

Decision finding Royal Mail contravened the safeguard price control cap on Second Class letters and imposing a financial penalty under paragraph 6 of Schedule 7 to the Postal Services Act 2011

Non-confidential version

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1. Overview

Royal Mail is required by regulation imposed by Ofcom to cap prices of Second Class stamps for letters. The price of these stamps is defined and increases by a certain amount every financial year. This Decision sets out our finding that Royal Mail increased the price of the Second Class stamps over the price cap for a period of one week and our decision to impose a financial penalty on Royal Mail for its contravention for this breach.

What was the price cap and relevant period?

The price cap for a Second Class letter for the period between 1 April 2018 and 31 March 2019 was set as a maximum of 60.65p.

What Royal Mail charged

For the week between 25 March 2019 to 31 March 2019 inclusive Royal Mail charged 61p, exceeding the cap of 60.65p.

Ofcom has imposed a penalty of £100,000 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 £100,000 on Royal Mail for breaching the price cap for the period between 25 March 2019 and 31 March 2019. We consider that this penalty is proportionate and appropriate to the contravention.

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 this 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 15 July 2019 and submitted an amended version on 13 September 2019. (“Representations”). In these Representations, Royal Mail did not dispute exceeding the safeguard cap and acknowledged that it breached the safeguard cap for a period of seven days. It also set out reasons why it thought that a financial penalty was not appropriate 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 13 March 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 the price cap for Second Class letter and that a penalty of £100,000 was appropriate and proportionate to that contravention.
- 2.4 On 29 June 2020, Royal Mail wrote to Ofcom to state that it had decided not to contest Ofcom’s provisional decision set out in the Second Notification and would not be submitting further representations.

Structure of this Decision

- 2.5 The structure of this Decision is as follows:
- In Section 3, we set out the legislation and regulatory conditions relevant to this investigation.
 - In Section 4, we explain our reasons for determining why Royal Mail contravened its obligations in relation to the safeguard price cap for Second Class standard letter mail.
 - In Section 5, we set out our reasons for determining that a penalty is appropriate and the amount of this penalty.

3. Regulatory framework

- 3.1 In this section we outline the legislation and regulatory conditions relevant to this investigation and explain the importance of the Second Class safeguard price cap.

Regulatory framework

- 3.2 Ofcom has duties under the Communications Act 2003 and the Postal Services Act 2011 (the “Act”) to secure the provision of an efficient and financially sustainable universal postal service and to further the interests of citizens and consumers of postal services, where appropriate by promoting competition.
- 3.3 Ofcom has the power to impose regulatory conditions on Royal Mail in certain circumstances. In this context, Royal Mail is required by regulation imposed by Ofcom not to exceed a specified maximum price for standard letters sent by Second Class post. This is known as a safeguard cap price control. Ofcom has the powers to take enforcement action where it has reasonable grounds for believing that regulatory requirements, such as a price cap, have been contravened.

Overview of the Second Class safeguard price cap regulation

Regulation applicable in the period 1 April 2012 to 31 March 2019

- 3.4 On 27 March 2012, we published a statement entitled “Securing the Universal Postal Service: Decision on the new regulatory framework” (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 Act.¹
- 3.5 The DUSP conditions² set out the Universal Service products that Royal Mail is required to provide at an affordable and uniform price throughout the United Kingdom. This includes the requirement to provide standard services where Royal Mail aims to deliver postal items within three working days of collection.³ This is referred to as Second Class by Royal Mail.
- 3.6 DUSP condition 2 imposes a safeguard price cap on Second Class standard letters. The cap, set out in DUSP 2.2.2, was set for seven years, starting from 1 April 2012. Each relevant year started on 1 April and ended on 31 March of the following year. The seventh relevant year expired on 31 March 2019.
- 3.7 DUSP 2.2.1 sets out the maximum amount permitted under the safeguard price cap for the first relevant year. This was set at 55p.

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 See DUSP Condition 1.6.1 (b).

