

## Annex 15

# Statutory Notification: proposed modification of Consumer Protection condition 3

## NOTIFICATION OF PROPOSALS TO MODIFY REGULATORY CONDITIONS IN ACCORDANCE WITH SECTION 51 OF, AND PARAGRAPH 3 OF SCHEDULE 6 TO, THE POSTAL SERVICES ACT 2011

### BACKGROUND

- (A) On 27 March 2012, following a consultation, OFCOM published a statement entitled “*Securing the Universal Postal Service: Decision on the new regulatory framework*”<sup>1</sup> (the “**2012 Statement**”) setting out various decisions, including the imposition of consumer protection conditions to make provision for matters set out in section 51 of the Postal Services Act 2011 (the “**Act**”). These conditions included Consumer Protection Condition 3 (“**CP 3**”).
- (B) On 1 April 2014, following a consultation, Ofcom published a statement entitled Amendments to regulatory conditions DUSP 1.8 and CP 1 and minor amendments to other regulatory conditions’<sup>2</sup> setting out various decisions, including the decision to modify CP 3 (the “2014 Modification”).<sup>3</sup> In the 2014 Modification, Ofcom explained that this revised version replaced the previous published version notified in the 2012 Statement and took effect when this notification was published.

### PROPOSAL

1. OFCOM hereby proposes, in accordance with section 51 of, and paragraph 3 of Schedule 6 to, the Act and pursuant to powers and duties in section 51 of the Act, to revoke CP 3 and replace it with a new consumer protection condition to make provision for matters set out in section 51.
2. The proposed new CP 3 is specified in the Schedule, marked up against the existing condition to show the changes which are proposed, as highlighted in red text.
3. The effect of, and OFCOM’s reasons for making, this proposal are set out in the accompanying consultation document.

### Ofcom’s duties and legal tests

4. OFCOM is satisfied that this proposal satisfies the general test in paragraph 1 of Schedule 6 to this Act.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/statement.pdf>

<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/amendments-dusp-cp/statement/Statement.pdf>

<sup>3</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/amendments-dusp-cp/statement/CP2\\_3.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/amendments-dusp-cp/statement/CP2_3.pdf)

5. In making this proposal, OFCOM have considered and acted in accordance with their principal duty in section 29 of the Act and their general duties in section 3 of the Communications Act 2003.

### **Making representations**

6. Representations may be made to OFCOM about the proposal set out in this Notification by no later than 3 August 2016.
7. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.
8. By virtue of paragraph 3(5) of Schedule 6 to the Act, OFCOM may give effect, with or without modifications, to a proposal with respect to which it has published a notification only if OFCOM has—
  - (a) considered every representation about the proposal that is made to OFCOM within the period specified in this Notification; and
  - (b) had regard to every international obligation of the United Kingdom (if any) which has been notified to OFCOM for this purpose by the Secretary of State.

### **Interpretation**

9. 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 CP 3 (as relevant).
10. In this Notification—
  - (a) “**2012 Statement**” has the meaning given to it in recital (A) to this Notification;
  - (b) “**2014 Modification**” has the meaning given to it in recital (B) to this Notification;
  - (c) “**Act**” means the Postal Services Act 2011 (c.5); and
  - (d) “**CP 3**” means consumer protection condition referred to in recital (B) to this Notification as modified and replaced by the 2014 Modification.
11. For the purpose of interpreting this Notification—
  - (a) headings and titles shall be disregarded;
  - (b) expressions cognate with those referred to in this Notification shall be construed accordingly;
  - (c) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.

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

Signed by

A handwritten signature in blue ink, appearing to read 'Jonathan Oxley', is written in a cursive style.

