and that they form a significant part of the CABs’ workplans and consumer advocacy costs.<sup>58</sup> Hermes also acknowledged that parcel operators of a “certain qualifying turnover are being required to support the funding of consumer advocacy given the growth in online shopping and parcel volumes, as well as the importance of parcels to consumers”.<sup>59</sup>
- 3.65 However, some stakeholders commented that, whilst parcel services should be within scope for the recovery of CABs’ costs, parcel operators should only be liable to pay the CABs’ costs of parcels-related work (i.e. just ‘parcels’ or ‘parcels’ and ‘consumer needs and future developments’ CAB work), and should not be made to contribute to parts of the market in which they are not active in (e.g. the universal service or the letters market).<sup>60</sup>
- 3.66 Hermes stated that the work carried out by the CABs for the ‘consumer needs and market developments’ work area was “sufficiently broad to capture all qualifying postal operators, although it is far from clear”.<sup>61</sup> A number of stakeholders stated either that they are already incentivised to provide excellent customer service in a competitive market, and monitored their service, or that they had made significant investments, developed

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<sup>56</sup> Citizens Advice response to July 2017 Consultation, pages 4-5; CCNI response to July 2017 Consultation, page 5; CAS response to July 2017 Consultation, page 4.

<sup>57</sup> Ofcom, March 2018 Consultation, paragraphs 4.57-4.62.

<sup>58</sup> Royal Mail response to March 2018 Consultation, pages 9-10; Citizens Advice response to March 2018 Consultation, page 3 and 5; Hermes response to March 2018 Consultation, page 1; CAS response to March 2018 Consultation, page 3; MCF response to March 2018 Consultation, page 3; CCNI response to March 2018 Consultation, paragraph 2.5.

<sup>59</sup> Hermes response to March 2018 Consultation, page 1.

<sup>60</sup> Hermes response to March 2018 Consultation, pages 1-2; Whistl response to March 2018 Consultation, pages 2-3; DPD response to March 2018 Consultation, page 1.

<sup>61</sup> Hermes response to March 2018 Consultation, page 1.

customer relationship tools and used innovations and technology – and that each of these reduced the risk of their companies influencing the work of the CABs.<sup>62</sup>

## Our conclusions

- 3.67 We note that most stakeholders who responded on this issue agreed with our proposal and reasoning for the inclusion of parcel services. Consumers are increasingly using parcel services, both as a recipient and as a sender, in light of the increase in online shopping. The market continues to grow, with an 11% increase in parcel volumes in 2017-18.<sup>63</sup> Parcels have been, and are likely to continue to be, increasingly important to consumers.
- 3.68 This trend is indeed reflected in the work of the CABs. Parcels work makes up 19% of the CABs' total research spend since 2014/15 (see Figure 3.1 above). This figure rises to 24% when the most recent three years are analysed. This correlates with the comments made by Citizens Advice in their written response, who stated that parcels form "*an increasing part of Citizens Advice workplan*".<sup>64</sup> Moreover, the work categories 'consumer needs and future developments' and 'USO and letters' also relate to parcels work to some extent, and as we highlight below, part of the work area 'Post Office' also relates to parcel services.
- 3.69 Hermes mentioned that the category 'consumer needs and future developments' was unclear, which may also mean they were questioning parcel operators' contribution to this part of the CABs' work. 'Consumer needs and future developments' covers a wide range of postal projects, and generally cover all other postal projects (i.e. USO and letters, parcels and Post Offices).<sup>65</sup> We also gave some examples of postal projects that fell in this postal category in our March 2018 consultation.<sup>66</sup>
- 3.70 It is precisely because they are wide-ranging in nature and therefore relate to postal services generally, as Hermes acknowledge, that it is difficult to isolate their effect in our opinion. In addition, as explained in more detail in the Post Office subsection below, we do not support the proposition of allocating different parts of the CABs' consumer advocacy work to different types of postal operators, but instead to charge operators with relevant turnover in line with the percentage of relevant turnover compared with the whole market.
- 3.71 Regarding stakeholder comments about the parcel operators' incentives in providing excellent customer service, and their investments in customer service/experience thereby reducing their impact on the CABs' costs, there is a distinction between the CABs' calls costs, on the one hand, and the CABs' non-calls costs, on the other hand. While the incentives to which stakeholders refer to might (if they are right) reduce the number of complaints the CABs would receive, any such reduction would impact on their contribution

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<sup>62</sup> AICES response to March 2018 Consultation, pages 1-2; DPD response to March 2018 Consultation, page 2; Hermes response to March 2018 Consultation, page 1.

<sup>63</sup> Ofcom, AMR 2018, Figure 4.1.

<sup>64</sup> Citizens Advice response to March 2018 Consultation, page 5.

<sup>65</sup> This was confirmed in CAS's response to our recent information request, where they stated: "work under the 'consumer needs and future developments' theme is relevant to USO and letters, parcel services and Post Offices."

<sup>66</sup> See paragraph 4.45 of our March 2018 Consultation.

towards the CABs' calls costs (which account for less than 1% of the total CAB's costs). In contrast, the CABs' non-calls costs relate to their advocacy and research function more generally. We understand that the CABs' work (and associated costs) in relation to that function is not just determined by the number of complaints they receive, but it is driven by a wider range of inputs (e.g. issues it identifies itself, strategic work). As a result, we estimate that an operator's investment in customer service may not materially affect whether the CABs' conduct consumer advocacy, and thus generate non-calls costs.

- 3.72 We note the comments from Whistl and Hermes regarding parcel operators only contributing towards the CABs parcels-related work.<sup>67</sup> A number of other stakeholders made similar points, but regarding the recovery of the CABs costs on the Post Office. Thus, we address these points as one in the next section.
- 3.73 We have therefore decided to adopt our proposal in the March 2018 consultation, so that postal operators providing parcel services will, in principle, be required to contribute towards the CABs' costs, if they exceed the associated revenue threshold discussed below. We have reached that decision having particular regard to our guiding criteria of cost-reflectiveness, adaptability and fairness and equity, and that imposing such a liability on such operators under CP1 satisfies the relevant legal tests discussed in Section 5. We also consider this outcome would be consistent with Ofcom's principal duty in section 29 of the Act and our general duties in section of the Communications Act 2003, in particular to furthering the interests of citizens and consumers. Thus, our modifications to CP1 (see Annex 1) capture these parcel services in its definition of 'relevant parcels postal service' under CP 1.1.2, which is discussed further below.

## Exclusions for relevant parcels postal services

### Our March 2018 consultation proposals

- 3.74 As stated above in relation to letters, in our March 2018 consultation, we proposed to create a new term of a 'relevant postal operator'. We proposed to define a 'relevant postal operator' as "a postal operator that provides a relevant letters postal service" and "a postal operator that provides a relevant parcels postal service".
- 3.75 In our proposed new draft CP1, as with letter services, we proposed to exclude certain specific services from the meaning of a 'relevant parcels postal service', i.e. the services provided by relevant operators. We proposed to do this by setting out a broad definition of a relevant parcels postal service, and then setting out a list of exclusions to align with our policy proposals and the wording of standard exclusions in other postal conditions; namely:. These exclusions were:
- a) services for which the postal operator has not received any payment, reward, profit or advantage with respect to the conveyance of the relevant parcels;

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<sup>67</sup> For instance, there were different views among stakeholders as to what was 'parcels related' work by the CABs – e.g. 'parcels' work only or 'parcels and 'consumer needs and future developments' work.

- b) services consisting of the conveyance of relevant parcels within a closed user group network;
- c) services provided while acting in the capacity of an intermediary postal operator, that is to say a postal operator that hands over relevant parcels to another postal operator (including but not limited to the universal service provider) for subsequent conveyance and delivery to the intended recipients of the relevant parcels; and
- d) services consisting of conveying relevant parcels, which have been sent from a location outside of the United Kingdom and which are addressed for delivery to a location outside of the United Kingdom, out of the United Kingdom.

3.76 As with letter services, we did not believe any of the exclusions set out in a ‘relevant parcels postal service’ to be driving the CABs’ consumer advocacy work, and therefore, paying particular importance to our guiding criteria of cost reflectivity and fairness and equity, we proposed to exclude these services from providing a relevant parcels postal service, and therefore not liable to contribute to the CABs’ consumer advocacy costs.

## Stakeholder responses

3.77 There were no stakeholder comments in relation to the exceptions. However, as a related point, Whistl stated that regarding parcel services establishing liability to contribute to the CABs’ costs, Royal Mail’s non-mandated downstream access parcels should be included.<sup>68</sup>

## Our decision

3.78 In regard to Whistl’s point about ensuring inclusion of Royal Mail’s downstream access parcel services, we note that in this example, Royal Mail’s interaction with consumers, and its role in delivery, is the same as we identified with bulk mail services and Royal Mail’s mandated access service (as outlined above). Therefore, for the same reasons as outlined above, on the grounds of cost reflectivity and fairness and equity, we have decided to amend CP1 to clarify that an intermediary (whether an access operator or another operator offering a relevant parcels postal service) relying on a third party’s network (an access product or service, whether through the USP or another third party’s network) will exclude revenues from such activities when calculating its relevant turnover. Revenues paid to the USP operator for access to its postal network will be included in the USP’s calculation of relevant turnover, but excluded from the relevant turnover of the parcel operator injecting access parcels into the USP’s network. Therefore, for the avoidance of doubt, wholesale revenues received by Royal Mail for the delivery of parcel services on behalf of other operators should be included in its relevant turnover for the purposes of deciding its contribution to CAB costs.

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<sup>68</sup> Whistl response to March 2018 Consultation, pages 2-3.

3.79 In regard to our other exclusions, as outlined in paragraph 3.75 above, we set out in Table 3.4 below our exclusions and our reasons for maintaining these exclusions in our final decision.

**Table 3.4 - Parcel services exclusions set out the in legal instrument**

Number in CP1	Exclusion	Our decision
(o) (1)	services for which the postal operator has not received any payment, reward, profit or advantage with respect to the conveyance of the relevant parcels;	In the absence of payment, there is unlikely to be consumer advocacy and there will be no relevant turnover.
(o) (2)	services consisting of the conveyance of relevant parcels within a closed user group network;	In a closed user group, the delivery arrangements are likely to be internal (e.g. between branches in the same company, or between government departments, or between companies part of a closed user group), and are therefore unlikely to impact the CABs' consumer advocacy work.
(o) (3)	services provided while acting in the capacity of an intermediary postal operator, that is to say a postal operator that hands over relevant parcels to another postal operator for subsequent conveyance and delivery to the intended recipients of the relevant parcels; and	For the same reasons as outlined on access mail services above, in this instance, consumers have no interaction with an intermediary postal operator, and therefore, this is unlikely to drive or impact the work of the CABs.
(o) (4)	services consisting of conveying relevant parcels, which have been sent from a location outside of the United Kingdom and which are addressed for delivery to a location outside of the United Kingdom, out of the United Kingdom.	This is international mail that passes through the UK (i.e. where both the recipient and receiver are outside the UK) and thus is unlikely to impact the work of the CABs (who focus on UK consumers)

3.80 Since our March 2018 consultation, we note that there has been a case in the Court of Justice of the European Union which has implications for the definition of a 'postal operator' set out in the Postal Services Directive. In Annex 2 we explain this case in more detail, its Judgement and the implications for what we consider a relevant parcels postal operator might constitute.

- 3.81 Therefore, in light of the Judgement, in making this statement we have reconsidered, firstly, our definition of a relevant parcels postal service, including which parts of a business may constitute a postal operator, and secondly, in line with our guiding criteria of cost reflectivity, fairness and equity and adaptability, which parts of a business are likely to impact and drive the work of the CABs.
- 3.82 As explained below in Annex 2, where a third-party retailer uses an e-commerce marketplace, and uses a delivery network provided by the marketplace to fulfil these orders, in this instance, we would consider the part of the e-commerce marketplace which is fulfilling the orders to be acting as a postal operator.
- 3.83 Like other parcel operators, such a business is likely to be impacting and driving the work of the CABs. Therefore, we have defined such businesses as offering a relevant parcels postal services, and they are, in principle, liable to contribute to the CABs' costs.
- 3.84 As set out in Annex 2 below, we consider that, where a business is self-delivering their retail products through their own networks (irrespective of its internal arrangements, i.e. through its own workforce or otherwise), then this business is not providing relevant parcels postal services for the purpose of the CABs' cost recovery mechanism, for the reasons set out below.
- 3.85 We consider that a retailer selling goods to consumers, which it delivers to an end-user through its own delivery network (irrespective of its internal arrangements) could be providing a postal service.
- 3.86 However, such a delivery is linked to a sales contract between the retailer and the buyer, and as such is ancillary to the sales contract.
- 3.87 Moreover, we do not think it is proportionate to apply the charging mechanism to such retailers given this could potentially affect a significant number of businesses across the UK, and that this would not meet a number of our charging principles. For instance, we are concerned relevant retailers could include local newsagents or pharmacies delivering newspapers or medicine to their customers. Furthermore, this would require such retailers separating the costs of delivery from the sales contract for goods, where there is no third party postal operator involved in the delivery of those goods to a consumer. Capturing such scenarios would go against our principles of simplicity, transparency and verifiability for the cost recovery mechanism. Therefore, we have decided to exclude retailers who self-deliver their own goods through their own delivery network from the recovery of CABs' costs.
- 3.88 This is achieved through the following amendment to the definition in CP1:
- “services consisting of the conveyance of relevant parcels provided by the postal operator only as part of a sales contract between the postal operator and a user under which the postal operator conveys and delivers such relevant parcels that are subject of that contract directly to the user without any arrangements with another postal operator; in this exclusion “a sales contract” refers to a contract by which the

seller transfers or agrees to transfer the property in goods to the buyer for a money consideration.”