- 3.8 DUSP 2.2.2 stated that for each subsequent year *“the maximum amount that the universal service provider shall be permitted to charge for sending a single Standard Letter by Second Class Post shall be the maximum amount that the universal service provider was permitted to charge for that service in the previous Relevant Year increased by CPI”*.
- 3.9 In the period of the seventh relevant year (1 April 2018 to 31 March 2019), the maximum price that could be charged was 60.65p.⁴

Regulation applicable in the period from 1 April 2019

- 3.10 In June 2015, we initiated a *Review of the Regulation of Royal Mail* to consider whether the regulatory framework for post remained appropriate and sufficient to secure the universal postal service.
- 3.11 We published a statement in March 2017⁵ in which we concluded that the safeguard price cap on Second Class standard letters should be retained to ensure vulnerable consumers can access a basic universal service.
- 3.12 We also committed to review the level of the safeguard price cap during the course of the 2018/19 financial year, so we could take an informed view based on the most up-to-date market information and any changes to the financial sustainability of the universal service and/or the prices vulnerable consumers can afford, prior to the expiry of the safeguard price caps in March 2019.
- 3.13 Further to that review, in January 2019, we published a statement in which we raised the level of the Second Class standard letter safeguard price cap by 5% in real terms, from 60p to 65p for the period 1 April 2019 to 31 March 2020.

Importance of the safeguard price cap

- 3.14 In the 2012 statement⁶, we explained that the Second Class standard letter safeguard price caps were introduced to ensure a basic universal service was available to all at affordable prices and to ensure that users of postal services, especially vulnerable consumers, are protected from on-going price increases.
- 3.15 The Second Class standard letter safeguard price cap was set at 55p, which represented a 53% increase on the stamp price at the time which was 36p (2011-2012 prices). This cap was set to apply for seven years and was subject to indexation at CPI.

⁴ In the 2012 Statement, we determined that it would be appropriate to extend the scope of the safeguard cap to include the basket cap, which comprised Second Class Large Letters and packets, up to a weight of 2kg. The basket cap is not subject to this investigation. We refer to the Second Class standard letters safeguard cap and the basket cap collectively as the safeguard caps in this document.

⁵ Ofcom, *Statement on Review of the Regulation of Royal Mail*, 1 March 2017

https://www.ofcom.org.uk/data/assets/pdf_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf

⁶ Ofcom, *Securing the Universal Postal Service Statement on the new regulatory framework*, 27 March 2012

https://www.ofcom.org.uk/data/assets/pdf_file/0029/74279/Securing-the-Universal-Postal-Service-statement.pdf

- 3.16 This was put forward in order to balance the pricing flexibility Royal Mail were given to help secure the ongoing provision of the universal postal service, with the protection of price increases for vulnerable consumers.
- 3.17 In our 2017 review⁷, we concluded that Royal Mail continued to be a near monopolist in single piece letters and therefore has the ability to profitably raise prices above the current level of the safeguard price caps. Data from our monitoring programme showed that Second Class letter revenues had increased at a time when First Class letter revenues had fallen, which we considered may indicate that some consumers now favour cheaper Second Class products, perhaps due to price rises and the desire to economise. We considered that this highlights the importance of maintaining the safeguard price caps (on standard Second Class letters, as well as Large Letters and packets) as an affordability measure, in order to ensure that consumers, in particular vulnerable ones, continue to have access to a universal service at affordable prices.

Ofcom's investigatory and enforcement powers

- 3.18 Ofcom's powers to take enforcement action for compliance with DUSP conditions, including the Second Class safeguard cap price control, are set out in Schedule 7 of the Act.
- 3.19 Under section 54 of, and paragraph 2 of Schedule 7 to, the Act, if Ofcom determines that there are reasonable grounds for believing that a person is contravening, or has contravened, a regulatory requirement, Ofcom may give them a notification. The notification must, in particular:
- 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 that person has an opportunity to make representations about the notified determination.
- 3.20 If, following a notification under paragraph 2, Ofcom is satisfied that the person notified has, in one or more of the notified respects, been in contravention of the notified regulatory requirement, Ofcom may impose a financial penalty on them, in accordance with paragraph 6 of Schedule 7 to the Act. The amount of any penalty should be such an amount as Ofcom determines to be appropriate and proportionate to the contravention for which it is imposed. In any event, a financial penalty may not exceed 10% of the turnover of the relevant person's postal service business for the relevant period. In determining the amount of a financial penalty in this context, Ofcom is also required to have regard to its guidelines on financial penalties (the "Penalty Guidelines").⁸

⁷ https://www.ofcom.org.uk/_data/assets/pdf_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf

⁸ See Ofcom, [Penalty Guidelines – Section 392 Communications Act 2003](#), 14 September 2017.