**Jonathan Oxley**

**Group Director, Competition Group**

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

24 May 2016

Schedule

# Proposed modification of CP 3

## CONSUMER PROTECTION CONDITION 3: COMPLAINTS HANDLING AND REDRESS

### 3.1. Application, definitions and interpretation

<b>CP 3.1.1</b>	This consumer protection condition (“ <b>CP Condition</b> ”) shall apply as follows: (a) CP 3.2 - all <u>postal operators</u> ; and (b) CP 3.3 - <del>the <u>universal service provider</u> apart from CP 3.3.16 – regulated postal operators; and</del> (c) <del>CP 3.3.16 – the <u>universal service provider</u></del>
<b>CP 3.1.2</b>	In this CP Condition—  (a) “ <b>Act</b> ” means the Postal Services Act 2011 (c.5);  (b) “ <b>appointed day</b> ” means 1 October 2011;  (c) “ <b>Citizens Advice Consumer Service</b> ” means the telephone and online consumer advice service operated by the National Association of Citizens Advice Bureaux, registered company number 1436945;  (d) “ <b>complainant</b> ” means a person who has made a <u>consumer complaint</u> ;  (e) “ <b>complaint</b> ” means any expression of dissatisfaction made to a <u>postal operator</u> , related to one or more of its products or services or the manner in which the <u>postal operator</u> has dealt with any such expression of dissatisfaction, where a response is explicitly or implicitly required or expected to be provided;  (f) “ <b>complaints handling procedure</b> ” means the procedure required by Condition CP 3.3.1;  (g) “ <b>completed complaint</b> ” means a <u>consumer complaint</u> in respect of which there remains no outstanding action to be taken by the <u>postal operator</u> in accordance with its <u>complaint handling procedure</u> ;  (h) “ <b>consumer</b> ” means a person who uses <u>postal services</u> either as a sender or an addressee;

	<p>(i) “<b>consumer complaint</b>” means a <u>complaint</u> which is made against <del>a regulated postal operator or the</del> <u>universal service provider</u> either—</p> <p>i. by a person in that person's capacity as a <u>relevant consumer</u>; or</p> <p>ii. by a person acting on behalf of such a relevant consumer;</p> <p><del>(j) “<b>contract customer</b>” means a person who is a <u>consumer</u> in relation to a <u>regulated postal service</u> where the provision of the <u>regulated postal service</u> is governed by a contract between that consumer and the <u>regulated postal operator or universal service provider</u>;</del></p> <p>(kj) “<b>Consumer Advocacy Bodies</b>” means Citizens Advice, Citizens Advice Scotland and the General Consumer Council for Northern Ireland;</p> <p>(lk) “<b>DUSP condition</b>” means a designated USP condition imposed under s.36 of the Act;</p> <p>(ml) “<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>(nm) “<b>qualifying redress scheme</b>” means a redress scheme which is approved by <u>OFCOM</u> in accordance with Schedule 5 of the Act<sup>4</sup>;</p> <p><del>(g) “<b>regulated postal operator</b>” means a <u>postal operator</u> which provides services in relation to which, had these services been carried out prior to the <u>appointed day</u>, it would have been required to hold a licence under the Postal Service Act 2000, and includes the <u>universal service provider</u>;</del></p> <p><del>(h) “<b>regulated postal service</b>” means a <u>postal service</u> the provision of which:</del></p> <p style="padding-left: 40px;"><del>i— had it been carried out prior to the <u>appointed day</u>, would have required the provider to hold a licence under the Postal Service Act 2000; or</del></p> <p style="padding-left: 40px;"><del>ii— is required to be provided by a <u>DUSP condition</u>.</del></p> <p>(on) “<b>relevant consumer</b>” means a consumer of a <u>regulated relevant postal service</u>; <del>who is not a contract customer;</del></p> <p>(o) “<b>relevant postal service</b>” means a <u>postal service</u> which the <u>universal service provider</u> is required to provide by a <u>DUSP condition</u>;</p>
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<sup>4</sup> OFCOM approved IDRS Ltd to administer the Postal Redress Service under section 52 and Schedule 5 of the Postal Services Act 2011 on 1 October 2011.