## Recovering CABs’ costs for work related to the Post Office

### Our March 2018 consultation proposals

- 3.89 We noted that part of the CABs’ work in relation to postal services relates specifically to the Post Office. However, Post Office Ltd cannot be defined as a postal operator under the Act, therefore consumer advocacy costs can only be recovered by relevant postal operators as defined under the cost recovery mechanism.
- 3.90 We noted that, due to the exclusivity arrangement between Royal Mail and Post Office Ltd, other postal operators cannot provide services via the Post Office network. In line with the importance we attached to the guiding criteria of cost reflectivity and fairness and equity, we recognised there was an argument that postal operators who cannot access the Post Office network should not be made to contribute to the costs of the CABs incurred for work on the Post Office.
- 3.91 However, we provisionally rejected this option. We considered that the proposal to recover these costs directly from Royal Mail, whilst meeting our guiding criteria of cost reflectivity and fairness and equity, would fail a significant number of other guiding criteria. This was because the CABs informed us they did not have a time recording system to accurately allocate staff costs to project work. Given that we noted staff costs made up the majority of the CABs’ total costs, we could not accurately allocate the staff costs relating to the Post Office work. Therefore we provisionally concluded it was not clear this option would meet our reliability and verifiability criteria, and that it would add complexity on how we recover costs and so would be unlikely to satisfy our simplicity and transparency criteria.
- 3.92 Therefore, we proposed to recover CABs costs in relation to work done on the Post Office from all relevant postal operators on a share of relevant revenue basis (i.e. on the same basis as the rest of the CABs’ non-calls costs). We considered that there were significant advantages to such an approach. First, such an approach is more likely to meet our guiding criteria of simplicity and transparency, reliability and verifiability since it does not seek to introduce a level of cost apportionment which may not be accurate. As it would be difficult to identify exactly which staff costs would relate to Post Office work, given the CABs’ do not separate staff costs by activity, we considered that our proposals were more likely to satisfy our criteria of cost-reflectiveness, fairness and equity.
- 3.93 Moreover, we also noted Royal Mail’s near monopolist position in the letters market, combined with its strong position in the parcels sector. We set out that, in practice, given this option was based on an operator’s share of relevant revenue, Royal Mail is likely to

continue to pay the majority of the costs incurred by the CABs in relation to postal services, and therefore by extension, in relation to the CABs' work on the Post Office network.<sup>69</sup>

## Stakeholder responses

- 3.94 This area attracted the most comments from stakeholders. Several stakeholders (AICES, the MCF and Whistl) said that Post Office Ltd postal costs should be paid only by Royal Mail. Hermes said that, as the Post Office is the only operator which benefits from the CABs' work in this area, and benefits from the exclusivity agreement with Royal Mail until 2022, it should be responsible for all of its associated costs. Hermes argued that Ofcom should seek to have our legislative powers amended to allow us to recover the costs from Post Office Ltd to avoid this anomaly.<sup>70</sup>
- 3.95 Several responses suggested that the CABs should have a time recording system, or Ofcom should require the CABs to establish a way to allocate their costs appropriately.<sup>71</sup>
- 3.96 Whistl suggested that we should take the Post Office consumer research expenditure as a proxy for the staff costs relating to the CABs' Post Office costs, and that this section of costs should then be apportioned to Royal Mail. However, Hermes agreed with our consultation analysis that, as the CAB does not have a recording of staff hours, it is impossible to establish accurately how much is spent by the CABs on Post Office work, unless done through estimates of staff costs relating to Post Office work. Hermes concluded that to base the Post Office staff costs on estimates "*would neither be fair nor equitable*".<sup>72</sup>
- 3.97 The CCNI said that the definition of public post offices extends to any outlet from which postal services are provided to the public, so the rise of pick up-drop off outlets could extend the CABs work on Post Offices in the future to take account of the broader diversity in outlets providing postal services. CAS made a similar point and said that the CABs undertake a large amount of work on post offices and other access points, not just on Post Office Ltd.<sup>73</sup>
- 3.98 Citizens Advice agreed with our reasoning that Royal Mail's share of relevant revenues means it is likely to effectively continue paying for consumer advocacy costs relating to the Post Office.<sup>74</sup>
- 3.99 Royal Mail did not comment on this area.

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<sup>69</sup> Ofcom, March 2018 Consultation, paragraphs 4.64-4.69.

<sup>70</sup> AICES response to March 2018 Consultation, page 2; MCF response to March 2018 Consultation, page 3; Whistl response to March 2018 Consultation, page 1; Hermes response to March 2018 Consultation, page 2.

<sup>71</sup> Whistl response to March 2018 Consultation, page 2; MCF response to March 2018 Consultation, page 4.

<sup>72</sup> Whistl response to March 2018 Consultation, page 2; Hermes response to March 2018 Consultation, page 2.

<sup>73</sup> CCNI response to March 2018 Consultation, page 5; CAS response to March 2018 Consultation, page 5.

<sup>74</sup> Citizens Advice response to March 2018 Consultation, page 7.

## Our conclusions

### Our role in recovering the CABs' consumer advocacy funding

- 3.100 In regard to stakeholder comments about seeking amendments to our powers to allow us to recover CAB's costs relating to the Post Office network from the Post Office Ltd, our powers are set out in legislation and can only be amended by Parliament.
- 3.101 We do not believe the inclusion of Post Office Ltd within the cost recovery mechanism, and therefore the broadening of the scope of its application, is a matter for us and in relation to which we would seek legislative changes. We note that Post Office Ltd is state owned and that any additional subsidy from the Secretary of State towards CABs' costs directly or indirectly would be a matter for the Secretary of State. However, it is of course open to stakeholders themselves to make such requests directly to BEIS.
- 3.102 Likewise, regarding responses asking us to require CABs to change how they record staff time, we do not have the power to impose such requirements on the CABs. This is a matter for the CABs and BEIS. As explained in Section 2 of this statement, the actual amounts of the CABs' costs to be recovered by Ofcom are a matter for the Secretary of State for BEIS, who decides whether to sign them off as qualifying consumer expenses.

### On who benefits from parts of the CABs' work

- 3.103 In regard to the issue raised by respondents about allocating Post Office costs only to either Post Office Ltd or Royal Mail as the main beneficiaries of the CABs' work (notwithstanding the issues above about our powers in relation to this matter), we also received similar comments from some parcel operators in regard to parcel operators only contributing towards CABs' work on parcels-related work.
- 3.104 Ofcom, across the sectors it regulates, does not base its funding mechanisms on who benefits the most, as this is something that is difficult to identify and quantify as an output. However, in line with our guiding principle of cost-reflectivity, we try to identify those stakeholders who influence and drive our workload, or in this instance, the workload of the CABs. This is illustrated in Figure 3.1 above that highlights a range of work streams relating to postal services, supported by other sources (e.g. CABs' workplans), that indicate this variety of work. Therefore, basing a funding mechanism on such a premise would arguably not meet the criteria of cost reflectivity, verifiability or relevance.
- 3.105 In addition, as Ofcom does not take this approach in other funding mechanisms, amending the CAB funding mechanism on this basis would fail the guiding criteria of harmonisation.

### Using consumer research spend as a proxy

- 3.106 In regard to the suggestion of using consumer research spend as a proxy for all CABs' spend on Post Offices, we note that such an approach would fail many of the guiding criteria. It would become complex for us to administer, be less reliable, and could become more volatile (and less transparent), thereby making it more difficult for stakeholders to know what their costs might be in future years. Moreover, it would be difficult to ascertain

whether it would provide an accurate estimate in relation to cost-reflectiveness, given it would be a proxy for staff-related costs on the CABs' Post Office work, and would not be verifiable, as well as representing a departure from other Ofcom funding mechanisms. As such, we concur with Hermes's comments that basing staff costs on estimates is likely to be neither fair nor equitable.

### CABs' work on Post Offices

- 3.107 Notwithstanding the point above, we note CAS's comments regarding its work on other, non-Post Office Ltd<sup>75</sup> access points and acknowledge its point that *"as the postal market continues to grow and evolve, it is possible that consumer use of these outlets will increase and that they could become more of a focus of our work in future"*. CAS noted that currently it undertakes a large amount of work on Post Offices (including other access points, such as Pick Up Drop Off ("**PUDOs**") points for parcels), and thus it is fair, and cost reflective, for these other (parcel) operators who benefit from their work in this area to also contribute towards the CABs' Post Office costs.<sup>76</sup>
- 3.108 The CCNI supported CAS's comment, noting the definition of a public post office allows it to extend the CABs work on PUDOs in the future, whilst Citizens Advice stated in its written response that it *"considers 'post offices' in a broader sense – as a constituent part of a wider nationwide network of parcel PUDO points. This means that our work on post offices often has wider relevance for the postal sector and can be linked to our broader parcels work"*.<sup>77</sup> These comments were confirmed in stakeholder meetings with the CABs,<sup>78</sup> and also reflect the public workplans of the CABs for 2018/19.<sup>79</sup>
- 3.109 In order to gain a better understanding on the CABs' work on Post Offices, and what it relates to, when we issued the updated information request to produce Figure 3.1, we also asked all of the CABs to further split 'Post Office' costs, where possible, into 'Post Office Limited' costs (whereby projects allocating to this only benefited the Post Office Limited) and 'PUDO' costs (whereby projects allocated to this category benefited both the Post

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<sup>75</sup> Here, and in the rest of this sub-section, when we refer to 'Post Office', we are referring to post office access points in a wider sense (as opposed to 'Post Office Ltd', which we refer to above, which deals with expressly and solely regarding the Post Office Ltd).

<sup>76</sup> CAS response to March 2018 Consultation, page 4.

<sup>77</sup> CCNI response to March 2018 Consultation, paragraph 2.8; Citizens Advice response to March 2018 Consultation, page 5.

<sup>78</sup> In a meeting with Ofcom in July 2018, all of the CABs agreed they intended to do more work on PUDOs and generic parcel access points in the future – Citizens Advice stated they expected to spend significantly more on PUDOs than specific Post Office Ltd work in the next two to three years. We also note that Citizens Advice have agreed a new, lighter touch arrangement with the Post Office Ltd

([http://corporate.postoffice.co.uk/sites/default/files/Principles%20of%20Community%20Engagement June%202018.pdf](http://corporate.postoffice.co.uk/sites/default/files/Principles%20of%20Community%20Engagement%20June%202018.pdf)), which means they have been able to significantly reduce their head count working on Post Office Ltd specific issues.

<sup>79</sup> For instance, this can be seen in Citizens Advice workplan for 2018-19, which states "We will also commission external research to build on our unique geospatial analysis of parcel collection points across England, Scotland and Wales. This will help us to better understand consumer use of collection points and their experience of collecting, sending and returning parcels." (Citizens Advice, *Protecting consumers in a changing world - the Citizens Advice draft consumer work plan 2018/19*, <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Work%20plan%2018-19/Citizens%20Advice%2018%2019%20Draft%20Work%20Plan%20-%20Google%20Docs.pdf>). This also builds on Citizens Advice work in 2017/18, which included the start of its mapping exercise of PUDOs collection points, the output of which can be seen here - <http://cita.maps.arcgis.com/apps/MapSeries/index.html?appid=332a24b3475a4110a069fe6c63ebf995>.

Office Ltd and other parcel access points). The analysis of this data showed that in the last couple of years, there has been a shift towards an increasing proportion of Post Office work which relates to both PUDOs and Post Office Ltd, and less which only relates to Post Office Limited. In light of the evolution of the parcels market towards alternative delivery and collection models than Post Offices, we would expect this trend to continue in the future.

- 3.110 Moreover, both Citizens Advice and CAS stated in their responses to our information requests that they also carried out work in regard to PUDOs which would not show in our information request, because the work carried out was only using staff time/costs (which cannot be broken down).<sup>80</sup> This further suggests that PUDOs are contributing to the CABs consumer advocacy work.
- 3.111 We note CCNI asked for the mechanism to be adaptable in the future to “reflect changing market conditions”.<sup>81</sup> In our March 2018 consultation, we stated that adaptability was one of the three guiding criteria we attached significance to in designing the CABs’ funding mechanism. The relevance of PUDOs in the CABs’ work is a trend that is likely to increase, in line with wider parcels work increasing, and in line with a reduced amount of work on the Post Office Ltd (see below), and therefore to relate to parcel services more generally. As such, given that the CABs’ costs associated with ‘Post Offices’ are increasingly having a broader impact on, and benefiting, other parcel operators, we believe it is fair and cost reflective to attribute such costs to all operators and not just Royal Mail, whilst being adaptable in recognising this market change.
- 3.112 In addition, we note that the CABs’ work on the Post Office Ltd is likely to reduce as a proportion of its overall postal work in the short to medium term, as confirmed by Citizens Advice in their written response, with the Post Office Network Transformation Programme (NTP) coming to an end in 2019/20.<sup>82</sup> <sup>83</sup> This is supported by the decrease in the CABs’ overall budget for advocating on behalf of postal consumers in 2018/19, which has fallen by approximately £500,000, and which BEIS has confirmed to Ofcom is attributable in part to the end of the NTP.<sup>84</sup>

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<sup>80</sup> Ofcom, Citizens Advice, CAS and the CCNI information request responses (September 2018). For example, Citizens Advice stated “in 2017/18 significant staff time was spent engaging with PUDO operators to collect commercially sensitive information on the locations of their access points. This activity did not involve any external research spend, but represented a significant resource commitment” and CAS stated “in 2018/19, our work on PUDOs so far has been carried out internally using staff time (i.e. analysing the Scottish results from Citizens Advice’s PUDO mapping project and identifying ‘gaps’ in PUDO provision in the areas affected by parcel delivery surcharges) so we will likely have nothing to record as external spend in the PUDO category this year, but that does not mean that we are not actively working in this area.”

<sup>81</sup> CCNI response to March 2018 Consultation, paragraph 1.6.

<sup>82</sup> The Post Office Network Transformation Programme was a programme designed to modernise the Post Office network, with the aim of maintaining the current Post Office network at or around its current size of 11,500 branches and the long term aim of creating a financially sustainable Post Office network.

<sup>83</sup> Citizens Advice stated in their response: “We note that the unprecedented scale of change under the NTP is chiefly behind the higher level of resource allocated to work on post offices in recent years...as the NTP draws to a close in 2018, Citizens Advice expects to be able to scale back our resource allocation to this specific segment of the market.” (Citizens Advice response to March 2018 Consultation, page 7).

<sup>84</sup> BEIS annual funding letter to Ofcom (re: recovery of consumer advocacy costs), September 2018.

## Our decision

- 3.113 As stated in our March 2018 consultation, Royal Mail will continue to contribute the majority of CABs' fees, due to its strong position in both the letters and parcels market. By extension, it will continue, therefore, to pay most of the CABs' Post Office costs. Citizens Advice recognised and agreed with this analysis in their response.
- 3.114 In addition, as set out above, an increasing proportion of Post Office work is being spent on PUDOs, which provide alternative access points for parcel operators other than Royal Mail, and so relates to the wider postal market. Therefore, attributing such costs to the wider parcels market is in line with cost reflectivity, and is adaptable in reflecting the increasing trend of the CABs' undertaking work that benefits operators other than the Post Office Ltd through its Post Office advocacy work.
- 3.115 Finally, during our meetings with stakeholders, we asked the CABs whether they have any plans to implement a time recording system. We were told that they did not have any plans to do so. Therefore, in the absence of better, more accurate data which would allow us to clearly and accurately allocate costs to individual postal projects, and meet our guiding criteria, alternative methodologies are less feasible and we believe our approach remains justified. Moreover, even if such data was made available, as noted above, Ofcom does not benefit other funding mechanisms on this basis.
- 3.116 For the reasons set out above, we have decided to adopt our consultation proposal and recover the CABs' Post Office costs from all postal operators who are liable to contribute towards the CABs consumer advocacy costs.
- 3.117 We have considered the relevant legal tests discussed in Section 5 and are satisfied that our decision meets them. We also consider this outcome would be consistent with Ofcom's principal duty in section 29 of the Act to secure the provision of the universal postal service and our general duties in section of the Communications Act 2003, in particular to furthering the interests of citizens and consumers.

## 4. Revenue thresholds

### Introduction

4.1 In this Section, we set out the level of relevant turnover after which a relevant postal operator is liable to contribute to the costs of the CABs. We also set out our decision on how to attribute calls costs.

### Minimum revenue threshold for letter services

#### Our March 2018 consultation proposals

4.2 We proposed a threshold for letter services to reduce the risk of a cost contribution to CABs acting as a barrier to entry for new market entrants who provide a relevant letters postal service. We proposed a threshold of £10 million for postal operators providing a relevant letters postal service, on the basis that an operator with less than £10 million annual revenues would be unlikely to be operating on a scale that would impact the work of the CABs.

4.3 We based this on other E2E letter operators generating £6 million revenues in total in 2016-17 and noting that E2E letter operators other than Royal Mail tend to be operating in specific geographic areas only. We proposed that such smaller operators are likely to have limited reach and thus are unlikely to have significant contact with consumers. Therefore, we considered that such smaller operators should not be liable to contribute towards the cost of consumer advocacy.<sup>85</sup>

4.4 We also based our proposed threshold on our analysis of when Whistl was an active E2E letter operator in the market, and we noted that an operator who reached Whistl's scale, by revenue (E2E letter revenues of £15 million in 2013-14 and £36 million in 2014-15) and by letter volumes, was likely to be operating on a scale to have sufficient contact with consumers, and therefore impact the work of the CABs.<sup>86</sup>

#### Stakeholder responses

4.5 Access operators (MCF) and most other respondents who commented on the letters threshold (CAS, DPD) tended to agree with our proposal.<sup>87</sup>

4.6 Whistl commented that the threshold should be set sufficiently high that, in practice, "only Royal Mail bears the costs relating to relevant letters postal services". Whistl noted that going forward, Royal Mail was likely to remain the only E2E letter operator.<sup>88</sup>

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<sup>85</sup> Ofcom, March 2018 Consultation, paragraphs 4.74, 4.76-4.78.

