

Decision finding Royal Mail contravened its quality of service performance targets in 2018/19 and imposing a financial penalty under paragraph 6 of Schedule 7 to the Postal Services Act 2011

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1. Overview

Royal Mail is required by regulation imposed by Ofcom to achieve certain performance targets in the delivery of Universal Service products. This decision sets out our findings that Royal Mail failed to achieve two of these targets in 2018/19 (the first class national performance target and the Postcode Area performance target) and our decision to impose a financial penalty on Royal Mail for its contravention of its first class national performance target.

What are the targets?

The first class national performance target effectively requires at least 93% of first class mail to be delivered within one working day of collection. The first class Postcode Area performance target effectively requires at least 91.5% of first class products to be delivered within one working day of collection in 118 out of the 121 PCAs in the UK.

Royal Mail failed to achieve these targets in 2018/19

Royal Mail reported that in 2018/19 it achieved a performance of 91.54% against its first class national performance target (93%), and only met its first class Postcode Area performance target of 91.5% in 75 of 118 PCAs.

Ofcom took into account the impact of an exceptional event but Royal Mail still failed to achieve its targets

Ofcom has discretion to adjust Royal Mail's performance to take into account the impact of events which Ofcom considers to be exceptional and which affected its quality of service performance. After considering the evidence put forward by Royal Mail, Ofcom decided to adjust Royal Mail's performance to take into account the impact of Highways England's road investment programme.

Despite this adjustment, Royal Mail still failed to achieve its first class national performance target by 1.1% and its Postcode Area performance target in 10 Postcode Areas.

Ofcom has imposed a penalty of £1.5 million on Royal Mail

In the specific circumstances of this case, and having considered all of the relevant factors in the round, we have imposed a penalty of £1.5 million on Royal Mail for its failure to meet its first class national performance target. We consider that this penalty is proportionate and appropriate to the contravention.

We have decided not to impose a financial penalty in relation to Royal Mail's failure to comply with the first class Postcode Area performance target.

The overview section in this document is a simplified high-level summary only. The decision we have taken and our reasoning are set out in the full document.

2. Introduction

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

Notifications issued during the investigation

- 2.2 On 13 June 2019, we issued a notification (the “First Notification”) to Royal Mail which explained that we had reasonable grounds for believing that it had contravened relevant regulatory requirements. Royal Mail provided written representations in response on 9 August 2019 (“Representations”). These Representations included submissions on (i) adjustments to Royal Mail’s quality of service performance to take into account the impact of events which Royal Mail considered exceptional; and (ii) why Royal Mail did not consider a financial penalty was appropriate or proportionate in this case.
- 2.3 Taking into account these Representations, and further information provided by Royal Mail, we issued Royal Mail with a further notification (the “Second Notification”) on 3 February 2020. This replaced the First Notification and explained that we continued to have reasonable grounds for believing that Royal Mail had contravened relevant regulatory requirements. It also set out our provisional view that it was appropriate to impose a financial penalty on Royal Mail for its contravention of its first class national performance target and that a penalty of £1.5 million was appropriate and proportionate to that contravention.
- 2.4 On 6 March 2020, Royal Mail wrote to Ofcom advising that it had decided not to contest Ofcom’s provisional decision set out in the Second Notification and would not be submitting further written representations.

Structure of this document

- 2.5 The structure of this document is as follows:
- In **Section 3**, we set out the legislation, regulation and European Standard relevant to this investigation. We also explain how Royal Mail monitors its quality of service performance.
 - In **Section 4**, we set out our consideration of Royal Mail’s submissions in its Representations relating to adjustments to its performance, and explain our reasons for deciding to take into account the confidence interval and to adjust Royal Mail’s performance to reflect the impact of Highways England’s road investment programme. We also explain our finding that, despite this adjustment, Royal Mail contravened its obligations in relation to the first class national and first class Postcode Area (“PCA”) performance targets in 2018/19.
 - In **Section 5**, we:

- summarise Royal Mail's submissions in its Representations that a penalty is not appropriate or proportionate in this case;
- set out our reasons for deciding that, in the specific circumstances of this case, it is appropriate to impose a financial penalty on Royal Mail for its failure to meet the first class national performance target; and
- set out our reasons for deciding not to impose a penalty for Royal Mail's failure to meet the PCA performance target in the specific circumstances of this case.

3. Regulatory framework in relation to Royal Mail's quality of service targets

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

Regulatory framework

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

Overview of the quality of service regulation

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

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

3.5 DUSP condition 1.9.1 requires Royal Mail to meet certain performance targets, including:

- a first class national performance target, which requires at least 93.0% of first class mail to be deemed to have been delivered with an actual routing time of no more than one working day i.e. within one working day of collection; and
- a first class Postcode Area⁴ performance target, which requires at least 91.5% of first class products, which have been purchased by postage stamp and by meter, to be deemed to have been delivered with an actual routing time of no more than one

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

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

³ As amended on 1 April 2014.

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

working day in each postcode area in the UK apart from HS,⁵ KW⁶ and ZE⁷ (118 out of the 121 in the UK).

- 3.6 DUSP condition 1.9.1 requires Royal Mail to meet these targets in respect of each annual period ending on 31 March, with the exception of the Christmas Exemption Period, which is defined as the period beginning on the first Monday in December and ending on the New Year public holiday in the following January.⁸
- 3.7 DUSP condition 1.9.2 requires Royal Mail to monitor, or to procure the monitoring of, its performance in relation to the relevant quality of service targets using an appropriate testing methodology. The approach followed by Royal Mail is explained below.
- 3.8 Royal Mail has been subject to equivalent regulatory obligations since 2001, including the first class national performance targets and PCA performance targets.⁹ The levels of the standards were initially based on Royal Mail's then internal quality of service targets.¹⁰ Royal Mail subsequently agreed to an increase in the standards and by 2005/06 the present levels applied.¹¹ In establishing a new regulatory framework in 2012, we decided to maintain performance targets at these levels. We noted that *"[h]istorical performance suggests that all of the targets are achievable."*¹²

Ofcom's investigatory and enforcement powers

- 3.9 Ofcom's powers to take enforcement action against Royal Mail in relation to its compliance with the performance targets imposed on it are set out in Schedule 7 to the Act.
- 3.10 Under section 54 of, and paragraph 2 of Schedule 7, to the Act, if Ofcom determines that there are reasonable grounds for believing that Royal Mail is contravening, or has contravened, a regulatory requirement, Ofcom may give Royal Mail a notification. The notification must:
- a) set out the determination made by Ofcom;
 - b) specify the requirement and contravention in respect of which that determination has been made; and
 - c) specify the period during which Royal Mail has an opportunity to make representations about the notified determination.
- 3.11 Following the issue of such a notification, there are a number of further enforcement actions that Ofcom may consider taking. As this case relates to Royal Mail's performance

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

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

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

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

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

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

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

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

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

during 2018/19, some of these actions, such as issuing an enforcement notification together with a direction setting out steps to be taken to remedy the contravention (provided for under paragraph 5 of Schedule 7 to the Act), are not applicable since it would not be possible for Royal Mail to remedy any contravention on a retrospective basis.

- 3.12 If, following a notification under paragraph 2, Ofcom is satisfied that Royal Mail has, in one or more of the notified respects, been in contravention of the notified regulatory requirement, Ofcom may impose a financial penalty on Royal Mail, in accordance with paragraph 6 of Schedule 7 to the Act. The amount of any penalty should be appropriate and proportionate to the contravention(s) for which it is imposed and may not exceed 10% of the turnover of Royal Mail's postal service business for the relevant period. In determining the amount of any financial penalty, Ofcom is also required to have regard to its guidelines on financial penalties.¹³

Ofcom's approach to the enforcement of Royal Mail's performance targets

- 3.13 In this section, we set out Ofcom's approach to enforcement of Royal Mail's performance targets. In carrying out such enforcement action, we have regard to the European Standard for first class mail which sets how quality of service should be measured.

Measuring quality of service

- 3.14 The European Committee for Standardization, known as CEN, is an association that brings together the National Standardization Bodies of 34 European countries. CEN is one of the European Standardization Organizations that has been officially recognised by the European Union and by the European Free Trade Association (EFTA) as being responsible for developing and defining voluntary standards at a European level.
- 3.15 CEN has approved European Standard EN 13850:2012 (the "first class standard") which was implemented in the UK by The British Standards Institute and guides postal operators in measuring the quality of service of single piece priority or first class mail falling within the scope of universal service obligations. It does this by providing a detailed methodology for estimating the quality of service – in relation to journey times – of these priority mail services.
- 3.16 As noted above, DUSP condition 1.9.2 requires Royal Mail to monitor, or to procure the monitoring of, its performance in relation to the relevant quality of service standards using an appropriate testing methodology. Royal Mail complies with this requirement by way of a series of surveys involving test mail items. These are designed by Royal Mail in compliance with the first class standard and carried out by the market research agency Kantar. To carry out the survey, Kantar recruits a panel of private individuals and businesses across the UK who are directed to post items of test mail to each other. Royal Mail explains that panellists record the dates on which test items are posted and the dates

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

on which test items are delivered. The test items are not identifiable to Royal Mail and the participants in the survey are anonymous to Royal Mail.