	<p><b>(rp)</b> “<b>specified time period</b>” means the time period specified by the <u>universal service provider</u><del>regulated postal operator</del> in its <u>complaint handling procedure</u> or as otherwise agreed with a <u>relevant consumer</u>, as the maximum period that the <u>universal service provider</u><del>regulated postal operator</del> has to complete a <u>consumer complaint</u> before the <u>universal service provider</u><del>relevant consumer</del> who made that <u>consumer complaint</u>, or on whose behalf that <u>consumer complaint</u> was made, becomes entitled to refer that <u>consumer complaint</u> to a <u>qualifying redress scheme</u>;</p> <p><b>(sq)</b> “<b>vulnerable consumer</b>” means a consumer who cannot reasonably be expected to pursue a <u>complaint</u> on their own behalf;</p> <p><b>(tr)</b> “<b>working day</b>” means any day other than a Saturday, a Sunday or a <u>public holiday</u>.</p>
CP 3.1.3	<p>For the purpose of interpreting this CP Condition—</p> <p><b>(a)</b> 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>5</sup>;</p> <p><b>(b)</b> headings and titles shall be disregarded;</p> <p><b>(c)</b> expressions cognate with those referred to in this CP Condition shall be construed accordingly;</p> <p><b>(d)</b> the Interpretation Act 1978 (c. 30) shall apply as if this CP Condition were an Act of Parliament;</p> <p><b>(e)</b> 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 <u>public holidays</u>.</p>

### **3.2. Obligation on postal operators**

CP 3.2	<p>A <u>postal operator</u> shall establish, make available and comply with transparent, simple and inexpensive procedures for dealing with <u>complaints</u> of <u>consumers</u> of <u>postal services</u>, which facilitate the fair and prompt settlement of disputes.</p>
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<sup>5</sup> A table for information identifying such defined terms is provided at the end of this condition. This table is intended only as a guide and does not form a part of this condition. We make no representations as to its accuracy or completeness.

### 3.3. Obligations on ~~the universal service provider~~regulated postal operators

<p><b>CP 3.3.1</b></p>	<p>The <del>universal service provider</del><u>regulated postal operator</u> shall establish, make available and comply with a <u>complaints handling procedure</u> in accordance with CP 3.2 and CP 3.3.2 for dealing with <u>complaints of relevant consumers</u> of <del>regulated</del><u>relevant</u> postal services.</p>
<p><b>CP 3.3.2</b></p>	<p>A <u>complaints handling procedure</u> must:</p> <ul style="list-style-type: none"> <li>(a) be in plain and intelligible language;</li> <li>(b) allow for <u>consumer complaints</u> to be made orally or in writing (including electronically);</li> <li>(c) set out contact details to allow a <u>relevant consumer</u> to make a <u>consumer complaint</u>;</li> <li>(e) allow for <u>consumer complaints</u> to be progressed through each stage of the <u>complaints handling procedure</u> orally or in writing (including electronically);</li> <li>(f) allow for <u>consumer complaints</u> with no evidence base to be dealt with;</li> <li>(g) describe the process which the <del>regulated postal operator</del><u>universal service provider</u> will follow with a view to investigating and resolving a <u>consumer complaint</u> and the likely timescales for that process;</li> <li>(h) provide for an internal review of an existing <u>consumer complaint</u> where a <u>complainant</u> indicates that they would like such a review to occur because he or she is dissatisfied with the handling of that <u>consumer complaint</u>;</li> <li>(i) set out contact details for <u>Citizens Advice Consumer Service</u>;</li> <li>(j) describe the <u>complainant's right to refer a consumer complaint to a qualifying redress scheme</u>: <ul style="list-style-type: none"> <li>(i) from the point at which the <del>regulated postal operator</del><u>universal service provider</u> notifies the <u>complainant</u> in writing, that it is unable to complete the <u>consumer complaint</u> to the <u>complainant's satisfaction</u>; or</li> <li>(ii) after the expiry of the <u>specified time period</u>.</li> </ul> </li> </ul>
<p><b>CP 3.3.3</b></p>	<p>The <del>regulated postal operator</del><u>universal service provider</u> shall, not less than once every three calendar years, review the <u>complaints handling procedure</u> and seek feedback from a reasonable number of <u>complainants</u> to ensure the <u>complaints handling procedure</u> meets the needs of <u>relevant consumers</u>.</p>