<sup>86</sup> Ofcom, March 2018 Consultation, paragraphs 4.79-4.81.

<sup>87</sup> DPD response to March 2018 Consultation, page 1; MCF response to March 2018 Consultation, page 4; CAS response to March 2018 Consultation, page 3.

<sup>88</sup> Whistl response to March 2018 Consultation, page 2.

- 4.7 Royal Mail disagreed with our proposal, citing that consideration should be given to lower thresholds of either £1 million or £5 million to ensure a broader range of operators contribute. It noted a £1 million threshold would not create any barriers to market entry, and cited inconsistency between how Ofcom concluded its threshold for its own funding mechanism and that of the CABs. Royal Mail argued this would make the charging mechanism fairer, more consistent and predictable. It also suggested returning to the £5 million threshold originally proposed in the July 2017 consultation, citing the benefits of harmonisation with other sectors that Ofcom has funding mechanisms for.<sup>89</sup>
- 4.8 Royal Mail also noted that single piece E2E letter services are substitutable for letter services provided as part of the universal postal service in the geographical areas they are offered, and “as such, users of these services benefit from CAB activities” and thus “it is therefore right that [they] should be taken into account”.<sup>90</sup>

## Our conclusions

- 4.9 We continue to believe that a threshold is necessary to minimise the risk that contributing to CABs’ costs is a barrier to entry for smaller operators. In addition, we do not consider that we should lower the proposed threshold of £10 million. The regulatory impact on small businesses or new entrants to the letters market would be likely to be disproportionate when considering the size of any contribution such an operator would pay towards CABs’ costs. In addition, a lower threshold may mean seeking payments from a larger number of small operators, which would increase Ofcom’s costs in administering the cost recovery scheme.
- 4.10 In relation to Royal Mail’s point that there is an inconsistency in how Ofcom reached the revenues threshold for letter services in its own administrative fee and the recovery of the CABs’ consumer advocacy costs, we note that the two funding mechanisms are fundamentally different in terms of who is liable to pay, in principle, to the respective funding mechanisms, and the basis on which these respective decisions were made.
- 4.11 With our own administrative fees, we capture access operators, which are not captured by the CABs’ cost recovery mechanism. This is because the upstream part of access services is an important part of our work, with competition being one of the key safeguards of the current regulatory framework for post. As explained in the statement on our administrative fees, access services are subject to, and benefit from, our regulation and our work on the letters market.<sup>91</sup> There are also long-established operators already over this threshold. Accordingly, in setting our threshold, we balanced the need not to deter entry with the principles of fairness and cost reflectivity; that is to say, that it is fair and equitable that the larger access operators contribute to our cost mechanism.
- 4.12 In contrast, no such arguments apply to the CABs’ cost recovery mechanism. As stated above, contrary to the recovery of our administrative fees, we do not believe that access

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<sup>89</sup> Royal Mail response to March 2018 Consultation, paragraphs 2.16-2.19.

<sup>90</sup> Royal Mail response to March 2018 Consultation, paragraphs 2.2, 2.15.

<sup>91</sup> See paragraphs 3.35-3.37 of our March 2018 Statement.

services materially drive or influence the work of the CABs. Currently, there is very little E2E competition in letters: while access operators, by revenue, made up c.4% of the market in 2017/18, other (i.e. non-Royal Mail) single piece E2E operators made up 0.07% of the market by revenue in the same period.<sup>92</sup> In addition, while competition brings benefits to consumers in terms of better choices, higher quality, and lower prices, there is little prospect of E2E competition emerging in the short term. Therefore, on balance, we consider that it is more important to ensure there are no barriers to entry for E2E letter operators than to be consistent with the threshold for a different cost recovery mechanism.

- 4.13 In regard to Royal Mail’s point regarding the substitutability of letter services provided as part of the universal service with single piece E2E letter services in geographic areas, we note that such services are both small in scale, and more than likely highly localised. Therefore, we do not believe they reach sufficient scale to impact significantly upon the work of the CABs.
- 4.14 In making this decision, we have considered the impact on potentially liable relevant postal operators and consider the impact to be small. This is because the CABs’ overall non-calls costs (as detailed in the next Section) are small and have been reducing over the last few years (from £3.3 million in 2016/17 to a budgeted £1.7 million for 2018/19).<sup>93</sup> Moreover, the charging mechanism for non-calls costs works means that a relevant postal operator only contributes according to the proportion of the total relevant turnover, and therefore any future E2E letter operators who enter the market will initially face small contributions when first exceeding a relevant turnover of £10 million. Moreover, Royal Mail is likely to remain the only E2E liable postal operator offering a relevant letters postal service in the immediate future, meaning we consider our decision to have a minimal impact on other E2E operators.
- 4.15 We have therefore decided to adopt our proposal in the March 2018 consultation, so that only a postal operator whose turnover from providing relevant letters postal services exceeds the threshold of £10 million in the assessment year<sup>94</sup> is liable to make contributions to Ofcom for the CAB’s non-calls costs. We have reached that decision having particular regard to our guiding criteria of cost-reflectiveness, adaptability and fairness and equity. Thus, our modifications to CP1 (see Annex 1) capture that £10 million threshold under CP 1.2.1. We have considered the relevant legal tests discussed in Section 5, and are satisfied that our decision meets them. We also consider this outcome would be consistent with Ofcom’s principal duty in section 29 of the Act to secure the provision of the universal postal service and our general duties in section of the Communications Act 2003, in particular to furthering the interests of citizens and consumers.

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<sup>92</sup> Ofcom, AMR 2018, Figure 3.4.

<sup>93</sup> See Figure 6.1 in Section 6.

<sup>94</sup> i.e. the ‘relevant year’ minus two years, beginning on 1 April. For example, for the first relevant year beginning on 1 April 2019 from which our modified CP1 will apply, it is necessary for a postal operator to consider whether it had a turnover from providing relevant letters postal services in the period beginning on 1 April 2017 and ending on 31 March 2018 (i.e. the assessment year for that relevant year) that exceeded £10 million.

## Minimum revenue threshold for parcel services

### Our March 2018 consultation proposals

- 4.16 As a consequence of our proposal to bring parcel services into scope, we also proposed to set a revenue threshold for parcel services. This was because, similarly to the letters market, we were concerned about reducing the risk of a contribution to CABs' non-calls costs acting as a barrier to entry to new market entrants.<sup>95</sup> However, we also considered the parcels market to be significantly different to the letters market, and therefore proposed a higher minimum threshold for parcel revenues than for letter revenues, to determine which operators should be liable to contribute to the CABs' non-calls costs.<sup>96</sup>
- 4.17 In line with our criteria of cost reflectivity and fairness and equity, we considered that the largest operators are likely to have greater interaction with consumers, and therefore are more likely to impact the work of the CABs.<sup>97</sup>
- 4.18 Using data from our monitoring programme, we proposed that those operators who have a greater than 5% share of the market by revenue are most likely to influence the work of the CABs, based on the view that in order for an operator to generate such revenues, it has to be delivering sufficient volumes to come into contact with consumers, and thus impact the work of the CABs. We noted that operators with revenues in excess of £350 million per annum occupied a market share by revenue of 5% or greater, with operators with less than £350 million unlikely to have significant consumer interaction and thus unlikely to influence CABs' work. Many of the operators with 5% market share or less are more active in the B2B segment (rather than B2C or Consumer-to-anywhere ("C2X")), which we stated is of little or no relevance to consumers or the work of the CABs.<sup>98</sup>

### Stakeholder responses

- 4.19 This area attracted a significant amount of comment from stakeholders, with mixed views on our approach to the proposed threshold.
- 4.20 DPD noted that using turnover penalises high end operators who provide value-added services, and suggested using parcel volumes was fairer and more appropriate. DPD also stated that as it mainly provides bulk parcel services to businesses, and that as these businesses are unlikely to use the CABs, only single piece E2E parcel volumes should be considered for the cost recovery mechanism.<sup>99</sup>

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<sup>95</sup> Ofcom, March 2018 Consultation, paragraph 4.74.

<sup>96</sup> Ofcom, March 2018 Consultation, paragraphs 4.82-4.84.

<sup>97</sup> Ofcom, March 2018 Consultation, paragraph 4.86.

<sup>98</sup> Ofcom, March 2018 Consultation, paragraphs 4.82-4.91.

<sup>99</sup> DPD response to March 2018 Consultation, page 1.

- 4.21 CAS agreed with our analysis that the letters market and parcels market were different, noting “the parcels market generates considerably more revenues than the letters market” so it was appropriate for the parcels threshold to be higher.<sup>100</sup>
- 4.22 AICES and DPD believed that B2B parcel operators should be excluded from the cost recovery mechanism as a matter of principle. AICES noted that, while the proposed threshold excluded its members, our reasoning was flawed because it was the only basis by which operators offering a B2B service were excluded.<sup>101</sup> AICES subsequently clarified in a meeting that it thought B2B operators should be out of scope completely, and as a second order point, the threshold was too low.<sup>102</sup> AICES also argued that Ofcom was inconsistent in its treatment of B2B relationships, pointing out that it excluded mandated access services from the recovery of consumer advocacy costs on the basis of it being a B2B service.<sup>103</sup>
- 4.23 Furthermore, DPD stated that smaller operators are less likely to have robust customer service procedures in place and therefore will generate more CAB queries. DPD concluded that the appropriate threshold should be lowered to £10 million so that it is set at a consistent level compared with the level set for the letters market.<sup>104</sup>
- 4.24 Hermes agreed with our view that parcel operators of a certain size should be required to support and fund the CABs’ work, but Hermes did not comment on the level of the threshold.<sup>105</sup> Citizens Advice stated they work on behalf of all consumers, not just consumers dealing with larger operators, but agreed with our analysis that larger operators are more likely to interact with consumers, stating “it is intuitive that postal operators with larger revenues will engage with a wider range of consumers, and are therefore more likely to contribute to consumer issues in the market”.<sup>106</sup>
- 4.25 Royal Mail disagreed with our proposed level of the threshold, stating that consumer advocacy should be recovered at a level consistent with the largest 14 operators from whom Ofcom currently collect data. Separately, Royal Mail commented that collecting revenues from the largest providers introduced a new guiding criterion of “largest providers”, which it considered inconsistent with Ofcom’s recovery of its own fees. Royal Mail considered that using Ofcom’s Average Revenue Per Unit (ARPU) for letters and parcels, and Ofcom’s £10 million threshold for letters, the threshold for parcels should be set at £100 million.<sup>107</sup>
- 4.26 The MCF agreed with our proposed threshold,<sup>108</sup> whilst Whistl had “no particular reason to disagree with the proposal that it be set at £350 million”.<sup>109</sup>

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<sup>100</sup> CAS response to March 2018 Consultation, page 5.

<sup>101</sup> AICES response to March 2018 Consultation, page 2; DPD response to March 2018 Consultation, page 1.

<sup>102</sup> AICES meeting with Ofcom, June 2018.

<sup>103</sup> AICES response to March 2018 Consultation, page 2.

<sup>104</sup> DPD response to March 2018 Consultation, page 1.

<sup>105</sup> Hermes response to March 2018 Consultation, page 1.

<sup>106</sup> Citizens Advice response to March 2018 Consultation, page 6.

<sup>107</sup> Royal Mail response to March 2018 Consultation, paragraphs 2.21-2.25.

<sup>108</sup> MCF response to March 2018 Consultation, page 4.

<sup>109</sup> Whistl response to March 2018 Consultation, page 2.

- 4.27 Whistl sought clarification that revenues from Royal Mail’s access parcels were included, and revenues from upstream or broker services were excluded.<sup>110</sup>
- 4.28 Separately, Whistl suggested that we should use fines from our investigation work to fund consumer advocacy.<sup>111</sup>

## Our conclusions

### On the need for a threshold for relevant parcels postal services

- 4.29 We have not received further evidence that would lead us to change our view that a threshold is needed. We remain of the view that setting a threshold would avoid the risk of imposing a barrier to new entrants,<sup>112</sup> and that a threshold is needed to ensure the cost recovery mechanism is simple, transparent and reasonably practicable for Ofcom to administer.
- 4.30 We recognise that the CABs’ work may relate to all parcel operators. In this statement, we are not seeking to comment about the work that the CABs should carry out in relation to the parcels market, as this would be outside of our remit. Rather, we are reaching conclusions as to which parcel operators should be liable to contribute to the CABs’ non-calls costs for the purpose of recovering such costs on behalf of the Secretary of State.

### On the exclusion of B2B parcel operators

- 4.31 We agree with AICES and DPD that, in principle, our cost recovery mechanism should not include B2B parcel services turnover. However, in practice it is not possible to isolate such services, but by setting the threshold at £350 million this is likely to exclude operators who are only, or are predominantly, focused on this segment of the market.
- 4.32 As confirmed by industry in correspondence with Ofcom when we amended our definitions of single piece and bulk parcel products in September 2016, for the purposes of our monitoring work on the postal sector,<sup>113</sup> some industry representatives have told us that they are unable to provide an accurate split of the data to allow us to differentiate between B2B and C2X/B2C revenues, because several of the larger parcel operators do not distinguish between consumer and business services and all of their parcel services are available to anyone.<sup>114</sup> This means ‘relevant revenue’ would not be sufficiently measurable,

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<sup>110</sup> Whistl response to March 2018 Consultation, pages 2-3.

<sup>111</sup> Whistl response to March 2018 Consultation, page 1.

<sup>112</sup> We explained in paragraph 4.75 of our March 2018 Consultation that, by introducing thresholds, we are also seeking to ensure that the regulatory outcome (and any apportionment of the CABs’ non-calls costs) is appropriate to furthering the interests of citizens and consumers, where appropriate by promoting competition, in accordance with our general duties under section 3 of the Communications Act 2003.

<sup>113</sup> On 29 September 2016, Ofcom emailed 14 parcel operators from whom we collected data, for our monitoring programme, providing clarification on our definition of single piece and bulk parcels, and asking parcel operators whether, in light of these amended definitions, parcel operators needed to amend their recent information request response.

<sup>114</sup> For instance, [X], while [Y]. Moreover, due to the range of parcel products on offer from different parcel operators, it was not clear which products would clearly fit into a single piece or bulk parcels categorisation - [Z], while we understood from dialogue with [X] that this required a level of judgement from ourselves and was subjective – therefore, it could not be done accurately and consistently.

therefore such a charging mechanism would fail to meet the guiding criteria of reliability and verifiability.

- 4.33 Furthermore, in setting the parcels threshold, we have looked at the revenue market share for the parcels market, and observe that parcel operators who predominantly provide B2B parcel services are more likely to have 5% market share (by revenue) or less. This market share roughly corresponds to a £350 million threshold. In setting the threshold at £350 million, we therefore aim to exclude parcel operators who predominantly provide B2B parcel services to ensure they are not liable to contribute towards the CABs' non-calls costs. Conversely, we noted that parcel operators who had a revenue share of more than 5% are generally more active in the B2C or C2X parcels market, which are areas that CABs told us materially drive and impact their work.