- 3.17 The delivery performance of these test items can be extrapolated to estimate the performance across all mailed items. In particular, the first class standard provides a statistical methodology which enables Royal Mail to calculate a margin of error (known as the “*confidence interval*”) around the performance of the sample items within which there can be confidence Royal Mail’s overall performance lies.¹⁴
- 3.18 This results in a range within which there is a 95% probability that Royal Mail’s true performance falls, although it is not possible to determine precisely where in that range Royal Mail’s actual performance lies. The performance figures reported by Royal Mail represent the middle of the confidence interval. The range or degree of the confidence interval is determined by (i) the measured quality of service achieved for the sample; and (ii) the sample size.
- 3.19 Since imposing the DUSP condition in 2012, Ofcom has consistently acknowledged the confidence interval associated with Royal Mail’s quality of service performance figures. This means that where Royal Mail’s performance – adjusted to the high point of the confidence interval – meets the relevant standard, Ofcom has not intervened or investigated further. This is because, in these circumstances, “*it could not be ascertained whether Royal Mail had missed the target or not.*”¹⁵ Similarly, we have taken into account the confidence intervals in our decisions associated with Royal Mail’s performance in 2015/16 and 2017/18.¹⁶

Exceptional events for which an additional allowance may be granted

- 3.20 The objective of Royal Mail’s performance targets is to ensure that consumers receive an adequate level of service. These targets are made meaningful and achievable by being set below 100%, in recognition of the fact that events may affect delivery performance which are beyond Royal Mail’s control.¹⁷ However, Ofcom has discretion to take into account the impact of events Ofcom considers to be exceptional and grant an additional allowance, in

¹⁴ See European Standard EN 13850:2012, section A.5.

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

¹⁶ See Ofcom, [Decision to conclude investigation of Royal Mail Group Limited in relation to a contravention of Designated Universal Service Provider Condition 1.9.1](#), 19 October 2016, page 6, paragraph 3.6; Ofcom, [Decision to conclude investigation into Royal Mail’s compliance with its quality of service performance standards in 2017/18](#), 31 May 2019, page 11, paragraph 3.17.

¹⁷ See Ofcom, [Annual monitoring update on the postal market – Financial year 2012-13](#), page 37, paragraph 5.33; Ofcom, [Annual monitoring update on the postal market – Financial year 2013-14](#), page 45, paragraphs 5.36; Ofcom, [Annual monitoring update on the postal market – Financial year 2014-15](#), page 17, paragraph 3.32; Ofcom, [Decision to conclude investigation of Royal Mail Group Limited in relation to a contravention of Designated Universal Service Provider Condition 1.9.1](#), 19 October 2016, page 9, paragraph 3.22; Ofcom, [Decision to conclude investigation into Royal Mail’s compliance with its quality of service performance standards in 2017/18](#), 31 May 2019, page 8, paragraph 3.5.

excess of the allowance already built into the targets. Ofcom will consider on a case-by-case basis whether to grant such an additional allowance.

- 3.21 Determining whether an event should be considered “exceptional” is an inherently subjective exercise. An event may appear exceptional, for example, because it has never happened before, is rare, or has an unprecedented and unforeseeable impact. However, it does not follow that we should automatically grant an additional allowance for it. This is because Royal Mail’s performance targets are already set below 100% to capture events that are beyond Royal Mail’s control, some of which could be considered “exceptional” to the extent the specific nature of the event may not have happened before or is rare. Whether an event is considered “exceptional” cannot therefore be the only relevant factor when determining whether we should grant an additional allowance for a specific event. If it was, then Royal Mail could effectively receive two allowances for the same event; one under the allowance built into its targets - which is intended to cover events beyond Royal Mail’s control, including events that may be considered “exceptional” - and one as a result of an ex post investigation.
- 3.22 In exercising our discretion, we therefore consider the specific circumstances of an event and take a more holistic approach when deciding whether to take into account the impact of an event and grant an additional allowance for it. We consider:
- a) first, whether an event is exceptional; and
 - b) second, if it is exceptional, whether an additional allowance should be granted for it.
- 3.23 As set out above, the first component is an inherently subjective exercise. In exercising our discretion, we have regard to the first class standard (discussed in paragraphs 3.26 – 3.27 below) which sets out criteria for an event to be regarded as ‘force majeure’ and will consider factors such as whether the event was caused by Royal Mail and whether the type of the event was rare, unprecedented, unforeseeable and/or unavoidable.
- 3.24 The second component will consider factors such as whether the event had a provable and quantifiable impact on quality of service; the extent of that impact and whether we consider Royal Mail should be able to absorb the impact within its allowance; whether we consider the exceptional event is the type of event which the allowance is intended; and whether Royal Mail has taken adequate steps to mitigate the impact of the event on its quality of service.
- 3.25 Where we decide to grant an additional allowance for a specific event, we adjust Royal Mail’s performance to account for the impact of the particular event in question.

European Standard for first class mail

- 3.26 The first class standard outlines certain circumstances, known as “*force majeure*” events, which may provide a reason for postal operators to remove certain samples from its performance assessment, and which has the effect of uplifting overall performance. Section 5.2 of the first class standard, entitled “Transit time calculation”, discusses *force majeure* events and Section H.3.5, entitled “Force majeure”, covers a number of topics related to *force majeure* events. We have regard to the first class standard (in particular

the Sections 5.2.2 and H.3.5.4 copied below) when deciding whether an event should be considered an exceptional event for which Royal Mail's performance should be adjusted (although the first class standard is not considered by itself determinative of the issue).

3.27 Sections 5.2.2 and H.3.5.4 read as follows:

"5.2.2 Continuity of measurement

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

Non-functioning of the postal operator and days of strikes or industrial disputes shall not be discounted. However, in case of "force majeure" events, deduction of corresponding periods may be considered [by the regulatory authority¹⁸]. Any deduction shall be indicated in the reporting and be subject to audit.

[...]

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

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

It shall;

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

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

"H.3.5.4 Examples of force majeure

- natural disasters; earthquake, flooding or other extreme weather conditions (which are unlikely in that region or country) causing damage to e.g. goods, infrastructure, people and making the postal operator unable to perform its obligations,*

¹⁸ See European Standard EN 13850:2012, section F.2.2.

- *war or terrorist activity causing physical damage to e.g. goods, infrastructure, people or creating a psychological distress that results in non-performance,*
- *general strike; an external strike outside the operators influence and where all major transportation systems are blocked on a nation-wide level.*

The following events may not qualify as force majeure:

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

4. Our assessment of Royal Mail's submissions and finding of contraventions of DUSP 1.9.1

Royal Mail's quality of service performance in 2018/19

- 4.1 On 17 May 2019, Royal Mail announced¹⁹ its quality of service performance against its targets. These results were confirmed in its end of year performance report published on 28 June 2019.²⁰ These showed that Royal Mail had:
- failed to meet its first class national performance target of 93.0%, achieving a lower performance of 91.54%; and
 - failed to meet its first class PCA performance target of 91.5% in 43 of the 118 specified PCAs, only achieving the target in 75 out of 118 PCAs.
- 4.2 On 31 May 2019, Ofcom opened an investigation into the two failures identified above.²¹ On 13 June 2019, we issued our First Notification which found that we had reasonable grounds for believing that Royal Mail had contravened DUSP condition 1.9.1 by failing to achieve the first class national performance target and the first class PCA performance target in the financial year 2018/19. Royal Mail provided its written Representations in response to Ofcom on 9 August 2019, attended a meeting with Ofcom on 17 September 2019, and on 27 September 2019 provided additional information.
- 4.3 In its Representations, Royal Mail submitted that we should take into account the confidence interval, and that its performance in 2018/19 should be adjusted for:
- a) The significant disruption caused by Highways England's road investment programme, which Royal Mail stated had an impact of 0.25% on its first class national quality of service performance.²²
 - b) The effects of Cyber Week, the period from the fourth Friday in November (Black Friday) until the following Saturday. During this time, Royal Mail sees a significant increase in parcel volumes which it explained negatively impacted its national quality of service performance for first class products by 0.16%.²³
 - c) The effects of several other events which Royal Mail submitted were beyond its reasonable control including: external events affecting the air, rail, hub and road network; local issues, including the evacuation of a South Midlands mail centre; and

¹⁹ See: [Royal Mail press release on quality of service in 2018/19](#).

²⁰ Royal Mail, [Year-End Adjusted Quality Results 2018/19](#).

²¹ This was publicly announced on Ofcom's [competition and consumer enforcement bulletin](#).

²² Representations, paragraphs 31-41.