<p><b>CP 3.3.4</b></p>	<p>Upon receipt of a <u>consumer complaint</u> made through the <u>complaints handling procedure</u> the <del>regulated postal operator</del><u>universal service provider</u> shall record in a written or electronic format the following details:</p> <ul style="list-style-type: none"> <li>(a) the date that the consumer complaint was received;</li> <li>(b) whether the consumer complaint was made orally or in writing;</li> <li>(c) the identity and contact details of the complainant; and</li> <li>(d) a summary of the consumer complaint.</li> </ul>
<p><b>CP 3.3.5</b></p>	<p>For each <u>consumer complaint</u> received through <u>its complaints handling procedure</u> the <del>regulated postal operator</del><u>universal service provider</u> must also record:</p> <ul style="list-style-type: none"> <li>(a) a summary of any subsequent contact with the <u>complainant</u> and any advice given or action taken in response to the <u>consumer complaint</u>;</li> <li>(b) the date (if any) on which the <u>consumer complaint</u> became a <u>completed complaint</u>; and</li> <li>(c) the date (if any) on which the <del>regulated postal operator</del><u>universal service provider</u> sends a written notice to a <u>complainant</u> in accordance with CP 3.3.7.</li> </ul>
<p><b>CP 3.3.6</b></p>	<p>Where a <del>regulated postal operator</del><u>universal service provider</u> has recorded a <u>consumer complaint</u> as a <u>completed complaint</u> but within three months of the date of making that record a subsequent contact is made by or on behalf of the <u>complainant</u> in relation to that <u>consumer complaint</u> which indicates that it is not a <u>completed complaint</u>, the <del>regulated postal operator</del><u>universal service provider</u>:</p> <ul style="list-style-type: none"> <li>(a) must as soon as reasonably practicable take account of that <u>consumer complaint</u> in any report which it is obliged to prepare and publish in accordance with CP 3.3.14;</li> <li>(b) shall not otherwise be entitled to treat that <u>consumer complaint</u> as a <u>completed complaint</u> until that <u>consumer complaint</u> is demonstrably a <u>completed complaint</u>.</li> </ul>

<p><b>CP 3.3.7</b></p>	<p>The <u>universal service provider</u> <del>Each regulated postal operator</del> must send a notice to a <u>complainant</u> on the earlier of:</p> <ul style="list-style-type: none"> <li>(a) the first <u>working day</u> after the day on which the <del>regulated postal operator</del><u>universal service provider</u> becomes aware that it is not able to complete a <u>consumer complaint</u> made through its <u>complaints handling procedure</u> to the <u>complainant's</u> satisfaction; or</li> <li>(b) the first <u>working day</u> after the day on which the <u>specified time period</u> for that <u>consumer complaint</u> expires.</li> </ul>
<p><b>CP 3.3.8</b></p>	<p>The notice referred to in CP 3.3.7 must be in writing (including electronically) unless another format has been agreed with the <u>complainant</u>, and notify the <u>complainant</u>—</p> <ul style="list-style-type: none"> <li>(a) of their right to refer the <u>consumer complaint</u> to a <u>qualifying redress scheme</u>;</li> <li>(b) of the contact details of the <u>qualifying redress scheme</u>;</li> <li>(c) that the <u>qualifying redress scheme</u> process is independent of the <del>regulated postal operator</del><u>universal service provider</u>;</li> <li>(d) that the <u>qualifying redress scheme</u> process is free of charge to the <u>complainant</u>;</li> <li>(e) of the types of redress that may be available under a <u>qualifying redress scheme</u>; and</li> <li>(f) that any outcome of the <u>qualifying redress scheme</u> process is binding upon the <del>regulated postal operator</del><u>universal service provider</u> but not upon the <u>complainant</u>.</li> </ul>
<p><b>CP 3.3.9</b></p>	<p>The <u>universal service provider</u> <del>Each regulated postal operator</del> must allocate and maintain such level of resources as may reasonably be required to enable <del>that</del> the <del>regulated postal operator</del><u>universal service provider</u> to receive, handle and process <u>consumer complaints</u> made through its <u>complaints handling procedure</u> in an efficient and timely manner and in accordance with this Condition.</p>