### The level of the parcels threshold

- 4.34 Stakeholders raised a couple of arguments in favour of lowering the threshold. We respond to those in turn below but, as a general point, we have sought to balance the need to capture those operators likely to impact significantly the work of the CABs with the need to remain proportionate towards both smaller and larger operators and in operating a cost-effective cost recovery mechanism. We believe that our proposed threshold does this by capturing most of the parcels market while limiting the number of parcel operators liable to contribute.
- 4.35 DPD proposed that the threshold should be set considerably lower at £10 million to capture a greater number of smaller providers, because smaller operators generate a higher proportion of complaints. We have received no evidence to suggest that this is the case, and as stated above, complaints do not solely drive the CAB's postal work.<sup>115</sup> Furthermore, complaint handling in itself is a small percentage of CABs work. Finally, as stated in relation to smaller letter operators above, smaller operators are likely to be operating on a smaller, more geographically limited basis, suggesting the volume of its interactions with consumers would remain limited. Therefore, they are less likely to impact the work of the CABs to a material extent.
- 4.36 We do not agree with Royal Mail that the threshold should be lowered to £100 million. Firstly, as we stated in our March 2018 consultation,<sup>116</sup> the parcels market and the letters market are very different. Therefore, reaching a threshold simply based on a calculation and comparison metrics between the two does not automatically lead to a threshold level that is appropriate.
- 4.37 Secondly, we do not support Royal Mail's argument that our reasoning has introduced a new guiding criterion of 'largest providers' as such. Our guiding criteria have remained the same since our first consultation in July 2017. However, in taking those criteria into account, we accept that the size of an operator might affect its likely interaction with consumers and is thus likely to have a greater impact on the CABs' non-calls costs –

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<sup>115</sup> See paragraph 3.71 above.

<sup>116</sup> See paragraphs 4.82-4.83 of our March 2018 Consultation.

Citizens Advice agreed with our assessment, saying it was “*intuitive*” that the largest operators are likely to generate the most amount of work for the CABs.

- 4.38 Finally, we do not agree with Royal Mail’s suggestion that we should set the parcels threshold in line with the 14 largest parcel operators we currently collect data from. This is because, if we were to do so, this threshold would have the effect of capturing parcel operators who predominantly provide B2B parcel services. As explained above, we remain of the view that such B2B parcel operators are of little or no relevance to materially driving the work of the CABs, and therefore would fail our guiding criteria of cost reflectivity and fairness and equity.

#### Using parcel volumes as opposed to parcel revenues

- 4.39 In regard to DPD’s point about using parcel volumes, we have chosen to use parcel revenues as the threshold because we believe using parcel volumes would also represent a departure from how Ofcom’s other funding mechanisms works, which use revenue, thus failing the criterion of harmonisation. It would also make the funding mechanism more susceptible to volatility year-on-year (due to the greater volatility between parcel operators volumes year-on-year compared to parcel revenues), and therefore fail our guiding criteria of reliability and adaptability. Therefore, we believe using parcel revenues satisfies a greater range of our guiding criteria. In response to DPD’s comment about its own business mainly offering bulk mail parcels to businesses, we agree that the senders (businesses) are unlikely to impact the work of the CABs, due to existing SLGs/SLAs. However, the recipients of these bulk parcels are likely to be consumers, which are likely to have some impact on the work of the CABs.

#### Access mail parcel revenues and using Ofcom’s fines to fund consumer advocacy

- 4.40 In regard to Whistl’s clarification about Royal Mail including access mail parcels, we agree that revenues for Royal Mail’s access mail parcels - provided they meet the definition of a ‘relevant parcel’ - fall within the definition of a ‘relevant parcels postal service’. As such, we did not propose to exclude such parcels in our March 2018 consultation. Royal Mail’s access mail parcels have the same relationship with consumers (B2C) as Royal Mail’s (mandated) access mail services and Royal Mail’s retail bulk mail services, which for reasons stated in the previous section, should be liable to contribute towards the CABs’ non-calls costs.
- 4.41 In regard to Whistl’s argument about using competition fines to fund consumer advocacy, as already explained in our March 2018 consultation<sup>117</sup> (albeit with regard to the recovery of our own administrative costs), Ofcom cannot use the proceeds of penalties to fund its activities and any charging mechanisms for other bodies (such as the CABs’ costs that we recover on behalf of BEIS). We are required to pass the proceeds from any financial

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<sup>117</sup> See paragraphs 3.61-3.62 of our March 2018 Statement.

penalties that Ofcom imposes directly to HM Government.<sup>118</sup> Therefore, it would require a change to primary legislation for Ofcom to be able to use the proceeds of penalties to fund the CABs' costs as suggested by Whistl.

### Our decision

- 4.42 We remain of the view that the largest parcel operators are more likely to impact the work of the CABs more significantly than smaller parcel operators. Therefore, in setting the parcel revenue threshold, we have sought to ensure that only the largest parcels operators contribute. In setting the threshold at £350 million, we are capturing most of the parcels market ([3%] by revenue and most of the parcels market [3%] by volume).<sup>119</sup>
- 4.43 We also remain of the view that, in order to exclude operators predominantly providing B2B parcel services from the liability to contribute to the CABs' non-calls costs (on the basis that they are unlikely to impact the work of the CABs, and so on the grounds of fairness and equity and cost reflectivity, they should not be liable to contribute to the CABs' non-calls costs), we need to find a way which is administratively practicable to Ofcom, and which also meets our guiding criteria of simplicity, transparency and verifiability. We have concluded that a threshold which only captures those parcel operators with a greater revenue than 5% market share by revenue achieves those objectives.
- 4.44 In that regard, we note that data from our residential consumer tracker survey shows that consumers use a range of parcel operators for sending and receiving parcels. Our latest tracker data also shows a reasonably strong correlation between the parcel operators whose services consumers told us they use most frequently, both as senders and receivers, and those operators with a revenue share of [3%] or more. In particular, when consumers were asked which of the companies listed in the survey they had encountered in having a letter, parcel or packet delivered to them, the [3%] highest rated parcel operators cited by consumers correlate strongly with the largest parcel operators likely to be in scope of our £350 million threshold.<sup>120</sup>
- 4.45 In our March 2018 consultation, we noted that our proposed threshold of £350 million would ensure that only the largest operators would be required to contribute towards the CABs' non-calls costs. Our latest parcels data for 2017-18 continues to show that those

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<sup>118</sup> Section 400(2) of the Communications Act 2003 provides that, where Ofcom receives an amount to which section 400 applies, it must be paid into the appropriate Consolidated Fund. Section 400(1) of that Act sets out the amounts to which section 400 applies, including "(i) an amount paid to OFCOM in respect of a penalty imposed by them under Part 3 of the Postal Services Act 2011."

<sup>119</sup> Moreover, we note that in the 2015-16 and 2016-17, our threshold of £350 million captures a similar proportion of the market by revenue [3%] and by volume [3%].

<sup>120</sup> Ofcom, Residential Postal Tracker Q3 2017 to Q2 2018, September 2018, *Q12\_2: Which, if any, of these companies have you encountered because they delivered a packet, parcel or letter to you?*, Base: All respondents Q3 2017-Q2 2018 (n= 5,836), [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0034/118996/-tables.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0034/118996/-tables.pdf).

parcel operators will be captured by our £350 million threshold.<sup>121</sup> Therefore, in addition to our guiding criteria of cost-reflectiveness and fairness and equity, we are also satisfied that this threshold takes account of our reliability and adaptability criterion.

- 4.46 The impact on relevant postal operators of our decision on the level of the parcels threshold is, we believe, likely to be limited. This is because the CABs' overall non-calls costs (as detailed in the next Section) are small compared with the proposed relevant turnover and have in fact reduced over the last few years (from £3.3 million in 2016/17 to a budgeted £1.7 million for 2018/19).<sup>122</sup> Moreover, any contribution a relevant postal operator is liable to pay is proportionate to their share of relevant turnover, and as such, smaller relevant parcels postal operators who have revenues in excess of £350 million would only be required to pay a small part towards consumer advocacy costs.
- 4.47 We have therefore decided to adopt our proposal in the 2018 March consultation, so that only a postal operator whose turnover from providing relevant parcels postal services exceeds the threshold of £350 million in the assessment year<sup>123</sup> is liable to make contributions to Ofcom for the CAB's non-calls costs. We have reached that decision having particular regard to our guiding criteria of cost-reflectiveness, fairness and equity and adaptability. Thus, our modifications to CP1 (see Annex 1) capture that £350 million threshold under CP 1.2.1. We have considered the relevant legal tests discussed in Section 5, and are satisfied that our decision meets them. We also consider this outcome would be consistent with Ofcom's principal duty in section 29 of the Act to secure the provision of the universal postal service and our general duties in section of the Communications Act 2003, in particular to furthering the interests of citizens and consumers.

## Calls costs

- 4.48 As explained in Section 2 of this statement and in our March 2018 consultation, the CABs also incur costs in dealing with calls to their consumer helplines, which form a minority of the CABs total consumer advocacy costs on post.
- 4.49 As explained in both our July 2017 and March 2018 consultations, these calls costs are recovered on a different basis from non-calls costs. Each year, the Secretary of State provides Ofcom with (a) the projected calls costs for the CABs; and (b) the number of calls to the consumer advice service broken down by relevant company. Ofcom uses this

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<sup>121</sup> We collect this data for the purposes of our monitoring regime on Royal Mail; however, such data is commercially confidential and is not published. Our most recent data, for 2017-18 continues to show that [X] continue to be caught by the £350 million threshold, with the lowest of these operators, [X].

<sup>122</sup> See Figure 6.1 in Section 6.

<sup>123</sup> i.e. the 'relevant year' minus two years, beginning on 1 April. For example, for the first relevant year beginning on 1 April 2019 from which our modified CP1 will apply, it is necessary for a postal operator to consider whether it had a turnover from providing relevant parcels postal services in the period beginning on 1 April 2017 and ending on 31 March 2018 (i.e. the assessment year for that relevant year) that exceeded £350 million.

information to calculate whether a postal operator should make a payment to recover the costs of calls to CAB helplines and, if so, the amount of that payment.<sup>124</sup>

- 4.50 In our March 2018 consultation, we noted that no stakeholder disagreed with our proposals in our July 2017 consultation to recover calls costs on the same basis that we do now but to broaden the scope of operators who are liable to meet such costs, from any ‘regulated postal operator’, to any postal operator providing a ‘relevant letters postal service’ or ‘relevant parcels postal service’.<sup>125</sup> We continued to propose that there should be a threshold based on the costs to CABs of answering the calls relating to a specific operator of £100 per annum, before such an operator start contributing to calls costs.
- 4.51 Again, we received no stakeholder responses to our March 2018 consultation on our proposals in that regard.
- 4.52 We continue to believe that there should be a threshold for contributions to ensure that payment of charges in relation to the CABs’ calls costs do not act as a barrier to entry to the postal services market and to ensure the cost recovery mechanism is not inefficient for Ofcom to administer. We aim to ensure that the costs to Ofcom of recovering costs from postal operators that do not generate many calls remain proportionate (e.g. if it costs Ofcom £100 to recover calls costs of £20 from an operator, it could be considered administratively inefficient to recover said costs). We also believe that it is fair that, once the threshold has been applied, the costs of the consumer advice service should be borne by those postal operators that generate the calls.
- 4.53 We have therefore decided to adopt our proposal in the March 2018 consultation, so that postal operators providing either ‘relevant letters postal services’ or ‘relevant parcels postal services’ will, in principle, be required to contribute towards the CABs’ calls costs, if they exceed the minimum threshold for calls costs of £100. In other words, the thresholds of £10 million (for letters) and £350 million (for parcels) do not apply in relation to calls costs, but instead the calls costs threshold of £100 applies.
- 4.54 In making this decision, we have considered the impact on liable relevant postal operators, and consider the impact to be small, because of the low total amount of calls costs (c.£12,000 a year in total) and the fact that an operators contribution to calls costs is proportionate to the amount of calls that have been generated as a result of their actions. Moreover, based on data from BEIS on previous years in relation to licenced postal operators,<sup>126</sup> only Royal Mail, in practice, is likely to exceed the calls cost threshold, and in future charging years, Royal Mail is likely to make up the majority of the calls costs.

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<sup>124</sup> Firstly, Ofcom multiplies the projected calls costs by the regulated postal operator’s share of calls related to the regulated postal operator expressed as a percentage of the total calls relating to regulated postal operators. If this calculation gives a result of greater than £100, the regulated postal operator is required to contribute to calls costs. Ofcom then multiplies the projected calls costs by the share of the regulated postal operator’s share of calls expressed as a percentage of the total calls relating to regulated postal operators. This then results in the charge that the relevant postal operator must pay in relation to the CABs’ calls costs.

<sup>125</sup> Ofcom, March 2018 Consultation, paragraph 4.72.

<sup>126</sup> Email from BEIS to Ofcom (re: postal contacts since 2014-15), 5 November 2018.

- 4.55 We have reached this decision having particular regard to our guiding criteria of cost-reflectiveness, adaptability and fairness and equity. Thus, our modifications to CP1 (see Annex 1) capture that £100 threshold under CP 1.2.1. We have considered the relevant legal tests discussed in Section 5 and are satisfied that our decision meets them. We also consider this outcome would be consistent with Ofcom’s principal duty in section 29 of the Act to secure the provision of the universal postal service and our general duties in section of the Communications Act 2003, in particular to furthering the interests of citizens and consumers.

## 5. Legal tests, impact assessment and equality impact assessment

### Our March 2018 consultation

- 5.1 When proposing new or modified regulatory conditions such as those amendments set out in the March 2018 consultation, we consider whether they satisfy the relevant tests set out in paragraph 1 of Schedule 6 to the Act; namely, that our modifications to CP1:
- a) are objectively justifiable;
  - b) do not unduly discriminate against a particular person of a particular description of persons;
  - c) are proportionate; and
  - d) are transparent in relation to what they are intended to achieve.
- 5.2 We explained in Section 4 of the March 2018 consultation our reasons why we were satisfied that our proposals met those legal tests.

### Stakeholder comments

- 5.3 In response to our March 2018 consultation, AICES stated that, in relation to the legal tests, our proposals were not objectively justifiable by including services provided by AICES members, that they were not transparent because our proposals relied on commercially confidential information, and that they were not proportionate because they bore no relation to the primary purpose of the legislation.<sup>127</sup>

### Our decision

- 5.4 We disagree with AICES's submission that our proposals do not meet our legal tests. Whilst we cannot reveal commercially confidential information, we believe that:
- a) our March 2018 consultation contained enough information and reasoning to enable stakeholders, including AICES, to consider our proposals intelligently regarding the parcels threshold; in any event, the transparency test in the Act concerns the transparency of our modifications to CP1 and we maintain that they are transparent for reasons set out in paragraph 5.6(d) below; and
  - b) our decision does relate to the primary purpose of the legislation, which is for Ofcom to find an appropriate way to determine who should be liable to contribute to the CABs' costs and to collect this money on behalf of BEIS. We also explain below why we consider our decision is objectively justifiable and proportionate.

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<sup>127</sup> AICES response to March 2018 Consultation, page 2.