²³ Ibid, paragraphs 42-59.

industrial action. Royal Mail submitted that these other events had a combined impact of 0.15% on its first class national quality of service performance.²⁴

- 4.4 In assessing the impact of these events on its quality of service performance, Royal Mail analysed the journey for mail that failed to reach its destination by the next working day. Where the item failed during an event that Royal Mail classified as ‘beyond its reasonable control’, and where it did not fail again later in the pipeline, Royal Mail removed the item from its quality of service data. It then compared this adjusted quality of service data to the original data to quantify the impact of such events.²⁵
- 4.5 Royal Mail noted that by adjusting its performance to take into account the factors above, and the confidence interval, its performance against the first class national target increased by 0.71% to 92.25% and the number of PCAs achieving 91.5% increased from 75 to 109.²⁶ This adjusted performance – which is the maximum performance Royal Mail indicated it achieved – still failed to meet the first class national and PCA performance target by a significant margin.
- 4.6 As mentioned in Section 3 above, the purpose of Royal Mail’s performance targets is to ensure an adequate level of service for all consumers. The targets are set below 100% in recognition of that fact that Royal Mail’s delivery performance may be affected by some events outside of its control.²⁷ Ofcom has the discretion to grant additional allowances for events which we consider to be exceptional. This a subjective exercise during which we take into account the specific circumstances of an event and the factors identified in paragraphs 3.23 to 3.24 above.
- 4.7 In this section, we consider each of Royal Mail’s submissions in its Representations that relate to adjustments it proposes we should make to its quality of service performance to take account of the impact of events which it considered exceptional. In the specific circumstances of this case, we explain our decision to take into account the confidence interval and adjust Royal Mail’s performance for the impact of Highways England’s road investment programme. We also explain our reasons for rejecting Royal Mail’s submissions on adjustments for Cyber Week and other events which Royal Mail submitted were beyond its reasonable control.

Confidence interval

- 4.8 As set out in paragraph 3.17 above, the first class standard provides a statistical methodology which enables Royal Mail to calculate a confidence interval around the

²⁴ Ibid, paragraphs 60-68.

²⁵ Ibid, paragraphs 64-65.

²⁶ Ibid, paragraphs 5 and 7.

²⁷ See Ofcom, [Annual monitoring update on the postal market – Financial year 2012-13](#), page 37, paragraph 5.33; Ofcom, [Annual monitoring update on the postal market – Financial year 2013-14](#), page 45, paragraphs 5.36; Ofcom, [Annual monitoring update on the postal market – Financial year 2014-15](#), page 17, paragraphs 3.32; Ofcom, [Decision to conclude investigation of Royal Mail Group Limited in relation to a contravention of Designated Universal Service Provider Condition 1.9.1](#), 19 October 2016, page 9, paragraph 3.22; Ofcom, [Decision to conclude investigation into Royal Mail’s compliance with its quality of service performance standards](#), 31 May 2019, page 8, paragraph 3.5

performance figures it reports. In 2018/19, the quality of service performance survey was carried out by Kantar with 587,896 first class items analysed. The confidence interval for first class national performance was +/- 0.14%. The confidence intervals for PCA performance varied by postcode but fell between +/- 0.7% and +/- 1.4%.²⁸ With the confidence intervals applied, Royal Mail's maximum performance without any other adjustments in 2018/19 was:

- a) 91.68% against the first class national performance target; and
- b) 105 out of 118 against the first class PCA performance target.

4.9 In its Representations, Royal Mail argued that *"it is appropriate for Ofcom to take into account the upper limit of the confidence interval when considering [its] performance"*.²⁹ This is because any result within the confidence interval has the same probability of being Royal Mail's true performance. Royal Mail highlighted the fact that *"EN13850 states that, in assessing whether measured QoS performance has met the target, the [confidence interval] must be taken into account"* when deciding if a contravention has taken place.³⁰

Ofcom's decision

4.10 Since the introduction of the DUSP in 2012, we have consistently taken the confidence interval into account when assessing Royal Mail's quality of service performance. In practice, this means that where Royal Mail's performance has met the targets after taking into account the confidence interval, we have not taken enforcement action.³¹ Consistent with this approach, we have taken the confidence interval into account (i.e. the upper confidence limit) when determining Royal Mail's performance in 2018/19.

Highways England's road investment programme

4.11 In its Representations, Royal Mail submitted that Highways England's road investment programme affected its quality of service performance in 2018/19.³² Royal Mail explained that when the effect of Highways England's programme is taken into account, its performance against the first class national target increased by 0.25%. When combined with the confidence interval (0.14%), this takes its first class national performance from 91.54% to 91.93% and its first class PCA performance from 75 to 108 out of 118 PCAs achieving 91.5%.³³

²⁸ Representations, paragraph 38.

²⁹ Ibid, paragraph 21.

³⁰ Ibid, paragraph 29.

³¹ Ofcom, [Annual monitoring update on the postal market – Financial year 2014-15](#), paragraph 3.35. Also see Ofcom, [Annual monitoring update on the postal market – Financial year 2013-14](#), 2 December 2014, paragraph 5.40; Ofcom, [Decision to conclude investigation of Royal Mail Group Limited in relation to a contravention of Designated Universal Service Provider Condition 1.9.1](#), CW/01183/05/16, 19 October 2016, paragraph 3.6, Ofcom, [Decision to conclude investigation into Royal Mail's compliance with its quality of service performance standards in 2017/18](#), 31 May 2019, paragraph 3.17

³² Representations, paragraph 31.

³³ Ibid, paragraph 32.

Royal Mail's Representations

- 4.12 In its Representations, Royal Mail described its road network as “*the single most critical element of [its] transport network,*” explaining that its vehicles travel [§<] million miles each year and that [§<] million of these miles are on motorways and dual carriageways. Despite making some use of rail and air transport, [§<] [to the significant majority] of its domestic mail travels exclusively by road.³⁴
- 4.13 Royal Mail explained that delays to vehicles caused by roadworks can lead to connection times being missed, and that first class mail performance is “*particularly affected*” by this because each part of the journey is “*time-critical and interdependent*”.³⁵
- 4.14 According to Royal Mail, there were five main features of Highways England’s programme which impacted its quality of service performance, namely:³⁶
- a) **Timing** - The majority of roadworks were overnight which directly impacted transporting first class mail for delivery the following morning.
 - b) **Scale** - There was a step change in the level of investment in road maintenance over the previous year and, at the time of its Representations, 17 major projects were taking place across the Strategic Road Network.
 - c) **Notification [of roadworks]** – [§<]
 - d) **Type of closure** - Lane closures are easier to plan for than full road closures. Full closures require alternative routes, which added significant time to journeys and impacted Royal Mail employees with restricted driving hours.
 - e) **Location** - Road disruption has a disproportionately high impact on Royal Mail’s quality of service performance when it is near one of the national distribution centres or on a neighbouring motorway. Examples of such motorways are the M1, M6 and M42, all of which were affected by Highways England’s programme.³⁷
- 4.15 Royal Mail submitted that it took extensive steps to mitigate the impact of Highways England’s programme. This included utilising its pre-existing 24/7 tactical response unit, Central Postal Control, that aims to mitigate the impact of disruption through the use of contingency routes to divert vehicles.³⁸ Royal Mail also worked with Highways England to build a senior level relationship and introduce new processes which allow quarterly contingency planning for up to nine months in advance.³⁹ Additionally, Royal Mail placed an

³⁴ Ibid, paragraph 33.

³⁵ Ibid, paragraph 34.

³⁶ Ibid, paragraph 35.

³⁷ Information about Highways England’s disruption to these routes can be found on its website [here](#).

³⁸ Representations, paragraph 36.

³⁹ Ibid, paragraph 37.

individual on secondment with Highways England during September 2018 to improve communication between the organisations.⁴⁰

- 4.16 Notwithstanding the mitigating steps Royal Mail took, it submitted that some delays caused by Highways England's programme were too severe to mitigate or that it was given insufficient notice of disruption.⁴¹
- 4.17 Royal Mail submitted that the scale of the programme, the "exceptional" disruption created by it, and the fact that it was outside of its control,⁴² meant that it was not an event for which the 7% allowance built into its first class national performance target was intended.⁴³

Ofcom's decision

- 4.18 In the specific circumstances of this case, we have decided that an additional allowance should be granted for the impact of Highways England's road investment programme on Royal Mail's first class national and PCA performance targets in 2018/19, and that Royal Mail's performance should be adjusted to take into account its impact.
- 4.19 In exercising our discretion and reaching this decision, we have considered the following factors:
- a) The disruption to the network was outside of Royal Mail's control and exceptional in terms of its scale and impact relative to previous years.
 - b) In some cases, disruption was unforeseeable ([§<]) and unavoidable (due to the extent and location of works and delays).
 - c) Royal Mail took extensive steps to mitigate the impact of Highways England's programme on its quality of service performance (including utilising its Central Postal Control, extensive senior engagement efforts with Highways England, and placing an individual on secondment).
 - d) Due to the unique scale and nature of this particular programme of road maintenance, it is not the type of event for which the 7% allowance built into Royal Mail's first class national performance target is intended to cover.⁴⁴

Cyber Week

- 4.20 In its Representations, Royal Mail submitted that its 2018/19 quality of service performance was affected by the volume of packages it processed during Cyber Week, and

⁴⁰ Royal Mail, *Presentation to Ofcom: Highways England – impact on the business*, 18 September 2018, page 18 (included as Annex C in Royal Mail's Representations).

⁴¹ Representations, paragraph 38.

⁴² Ibid, paragraph 40.

⁴³ Ibid, paragraph 39. Where we refer in this document to the 7% allowance built into Royal Mail's first class national performance target, we are also referring to the 8.5% allowance built into its PCA performance target.