<p><b>CP 3.3.10</b></p>	<p>The <u>universal service provider</u> <del>Each regulated postal operator</del> must put in place arrangements to deal with <u>complaints</u> made through its <u>complaints handling procedure</u> in relation to which the <u>Consumer Advocacy Bodies</u> makes representations on behalf of a <u>vulnerable consumer</u>. If <del>a regulated postal operator</del> the <u>universal service provider</u> identifies a consumer as a <u>vulnerable consumer</u> with a <u>consumer complaint</u>, or the <u>Consumer Advocacy Bodies</u> refers such a <u>consumer</u> to <del>a regulated postal operator</del> the <u>universal service provider</u>, <del>that regulated postal operator</del> the <u>universal service provider</u> must take such additional steps as it considers necessary or appropriate with a view to assisting that <u>vulnerable consumer</u> and completing their <u>consumer complaint</u> in an appropriate and prompt manner.</p>
<p><b>CP 3.3.11</b></p>	<p>The <u>universal service provider</u> <del>Each regulated postal operator</del> must:</p> <ul style="list-style-type: none"> <li>(a) publish its <u>complaints handling procedure</u> in such a manner as will ensure reasonable publicity for it;</li> <li>(b) ensure that its <u>complaints handling procedure</u> appears at a clear and prominent location on any relevant website it operates or controls; and</li> <li>(c) ensure that details of how to make a <u>consumer complaint</u> are made available at all its business premises which are accessible to the public, including the premises of its agents.</li> </ul>
<p><b>CP 3.3.12</b></p>	<p>Where <del>a regulated postal operator</del> the <u>universal service provider</u> becomes aware, following contact by or on behalf of the <u>complainant</u>, that a <u>consumer complaint</u> which the <u>postal operator</u> had recorded as a <u>completed complaint</u> is not a <u>completed complaint</u>, the <del>regulated postal operator</del> <u>universal service provider</u> must as soon as reasonably practicable—</p> <ul style="list-style-type: none"> <li>(a) direct the <u>complainant</u> to the <u>complaints handling procedure</u>; and</li> <li>(b) offer to provide a copy of the <u>complaints handling procedure</u> to the <u>complainant</u> free of charge.</li> </ul>
<p><b>CP 3.3.13</b></p>	<p>The <u>universal service provider</u> <del>Each regulated postal operator</del> must provide a copy of its <u>complaints handling procedure</u>, free of charge, to any person who requests it.</p>
<p><b>CP 3.3.14</b></p>	<p>The <u>universal service provider</u> <del>Each regulated postal operator</del> must—</p> <ul style="list-style-type: none"> <li>(a) publish by 30th June each year a consumer complaints report in such a manner as will ensure reasonable publicity for it;</li> <li>(b) publish its consumer complaints report at a clear and prominent location on any website it operates or controls; and</li> </ul>

	(c) provide a copy of its <u>consumer complaints</u> report, free of charge, to any person who requests it.
<b>CP 3.3.15</b>	<p>A <u>consumer complaints</u> report is a report in relation to the twelve month period ending on 31st March of the year in which the report is published which contains the following information:</p> <p>(a) the number of <u>consumer complaints</u> which the <del>regulated postal operator</del> <u>universal service provider</u> received during that period, which had not become <u>completed complaints</u> within that period; and</p> <p>(b) the number of <u>consumer complaints</u> which the <del>regulated postal operator</del> <u>universal service provider</u> received, during that period, which had become <u>completed complaints</u> within that period,</p> <p>in each case presenting the information broken down by no more than ten of the main causes of <u>consumer complaint</u>.</p>
<b>CP 3.3.16</b>	<p>The <u>universal service provider</u> shall submit to <u>OFCOM</u> and to the <u>Consumer Advocacy Bodies</u>, and publish in such a manner as will ensure reasonable publicity for them, not later than two months from the end of the quarter to which they relate, written quarterly reports which shall</p> <p>(a) set out -</p> <p>(i) the number of <u>consumer complaints</u> received during that quarter from <u>relevant consumers</u> which have not become <u>completed complaints</u>; and</p> <p>(ii) the number of <u>consumer complaints</u> received during that quarter from <u>relevant consumers</u> which have become <u>completed complaints</u>.</p> <p>(b) present the information referred to in paragraph (a) for the United Kingdom as a whole -</p> <p>(i) broken down by no less than ten main categories of <u>consumer complaint</u>, and</p> <p>(ii) showing the compensation that has been paid to <u>relevant consumers</u> in relation to <u>consumer complaints</u> that were found to be valid.</p>
<b>CP 3.3.17</b>	<p><del>A regulated postal operator</del> The <u>universal service provider</u> must be a member of a <u>qualifying redress scheme</u> in relation to <u>consumer complaints</u> about the provision of a <del>regulated</del> <u>relevant postal service</u>.</p>

**Table of terms defined in the Act**

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

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