4. Finding of contravention of DUSP 2

- 4.1 In this section, we explain our reasons for determining that Royal Mail exceeded its safeguard price cap for Second Class standard letters between 25 March 2019 to 31 March 2019.
- 4.2 DUSP 2.2 specifies the safeguard cap price for the service of sending a single standard letter by Second Class post. According to DUSP 2.2.2, the safeguard cap price control applies in each relevant year, as defined in DUSP 2.1.2, for a period of seven years; the seventh relevant year beginning 1 April 2018 and ending on 31 March 2019.
- 4.3 DUSP 2.2.2 sets out the maximum amount which can be charged during that period, calculated by reference to the previous relevant year increased by CPI. Accordingly, for the period between 1 April 2018 and 31 March 2019, Royal Mail was not permitted to charge more than 60.65p. As explained above, on 1 April 2019 a revised DUSP 2.2.2 condition entered into force with the effect that the level of the Second Class standard letter safeguard price cap for the period 1 April 2019 to 31 March 2020 was increased to 65.2p.
- 4.4 On 21 February 2019, Royal Mail notified Ofcom that it would increase the second-class stamp letter price to 61p, effective from 25 March 2019.
- 4.5 In a letter to Ofcom on 22 February 2019, Royal Mail stated that “*we are 1p above the maximum capped price of 60p for 7 days*”, until 1 April 2019, and that this was “*a genuine mistake*”. Royal Mail explains that it reached the view that, in light of the processes involved, it would not be possible to delay the price increase; that it was “*passed the point of no return.*”⁹
- 4.6 On the same day, Royal Mail made a public announcement about the planned price increase and acknowledged its error.
- 4.7 On 25 March 2019, Royal Mail increased the price of second class stamps for standard letters to 61p thereby exceeding the safeguard price cap of 60.65p. This price was published in its pricing guide,¹⁰ which is valid from 25 March 2019.
- 4.8 On 1 April 2019, the amended condition came into force with the effect that, from this point, Royal Mail’s price for second class stamps was below the cap.
- 4.9 We have therefore determined that Royal Mail contravened DUSP 2.2.2 by exceeding the permitted capped amount for a period of seven days, between 25 March 2019 and 31 March 2019 (inclusive).

⁹ Royal Mail, Response of Royal Mail Group Limited to Ofcom’s provisional contravention notification relating to Royal Mail’s compliance with the 2C letter safeguard cap dated 13 June 2019, 13 September 2019 (“**Royal Mail’s response**”), page 6, paragraph 2.6.

¹⁰ Located on page 6: <https://www.royalmail.com/sites/default/files/royal-mail-our-prices-25-march-2019-46305575.pdf>

Royal Mail's submissions on contravention of DUSP 2.2.2

- 4.10 Ofcom opened its investigation on 31 May 2019 and on 13 June 2019 sent Royal Mail a notification under paragraph 2 of Schedule 7 of the Act, which outlined its provisional finding that Royal Mail contravened DUSP 2.2.2.
- 4.11 Royal Mail provided initial written representations in response to our notification on 15 July 2019 and submitted an amended version on 13 September 2019. Royal Mail does not dispute exceeding the safeguard price cap and acknowledge that it has breached the safeguard price cap for seven days, and so contravening DUSP 2.2.2.¹¹

¹¹ Royal Mail's response, page 3, paragraph 1.10.

5. Consideration of financial penalty

- 5.1 As set out above, if Ofcom is satisfied that Royal Mail has 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.
- 5.2 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.¹² This states 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.¹³ In addition, and in accordance with the Act,¹⁴ any penalty we impose must be appropriate and proportionate to the contravention in respect of which it is imposed.
- 5.3 When determining the amount of a penalty, Ofcom must have regard to any representations made to it, any steps taken towards complying with the relevant regulatory requirements and steps taken to remedy the consequences of those contraventions.
- 5.4 In this section we consider:
- a) First, whether we should impose a financial penalty in relation to the contraventions set out above; and
 - b) Second, if we do decide to impose a penalty, what level of penalty is appropriate taking account of the seriousness of the breach and other factors in the round and, overall, the need to impose a penalty which is appropriate and proportionate.
- 5.5 In reaching our Decision, we have considered Royal Mail's representations that a penalty would not be appropriate.