⁴⁴ It is important to note that our decision relates to the specific impact of Highways England's programme and not typical road traffic disruption which the 7% allowance built into Royal Mail's target is intended to cover.

that we should adjust Royal Mail's performance to take into account its impact. Royal Mail explained that when the impact of Cyber Week is taken into account, its performance against the first class national target increased by 0.16%. When combined with the confidence interval (0.14%), this takes its first class national performance from 91.54% to 91.84% and its first class PCA performance from 75 to 108 out of 118 PCAs achieving 91.5%.⁴⁵

Royal Mail's Representations

Cyber Week volumes

- 4.21 Cyber Week runs from the fourth Friday of November (Black Friday) until the following Saturday.⁴⁶ During this time, Royal Mail sees a large increase in parcels, with volumes similar to the Christmas Exemption Period ("CEP").⁴⁷
- 4.22 In its Representations, Royal Mail explained that in 2018/19 it processed [X] million parcels during Cyber Week, an increase of [X]% on average parcel volumes compared to Q1-Q3 and a [X]% increase compared to the week before (equating to [X] million additional parcels).⁴⁸
- 4.23 As illustrated by Figure 1 below, Royal Mail submitted that in 2018/19 the parcel volumes during Cyber Week (Week 36) were [X] to the volumes throughout the CEP (beginning in Week 37). Royal Mail also explained that these Cyber Week volumes are likely to under-represent the actual volume of parcels processed by Royal Mail because in 2018/19 Black Friday fell outside of Week 36.⁴⁹

Figure 1: Parcel volumes carried by Royal Mail in 2018/19⁵⁰

[X]

Source: Royal Mail

- 4.24 Royal Mail explained that it uses "cross-docking", where Yorks⁵¹ of mail are sorted from one vehicle to another, as a measure of the volumes processed each day. As illustrated by Figure 2 below, in Week 36, the number of items being cross-docked was [X] Yorks. Royal Mail explained that this increase in cross-docking put pressure on its operation and increased the need for additional trucks to move the Yorks.⁵²

⁴⁵ Representations, paragraph 43.

⁴⁶ Ibid, paragraph 42.

⁴⁷ The CEP is defined in DUSP 1.1.2 as the first Monday in December until the first working day in January. Royal Mail's performance during this period is removed from its annual performance based on DUSP 1.9.1. Royal Mail must still publish its quality of service performance during the CEP and does so, in line with DUSP 1.10.6, with its Q3 results each year.

⁴⁸ Representations, paragraph 43.

⁴⁹ Ibid, Figure 7 and paragraph 46.

⁵⁰ Ibid, Figure 7. Royal Mail's footnote: Operationally Reported Parcels volumes (including Large Letters to Parcels adjustment, Special Delivery, Parcelforce, Ministerial Pouches and RM Specialist Services).

⁵¹ A "York" is a container used by Royal Mail to transport mail.

⁵² Ibid, Figure 8 and paragraphs 48-49.

Figure 2: Royal Mail cross-docking volumes (number of Yorks) by week, 2017/18 and 2018/19⁵³

[REDACTED]

Source: Royal Mail

4.25 Royal Mail explained that the increase in parcel volumes during Cyber Week creates a “significant additional workload” due to the size and weight of parcels and their difficulty to automate. It also takes postal workers additional time to deliver a parcel compared to a letter, because the parcel must be delivered to the recipient’s address or a neighbour’s address, or a note must be left if the package will not fit through the letter box.⁵⁴

4.26 In its Representations, Royal Mail noted that its performance over the CEP is excluded from its annual performance, “in recognition of the fact that volumes during this period are beyond those for which [it] could reasonably and efficiently resource” and that this same logic should be applied to Cyber Week, which fell entirely outside of the CEP in 2018/19.⁵⁵

Cyber Week planning and obstacles

4.27 Royal Mail explained that its planning for Cyber Week begins in January and additional resources are introduced from mid to late November. In its Representations, Royal Mail highlighted several investments it had made to mitigate the impact of Cyber Week and Christmas 2018/19 including:⁵⁶

- a) utilising approximately [REDACTED] staff;
- b) spending £[REDACTED] million on additional fleet;
- c) spending £[REDACTED] million on additional property including [REDACTED] temporary buildings, [REDACTED] previously vacant buildings, [REDACTED] marquees, [REDACTED] temporary vehicle operating centres, [REDACTED] temporary car parks and alterations to [REDACTED] operational buildings, equating to [REDACTED] million square feet of additional space;
- d) resourcing [REDACTED] domestic parcel sorting centres between early November and mid-January to increase capacity for processing mail and to reduce pressure on other processing centres; and
- e) increasing collections, [REDACTED].

4.28 Royal Mail recognised that Cyber Week is now a predictable part of the retail calendar but submitted that there are a number of obstacles limiting its ability to obtain the resources required to meet the first class performance targets during this time.⁵⁷

4.29 Royal Mail explained that one such obstacle is the need for [REDACTED] additional members of delivery staff if it was to meet the first class target during Cyber Week. Royal Mail explained that additional staff are not required during the Christmas period due to the CEP

⁵³ Ibid, Figure 8.

⁵⁴ Ibid, paragraph 47.

⁵⁵ Ibid, paragraph 45.

⁵⁶ Ibid, paragraph 51.

⁵⁷ Ibid, paragraph 58.

and an agreement with the Communication Workers Union (“CWU”) to make permanent staff available over Christmas.⁵⁸ Royal Mail also submitted that there are significant obstacles to recruiting staff for these additional roles, including:⁵⁹

- a) Other organisations hiring for the Christmas period. [§<].
- b) Delivery staff requiring greater skills [§<].
- c) Delivery roles which require carrying heavy loads and working outdoors in November, which may not be attractive compared to other seasonal roles.

4.30 Royal Mail submitted that there are other resources needed to meet the targets which are difficult to procure. These include:⁶⁰

- a) appropriately sized buildings available for short term lease, which are limited in number;
- b) vehicles available for short term hire, which are limited in number and high in demand; and
- c) additional flights, which are limited due to a finite amount of aircraft and runway slots.

Ofcom’s approach in previous investigations

4.31 Royal Mail submitted that Ofcom should revert to its previous approach to Cyber Week. It highlighted the fact that in 2015/16 Ofcom decided it was appropriate to accept Cyber Week as a mitigating factor and to adjust Royal Mail’s quality of service performance accordingly.⁶¹

4.32 Royal Mail also noted that in 2017/18, Ofcom considered that Cyber Week did not merit an adjustment. Royal Mail considered that Ofcom’s 2017/18 Decision “*does not appear to accord with [Ofcom’s] duty under the Communications Act 2003 to be consistent in the performance of its duties*”.⁶²

4.33 Additionally, Royal Mail highlighted that in 2017/18 Ofcom stated that Cyber Week had become an event that was covered by the allowance already built into the targets,⁶³ and argued that “*[b]y expanding the type of event covered by the 7% allowance without increasing the allowance itself, Ofcom in effect impose stricter quality of service targets on Royal Mail*”.⁶⁴

⁵⁸ Ibid, paragraph 53.

⁵⁹ Ibid, paragraph 54.

⁶⁰ Ibid, paragraph 55.

⁶¹ Ofcom, [Decision to conclude investigation of Royal Mail Group Limited in relation to a contravention of Designated Universal Service Provider Condition 1.9.1](#), 19 October 2016, paragraph 3.13.; Ofcom, [Decision to conclude investigation into Royal Mail’s compliance with its quality of service performance standards in 2017/18](#), 31 May 2019, paragraphs 3.8-3.14.

⁶² Representations, paragraph 59.

⁶³ Ofcom, [Decision to conclude investigation into Royal Mail’s compliance with its quality of service performance standards in 2017/18](#), 31 May 2019, paragraph 3.13.

⁶⁴ Representations, paragraph 57.

Ofcom's decision

- 4.34 In the specific circumstances of this case, we have decided that an allowance should not be granted to Royal Mail for the impact of Cyber Week and that we should not therefore uplift Royal Mail's quality of service performance to take into account its impact. In exercising our discretion and reaching this decision we have taken into account a number of factors, which are set out below.
- 4.35 Cyber week is an established part of the retail calendar and predictable in terms of when it occurs and its likely impact. Royal Mail has argued that Cyber Week's predictability or otherwise is not the key challenge but rather it is that there are physical limits in its network which make it difficult for it to maintain quality of service during this period regardless of predictability.
- 4.36 However, our view is that Royal Mail has not demonstrated that it is impossible, or inefficient to an extent that is likely to materially impact the provision of the universal service, for it to adapt and manage the impact of Cyber Week in the context of an annual target. For example, in 2016/17 Royal Mail achieved its first class national performance target of 93.0% despite Cyber Week falling entirely outside of the Christmas Exemption Period.⁶⁵ We consider Royal Mail should have the resource and capability to adapt and manage the impact of Cyber Week within its existing allowance.
- 4.37 Moreover, unlike other mitigating factors identified by Royal Mail, in Ofcom's view the impact of Cyber Week is to some extent within Royal Mail's control. This is because the surge in volumes is driven, to a considerable extent, by non-USO parcel traffic (i.e. parcels which are not subject to universal service obligations including quality of service performance targets) which is dispatched as a result of the Black Friday and Cyber Monday retail events and Royal Mail's commercial relationships with those retailers. Our view is that it would not be appropriate to provide additional allowances for events where the impact is, in part, caused by Royal Mail's commercial choices. If we were to grant an additional allowance for the impact of Cyber Week, this may also undermine Royal Mail's incentives to meet its quality of service targets associated with universal service products during this time.
- 4.38 We acknowledge that a different approach was taken by Ofcom in its decision on Royal Mail's quality of service performance in 2015/16. However, this was directly addressed in our 2017/18 decision in which we concluded that it was not appropriate, in the specific circumstances of that case, to grant an additional allowance for Cyber Week. In that decision, we explained that our 2015/16 decision had been taken in the context of Cyber Week being in its infancy and the difficulty Royal Mail was likely to have faced in predicting and mitigating the impact of a new marketing event.⁶⁶ As a predictable fixture of the retail

⁶⁵ In 2016/17, Cyber Week fell between Friday 25 November and Saturday 3 December 2016, while the CEP ran between Monday 5 December 2016 to Monday 2 January 2017.