5.5 In regard to AICES’s comment that our proposals were not objectively justifiable because we included services provided by AICES members, as explained above, we have been informed by industry that they are unable to provide an accurate and reliable split of the parcels data we request. Thus, to ensure we meet our guiding criteria of verifiability and reliability (of having accurate data), whilst recognising the argument for AICES members to be excluded from liability to contribute towards CABs’ costs (as B2B services are unlikely to materially drive the work of the CABs’), we can only exclude such services in practice through the level of the parcels threshold. The charging mechanism is set up to mitigate the risk of businesses, whose predominant income streams relate to B2B parcel services, being liable to pay. AICES acknowledges the limited scale of this risk in its comments about members not being caught by the charging mechanism when it is initiated in April 2019.<sup>128</sup>

## Our conclusions on the legal tests for modifying CP1

- 5.6 We summarise below the way in which we consider that our modifications to CP1 satisfy those tests.
- a) **Objectively justifiable** - we believe that our changes to the scope of CP1 are objectively justifiable because they recover the costs of the CABs in a way that is reasonably practicable, simple and efficient for us to administer. We will also use data we already hold and will continue to capture for purposes of our monitoring regime on post as well as requesting further verification from operators, and so the information will be immediately verifiable for a minimum burden on postal operators. The changes also balance the need for a practical implementation of the cost recovery mechanism with the need to ensure the mechanism is, in particular, fair and equitable, adaptable and cost-reflective.
  - b) **Not unduly discriminatory** - we believe that our changes to CP1 are not unduly discriminatory because they will ensure that our regulation is targeted at those postal operators that we consider provide services of a particular kind that are, or could, materially influence and drive the CABs’ workload and therefore their costs.
  - c) **Proportionate** - we believe that our changes to CP1 are proportionate because they only impose requirements that we consider are appropriate and necessary to meet our above-mentioned objective justification, without imposing an undue burden on those relevant postal operators which are subject to obligations under CP1.
  - d) **Transparent** - we consider that our changes to the scope of CP1 are transparent because CP1 clearly establishes which postal operators are within its scope. Further, we believe that CP1 clearly sets out the obligations imposed upon those operators, i.e. to make payments to Ofcom in order for us to recover the relevant costs of the CABs within the timescales specified in CP1.
- 5.7 For reasons already explained throughout this statement, in modifying CP1 and in assessing the impact of our modifications overall we also have considered and acted in

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<sup>128</sup> AICES response to March 2018 consultation, page 2.

accordance with our principal duty in section 29 of the Act and our general duties in section 3 of the Communications Act 2003.

## Impact assessment

- 5.8 The analysis and our decisions to modify CP1 presented throughout this statement represents an impact assessment, as defined in section 7 of the Communications Act 2003.
- 5.9 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Communications Act 2003, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom’s activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see our guidelines entitled ‘Better Policy Making: Ofcom’s approach to Impact Assessment’, which are available on our website.<sup>129</sup>

## Equality Impact Assessment (EIA)

- 5.10 Ofcom is separately required by statute to assess the potential impact of all our functions, policies, projects and practices on equality.<sup>130</sup> Equality Impact Assessments (“EIAs”) also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.
- 5.11 We have considered whether our decisions to modify CP1 for the recovery of the CABs’ costs would have an adverse impact on promoting equality. We have looked at whether those decisions would have a different or adverse effect on UK consumers and citizens in the following equality groups: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation, and, in Northern Ireland, political opinion and persons with dependents.
- 5.12 We do not expect any of the equality groups listed above to be negatively affected by those decisions to a material extent. Looking at the impact in Northern Ireland, we anticipate that our decisions will not have a differential impact in Northern Ireland compared to consumers in general. Accordingly, we have not carried out separate EIAs in relation to the additional equality groups in Northern Ireland: religious belief, political opinion and dependents.

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<sup>129</sup> Ofcom, *Better Policy Making – Ofcom’s approach to impact assessment*, 21 July 2005, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0026/57194/better\\_policy\\_making.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0026/57194/better_policy_making.pdf)

<sup>130</sup> Ofcom has a general duty under the 2010 Equality Act to have due regard to the need to eliminate discrimination, advance equality of opportunity between those who share a relevant ‘protected characteristic’ (age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation) and those who do not, and to foster good relations between persons who share a relevant protected characteristic and those who do not.

## 6. Next steps and practical implementation

### The effective date of our modifications to CP1

- 6.1 As explained in our statutory notification accompanying our modifications to CP1 (see Annex A1), these modifications shall take effect from 1 April 2019, that is to say for the ‘relevant year’ (as defined in the modified CP1) beginning on 1 April 2019. For the avoidance of doubt, until those modifications take effect, CP1 will continue to have effect as it has currently.
- 6.2 This effective date means that:
- for non-calls costs, ‘relevant postal operators’ meeting the respective thresholds in CP 1.2.1(a) and (b) will be required to pay to Ofcom in any relevant year, starting from the year beginning on 1 April 2019, a proportion of their turnover as calculated by Ofcom in relation to turnover in the ‘assessment year’. In other words, for the first relevant year beginning on 1 April 2019, it is necessary for such a relevant postal operator to contribute in proportion to its relevant turnover relating to the period beginning on 1 April 2017 and ending on 31 March 2018; and
  - for calls costs, ‘relevant postal operators’ meeting the calls costs threshold of £100 under CP 1.2.1(c) will be required to pay to Ofcom in any relevant year beginning on 1 April 2019 such proportions as calculated by Ofcom in relation to that year.
- 6.3 As explained in CP 1.2.8, the amounts due will become payable on 30 June in each relevant year or, if Ofcom invoices relevant postal operators later than mid-year for any reason, the amounts due will become payable on the expiry of one month from the day on which Ofcom serves notice on the relevant postal operator of such amount.

### Relevant postal operators’ duty to provide information to Ofcom

- 6.4 With regards to the recovery of non-calls costs, we will annually collect the information required for the purposes of calculating the amounts due under CP1 through our use of information-gathering powers under Schedule 8 to the Act. Under those powers, we may demand information from various types of persons, including a person who is (or has been) a postal operator or any other person who appears to Ofcom to have information that we require for the purpose of carrying out any of our functions in relation to postal services.
- 6.5 Currently, as part of our postal services monitoring programme, we issue annual information requests to the 14 largest parcel operators, and quarterly information requests to the largest (i.e. those who handle over 2 million letters and large letters a year)

- letter operators.<sup>131</sup> We also obtain equivalent information from the universal service provider (i.e. Royal Mail) from the regulatory accounts it is required to submit to Ofcom.
- 6.6 We intend to supplement our annual monitoring information requests so that we also request the information we need for purposes of applying CP1. Specifically, we envisage issuing an information request to relevant postal operators (which we will determine through our current information requests stated in paragraph 6.5) in advance of any invoicing process for the first charging year. This will give relevant postal operators the opportunity to consider the guidance set out in Annex 2 when providing the requisite information.
- 6.7 In future years, to minimise the administrative burden on stakeholders, we intend to try to streamline and align this information gathering process with our current annual information requests to parcel operators (as referred to in paragraph 6.5 above).
- 6.8 We intend to issue information requests to relevant postal operators in early 2019, which will be used to determine an operators' contribution to the CABs' non-calls costs. We then expect to be in a position to issue invoices to relevant postal operators in mid-2019. We expect these timings to remain stable every year after the first charging year (i.e. 1 April 2019 to 31 March 2020), however these are subject to change depending on when we receive information ourselves. We will endeavour to keep stakeholders aware of any delays. It is important to note, however, that if Ofcom has doubts about the accuracy of a relevant postal operators' information request response, then Ofcom are likely to engage further with the relevant postal operator concerned.
- 6.9 We emphasise that it is very important for recipients of our formal information requests to respond accurately and on time (i.e. by the deadline specified in our request). This is because a person required by Ofcom to provide such information is under a statutory duty to provide it in such manner and within such reasonable period as may be specified by Ofcom (see paragraph 4(1) of Schedule 8). If the person to whom our demand for information does not ensure that its response is on time, complete and accurate, then potential serious consequences could follow. In particular, we note that any failure to comply with our demand may result in us taking enforcement action to impose (among other things) a penalty of up to £50,000. Such action could also, in certain circumstances, result in Ofcom restricting or suspending operators' entitlement to provide postal services. Any offences under Part 2 of Schedule 8 of failing to provide the requested information or of providing false information may also be prosecuted.
- 6.10 For the recovery of calls costs, the CABs will continue to inform BEIS of calls costs incurred for each of the relevant postal operators in a given (completed) financial year. From our engagement with the CABs, we understand that the CABs may have to make some changes

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<sup>131</sup> From our current data, we can see that if a letter operator is below 2 million items a year, they are unlikely to have revenues above our £10 million threshold for a relevant letters postal service, and likewise, if a parcel operator is not one of the 14 largest operators from whom we currently collect data, they are unlikely to have revenues above £350 million for a relevant parcels postal service.

to how they currently record calls costs. However, we will not be issuing any information requests to relevant postal operators regarding determining calls costs.

## How does Ofcom’s cost recovery mechanism for the CABs’ costs work in practice?

6.11 To illustrate how our decision works in practice, and in order to help relevant postal operators understand the funding mechanism, we set out below a hypothetical example of how consumer advocacy costs will be recovered for illustrative purposes. As stated above, the CABs’ incur two types of costs – calls costs and non-calls costs. We set out the amounts of these in recent years in Figure 6.1 below to help stakeholders understand their costs.

**Figure 6.1 - CAB costs, for call and non-calls costs, 2014/15 to 2018/19**

CAB costs	Call costs	Non-calls costs
2014/15	£13,200	£3,029,000
2015/16	£12,800	£3,044,000
2016/17	£11,500	£3,308,000
2017/18	£10,400	£2,318,900
2018/19 (budgeted)	£13,600	£1,749,500

Source: Ofcom analysis, BEIS letters to Ofcom on recovering of costs on consumer advocacy on post (dated 2014 to 2018). These figures have been adjusted to reflect actual costs incurred by the CABs.

### Non-calls costs

6.12 There are two types of postal services which we propose to include in the recovery of non-calls costs. They are relevant letters postal services and relevant parcels postal services. In summary, once the thresholds have been used to identify relevant postal operators, relevant turnover will be used to identify the overall market contributions from those parties and the relative size of each party compared to other contributors to the CABs fees.

6.13 Say that total revenues from relevant letters postal services in a given year were £1 billion, and that only one postal operator generated letter revenues in excess of £10 million and therefore met the threshold to contribute. In addition, say also that total revenues from relevant parcels postal services were £1.5 billion in a given year, but that several postal operators generated parcel revenues in excess of £350 million and therefore met the threshold to contribute. Total relevant revenues are the sum of total letters revenues and total parcels relevant revenues (£2.5 billion in this example).

6.14 Say also that in the relevant charging year, the CABs’ consumer advocacy budget for postal services was £2 million. Under the decision as set out in this document, a postal operator with relevant turnover of £600 million in the assessment year would account for 24% of total relevant revenues (i.e. 24% of £2.5 billion). A postal operator with relevant revenue of £600 million would therefore pay £480,000 towards the forecasted costs of consumer

advocacy in the relevant charging year – 24% of the costs incurred by the CABs in relation to postal services, with other operators bearing the remaining costs in proportion to their relevant turnover.

6.15 The sum owed by relevant postal operators will be split according to those operators’ relative market size. As such, all relevant postal operators are liable to pay a fee in proportion to their share of relevant revenue. In Figure 6.2 below, we provide a hypothetical example of how this works in practice.

**Figure 6.2 - example of how Ofcom would recover CABs’ non-calls costs**

CABs’ budgeted costs	Postal operator	Relevant letters turnover	Relevant parcels turnover	Total relevant turnover	Postal operators relevant turnover share	Postal operators’ CAB fees
£2 million	Postal operator A (the USP)	£1 billion <sup>132</sup>	£500 million	£1.5 billion	60%	£1.2 million
	Postal operator B	£5 million	£400 million	£400 million	16%	£320,000
	Postal operator C	None	£600 million	£600 million	24%	£480,000
				£2.5 billion		£2 million

*Legend*

- Green indicates a postal operator has exceeded the relevant turnover threshold
- Red indicates a postal operator has not exceeded the relevant turnover threshold

6.16 Any late submissions from relevant postal operators, amendments from relevant postal operators’ submissions of their relevant turnover and/or any over- or under-spend from the CABs’ forecasted non-calls costs would be reconciled in the following year’s recovery of consumer advocacy costs.

6.17 It is important to reiterate that each relevant postal operator’s contribution to the CABs’ non-calls costs is determined on the basis described in previous sections and as illustrated above (i.e. on a share of relevant revenue basis), and not on any other basis.<sup>133</sup>

6.18 We will specify the proportion that each relevant postal operator must pay to Ofcom, after making any adjustments of the amounts payable in accordance with CP 1.2.6. As required by CP 1.2.8, the actual amount due shall be paid to Ofcom on 30 June in the ‘relevant year’

<sup>132</sup> In this example, for the avoidance of doubt, where this is the USP, the £1 billion represents both the revenues of the USP from providing a mandated access service and the revenues of the USP from providing a relevant letters and parcels service.

<sup>133</sup> Namely, the analysis of the information requests regarding consumer advocacy postal costs by external spend on projects (Figure 3.1 in Section 3) is solely for the purpose of determining which types of postal operators should, in principle, contribute towards the recovery of consumer advocacy costs, and has no bearing on determining a relevant postal operator’s share of contribution to the CABs’ costs.

or, if later, on the expiry of one month from the day on which Ofcom serves notice on the relevant postal operator of such amount.

## Calls costs

- 6.19 There are two types of postal services which we propose to include in the recovery of calls costs. They are relevant letters postal services and relevant parcels postal services. For example, if there are two relevant postal operators: relevant postal operator A (offering both a relevant letters postal service and a relevant parcels postal service) and relevant postal operator B (offering a relevant parcels postal service).
- 6.20 Say in Year 1 that there are 1,000 calls to the consumer advice service, of which 800 relate to postal operator A, and 200 relate to postal operator B. Say that in next relevant year (Year 2), the CABs' forecasted calls costs total £2,000. Applying these calculations would result in postal operator A contributing 80% of the CABs' forecasted calls costs in Year 2 (i.e. £1,600), and operator B contributing 20% of the CABs' forecasted calls costs in Year 2 (i.e. £400).
- 6.21 When we receive the funding letter from BEIS for the next relevant year (Year 3), we would then see the actual costs occurred for Year 2, and reconcile fees with rebates in Year 3.
- 6.22 In short, in order to work out which operators are liable to pay a part of these costs, we multiply the projected calls costs by a relevant postal operator's share of calls related to the relevant postal operator (information which we obtain from BEIS),<sup>134</sup> expressed as a percentage of the total calls relating to relevant postal operators. If this calculation gives a result greater than £100, the relevant postal operator will be required to contribute their share of meeting the CABs' calls costs. To calculate this, Ofcom multiplies the projected calls costs by the share of the relevant postal operators share of calls expressed as a percentage of the total calls relating to the relevant postal operators. This results in the charge that the relevant postal operator must pay in relation to the CABs' calls costs.
- 6.23 In Figure 6.3 below, we provide a hypothetical example of how this works in practice.

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<sup>134</sup> Each year the Secretary of State provides Ofcom with (a) the projected calls costs for the CABs; and (b) the number of calls to the consumer advice service broken down by relevant postal operators.

Figure 6.3 - example of how Ofcom would recover CABs' calls costs

	Year X-1 No. of calls to caller helpline	Year X Forecast of total calls costs	Year X Postal operators relevant calls costs share	Year X Postal operators calls fees	Year X+1 Actual calls incurred for Year X	Year X+1 Actual total calls costs for Year X	Year X+1 Postal operators actual fees for Year X	Year X+1 Variance for Year X actuals
Postal operator A	800 calls	£2000	80%	£1,600	1170 calls	£2,400	£2,340	+£740
Postal operator B	200 calls		20%	£400	30 calls		£60	-£400
Totals	1000 calls			£2000	2000 calls		£2400	

# A1. Statutory notification: Modified Consumer Protection Condition 1

## NOTIFICATION OF MODIFICATIONS TO CONSUMER PROTECTION CONDITION 1 PURSUANT TO SECTION 51 OF, AND IN ACCORDANCE WITH SECTION 53 OF, AND PARAGRAPH 3 OF SCHEDULE 6 TO, THE POSTAL SERVICES ACT 2011

### BACKGROUND

(A) On 27 March 2012, following consultation, Ofcom published a statement entitled *‘Securing the Universal Postal Service: Decision on the new regulatory framework’*<sup>135</sup> setting out various decisions, including the imposition of consumer protection conditions to make provision for matters set out in section 51 of the Act, such as Consumer Protection Condition 1 (the “**initial CPC1**”).