Consideration of whether to impose a penalty

- 5.6 We have carefully considered whether it is appropriate to impose a financial penalty in this case. In reaching our view, we have considered our duties, in particular to further the interests of citizens and consumers and to secure the provision of a universal postal service. For the reasons set out below, we consider that this is a significant regulatory breach which caused actual consumer harm and, therefore, we consider that it is appropriate to impose a financial penalty.

¹² Section 392 of the Communications Act 2003 requires Ofcom to prepare and publish a statement containing the guidelines it proposes to follow in determining the amount of penalties it imposes, apart from penalties under the Competition Act 1998. Ofcom's statement is set out in the [Penalty Guidelines – Section 392 Communications Act 2003](#), 14 September 2017. Section 392(6) requires Ofcom to have regard to the *Penalty Guidelines* when setting the amount of a penalty.

¹³ Penalty Guidelines, paragraph 1.4.

¹⁴ Paragraph 7(1) of Schedule 7 to the Act.

- 5.7 The safeguard price cap is a key part of the regulatory framework established by Ofcom in 2012. In our March 2012 statement¹⁵, Royal Mail was given greater commercial and operational flexibility (compared to the previous framework) so that it could restore the universal service to financial sustainability and adapt to the changing market environment. However, we recognised that the removal of price controls would come with serious risks, including the risk that Royal Mail did not take on the challenge of improving efficiency and instead relied solely on pricing to restore profitability.
- 5.8 For this reason, a number of critical safeguards were imposed including a safeguard price cap on Second Class stamps to ensure that a basic universal service product remained accessible to all and affordable by all. In imposing this cap, we highlighted that affordability of the universal service was particularly important for vulnerable consumers, such as those on low incomes and the elderly.
- 5.9 We re-iterated our position on the safeguard price cap in our 2017 statement.¹⁶ Based on data from our monitoring regime we found that Second Class revenue had increased, when First Class revenue had decreased, indicating that consumers continued to rely on Second Class products. In our view this highlighted the importance of maintaining the safeguard price cap as an affordability measure for vulnerable consumers.
- 5.10 In this case, we conclude that Royal Mail contravened DUSP 2.2.2 and as a result, consumers were in fact overcharged during the relevant period. In our view this is actual consumer harm which, due to the nature of these services, cannot be directly remedied (for example by way of refunds).
- 5.11 Any compliance failure that leads to a contravention of such a critical regulatory constraint, especially one aimed at protecting vulnerable consumers, is inherently serious. As such it is important that enforcement action deters Royal Mail, and others, from comparable compliance failures. This is notwithstanding the fact that a regulatory breach may only occur for a short period of time and/or cause relatively limited harm. Accordingly, we think it is appropriate and proportionate to impose a financial penalty on Royal Mail in this case, and that the level of the penalty should reflect, among other things, the serious nature of the alleged breach. We do not consider that a breach finding alone, including any reputational impact flowing from such a finding, would act as a sufficient deterrent for Royal Mail or the wider industry.
- 5.12 Royal Mail made representations that a penalty would not be appropriate. We respond to these points below.

Deterrence

- 5.13 Our central objective in imposing a penalty is deterrence. The level of the penalty must be sufficient to have a material impact on the regulated body so that it is incentivised to bring itself into compliance and avoid recurrences of the contraventions in future. It is also

¹⁵ Ofcom, Securing the Universal Postal Service Statement on the new regulatory framework, 27 March 2012

¹⁶ Ofcom, Review of the Second Class Safeguard Caps 2019, 17 January 2019

important that the penalty imposed serves to deter the wider industry from contravening regulatory requirements.