⁶⁶ Ofcom, [*Decision to conclude investigation into Royal Mail's compliance with its quality of service performance standards in 2017/18*](#), 31 May 2019, paragraph 3.71

calendar which is now generally consistent in time, scale and impact each year, a different approach was appropriate in 2017/18, as it is in this specific case.

- 4.39 Finally, we do not accept that our view that Royal Mail should be able to manage the impact of Cyber Week within its existing allowance, has “*in effect imposed stricter quality of service targets on Royal Mail.*” The performance targets have not changed. Rather, what has changed is the pattern of parcel volumes in Cyber Week which, on Royal Mail’s analysis, has rendered its ability to meet its first class targets more difficult to achieve. We acknowledge that the first class targets may be more difficult to achieve if the network is being more heavily utilised to deliver parcels. However, our view is that Royal Mail has not demonstrated that it can no longer, or should not be required to, meet the existing targets for first class mail such that they should be lowered to accommodate the specific impact of parcels delivered during Cyber Week. This is an issue which is distinct from the question of whether Cyber Week is an exceptional event for which we should grant an additional allowance.

Other events which Royal Mail submitted were beyond its reasonable control

- 4.40 In its Representations, Royal Mail identified several other events (described below) which it believed were beyond its reasonable control and affected its quality of service performance in 2018/19. Royal Mail submitted that we should adjust its performance to take into account the impact of these other events.
- 4.41 Royal Mail explained that when the impact of these other events is taken into account, its performance against the first class national target increased by 0.15%. When combined with the confidence interval (0.14%), this takes its first class national performance from 91.54% to 91.83% and its first class PCA performance from 75 to 108 out of 118 PCAs achieving 91.5%.⁶⁷

Royal Mail’s Representations

- 4.42 Royal Mail proposed that, despite “*robust contingency plans*” to mitigate the impact of certain external events, it is not always possible to fully mitigate the impact of these events. Royal Mail also suggested that increases in its operational efficiency intended to improve performance, had reduced its spare resources and therefore its capacity to absorb the impact of external events.⁶⁸
- 4.43 Royal Mail identified the following events outside of its control as ones which caused nearly [X] failures and which impacted its first class national and PCA performance in 2018/19:⁶⁹

⁶⁷ Representations, paragraph 61.

⁶⁸ Ibid, paragraph 62.

⁶⁹ Ibid, paragraph 63.

- a) **Air network issues** including flight delays and cancellations because of weather, security incidents and air traffic control decisions. Royal Mail explained that it flies time critical mail meaning its first class service often cannot be maintained.
 - b) **Rail network issues** including delays, cancellations and damaged overhead powerlines. Royal Mail explained that the complexity of diverting trains means it is difficult to mitigate such issues.
 - c) **Road network issues** including police incidents and severe weather. Royal Mail submitted that these incidents can close key routes for several hours, creating diversions or congestion which leads to large volumes of mail failing to make the necessary connection to arrive in time.
 - d) **Hub network issues** including “delays due to adverse weather causing mail to miss its scheduled connections for onward despatch”.
 - e) **Local issues** including “the evacuation of South Midlands mail centre due to a suspected gas leak and flooding at Medway mail centre”.
- 4.44 In addition, Royal Mail submitted that there were [§<] recorded instances of industrial action across [§<] of its units in 2018/19. Royal Mail indicated that around [§<] working hours were lost throughout the year because of this industrial action and highlighted the effect of an incident [§<], restricting Royal Mail’s ability to plan for these events.⁷⁰
- 4.45 Royal Mail explained that it faces a wide range of events that affect its quality of service performance and that, due to its interconnected pipeline, it is not possible for an efficient and effective operation to achieve a first class service 100% of the time. It claimed that the other events described above were events outside of its control and were therefore not reflected in the 7% allowance built into its first class national target.⁷¹
- 4.46 Royal Mail submitted that “Ofcom’s approach in its 2017/18 Decision suggests that [Ofcom] did not consider that an additional allowance should be granted for events which are exceptional but have a relatively small impact on quality of service”. Royal Mail argued that this approach was not appropriate and suggested that “Ofcom should first consider if an event is exceptional and so falls within the category of events for which it would be suitable to grant an allowance” and then adjust Royal Mail’s performance accordingly regardless of the size of the impact of the event.⁷²

Ofcom’s decision

- 4.47 We have decided that, in this case, an additional allowance should not be granted for this category of other events that Royal Mail submitted were beyond its reasonable control and that we should not therefore uplift Royal Mail’s quality of service performance to take into account their impact.

⁷⁰ Ibid, paragraph 66.

⁷¹ Ibid, paragraph 67.

⁷² Ibid, paragraph 68.

- 4.48 We acknowledge that these events may have been unforeseeable and beyond Royal Mail's ability to mitigate and that some could be considered exceptional. However, most of these events are not rare and some degree of disruption from weather events, road traffic accidents or industrial action is predictable. In any event, we do not consider these events to be the type of events that an additional allowance should be granted for and we consider that Royal Mail should be able to absorb their small impact within its targets.
- 4.49 As demonstrated by our approach to Highways England's programme, we acknowledge that a particular event may (due to its scale and widespread impact) develop such that it can be regarded as an exceptional event for which an additional allowance should be granted. We do not have sufficient evidence to find that any of these "other matters" fall into that category.
- 4.50 In its Representations, Royal Mail interpreted our approach in 2017/18 as suggesting that we do not consider an additional allowance should be granted for events which are exceptional, but which have a small impact. This is not an accurate reflection of our approach. Our decision not to grant an additional allowance for these other events took into account the small scale of impact but also recognised that the 7% tolerance (and 8.5% PCA tolerance) built into the targets allows for events of this type and scale.⁷³ We took the view that Royal Mail should be able to manage such events within its allowance.
- 4.51 Moreover, as explained in our 2017/18 decision, "[t]his allowance is intended to capture events in a way that does not require Ofcom to either assess multiple individual events put forward by Royal Mail and determine whether an additional allowance should be granted for each of them or simply accept some form of sweep-up category of events put forward by Royal Mail based on its own modelling in order to uplift its performance."⁷⁴

Statistical misalignment between the first class national and PCA targets

- 4.52 In its Representations, Royal Mail argued that the PCA target (set at 91.5%) is statistically misaligned from the national target (set at 93.0%) and that it would be appropriate for Ofcom to take into account Royal Mail's PCA performance at a lower level that is statistically aligned to the national target.⁷⁵

Royal Mail's Representations

- 4.53 As explained above, DUSP condition 1.9.1 requires Royal Mail to meet certain quality of service performance targets, including the first class PCA target. This requires at least 91.5% of first class products, which have been purchased by postage stamp and by meter,

⁷³ Ofcom, [Decision to conclude investigation into Royal Mail's compliance with its quality of service performance standards in 2017/18](#), 31 May 2019, paragraph 3.77

⁷⁴ Ofcom, [Decision to conclude investigation into Royal Mail's compliance with its quality of service performance standards in 2017/18](#), 31 May 2019, paragraph 3.78.

⁷⁵ Representations, paragraph 8.

to be deemed to have been delivered with an actual routing time of no more than one working day in 118 of the 121 PCAs in the UK.

- 4.54 In April 2017, Royal Mail submitted a document to Ofcom in which it argued that the current PCA performance target of 91.5% does not statistically align with the first class national target of 93.0%.⁷⁶ The basis for this statement was that to be statistically confident of achieving 91.5% in each of the required 118 PCAs, Royal Mail would have to achieve a first class national performance of around 94.5%. As such, in its Representations Royal Mail argued that the PCA performance target should be set at 90% to be statistically aligned.⁷⁷
- 4.55 Throughout its Representations, Royal Mail made reference to both the 91.5% PCA target required by DUSP 1.9.1 and its own suggested PCA target of 90% for the delivery of first class mail by the next working day in the 118 PCAs subject to the PCA target.⁷⁸

Ofcom's decision

- 4.56 We acknowledge Royal Mail's Representations in relation to the level of the PCA target and make no comment as to the statistical analysis underpinning Royal Mail's submissions. We note that the current PCA target is 91.5% and has been set at this level consistently for over ten years. Unless the target is changed by Ofcom at some point in the future, we expect Royal Mail to achieve that level.