(B) On 28 March 2013, following consultation, Ofcom published a statement entitled *‘Decision on modification to Consumer Protection Condition 1: Statement to modify Consumer Protection Condition 1 to reflect the change in the provision of consumer advice for postal services to Citizens Advice and Citizens Advice Scotland’*<sup>136</sup> setting out its decision to modify initial CPC1 in order to allow Ofcom to collect payments from regulated postal operators relating to the expenses of Citizens Advice and Citizens Advice Scotland.

(C) On 1 April 2014, following consultation, Ofcom published a statement entitled *‘Amendments to regulatory conditions DUSP 1.8 and CP 1 and minor amendments to other regulatory conditions’*<sup>137</sup> setting out various decisions, including the revocation of the initial CPC1 (as modified in 2013) and the imposition of a new Consumer Protection Condition 1 (“**CP1**”).

(D) On 4 December 2015, following consultation, Ofcom published a statement entitled *‘Modification to Consumer Protection Condition 1: Collection of qualifying consumer expenses of the Consumer Advocacy Bodies’*<sup>138</sup> setting out its decision to modify CP1 to correct an error in the drafting of CP1 with regard to the calculation of the contributions of postal operators to the qualifying consumer expenses of the Consumer Advocacy Bodies.

(E) On 27 July 2017, Ofcom published a consultation entitled *‘Recovering postal regulation and consumer advocacy costs - A review’*<sup>139</sup> setting out its proposals to amend CP1. Having considered responses received to that consultation, Ofcom decided to re-consult on its new proposals for amending CP1 set out in its Notification contained in Annex 7 to its document entitled *‘Recovering*

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<sup>135</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0029/74279/Securing-the-Universal-Postal-Service-statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0029/74279/Securing-the-Universal-Postal-Service-statement.pdf)

<sup>136</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0033/37689/statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0033/37689/statement.pdf)

<sup>137</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/amendments-dusp-cp/statement/Statement.pdf>

<sup>138</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/84165/cp1\\_statement\\_04dec2015.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/84165/cp1_statement_04dec2015.pdf)

<sup>139</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/105238/consultation-postal-regulation-review.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/105238/consultation-postal-regulation-review.pdf)

*postal regulation and consumer advocacy costs: Statement and consultation*<sup>140</sup> published on 29 March 2018 (the “**March 2018 Notification**”).

**(F)** A copy of the March 2018 Notification was sent to the Secretary of State on 29 March 2018 in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.

**(G)** Ofcom invited representations about the proposals set out in the March 2018 Notification by 24 May 2018. Ofcom received responses from nine stakeholders to the March 2018 Notification. Ofcom has considered every such representation. In accordance with paragraph 3(5) of Schedule 6 to the Act, Ofcom has made the decision set out below to give effect, with some modifications (the nature of which are explained in the accompanying statement), to its proposals set out in the March 2018 Notification. The Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for the purpose of Ofcom giving effect to those proposals.

## **DECISION**

**1.** Ofcom hereby decides, in accordance with section 53 of, and paragraph 3 of Schedule 6 to, the Act and pursuant to its powers under section 51 of the Act, to modify CP1 as set out in paragraph 2 of this Notification in order to make further provision for matters set out in that section 51 and to impose that CP1 on every postal operator of a description specified therein.

**2.** The modifications to CP1 are specified in the Schedule to this Notification, which shall take effect from 1 April 2019, that is to say for the relevant year (as defined in these modifications) beginning on 1 April 2019. For the avoidance of doubt, until those modifications take effect, CP1 will continue to have effect.

**3.** The effect of, and Ofcom’s reasons for making, this decision are set out in the accompanying statement.

## **OFCOM’S DUTIES AND LEGAL TESTS**

**4.** Ofcom is satisfied that this decision satisfies the general test in paragraph 1 of Schedule 6 to the Act.

**5.** In making this decision, Ofcom has considered and acted in accordance with its principal duty in section 29 of the Act and its general duties in section 3 of the Communications Act 2003.

## **INTERPRETATION**

**6.** Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Act or for the purpose of CP1 (as relevant).

**7.** In this Notification—

**(a)** “**Act**” means the Postal Services Act 2011 (c.5);

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<sup>140</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/recovering-postal-regulation-costs>

(b) “CP1” means Consumer Protection Condition 1 as referred to in recital (C) to this Notification, as modified by the modification referred to in recital (D); and

(c) “Ofcom” means the Office of Communications.

8. For the purpose of interpreting this Notification—

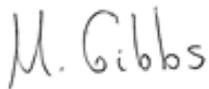
(a) headings and titles shall be disregarded;

(b) expressions cognate with those referred to in this Notification shall be construed accordingly; and

(c) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.

9. The Schedule to this Notification shall form part of this Notification.

Signed by

A handwritten signature in blue ink that reads "M. Gibbs". The signature is written in a cursive, slightly slanted style.

**Marina Gibbs**

**Competition Policy Director**

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

**16 January 2019**

**SCHEDULE**  
**CONSUMER PROTECTION CONDITION 1**  
**PAYMENTS RELATING TO QUALIFYING EXPENSES**

**1.1. Application, Definitions and Interpretation**

<p>CP 1.1.1 <i>Application</i></p>	<p>This consumer protection condition (“<b>CP Condition</b>”) shall apply to every <u>relevant postal operator</u> to whom any of the obligations to make payments to <u>OFCOM</u> prescribed in CP 1.2.1 apply.</p>
<p>CP 1.1.2 <i>Definitions</i></p>	<p>In this CP Condition—</p> <p>(a) “<b>Act</b>” means the Postal Services Act 2011 (c.5);</p> <p>(b) “<b>appointed day</b>” means 1 October 2011;</p> <p>(c) “<b>assessment year</b>” means the <u>relevant year</u> minus two years, beginning on 1 April;</p> <p>(d) “<b>calls relating to a relevant postal operator</b>” means calls to a <u>consumer advocacy body</u> recorded by such a body as relating to a specific <u>relevant postal operator</u> save that where a call is recorded by a <u>consumer advocacy body</u> as relating to more than one specific <u>relevant postal operator</u> <u>OFCOM</u> will consider the call as relating to no <u>relevant postal operator</u>;</p> <p>(e) “<b>closed user group network</b>” means a system providing for the conveyance of <u>postal packets</u> (and the incidental services of receiving, collecting, sorting and delivering <u>postal packets</u>) between—</p> <p style="padding-left: 40px;">(1) the premises of one firm and another firm;</p> <p style="padding-left: 40px;">(2) a government department and a third party firm;</p> <p style="padding-left: 40px;">(3) branches and/or units in the same firm; or</p> <p style="padding-left: 40px;">(4) government departments,</p> <p style="padding-left: 40px;">where both the sender and the recipient of the <u>postal packets</u> have entered into specific arrangements with the <u>postal operator</u> for the conveyance of <u>postal packets</u> to or from other members of that system, which, for the avoidance of doubt, includes a document exchange;</p> <p>(f) “<b>consumer advocacy body (or bodies)</b>” means each of the following—</p> <p style="padding-left: 40px;">(1) <u>Citizens Advice</u>;</p> <p style="padding-left: 40px;">(2) <u>Citizens Advice Scotland</u> or such other body that provides, in or as regards Scotland, consumer advocacy and advice to which section 51(2)(ca) of the Act refers; and</p> <p style="padding-left: 40px;">(3) the General Consumer Council for Northern Ireland;</p> <p>(g) “<b>express and secured service</b>” means a service involving the conveyance of <u>postal packets</u> and any incidental services of collecting, sorting and</p>

	<p>delivering those <u>postal packets</u> which have at least one of the following features—</p> <p>(1) a guarantee for delivery by a certain time or date;</p> <p>(2) a facility enabling the sender and the recipient to monitor the progress of a <u>postal packet</u> through the <u>postal operator</u>'s network, including confirmation of delivery;</p> <p><b>(h)</b> “<b>public holiday</b>” means a Christmas Day, Good Friday and a day which is a bank holiday under the Banking and Financial Dealings Act 1971;</p> <p><b>(i)</b> “<b>qualifying calls expenses</b>” has the meaning given to it in CP 1.2.4;</p> <p><b>(j)</b> “<b>qualifying calls threshold</b>” has the meaning given to it in CP 1.2.4;</p> <p><b>(k)</b> “<b>qualifying expenses</b>” has the meaning given to it in CP 1.2.2;</p> <p><b>(l)</b> “<b>relevant letter</b>” means a <u>postal packet</u> that is up to no more than 353mm in length, up to no more than 250mm in width, up to no more than 25mm thick and which weighs up to no more than 750g;</p> <p><b>(m)</b> “<b>relevant letters postal service</b>” means a service of conveying <u>relevant letters</u> from one place to another by post and the incidental services of receiving, collecting, sorting and delivering <u>relevant letters</u>, excluding—</p> <p>(1) services for which the <u>postal operator</u> has not received any payment, reward, profit or advantage with respect to the conveyance of the <u>relevant letters</u>;</p> <p>(2) services provided by a charity which comprise solely the collection, conveyance and delivery of Christmas cards;</p> <p>(3) <u>express and secured services</u>;</p> <p>(4) services consisting of the conveyance of <u>relevant letters</u> within a <u>closed user group network</u>;</p> <p>(5) services provided while acting in the capacity of an intermediary postal operator, that is to say a <u>postal operator</u> that hands over <u>postal packets</u> to another <u>postal operator</u> (including but not limited to the <u>universal service provider</u>) for subsequent conveyance and delivery to the intended recipients of the <u>postal packets</u>;</p> <p>(6) services consisting of conveying <u>relevant letters</u>, which have been sent from a location outside of the United Kingdom and which are addressed for delivery to a location outside of the United Kingdom, out of the United Kingdom; and</p> <p>(7) services provided by a party to a <u>USP Access Agreement</u> with the <u>universal service provider</u> to other <u>postal operators</u> and <u>users of postal services</u> by obtaining access to the <u>universal service provider</u>'s <u>postal network</u> under, or as a result of, the party's <u>USP Access Agreement</u>; for the</p>
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	<p>avoidance of doubt, services provided by the <u>universal service provider</u> itself to a party to a <u>USP Access Agreement</u> do not fall under this exclusion;</p> <p><b>(n)</b> “<b>relevant parcel</b>” means a <u>postal packet</u> that is larger in dimensions than a <u>relevant letter</u>, and weighs no less than 750g but no more than 31.5kg;</p> <p><b>(o)</b> “<b>relevant parcels postal service</b>” means a service of conveying <u>relevant parcels</u> from one place to another by post and the incidental services of receiving, collecting, sorting and delivering <u>relevant parcels</u>, excluding—</p> <p>(1) services for which the <u>postal operator</u> has not received any payment, reward, profit or advantage with respect to the conveyance of the <u>relevant parcels</u>;</p> <p>(2) services consisting of the conveyance of <u>relevant parcels</u> within a <u>closed user group network</u>;</p> <p>(3) services provided while acting in the capacity of an intermediary postal operator, that is to say a <u>postal operator</u> that hands over <u>relevant parcels</u> to another <u>postal operator</u> (including but not limited to the <u>universal service provider</u>) for subsequent conveyance and delivery to the intended recipients of the <u>relevant parcels</u>;</p> <p>(4) services consisting of conveying <u>relevant parcels</u>, which have been sent from a location outside of the United Kingdom and which are addressed for delivery to a location outside of the United Kingdom, out of the United Kingdom; and;</p> <p>(5) services consisting of the conveyance of <u>relevant parcels</u> provided by the <u>postal operator</u> only as part of a sales contract between the <u>postal operator</u> and a user under which the <u>postal operator</u> conveys and delivers such <u>relevant parcels</u> that are subject of that contract directly to the user without any arrangements with another <u>postal operator</u>; in this exclusion “a sales contract” refers to a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration;</p> <p><b>(p)</b> “<b>relevant postal operator</b>” means each of the following—</p> <p>(1) a <u>postal operator</u> that provides a <u>relevant letters postal service</u>;</p> <p>(2) a <u>postal operator</u> that provides a <u>relevant parcels postal service</u>;</p> <p><b>(q)</b> “<b>relevant turnover</b>” means each of the following—</p> <p>(1) turnover from <u>relevant letters postal services</u>;</p> <p>(2) turnover from <u>relevant parcels postal services</u>;</p> <p><b>(r)</b> “<b>relevant year</b>” means any year beginning on 1 April, the first year of which begins on 1 April 2019;</p>
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	<p>(s) “<b>Scottish consumer advice amounts</b>” mean such amounts as the Secretary of State considers reasonable in respect of the provision, in or as regards Scotland, of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office, in relation to <u>users of postal services</u>; and</p> <p>(t) “<b>USP Access Agreement</b>” means an agreement under which the <u>universal service provider</u> provides access to its <u>postal network</u> in accordance with requirements set out in a condition imposed under section 38 of the Act.</p>
<p><b>CP 1.1.3</b> <i>Interpretation</i></p>	<p>For the purpose of interpreting this CP Condition—</p> <p>(a) except in so far as the context otherwise requires, any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Act<sup>141</sup>;</p> <p>(b) headings and titles shall be disregarded;</p> <p>(c) expressions cognate with those referred to in this CP Condition shall be construed accordingly;</p> <p>(d) the Interpretation Act 1978 (c. 30) shall apply as if this CP Condition were an Act of Parliament;</p> <p>(e) references to a “<b>day</b>” are references to a period of twenty-four hours beginning with one midnight and ending with the next, which period shall be treated to include a Saturday, a Sunday and public holidays.</p>

## **1.2. Payments relating to qualifying expenses**

<p>CP 1.2.1 <i>Obligations to make payments to OFCOM</i></p>	<p>A <u>relevant postal operator</u> is liable to make payments to <u>OFCOM</u> in one or more (as applicable to that operator) of the following three circumstances—</p> <p>(a) where a <u>postal operator</u> that provides <u>relevant letters postal services</u> that generated <u>relevant turnover</u> exceeding £10 million in the <u>assessment year</u>, that operator shall pay to <u>OFCOM</u> in any <u>relevant year</u> such proportion (calculated in accordance with CP 1.2.3) as <u>OFCOM</u> may specify of the <u>qualifying expenses</u>;</p> <p>(b) where a <u>postal operator</u> that provides <u>relevant parcels postal services</u> that generated <u>relevant turnover</u> exceeding £350 million in the <u>assessment year</u>, that operator shall pay to <u>OFCOM</u> in any <u>relevant year</u> such proportion (calculated in accordance with CP 1.2.3) as <u>OFCOM</u> may specify of the <u>qualifying expenses</u>;</p>
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<sup>141</sup> A table for information identifying such defined terms is provided at the end of this CP Condition. This table is intended only as a guide and does not form a part of this CP Condition. We make no representations as to its accuracy or completeness.