- 5.14 Any penalty we set should therefore be sufficiently high to discourage harmful conduct and incentivise Royal Mail's management to change the conduct of the company, encouraging good practices and a culture of compliance across the organisation. The level of the penalty should ensure that Royal Mail's senior management, and senior management across the wider industry, recognise that it is not more profitable for it to break the law and pay the consequences, than to comply in the first place. It should make clear that it is not worth taking the risk of non-compliance because it will cost the company to do so.
- 5.15 In considering deterrence, we also consider it important that the penalty we set should incentivise Royal Mail and the wider industry to comply with obligations that are imposed for the protection of consumers, in particular, where vulnerable consumers might otherwise be at risk of harm. Accordingly, in circumstances where the scale of the overall financial harm arising from a contravention is relatively low, a higher penalty may be appropriate to reflect the harm or risk of harm to individual consumers. In particular, our view is that the total level of financial gain/consumer harm (which we discuss further below) and the relative size of Royal Mail should be taken into account when setting the level of penalty.

Royal Mail's representations that a penalty is not necessary for deterrence

- 5.16 Royal Mail argues that it is not necessary to deter itself from breaching again as it has taken a range of steps and given assurances that there will be no further breach.¹⁷ It also states that it is not necessary to deter the wider industry as there are no other postal operators which are also subject to safeguard price caps.¹⁸
- 5.17 We do not accept Royal Mail's narrow interpretation. A breach finding in these circumstances demonstrates that there was, in this particular instance at least, a failure in Royal Mail's compliance processes. In our view, it is appropriate to deter Royal Mail and others from failing to comply with regulatory obligations (whether these are safeguard price caps or other types of regulatory obligation). In this case, the regulatory obligations have been in place in identical form since 2012 and are clear, unambiguous and straightforward to comply with.
- 5.18 Royal Mail also argues that imposing a penalty for what it characterises as a "*one-off, human error*" could deter regulated companies from having open engagement and co-operative dialogue with Ofcom, when compliance issues or potential breaches come to light.¹⁹ We do not accept that this can be a reason not to take action and that the point of deterrence is to encourage companies to comply, thereby preventing breaches from occurring in the first place. Royal Mail also argues that if a penalty is seen as inevitable, companies may be deterred from taking proactive steps to self-regulate as Royal Mail did

¹⁷ Royal Mail's response, page 18, paragraph 5.2

¹⁸ Ibid.

¹⁹ Royal Mail's response, page 19, paragraph 5.6.

in this case. Ofcom considers in each case whether it is appropriate and proportionate to impose a penalty, and considers a number of factors in its assessment. The Penalty Guidelines set out, for example, that any steps taken to remedy the consequences of a contravention may be a relevant factor when determining the level of penalty.

5.19 We have, therefore, concluded that it is appropriate to impose a penalty.

Determination of the level of the penalty

Consideration of relevant factors

5.20 Our penalty guidelines set out a range of potential relevant factors which may be relevant in any particular case. We have considered all the circumstances of the case in the round, taking into account a number of factors, in reaching our decision. We summarise these factors below.

Seriousness, degree of consumer harm and duration of the contravention

5.21 The safeguard price cap, as explained above, was implemented to ensure a basic and affordable universal service is available to all, especially vulnerable consumers. It is, accordingly, a critical regulatory constraint and we therefore regard a failure to comply with the safeguard price cap to be inherently serious, regardless of the actual level of harm caused.

5.22 The breach lasted for seven days from 25 March to 31 March 2019 and Royal Mail charged one penny over the safeguard price cap. Royal Mail estimates that it generated approximately £55,000 in additional revenue as a direct result of the overcharge.²⁰ It argues, however, that there was no material degree of consumer harm, due to the short duration of the breach and the limited level of overcharge.

5.23 In our view, it is not contested that consumers were overcharged, and hence harmed. Some of the consumers harmed may potentially have been vulnerable consumers, whom the safeguard price cap is designed in particular to protect.

5.24 Royal Mail argues that because the safeguard price cap was, precisely, 60.65p the overcharge should be treated as 0.35p rather than a whole penny (thereby reducing the scale of the overcharge).²¹ Royal Mail argue that this reduces the impact of the overcharge on vulnerable consumers, especially when considering the breach lasted a total of seven days.

5.25 Royal Mail's consumers cannot in practice be charged or pay 60.65p for individual second-class services. Accordingly, the highest compliant price that could be charged by Royal Mail was 60p, and therefore consumers were charged an additional 1p for each stamp purchased which they should not have had to pay (and could not be refunded for).