Royal Mail's decision not to contest Ofcom's assessment

- 4.57 As noted in Section 2 above, after taking into account Royal Mail's Representations summarised above, and further information it subsequently provided, we issued Royal Mail with a Second Notification on 3 February 2020. This replaced the First Notification and set out our above assessment of why we continued to have reasonable grounds for believing that Royal Mail had contravened relevant regulatory requirements.
- 4.58 On 6 March 2020, Royal Mail wrote to Ofcom advising that it had decided not to contest Ofcom's provisional decision set out in the Second Notification and would not be submitting further representations.

Finding of contraventions of DUSP 1.9.1

- 4.59 For the reasons set out above, we have decided that one of the events in 2018/19 put forward by Royal Mail (namely Highways England's road investment programme) was an exceptional event for which an additional allowance should be granted. We have therefore decided to uplift Royal Mail's quality of service performance to take into account the impact of that event. Taking into account the confidence interval as well as the maximum

⁷⁶ Letter from Royal Mail to Ofcom, *Updating Royal Mail's quality of service requirements*, April 2017, pages 44-45. Included by Royal Mail as Annex A in its Representations.

⁷⁷ Representations, paragraph 8.

⁷⁸ *Ibid*, paragraphs 8-9, 26-27, 30, 32, 43- 44, 61, 84, 93.

impact of Highways England's programme, Royal Mail still failed to meet the first class national and PCA performance targets by a significant margin:

- a) With adjustment, Royal Mail's maximum first class national performance was **91.9%**⁷⁹ (falling below the 93.0% target); and
- b) With adjustment, Royal Mail's maximum PCA performance was 91.5% in **108 of 118 PCAs** (falling below the 118 PCA target).⁸⁰

4.60 Accordingly, we have found that Royal Mail contravened DUSP condition 1.9.1 during 2018/19.

⁷⁹ In line with the DUSP condition, we propose to round Royal Mail's performance to one decimal place in finding of contraventions and our consideration of a financial penalty.

⁸⁰ We have determined that Royal Mail has contravened DUSP 1.9.1 in 2018/19 by failing to achieve the first class PCA performance target in the following ten PCAs: Chelmsford, Colchester, East London, Enfield, Hereford, Inverness, Paisley, Shrewsbury & Mid Wales, Southeast London and Southwest London.

5. Consideration of financial penalty

- 5.1 In this section, we set out our consideration of whether it would be appropriate to impose a financial penalty on Royal Mail and, if so, what level of penalty would be appropriate and proportionate taking account of the seriousness of Royal Mail's failure to meet its first class performance targets, relevant factors identified in our Penalty Guidelines and, overall, the need to impose a penalty which fulfils Ofcom's central objective of deterrence. We have also taken into account Royal Mail's Representations.
- 5.2 In the first part of this section, we explain our reasons for finding that it is appropriate to impose a financial penalty in respect of Royal Mail's failure to meet its first class national target and the amount of that penalty. In the second part of this section, we explain our reasons for finding that it is not appropriate to impose a financial penalty in respect of Royal Mail's failure to meet its first class PCA target.

Legal framework

- 5.3 In Section 4 above, we set out our reasons for determining that Royal Mail contravened DUSP 1.9.1 in 2018/19 by failing to achieve its first class national and PCA performance target.
- 5.4 As explained in Section 3 above, under paragraph 6 of Schedule 7 to the Act, Ofcom may impose a financial penalty on a person who has, in one or more of the respects notified by Ofcom, been in contravention of a regulatory requirement.
- 5.5 In determining whether to impose a penalty for a contravention, and the size of that penalty, we must have regard to Ofcom's Penalty Guidelines,⁸¹ which state that the central objective of imposing a penalty is deterrence. That is, the level of any penalty must be sufficient to deter the business from contravening regulatory requirements, and to deter the wider industry from doing so.⁸² In addition, and in accordance with the Act,⁸³ any penalty we impose must be appropriate and proportionate to the contravention in respect of which it is imposed.
- 5.6 When determining the level of a penalty, Ofcom must have regard to any representations made by Royal Mail and any steps taken by Royal Mail to comply with the relevant regulatory requirements.

Decision to impose a financial penalty for contravening the first class national performance target

- 5.7 We have identified and discussed below the relevant factors in the Penalty Guidelines we have taken into account when deciding:

⁸¹ Ofcom, [Penalty Guidelines – Section 392 Communications Act 2003](#), 14 September 2017.

⁸² Ibid, paragraph 1.4.

⁸³ Ibid, paragraph 7(1) of Schedule 7 to the Act.

- a) whether to impose a penalty on Royal Mail for its failure to meet its first class national performance target; and, if so
- b) the level of penalty which is appropriate and proportionate to the contravention in this case.

Seriousness, degree of harm and financial gain

- 5.8 The first class national performance target is a minimum service level that Royal Mail is required and expected to achieve. For this reason, DUSP condition 1.9.1 imposes on Royal Mail a clear and unambiguous regulatory requirement.
- 5.9 The purpose of the requirement is to ensure that consumers receive an adequate level of service and we consider any failure to meet this standard is inherently serious. This is because of the actual effect that it has on customers who purchase a next day service and do not receive what they have paid for. The greater the number of customers that fail to receive the service they have paid for, the greater the consumer harm is likely to be.
- 5.10 In this case, we consider that Royal Mail's failure to meet the standard by a material degree is a serious contravention that resulted in significant consumer harm which cannot be directly remedied.
- 5.11 In its Representations, Royal Mail submitted that there was limited consumer harm caused by its failure to meet the first class national performance target. To evidence this argument, it estimated that in 2018/19, [X] first class items per address were delivered on time, and that this would have increased to [X] items per address if the target had been achieved.⁸⁴ Royal Mail also noted that it exceeded the 99.5% regulatory target for items correctly delivered by achieving 99.76% and that, after taking into account the confidence interval and the three mitigating factors identified in its Representations, 98.6% of first class items were delivered within two days.
- 5.12 We do not consider that the average number of items delivered per address helpfully illustrates the consumer harm caused. We have found that Royal Mail missed the first class national performance target by at least 1.1% which equates to around [X] million first class items.⁸⁵ This is a substantial number of items which were delivered to a service level lower than that expected by customers. We also consider that this provides an indication of the level of Royal Mail's financial gain, in the form of the additional revenue associated with the premium charged for first class items over second class items. This suggests Royal Mail received additional revenue of approximately £[X] from customers that paid for services which were not delivered on time.⁸⁶

⁸⁴ Representations, paragraph 16. Based on Royal Mail delivering [X] million first class items in 2018/19 (see Representations, page 23, footnote 21) and there being 30.47 million addresses in the UK.

⁸⁵ This is based on the following calculation: the total number of first class items in 2018-19 (877 million) multiplied by the scale of the miss (1.1%) and multiplied by an adjustment factor to account for items during the Christmas Exemption Period (11/12).

⁸⁶ Assuming the price differential between a first and second class service is 9p (although it can be up to 23p), and presuming that those individuals that purchased a first class service but did not receive one may have instead purchased a

- 5.13 We acknowledge that some failed first class items were delivered to a higher standard than second class items. However, customers purchasing a first class service are nonetheless entitled to expect a higher quality of service than second class and were, accordingly, charged a premium by Royal Mail.
- 5.14 We also note that Royal Mail's failure to meet its first class national performance target would have had a greater effect on some customers than others and that some consumers may have been harmed as a result of knock-on effects of mail not being delivered to a first class standard.
- 5.15 Royal Mail noted that its customer satisfaction levels were high and, in many cases, growing.⁸⁷ Whilst we acknowledge this point, we note that, for any individual first class item, failure to deliver to that standard may not always be apparent to the sender (nor the recipient).

Steps taken to prevent or mitigate the impact of the contravention

- 5.16 In this section, we consider the steps Royal Mail took to prevent contravening its first class national performance target. We note that it is not possible to retrospectively remedy the contravention in this case; the contravention crystallises at the end of the regulatory reporting period and there is no way for Royal Mail to know which customers were harmed.
- 5.17 In its Representations, Royal Mail submitted that "*as a matter of urgency*" it spent an additional £[redacted] million on improving quality of service compared to its operational budget in 2018/19.⁸⁸ This additional spending was used to [redacted].⁸⁹
- 5.18 Royal Mail explained that in December 2018, it enhanced its governance arrangements by introducing weekly meetings between various Directors to review quality of service performance and agree specific actions to address any issues.⁹⁰ Royal Mail also explained that in January 2019, it introduced a new leadership structure with the aim of "*ensur[ing] end-to-end process ownership for day-to-day operations*".⁹¹ The new structure includes three new Service Delivery Director roles reporting to a new National Service Delivery Director with the aim of improving customer service and quality. From 1 April 2019, it also introduced 30 Service Delivery Leaders, who are each responsible for achieving quality of service performance in a geographic area, and who report into the new Service Delivery

second class service, consumers may have spent an additional £[redacted] on services which were not delivered on time. This is a high-level estimate based on various assumptions and we accept that many customers may have still opted to pay for a first class service even if they knew it was going to be delayed (because, for example, it may still have arrived before a second class service).