	<p>(c) where a <u>relevant postal operator</u> has reached the <u>qualifying calls threshold</u> in the <u>relevant year</u>, that operator shall pay to OFCOM in any <u>relevant year</u> such proportion (calculated in accordance with CP 1.2.5) as OFCOM may specify of <u>qualifying calls expenses</u>.</p>
<p>CP 1.2.2</p> <p><i>Meaning of “qualifying expenses”</i></p>	<p>The “<b>qualifying expenses</b>” are—</p> <p>(a) the <u>qualifying consumer expenses of Citizens Advice</u>;</p> <p>(b) the <u>qualifying consumer expenses of the General Consumer Council for Northern Ireland</u>;</p> <p>(c) the <u>Scottish consumer advice amounts</u>; and</p> <p>(d) the <u>qualifying consumer expenses of the Secretary of State</u>,</p> <p>likely to be incurred during the <u>relevant year</u> in respect of functions other than the <u>consumer advocacy bodies’ functions in dealing with calls relating to relevant postal operators</u>.</p>
<p>CP 1.2.3</p> <p><i>Calculation of proportion for the purposes of CP 1.2.1(a) and (b)</i></p>	<p>The proportion referred to in CP 1.2.1(a) and (b) will be calculated by multiplying the sum of the total <u>qualifying expenses</u> referred to in CP 1.2.2 by that <u>relevant postal operator’s</u> share of <u>relevant turnover</u> expressed as a percentage of the total <u>relevant turnover</u> generated by all <u>relevant postal operators</u> to which CP 1.2.1(a) and (b) refer in the <u>assessment year</u> in question.</p>
<p>CP 1.2.4</p> <p><i>Meanings of “qualifying calls threshold” and of “qualifying calls expenses”</i></p>	<p>A <u>relevant postal operator</u> shall be liable to make payments to OFCOM for the purposes of CP 1.2.1(c) only where the following calculation gives an amount greater than £100 (the “<b>qualifying calls threshold</b>”)—</p> <p>(a) take the total <u>qualifying calls expenses</u> in the <u>relevant year</u>,</p> <p>(b) multiply it by that <u>relevant postal operator’s</u> share of <u>calls relating to relevant postal operators</u> in the <u>relevant year</u> expressed as a percentage of the total <u>calls relating to relevant postal operators</u>.</p> <p>The “<b>qualifying calls expenses</b>” are—</p> <p>(a) the <u>qualifying consumer expenses of Citizens Advice</u>;</p> <p>(b) the <u>qualifying consumer expenses of the General Consumer Council for Northern Ireland</u>; and</p> <p>(c) the <u>Scottish consumer advice amounts</u>,</p> <p>likely to be incurred during the <u>relevant year</u> in respect of the <u>consumer advocacy bodies’ functions in dealing with calls relating to relevant postal operators</u>.</p>
<p>CP 1.2.5</p>	<p>The proportion referred to in CP 1.2.1(c) to be paid by a <u>relevant postal operator</u> reaching the <u>qualifying calls threshold</u> will be calculated by multiplying the total <u>qualifying calls expenses</u> in the <u>relevant year</u> by that <u>relevant postal operator’s</u></p>

<i>Calculation of proportion for the purposes of CP 1.2.1(c)</i>	share of <u>calls relating to relevant postal operators</u> falling within CP1.2.4 expressed as a percentage of the total <u>calls relating to relevant postal operators</u> falling within CP1.2.4.
CP 1.2.6 <i>Adjusted amounts payable under CP 1.2.1(a) and (b)</i>	The amounts payable under CP 1.2.1(a) and (b) in a <u>relevant year</u> shall include the amount of the difference, if any, between the costs actually incurred during the previous <u>relevant year</u> and the estimate of the costs in question upon which charges in the previous <u>relevant year</u> were based, where the latter exceeds the former the amount of the difference being treated as a negative amount.
CP.1.2.7 <i>Adjusted amounts payable under CP 1.2.1(c)</i>	The amounts payable under CP 1.2.1(c) in a <u>relevant year</u> shall include the amount of the difference, if any, between the amounts charged to the <u>relevant postal operator</u> in the previous <u>relevant year</u> , based on estimates; and the amounts which would have been charged had the calculation been based on actual numbers of <u>calls relating to relevant postal operators</u> (including to calls relating to that specific <u>relevant postal operator</u> ) and actual <u>qualifying calls expenses</u> . Where the latter exceeds the former, the amount of the difference shall be treated as a negative amount.
CP 1.2.8 <i>Payments due dates</i>	The amount due under each of the three circumstances specified in CP 1.2.1 shall be payable on 30 June in the <u>relevant year</u> or, if later, on the expiry of one month from the day on which <u>OFCOM</u> serve notice on the <u>relevant postal operator</u> of such amount.

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

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

<b>Defined term</b>	<b>Section</b>
<i>Citizens Advice</i>	<i>65(1)</i>
<i>Citizens Advice Scotland</i>	<i>65(1)</i>
<i>Letter</i>	<i>65(1)</i>
<i>OFCOM</i>	<i>90</i>
<i>postal network</i>	<i>38(3)</i>
<i>postal operator</i>	<i>27(3)</i>
<i>postal packet</i>	<i>27(2)</i>

Recovering consumer advocacy costs – statement

<i>postal services</i>	<i>27(1)</i>
<i>qualifying consumer expenses of Citizens Advice</i>	<i>51(4)(a) to (c)</i>
<i>qualifying consumer expenses of the General Consumer Council for Northern Ireland</i>	<i>51(4)(g)</i>
<i>qualifying consumer expenses of the Secretary of State</i>	<i>51(4ZA)</i>
<i>universal service provider</i>	<i>65(1) and Schedule 9 paragraph 3(3)</i>
<i>User</i>	<i>65(1)</i>

## A2. Guidance to relevant postal operators

- A2.1 We set out below our guidance aimed at assisting relevant postal operators when they consider their obligations under CP1. We strongly urge that they take into account this guidance, including in preparing to respond to our annual information requests that we refer to in Section 4 to this Statement.
- A2.2 As a starting point, it is important to note the broad definition of ‘postal operator’ under section 27 of the Act, which has the potential to capture a wide variety of persons operating in the postal market.

### Meaning of ‘postal operator’

- A2.3 For that reason, before we discuss types of postal operators liable to contribute to the CABs’ costs under CP1, we set out below broad guidance on the meaning of a ‘postal operator’, as this expression is fundamental to the three different payment obligations in CP1.
- A2.4 The definition of ‘postal operator’ (which applies to CP1) is set out in section 27(3) of the Act. It provides that:

*"Postal operator" means a person who provides—*

- (a) the service of conveying postal packets<sup>142</sup> from one place to another by post, or*
- (b) any of the incidental services of receiving, collecting, sorting and delivering postal packets.*

- A2.5 Importantly, section 27(4) clarifies that *a person is not to be regarded as a postal operator merely as a result of receiving postal packets in the course of acting as an agent for, or otherwise on behalf of, another.*
- A2.6 As already noted above, the definition of ‘postal operator’ is, however, broad and has the potential to capture a wide variety of persons operating in the postal market.
- A2.7 For example, in the case of *The Queen on the application of DHL International (UK) Limited (“DHL”) v Ofcom* [2016] EWHC 938 (Admin), it was held by the Administrative Court that DHL, as an international door-to-door courier of goods,<sup>143</sup> was a ‘postal operator’ within the meaning of the Act, and it was therefore liable to respond to Ofcom’s information

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<sup>142</sup> Section 27(2) of the Act defines a ‘postal packet’ to mean a letter, parcel, packet or other article transmissible by post.

<sup>143</sup> Paragraph 9 of the Judgment explains in more detail DHL’s essential service as it was at the time, especially “...*The business is predominantly business to business carriage of international express parcels and freight. The wider DHL group operates in some 220 countries. Its infrastructure includes ownership of over 280 aeroplanes. The request for the service comes from the customer and normally parcels or freight are collected directly from the account customer’s premises or from the sender of the goods. After collection they are taken to a DHL local station and then on to the country’s gateway export clearance. They are then either driven or flown to the import clearance gateway of the inbound country, taken on to the local station within the inbound country and from there delivered to the consignee’s address. The process is reversed when sent from an overseas country for delivery to a specific address in the UK...*”

request. In particular, the Administrative Court took a broad approach to the meaning of the phrase ‘by post’ in the postal operator definition. It decided, for instance, that none of the features of DHL’s international business were inconsistent with the conclusion that DHL was a postal operator. The Court noted that the legislative history demonstrated that there was no constraint as to the means by which packets, parcels etc. may to be conveyed from sender to addressee (or, in the language of carriage, from consignor to consignee). The Court therefore concluded that it would have still been conveyance ‘by post’ if e.g. the Royal Mail had arrangements akin to those of DHL. The Court also noted that the Act reflected the independent reviews of the UK postal services which were conducted by Mr Richard Hooper in 2008 and 2010, and it noted in particular that the 2008 report in its definition of the postal market included both standard parcels (i.e. falling within the universal postal service) and “express and courier items which are guaranteed to arrive on a particular day or time, and/or which require a signature on delivery or ‘track and trace’ facility”.

- A2.8 The Administrative Court also noted that the Act implements the Postal Services Directive. The Court of Justice of the European Union (“**CJEU**”) has ruled on the Directives’ concept corresponding to a ‘postal operator’ in several cases. Recently, on 31 May 2018, the CJEU gave its ruling in Joined Cases C-259/16 and C-260/16. These Joined Cases concerned undertakings and associations of undertakings operating in the haulage, freight-forwarding and mail courier sector (Case C-259/16) or only in the mail courier sector (Case C-260/16). One of the issues was whether haulage, freight-forwarding and express mail undertakings providing services involving the clearance, sorting, transport and distribution of postal items could be classified (except where their business is limited to the transport of postal items) as postal service providers within the Directive’s meaning.
- A2.9 The CJEU ruled that they could be so classified. Specifically, as regards road haulage and freight-forwarding service, it ruled that “...an undertaking must be classified as a ‘postal service provider’ within the meaning of Article 2(1a) of Directive 97/67 where it provides at least one of the services set out in Article 2(1) of the Directive or the service or services thus provided relate to a postal item, although its business cannot consist merely in the provision of transport services. It follows that haulage and freight-forwarding enterprises offering, as their principal business, a service entailing the transport of postal items and, as an ancillary activity, services entailing the clearance, sorting, and distribution of postal items does not fall outside the scope of the directive.” (paragraph 34 of the Judgment).
- A2.10 The CJEU dismissed the applicants’ argument that an undertaking which, as its principal business, provides a service involving the transport of postal items and offers one of the other services referred to in Article 2(1) of Directive 97/67 only as an ancillary business, cannot be classified as a ‘postal service provider’. That argument was dismissed in particular because “...if it were to be accepted that haulage or freight-forwarding undertakings were excluded from the scope of Directive 97/67, on the sole ground that they engage in the activities of collecting, sorting and distributing postal items only on an ancillary basis, that would give rise to numerous difficulties in interpreting the Directive. Indeed, it would be necessary, in order to determine the legal rules applicable, to assess, on

*a case-by-case basis, the greater or lesser proportion of services provided on an ancillary basis in relation to the main transport service provided.” (paragraph 35 of the Judgment)*

- A2.11 As regards express mail services, the CJEU noted that it is the Court’s established case-law that what distinguishes express mail services from the universal postal service is the added value which they bring to the customers, for which the customers agree to pay more. Nonetheless, the CJEU classified also express mail undertakings providing services involving the clearance, sorting, transport and distribution of postal items as postal service providers within the meaning of Directive 97/67, except where their business is limited to the transport of postal items. The CJEU noted in particular that *“...while a distinction can be made between the universal service and express mail services, on the basis of whether or not added value is provided by the service, it is clear that such a criterion for distinction is wholly irrelevant as regards the nature of the services set out in Article 2(1) of Directive 97/67. Thus, the fact that such services bring, in some circumstances, added value cannot alter the fact that they are ‘postal services’ within the meaning of that provision.”* (paragraph 40 of the Judgment)
- A2.12 In light of this broad meaning of a ‘postal operator’, we have excluded certain services from the definitions of ‘relevant letters postal services’ and ‘relevant parcels postal services’, respectively, for the purposes of CP1. We have explained why we have decided on these exclusions in Section 3 above, and further discuss those exclusions below. However, as they constitute exclusions from the general principle, they should be interpreted strictly and narrowly.
- A2.13 In regard to postal operators offering a relevant parcels postal service, we recognise that businesses may have different parts of their organisational structure, or different categories of activity, under which they may be acting as a postal operator providing relevant letters postal services and/or relevant parcels postal services by virtue of the exclusions below. To ensure they properly comply with their obligations under CP1, postal operators should seek their own independent advice on how specific matters might apply to the facts in their own circumstances, having regard to our guidance.

### **‘Relevant letters postal services’**

- A2.14 The expression ‘relevant letters postal services’ as set out in CP1 captures, as a general principle, every service of conveying ‘relevant letters’ from one place to another by post and the incidental services of receiving, collecting, sorting and delivering ‘relevant letters’. The expression ‘relevant letter’ is defined in CP1 as a ‘postal packet’ (as defined in section 27(2) of the Act) that is up to no more than 353mm in length, up to no more than 250mm in width, up to no more than 25mm thick and which weighs up to no more than 750g.
- A2.15 However, CP1 excludes the following services from the meaning of ‘relevant letters postal services’ and, as such, they fall outside the definition of ‘relevant letters postal services’:
- a) services for which the postal operator has not received any payment, reward, profit or advantage with respect to the conveyance of the relevant letters;

- b) services provided by a charity which comprise solely the collection, conveyance and delivery of Christmas cards;
- c) express and secured services;
- d) services consisting of the conveyance of relevant letters within a closed user group network;
- e) services provided while acting in the capacity of an intermediary postal operator, that is to say a postal operator that hands over postal packets to another postal operator (including but not limited to the universal service provider) for subsequent conveyance and delivery to the intended recipients of the postal packets;
- f) services consisting of conveying relevant letters, which have been sent from a location outside of the United Kingdom and which are addressed for delivery to a location outside of the United Kingdom, out of the United Kingdom; and,
- g) services provided by a party to a USP Access Agreement with the universal service provider to other postal operators and users of postal services by obtaining access to the universal service provider's postal network under, or as a result of, the party's USP Access Agreement; for the avoidance of doubt, services provided by the universal service provider itself to a party to a USP Access Agreement do not fall under this exclusion.

### **Closed user group networks**

A2.16 In both a relevant letters postal service, and a relevant parcels postal service (detailed below), we exclude 'services consisting of the conveyance of relevant letters within a closed user group network'. Below we set out examples which may constitute a closed user group, and hence form part of this exemption. These include:

- a) Organisations (e.g. businesses, government departments) that have an internal delivery exchange solely between their own business units (e.g. between their warehouse and retail stores, or between offices); and,
- b) Organisations who have a specific arrangement in place for the exchange of items within the closed user group (e.g. the delivery of medical samples from a laboratory to clinics / hospitals who form part of the same internal delivery exchange / closed user group or the movement of legal document bundles between law firms or law firms and the courts). These types of arrangements typically include an ongoing fee to be part of the closed user group arrangements.

### **'Relevant parcels postal service'**

A2.17 The expression 'relevant parcels postal services', as set out in CP1, captures, as a general principle, every service of conveying 'relevant parcels' from one place to another by post and the incidental services of receiving, collecting, sorting and delivering 'relevant parcels'. The expression 'relevant parcel' is defined in CP1 as a 'postal packet' (as defined in section

27(2) of the Act) that is larger in dimensions than a ‘relevant letter’, and weighs no less than 750g but no more than 31.5kg.

A2.18 However, CP1 excludes the following services from the meaning of ‘relevant parcels postal services’ and, as such, they fall outside the definition of a ‘relevant parcels postal services’:

- a) services for which the postal operator has not received any payment, reward, profit or advantage with respect to the conveyance of the relevant parcels;
- b) services consisting of the conveyance of relevant parcels within a closed user group network;
- c) services provided while acting in the capacity of an intermediary postal operator, that is to say a postal operator that hands over relevant parcels to another postal operator for subsequent conveyance and delivery to the intended recipients of the relevant parcels; and
- d) services consisting of conveying relevant parcels, which have been sent from a location outside of the United Kingdom and which are addressed for delivery to a location outside of the United Kingdom, out of the United Kingdom;
- e) services consisting of the conveyance of relevant parcels provided by the postal operator only as part of a sales contract between the postal operator and a user under which the postal operator conveys and delivers such relevant parcels that are subject of that contract directly to the user without any arrangements with another postal operator; in this exclusion “a sales contract” refers to a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration.

A2.19 As stated above, it is for each individual postal operator to consider their own legal advice as to whether they offer a relevant parcels postal service. In particular we note that a person may not be regarded as a postal operator merely as a result of acting as an agent for, or otherwise on behalf of, another. However, we believe that it might assist stakeholders if we give some hypothetical examples and practical guidance below as to what Ofcom would and would not consider a relevant parcels postal service.