²⁰ Royal Mail's response, page 12, paragraph 3.5 et seq.

²¹ Ibid.

- 5.26 Royal Mail explained that it took extensive steps to publicly communicate notice of the overcharge to its consumers through the media, its own website and social media sites in the month ahead of the price increase.²² Royal Mail states that its public statements allowed consumers to take preventative action by buying stamps before the price increase and thereby avoided being harmed.
- 5.27 We do not accept that Royal Mail's communications strategy to inform the public eliminated the potential for consumer harm, as consumers were nevertheless subject to overcharges. Whilst we acknowledge that this may have assisted some consumers in avoiding the overcharge, a material level of sales still occurred. In any event, it is not acceptable that consumers may have been deterred from purchasing universal service products as a consequence of Royal Mail's failure to comply with the safeguard price cap.
- 5.28 We consider £55,000 in additional revenue as a direct result of the overcharge to be a material amount of revenue recovered from consumers. Although the alleged breach lasted for a relatively short period of time and was of a relatively limited amount overall, it is also relevant to consider the harm caused to individual consumers, some of whom potentially were vulnerable consumers, such as those on low incomes and the elderly.
- 5.29 In taking into account the considerations above, we give particular weight to the fact that the Second Class safeguard price cap is a critical regulatory constraint, designed to provide a basic universal service to consumers, especially vulnerable ones. We therefore regard a failure to comply with the safeguard price cap to be inherently serious, regardless of the actual level of harm caused.

Appropriate steps taken to prevent the contravention

- 5.30 We have considered whether Royal Mail took appropriate steps to prevent the contravention. We note that Royal Mail first became aware that its planned price increase would breach the cap in February 2019, the day before it was due to announce the price increase and approximately one month in advance of the planned price increase taking effect.
- 5.31 Royal Mail states that it considered whether it was possible to delay the tariff announcement (and thereby avoid a breach) but that the view of senior management was that delay was not an option.²³ Royal Mail explains that, due to processes involved in implementing the price increase, including the fact that the Post Office required tariff information by a certain time, Royal Mail had "*passed the point of no return.*" It therefore decided to proceed as planned and instead looked to inform the public and other stakeholders about the error and ensure that it would not occur again.
- 5.32 It is not clear to us whether, and to what extent, an alternative approach could have been taken, including whether it was realistic to delay the second class stamp price increase. Nonetheless, in our view the apparent inflexibility of Royal Mail's pricing arrangements

²² Royal Mail's response, page 13, paragraph 3.8 et seq.

²³ Royal Mail's response, page 6, paragraphs 2.6 and 2.7.

emphasises the need for compliance arrangements with better oversight mechanisms and which can signal potential problems at an earlier stage.

Extent to which contravention occurred deliberately or recklessly

- 5.33 Another factor we may take into account in imposing a penalty is the extent to which the contravention occurred deliberately or recklessly, including the extent to which senior management knew, or ought to have known, that a contravention was occurring or would occur. Plainly, in this case Royal Mail was aware, when the mistake came to light, that it would have the effect of Royal Mail charging prices in excess of the safeguard cap. In this sense, senior management clearly understood that the contravention was going to occur.
- 5.34 We have considered the circumstances in which Royal Mail developed its pricing changes for March 2019. Royal Mail states that at the time it had robust, formal governance arrangements in place governing all its major pricing decisions. It explains that this was a one-off error which occurred because of “*a misalignment between the tariff and regulatory [safeguard] price cap implementation dates.*”²⁴ Although Royal Mail explains that the pricing processing involved significant senior level scrutiny, it “*did not include explicit senior management sign-off.*”²⁵
- 5.35 We have no evidence to suggest that Royal Mail intended to exceed the safeguard cap in the period in which it developed and agreed its prices for March 2019 (although as noted above it did proceed to charge those prices). However, in this case the requirement imposed on Royal Mail was clear, unambiguous and straightforward to comply with. A breach in these circumstances demonstrates there was potential for the existing compliance processes to fail and, in our view, renders them inadequate.
- 5.36 Royal Mail notes that it has since improved its arrangements and that its new processes will ensure no further breaches will occur. We discuss this further below.