⁸⁷ Representations, paragraph 85.

⁸⁸ Ibid, paragraph 12.

⁸⁹ Ibid, paragraph 75(e).

⁹⁰ Ibid, paragraph 79(b).

⁹¹ Ibid, paragraph 13.

Directors.⁹² Weekly performance packs for each Service Delivery Leader area have also been introduced.⁹³

- 5.19 Whilst we acknowledge these changes are intended to improve Royal Mail’s quality of service performance, we note that the earliest change was made at the end of Q3 in the 2018/19 reporting period and that Royal Mail’s new reporting structure did not become effective until the start of the 2019/20 reporting period.
- 5.20 Royal Mail suggested that this new operational structure may be improving quality of service because its first class quality of service improved in Q1 2019/20 [93.2%], relative to Q1 2018/19 [92.1%].⁹⁴ This indicates that had Royal Mail taken appropriate steps sooner then it may at least have been able to mitigate the impact on its quality of service in 2018/19.
- 5.21 We further note that Royal Mail’s senior management were aware that Royal Mail’s Q1, Q2 and Q3 quality of service reports showed that Royal Mail was not on track to meet its national performance target (see Table 1 below).

Table 1: Royal Mail’s unadjusted 2018/19 Q1 – Q4 results compared to national performance target⁹⁵

	Target	Q1	Q2	Q3	Q4
Performance	93.0%	-0.7%	-1.6%	-2.8%	-1.0%

- 5.22 Despite this, and as explained above, we have not seen any evidence to suggest that Royal Mail took appropriate steps to prevent or mitigate any impact on its quality of service until late in Q3 2018/19 and did not implement more significant changes in terms of its operational structure until the start of the 2019/20 quality of service reporting period.
- 5.23 Whilst we recognise that Royal Mail did take some steps during 2018/19, and subsequently to “restore performance”, our view is that they had a minimal impact, if any, on Royal Mail’s quality of service performance in 2018/19. Rather, they are more likely to improve Royal Mail’s quality of service performance in future years. Our view, therefore, is that any steps Royal Mail took to prevent or mitigate any impact on its quality of service in 2018/19 were insufficient or ineffective in terms of their scope, timing or implementation to the extent they failed to prevent a significant contravention of Royal Mail’s first class national performance target. Royal Mail has not provided a satisfactory explanation for why it missed the targets by such a significant amount. Accordingly, this is a serious matter.

⁹² Ibid, paragraph 13.

⁹³ Ibid, paragraph 79.

⁹⁴ Ibid, paragraph 15.

⁹⁵ Royal Mail, [Quarter 4 Results 2018-19](#).

Deliberateness and recklessness

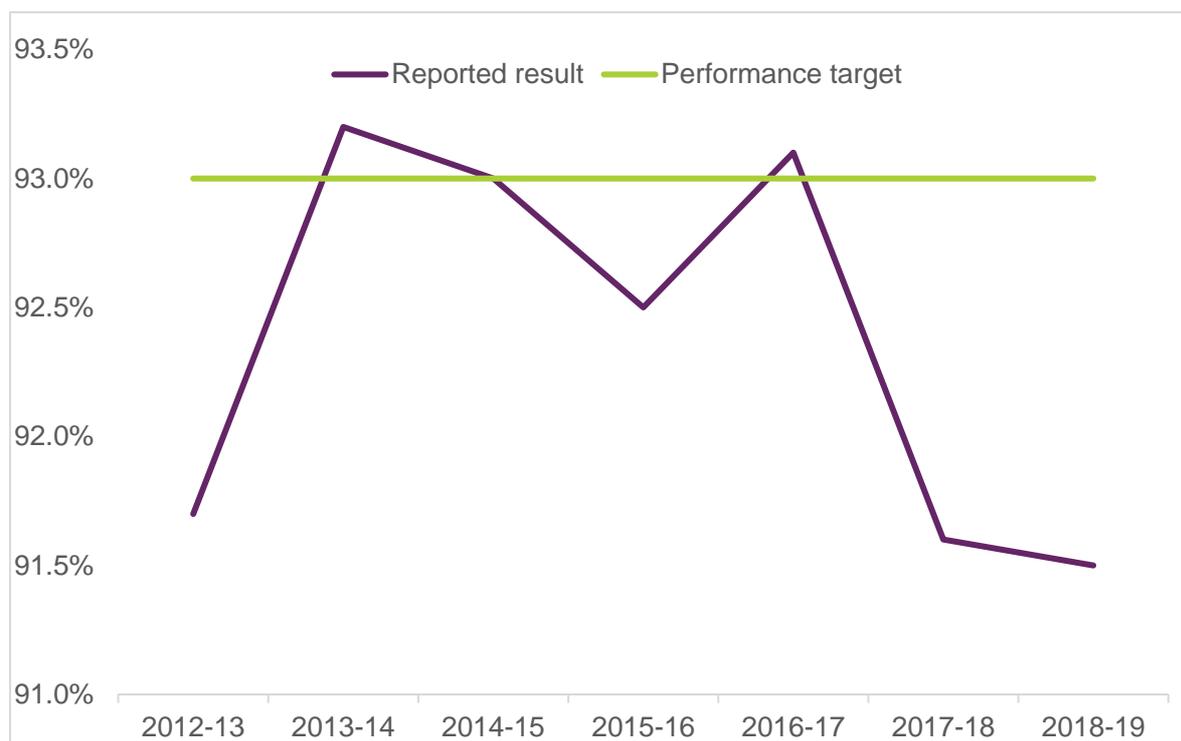
- 5.24 In its Representations, Royal Mail argued that the contravention in this case was not deliberate or reckless. It explained that it takes quality of service extremely seriously and implemented extensive mitigating measures to improve quality of service in 2018/19.⁹⁶
- 5.25 We have considered whether the contravention occurred deliberately or recklessly, including the extent to which senior management knew that it was occurring. While we have no evidence to suggest the contravention was deliberate, as noted above, Royal Mail's senior management were aware that Royal Mail's Q1, Q2 and Q3 quality of service reports showed that Royal Mail was not on track to meet its first class national performance target. We have not however seen any evidence to suggest Royal Mail implemented appropriate measures to prevent or mitigate any impact on its performance until late in Q3 2018/19 and did not implement more significant changes in terms of its operational structure until the start of the 2019/20 quality of service reporting period.

History of contraventions

- 5.26 Since 2012, Royal Mail has reported a performance level that fell below the first class national performance target on three prior occasions. Figure 3 below shows Royal Mail's performance since 2012.

⁹⁶ Representations, page 27.

Figure 3: Royal Mail's (unadjusted) first class national performance since 2012-13



Source: Royal Mail

- 5.27 In all of these cases, Ofcom carefully considered whether enforcement action, including a financial penalty, would be appropriate.
- a) In 2012/13, we decided not to take formal enforcement action but wrote to Royal Mail setting out our concerns and our expectation that Royal Mail would take all necessary steps to ensure that its quality of service performance failures did not recur in the future. A key reason for taking that approach was evidence that Royal Mail's performance was affected by its modernisation programme, which Ofcom supported.
 - b) In 2015/16, we issued a contravention decision for failing to meet the first class national and PCA target but decided not to impose a financial penalty due the fact that the miss was relatively narrow after adjusting Royal Mail's performance to take into account mitigating circumstances. However, we did warn Royal Mail that a significant financial penalty may be imposed in the future.
 - c) In 2017/18, we issued a contravention decision for failing to meet the first and second class national performance target but imposed no penalty. This was due to a relatively narrow miss after adjusting Royal Mail's performance to take into account the severe weather; the closure of Royal Mail's defined benefit pension scheme which meant this was a unique year in Royal Mail's history; and the steps Royal Mail took to mitigate the impact of events in 2017/18 and going forward. Again, we warned Royal Mail that a future contravention without satisfactory mitigation may result in a significant financial penalty.

- 5.28 The circumstances of Royal Mail's failure in 2018/19 are however quite different. The scale of the failure is considerable and, before adjusting Royal Mail's performance to take into account the impact of Highway's England's road investment programme, the largest since 2012. Further, the mitigating factors put forward by Royal Mail do not account for anything more than a small part of the miss.
- 5.29 We have taken into account the fact that we have clearly warned Royal Mail in previous decisions that if it contravenes its performance targets again without satisfactory mitigation then we may impose a significant financial penalty.⁹⁷
- 5.30 However, while Royal Mail has a history of repeated contraventions, we note that in the specific circumstances of each case, Ofcom did not consider that it was appropriate to impose a financial penalty. Accordingly, Royal Mail's history of contraventions has not been taken into account when determining the amount of the penalty in this case.

Cooperation

- 5.31 In its Representations, Royal Mail highlighted the engagement it has had with Ofcom throughout the relevant period, including quarterly meetings with Ofcom's policy team; pro-actively arranging site visits where it would help Ofcom understand the issues Royal Mail was facing; and a senior meeting with Ofcom to explain Royal Mail's operations and measures before they were publicly announced.
- 5.32 We acknowledge and have taken into account Royal Mail's helpful and constructive engagement in respect of Ofcom's ongoing monitoring of its quality of service performance and its full cooperation with this investigation.