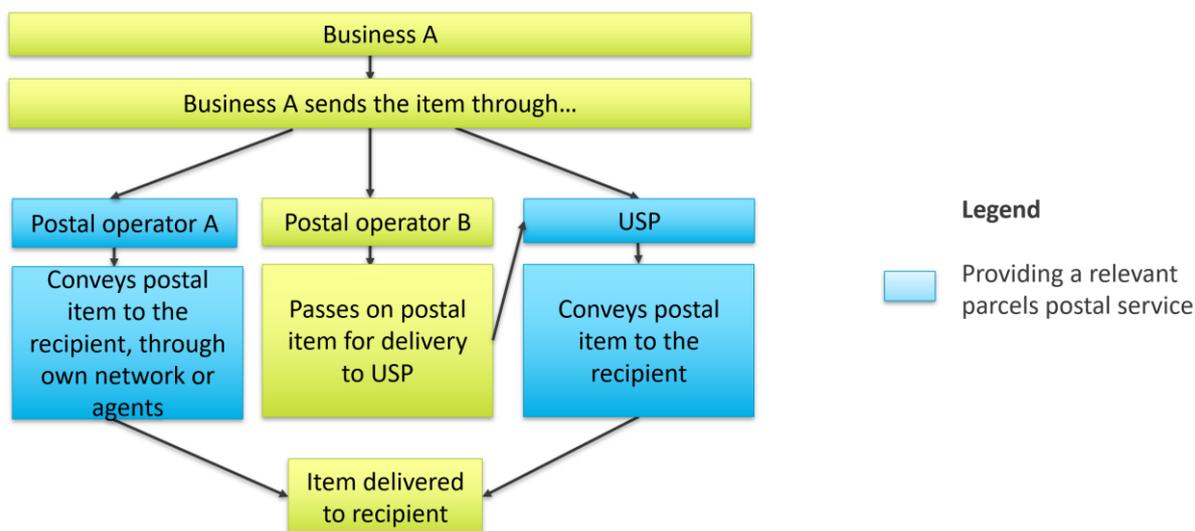
### Intermediaries

A2.20 Consider Business A in the example set out at Figure A2.1, which hands over its parcels to another provider: Postal operator A, Postal operator B, or the USP (Royal Mail) for delivery to the recipient. Business A is either the sender or an intermediary and is not providing a relevant parcels postal service. In the diagram below, postal operator A, and the USP (Royal Mail) where it is offering the delivery service, are providing a relevant parcels postal service. Postal operator B is an access operator and relies on the USP to deliver goods to the end customer, which means Postal operator B is not offering a relevant parcels postal service.

A2.21 In terms of how to report relevant revenues, postal operator A reports all the revenues related to the postal service of conveying parcels from Business A to the recipient.

Revenues paid from Postal operator B (the access operator) to the USP (Royal Mail) are included in Royal Mail’s relevant turnover.

**Figure A2.1 - Examples where Ofcom would and would not likely consider a business to be offering a relevant parcels postal service: intermediaries**



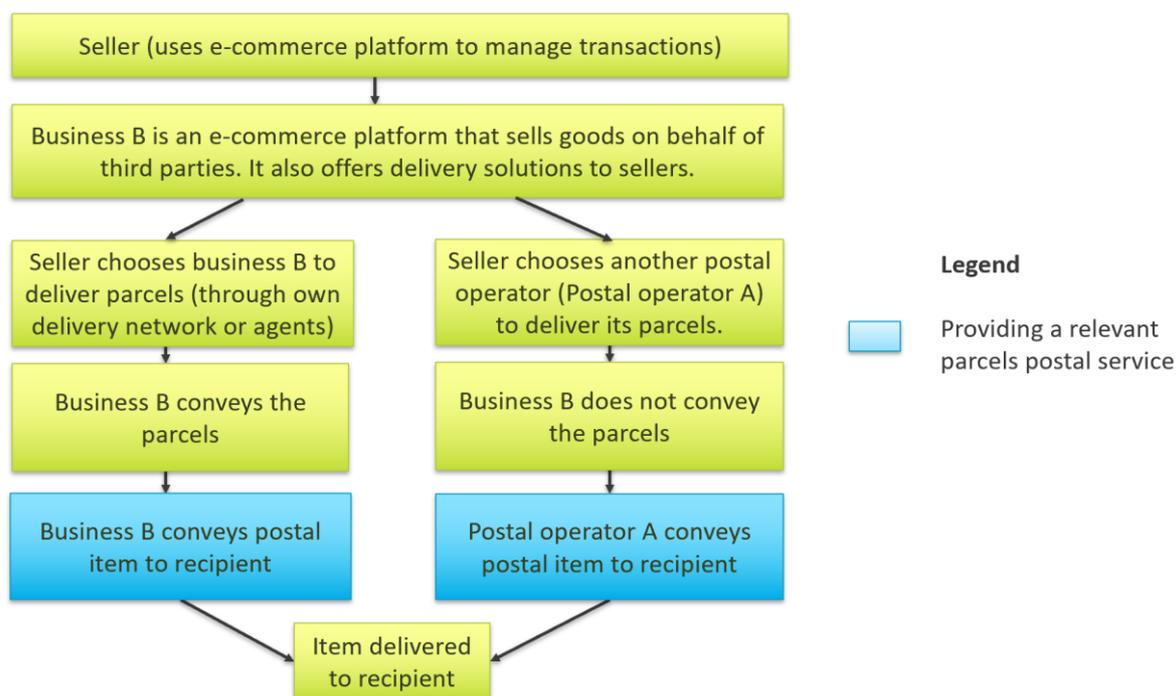
### Delivering items on behalf of third party sellers

A2.22 Consider Business B in the example at Figure A2.2, which has its own delivery network, and who operates an e-commerce platform for third party sellers to use. It facilitates delivery services on behalf of its third-party sellers, where one option is the use of its own E2E delivery service. In this situation we would consider this business to be offering a relevant parcels postal service, and where sellers use this service, revenues paid for delivery are considered relevant turnover.<sup>144</sup>

A2.23 In the same example in Figure A2.2, if the seller chooses to use another postal operator offering a relevant parcels postal service (e.g. an E2E parcels delivery service), then the other postal operator offers a relevant parcels service and we would not consider Business B to be offering a relevant parcels postal service.

<sup>144</sup> In this example, in regard to relevant turnover, we refer such relevant postal operators to our guidance in paragraph A2.30 below.

**Figure A2.2 - Examples where Ofcom would likely consider a business to be offering a relevant parcels postal service: delivery on behalf of third party sellers**

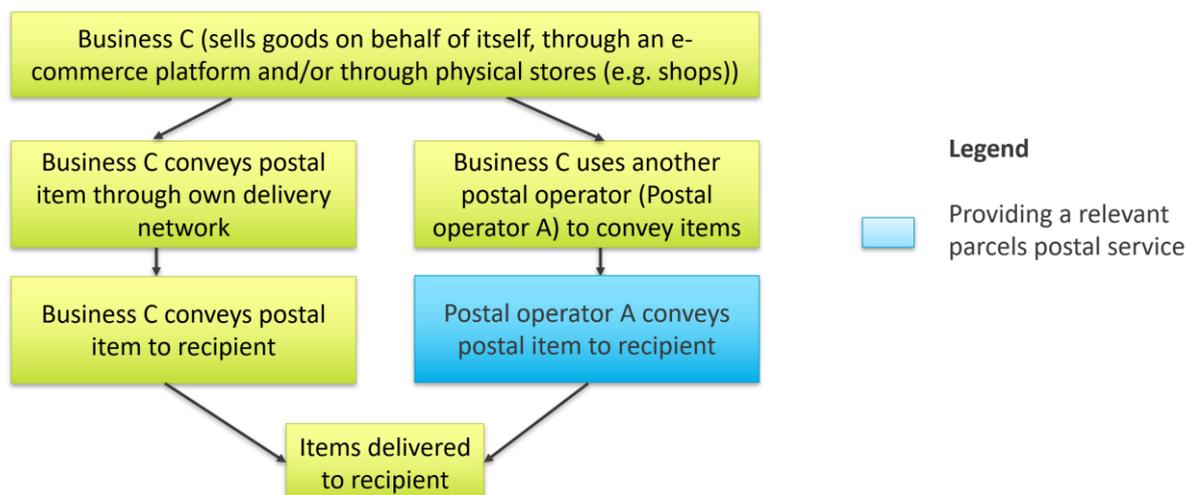


### Self-delivery

A2.24 Now consider Business C in the example set out in Figure A2.3, which operates a retail platform (whether that be online or in physical stores), has its own E2E delivery network, and is responsible for the end delivery of the parcel. Business C may give customers some choice over which delivery service to use for the fulfilment of an order/purchase, including delivery via its own network. Where the customer opted for Business C to deliver the parcel using its own delivery service, then we would consider this to be self-delivery and therefore not a relevant parcels postal service. A practical example here might be where an online retailer selling a microwave fulfils this order to the customer directly, and so delivers it to the customer’s home using its own network.

A2.25 In the same example given in Figure A2.3, if the customer selects another postal operator offering a relevant parcels postal service, then we would not consider Business C to be offering a relevant parcels postal service, as it would be solely acting as the sender.

**Figure A2.3 - Examples where Ofcom would and would not likely consider a business to be offering a relevant parcels postal service: self-delivery**



## Obligations on relevant postal operators to pay non-calls costs

### Relevant letters postal services

- A2.26 CP 1.2.1(a) requires that a ‘postal operator’ providing ‘relevant letters postal services’ that generated ‘relevant turnover’ exceeding £10 million in the ‘assessment year’ pays to Ofcom in any ‘relevant year’ (i.e. any year beginning on 1 April) such proportion as we will specify of the ‘qualifying expenses’ (that proportion will be calculated by Ofcom in accordance with CP 1.2.3).
- A2.27 As explained in the previous section, we will use our formal powers to require information annually. As a consequence, it is important for operators to carefully consider on an ongoing basis whether their services are captured by the definition of ‘relevant letters postal services’ and, if so, that they ensure that their systems are properly and accurately set up so that they can provide the associated information and data to Ofcom annually.

### Relevant parcels postal services

- A2.28 CP 1.2.1(b) requires that a ‘postal operator’ providing ‘relevant parcels postal services’ that generated ‘relevant turnover’ exceeding £350 million in the ‘assessment year’ pays to Ofcom in any ‘relevant year’ (i.e. any year beginning on 1 April) such proportion as we will specify of the ‘qualifying expenses’ (that proportion will be calculated by Ofcom in accordance with CP 1.2.3).
- A2.29 As explained in the previous section, we will use our formal powers to require information annually from various operators. Therefore, it is important for operators to carefully consider on an ongoing basis whether their services are captured by the definition of ‘relevant parcels postal services’ and, if so, that they ensure that their systems are properly

and accurately set up so that they can provide the associated information and data to Ofcom on an annual basis.

- A2.30 We recognise that some postal operators who provide a relevant parcels postal service may offer several models of delivery options for consumers<sup>145</sup> and/or ancillary services as part of providing a delivery service,<sup>146</sup> and therefore have different charging models for delivery. In such instances where a postal operator offers such bundled services, it is for such postal operators to allocate an appropriate proportion from its bundled services revenue to parcels delivery that is representative of the cost of such delivery when submitting its relevant turnover to Ofcom.

## Obligations on relevant postal operators to pay calls costs

- A2.31 CP 1.2.1(c) requires that a ‘postal operator’ providing either:

- a) ‘relevant letters postal services’; and/or
- b) ‘relevant parcels postal services’,

reaching the ‘qualifying calls threshold’ in any ‘relevant year’ (i.e. any year beginning on 1 April) pays to Ofcom in any ‘relevant year’ (i.e. any year beginning on 1 April) such proportion as we will specify of the ‘qualifying calls expenses’ (that proportion will be calculated by Ofcom in accordance with CP 1.2.5.). In short, if an operator is liable to pay CABs’ non-call costs, then if it is the source of complaints amounting to more than £100 of call costs for the CABs, it is also liable to pay a proportion of call costs.

- A2.32 CP 1.2.4 explains the meaning of the ‘qualifying calls threshold’, namely above-mentioned postal operators will be liable to make payments to Ofcom where the following calculation gives an amount greater than £100:

- a) take the total ‘qualifying calls expenses’ in the ‘relevant year’,
- b) multiply it by that relevant postal operator’s share of calls relating to ‘relevant postal operators’ in the ‘relevant year’ expressed as a percentage of the total calls relating to ‘relevant postal operators’.

- A2.33 The meaning of ‘qualifying calls expenses’ is also set out in that CP 1.2.4, namely:

- a) the qualifying consumer expenses of Citizens Advice;
- b) the qualifying consumer expenses of the General Consumer Council for Northern Ireland; and
- c) the Scottish consumer advice amounts,

likely to be incurred during the ‘relevant year in respect of the consumer advocacy bodies’ functions in dealing with calls relating to ‘relevant postal operators’.

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<sup>145</sup> For instance, in addition to offering consumers the chance to pay for delivery per item, some companies offer the ability to subscribe for a one-off or recurring fee and receive an unlimited amount of deliveries for free.

<sup>146</sup> For example, fees for providing space on a company’s website.

- A2.34 We then calculate the proportion in accordance with CP 1.2.5 to be paid by a relevant postal operator reaching the ‘qualifying calls threshold’ by multiplying the total ‘qualifying calls expenses’ in the ‘relevant year’ by that relevant postal operator’s share of calls relating to relevant postal operators expressed as a percentage of the total calls relating to relevant postal operators, after making any adjustments of the amounts payable in accordance with CP 1.2.7. As required by CP 1.2.8, the actual amount due shall be paid to Ofcom on 30 June in the ‘relevant year’ or, if later, on the expiry of one month from the day on which Ofcom serves notice on the ‘relevant postal operator’ of such amount.
- A2.35 In regard to determining whether a postal operator has exceeded the £100 calls threshold, when we receive the annual funding letter from BEIS to recover the qualifying consumer expenses for the relevant year, this will include the calls costs to recover from relevant postal operators (which is calculated by whether the relevant postal operators exceeded the calls costs threshold of £100 in the previous relevant year), and applied to the estimated calls costs for the following relevant year.<sup>147</sup>

## Role and status of this specific guidance

- A2.36 Guidance has the benefit of contributing to effective regulation by improving transparency and understanding. In particular, this specific guidance is aimed at encouraging compliance by explaining Ofcom’s approach to the application of the obligations of ‘relevant postal operators’ under CP1, thereby ensuring that they properly understand those obligations and what Ofcom expects from them.
- A2.37 One of Ofcom’s regulatory principles is that Ofcom will regulate in a transparent manner. Guidance can serve as a useful means to achieving this principle and to increasing understanding of Ofcom’s policy objectives and approach to regulation.
- A2.38 Ofcom would normally expect to follow this guidance should it investigate any potential failure to comply with the respective obligations under CP1. If Ofcom decides to depart from this guidance, it will set out its reasons for doing so. This guidance may also be subject to revision from time to time.
- A2.39 That said, whether or not (and, if so, how) a particular matter is regulated will usually turn on the specific facts in each case. ‘Relevant postal operators’ should therefore seek their own independent advice on specific matters, taking into account the facts in question to answer specific questions on their statutory obligations.
- A2.40 Ofcom cannot, as a matter of law, fetter its discretion as to any future decision. Accordingly, although this guidance sets out the approach Ofcom would normally expect to take, this guidance does not have binding legal effect, and each case will be considered on its own merits.

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<sup>147</sup> As outlined in CP 1.2.7, amendments are then made in the following financial year to reflect the actual numbers of calls made, and thus calls costs generated, for each relevant postal operator.