Steps taken to remedy the consequences

- 5.37 As explained above, Royal Mail took steps to publicly communicate notice of the overcharge to its consumers, although we consider harm occurred nonetheless.
- 5.38 We acknowledge that Royal Mail has subsequently sought to implement process improvements after carrying out a root cause analysis, which would help mitigate this error from occurring again.²⁶ The updated process comprises of (a) a manual sign-off form requiring oversight from two Royal Mail senior executives on the pricing calculation and proposed timing and (b) an automated check built into the pricing model. We welcome these changes; however, our view remains that Royal Mail’s compliance arrangements failed at the time of this breach, suggesting that they were inadequate. For example, this may have been in part due to the fact that the processes at the time of the breach “*did not include explicit senior management sign-off*” or include mechanisms to pick up “*a*

²⁴ Royal Mail’s response, page 6, paragraph 2.4.

²⁵ Royal Mail’s response, page 7, paragraph 2.12.

²⁶ Royal Mail’s response, page 7, 2.12 et seq.

misalignment between the tariff and regulatory [safeguard] price cap implementation dates”.

Financial gain

- 5.39 Royal Mail donated £60,000 to charity, based on its estimate of additional revenue generated as a direct result of the overcharge. It therefore argues that it did not financially gain from the breach.²⁷
- 5.40 Whilst we acknowledge that it took steps to avoid benefitting from the overcharge, we consider the *level* of additional revenue to be a relevant factor in determining the level of the penalty. That is because, regardless of the donation made, consumer detriment was nonetheless caused and not directly remedied. The level of additional revenue does not, however, determine or limit the level of the penalty. Indeed, we consider that a penalty which exceeds the level of additional revenue to be appropriate and proportionate. This reflects the inherent seriousness of the breach and harm to consumers, some of whom were potentially vulnerable consumers (such as those on low incomes and the elderly), as well as the need to achieve a sufficient deterrent effect for a regulated body of Royal Mail’s size.

History of contraventions

- 5.41 Royal Mail submits that it had not breached the Second Class letter safeguard price cap previously. Whilst we have investigated and made findings against Royal Mail in relation to other contraventions,²⁸ these have not been taken into account as part of our penalty assessment for this case.

Royal Mail’s co-operation

- 5.42 Royal Mail notes that it has pursued an open and continuing process of dialogue with Ofcom, to explain the steps it was taking in response to the error. It also highlights that it has proactively addressed the root causes of the error and made changes to its compliance processes. As a result, Royal Mail says it is confident the error will not happen again. We acknowledge Royal Mail’s engagement with Ofcom.

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

- 5.43 As noted 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 13 March 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 the Second Class price cap and that a penalty of £100,000 was appropriate and proportionate to that contravention.

²⁷ Royal Mail’s response, page 7, paragraph 2.9 et seq.

²⁸ These other contraventions are breaches of DUSP condition 1.9.1 and competition law. Links to these decisions can be found at [link 1](#), [link 2](#), [link 3](#) and [link 4](#)

5.44 On 29 June 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.

Conclusion on the penalty amount

5.45 Considering all of the above factors, we determine that it is appropriate to impose a financial penalty of £100,000 on Royal Mail. This reflects:

- a) the fact this is an inherently serious contravention of a straightforward safeguard price cap regulation, which is designed to ensure basic universal services are available and affordable to all, including vulnerable consumers;
- b) the fact that actual material consumer harm was caused (approximately £55,000 based on Royal Mail's estimates), some of which may have potentially affected vulnerable consumers, notwithstanding the short duration of the alleged breach and/or relatively limited harm overall;
- c) the need to deter Royal Mail and others from having inadequate compliance arrangements for regulatory obligations which are clear, unambiguous and straightforward to comply with (taking into account of the relative size of Royal Mail), and to ensure that Royal Mail and others recognise that it is not more profitable to break the law and pay the consequences, than to comply in the first place; and
- d) that whilst we acknowledge the steps Royal Mail have taken to remedy the consequences of the alleged breach and its open engagement with Ofcom, Royal Mail ought to have had better oversight mechanisms in place at the time so that Senior Management could have prevented the breach from occurring.

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

Interpretation

5.47 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

DATE 10 July 2020