Deterrence

- 5.33 The primary objective of imposing a financial penalty would be to incentivise Royal Mail to comply with its first class national performance target in future years, including by planning and implementing timely and effective resilience and recovery strategies and processes to mitigate the impact of events that affect performance.
- 5.34 Royal Mail argued that deterrence is not relevant in this case because it already takes its regulatory obligations seriously and it is committed to providing a high level of quality of service.⁹⁸ It argued that "*all managers, at all levels, are fully incentivised to comply with the targets*" without intervention being needed.⁹⁹
- 5.35 Royal Mail submitted that it self-fulfils the regulatory obligation for deterrence by publishing reports about its quality of service performance and issuing press releases. This, Royal Mail suggested, is a highly visible and effective way of ensuring a continuous focus on quality of service.¹⁰⁰

⁹⁷ See, for example, [Decision to conclude investigation of Royal Mail Group Limited in relation to a contravention of Designated Universal Service Provider Condition 1.9.1](#), October 2016, paragraph 4.15.

⁹⁸ Representations, paragraph 89.

⁹⁹ Ibid, paragraph 92.

¹⁰⁰ Ibid, paragraph 90.

- 5.36 In our view, these factors do not diminish the importance of deterrence in a decision to impose a financial penalty. Compliance with quality of services targets is important, in particular due to its impact on consumers. We have consistently taken the view that any failure to meet the first class performance targets is an inherently serious contravention and we have warned Royal Mail in our final decisions in 2016 and 2018 that we may impose a significant financial penalty if Royal Mail fails to meet its performance targets again. Notwithstanding, Royal Mail has not provided a satisfactory explanation for why it missed its first class national performance target by such a significant amount. Deterrence is therefore particularly important in this case.
- 5.37 Deterrence is also particularly important in this case as Royal Mail's Q1, Q2 and Q3 quality of service reports showed that Royal Mail was not on track to meet its first class national performance target yet we have not seen any evidence to suggest Royal Mail implemented appropriate measures to prevent or mitigate any impact on its quality of service until late in Q3. On this basis, our view is that Royal Mail did not do enough to meet its first class national performance target and needs to be incentivised to ensure it takes appropriate steps to meet its target in future years.
- 5.38 In relation to general deterrence, Royal Mail takes the view that there can be no general deterrence effect in this case because no other postal service operator is subject to quality of service performance regulation.¹⁰¹
- 5.39 We do not accept such a narrow interpretation and consider that general deterrence is a relevant factor to the extent that a financial penalty should deter any regulated company on which Ofcom has imposed quality of service performance targets, from failing to meet those targets. More generally, it should deter the wider industry from contravening regulatory requirements in the future.

Royal Mail's decision not to contest Ofcom's assessment

- 5.40 As noted in Section 2 above, after taking into account Royal Mail's Representations summarised above, and further information it subsequently provided, we issued Royal Mail with the Second Notification on 3 February 2020. This replaced the First Notification and set out our above assessment that we considered it was appropriate to impose a financial penalty on Royal Mail for its contravention of its first class national performance target and that a penalty of £1.5 million was appropriate and proportionate to that contravention.
- 5.41 On 6 March 2020, Royal Mail wrote to Ofcom advising that it had decided not to contest Ofcom's provisional decision set out in the Second Notification and would not be submitting further representations.

Decision on penalty

- 5.42 In the specific circumstances of this case, and having considered all of the relevant factors discussed above in the round, we have determined that it is appropriate to impose a

¹⁰¹ Ibid, paragraph 91.

penalty on Royal Mail for its failure to meet its first class national performance target. Having regard to Royal Mail's size and turnover, we have decided that a penalty of £1,500,000 is proportionate and appropriate to the contravention, in particular because:

- contravening quality of service performance targets is inherently serious in light of the likely consumer harm;
- Royal Mail missed its first class national performance target by a significant amount (after taking into account the confidence interval and adjusting its performance for the impact of Highways England's road investment programme) and has not provided any satisfactory explanation for its miss;
- Royal Mail received approximately £[X] in additional revenue from customers paying for, but not receiving, a first class service in relation to approximately [X] million items;
- any steps Royal Mail took to prevent or mitigate any impact on its quality of service in 2018/19 were insufficient or ineffective in terms of their scope, timing or implementation to the extent they failed to prevent a significant contravention (despite senior management being aware that Royal Mail was not on track to meet its target); and
- the importance of deterring Royal Mail and others in the wider industry from contravening both quality of service performance targets and other regulatory requirements in the future.

5.43 Royal Mail has until **5.00pm Friday 11 September 2020** to pay Ofcom the penalty. If not paid by that deadline, it can be recovered by Ofcom accordingly.

Decision not to impose a financial penalty for contravening the PCA target

5.44 In the specific circumstances of this case, and for the reasons set out below, we have decided not to impose a financial penalty in relation to Royal Mail's failure to comply with the first class PCA performance target.

- a) First, fundamentally, the first class national performance target and first class PCA performance target cover much of the same activity – the collection and delivery of first class mail items – with PCA performance essentially forming part of the overall first class performance. This means that low first class national performance will be associated with low first class PCA performance and that, accordingly, where both targets are failed, there will be an overlap in consumer harm. In the circumstances of 2018/19, we consider that any harm associated with the PCA performance target can be addressed by taking action in relation to first class national performance.
- b) Second, we have consistently expressed the view that a key objective of the PCA target is to make sure that local areas receive an adequate level of service over time. Where there are repeated failures in a given PCA, we expect Royal Mail to undertake targeted remedial action to restore quality of service in that PCA. We note that it may be

appropriate to impose a financial penalty to reflect persistent failures in PCAs that are not addressed by Royal Mail.

5.45 In this case, we have considered whether there is evidence of persistent failure in the relevant PCAs that may warrant the imposition of a financial penalty for Royal Mail’s failure to meet its first class PCA target. In doing so, we have taken into account adjustments we made to Royal Mail’s performance in previous years to take into account the impact of what at the time we considered to be exceptional events , most notably the severe weather which affected performance in early 2018.

5.46 Table 2 below shows the ten PCAs which failed to meet the first class PCA target in 2018/19 and Royal Mail’s performance in those PCAs in the preceding five years (once events for which we considered it was appropriate to adjust Royal Mail’s performance have been taken into account). The numbers in this table indicate Royal Mail’s ‘maximum performance’ in the relevant PCA; that is including the relevant confidence interval.

Table 2: Historic PCA performance in the PCAs failing in 2018/19

PCA	Maximum performance adjusted for exceptional events					
	2018/19	2017/18 ¹⁰²	2016/17	2015/16 ¹⁰³	2014/15	2013/14
SE Southeast London	89.4%	92.0%	92.1%	91.8%	93.2%	93.5%
EN Enfield	90.2%	92.7%	92.7%	93.9%	94.7%	93.8%
IV Inverness	90.5%	90.4%	90.4%	91.3%	93.8%	94.6%
SW Southwest London	90.5%	92.2%	94.1%	91.6%	93.5%	93.8%
CM Chelmsford	90.7%	91.8%	93.8%	93.3%	94.0%	94.7%
HR Hereford	90.7%	93.0%	94.0%	94.8%	94.6%	93.1%
PA Paisley	90.8%	94.3%	92.4%	95.1%	95.4%	94.1%
SY Shrewsbury & Mid Wales	90.9%	91.7%	94.6%	93.7%	93.7%	95.3%
CO Colchester	91.0%	93.5%	93.1%	92.9%	92.5%	92.8%
E East London	91.3%	93.1%	92.7%	93.1%	93.5%	93.8%

Source: Royal Mail, Ofcom calculations.

5.47 As shown in Table 2 above, out of the ten PCAs that failed in 2018/19, only one PCA, Inverness (IV), failed to meet the target in the preceding five years. In fact, Royal Mail failed to meet the target in Inverness in each of the last four years (including in 2018/19). While this is concerning, we consider that Royal Mail has taken significant steps to improve performance in this PCA, including establishing a new mail centre which became operational in March 2019. We expect performance to improve as a result of Royal Mail’s investment and will continue to monitor Royal Mail’s performance in this PCA.

¹⁰² In our [Decision to conclude investigation into Royal Mail’s compliance with its quality of service performance standards in 2017/18](#), we took the decision to adjust Royal Mail’s performance in light of the severe weather in February and March 2018. See: paragraph 3.30.

¹⁰³ In our [decision to conclude our investigation into Royal Mail Group Limited in relation to a contravention of Designated Universal Service Provider Condition 1.9.1](#) in 2015/17 we concluded that it was appropriate to adjust Royal Mail’s performance to account for the impact of Cyber Week. See: paragraph 3.12-14

- 5.48 If Royal Mail's performance in the Inverness PCA continues to fail its target, or if any of the ten PCAs that failed the target in 2018/19 fail the PCA target in future years, we may consider imposing a financial penalty for Royal Mail's contravention of the PCA target.

Interpretation

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

Gaicho Rasmussen

Director of Enforcement

10 July 2020