



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to Ofcom consultation in relation to *Review of Regulatory Conditions: Postal Regulation*

January 2012

About Consumer Focus

Consumer Focus is the statutory consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland.

We operate across the whole of the economy, persuading businesses, public services and policy makers to put consumers at the heart of what they do.

Consumer Focus tackles the issues that matter to consumers, and aims to give people a stronger voice. We don't just draw attention to problems – we work with consumers and with a range of organisations to champion creative solutions that make a difference to consumers' lives.

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Introduction and background

Purpose of paper

This document provides the response from Consumer Focus to the consultation about Ofcom's proposals as set out in *Review of Regulatory Conditions: Postal Regulation* of 13 December 2011.

This document is a redacted version of the response submitted to Ofcom that contained commercially sensitive information.

Summary of issues

The Ofcom consultation paper on regulatory conditions seeks to change the conditions of postal services to ensure consistency with Ofcom's overall objectives of simplifying the regulatory regime and providing greater commercial flexibility to Royal Mail while securing the universal postal service.

Ofcom identifies three key areas for the new proposals

- The first universal postal service order (UPSO) and related adjustments to the designated universal service provider (DUSP) conditions
- The publication and advance notification requirements for price and non-price terms of Royal Mail's services
- The introduction of an end to end notification condition which would require postal operators to notify Ofcom, within three months of proposed commencement, of their plans to provide or expand an end-to-end letters delivery service

UPSO order and DUSP conditions

Consumer Focus agrees with the UPSO. We are supportive of the move in the DUSP conditions to an outcome-based approach through a description of the characteristics of universal postal services, and hope that this encourages Royal Mail to carefully review their product offering and brand names to ensure that they meet customer demand. For example we would suggest that this can be achieved by Royal Mail offering individual elements of their registered and insured services. We would also hope that this will provide Royal Mail with greater freedoms to be able to offer innovative products that are consumer driven.

We agree that return to sender should not be required to be provided free of charge. However, we are concerned about the implications of return to sender being provided as a paid for service and consider that this is a complex issue that needs to be fully researched and thought through in order to ensure that the change is not detrimental to consumers.

Publication and notification of changes to Royal Mail services

Ofcom proposes to replace the approval process for changes to the prices and the terms and conditions of retail universal services with a notification period of one month (rather than the current three months). The regulator also proposes a general requirement that terms and conditions for universal services be 'fair and reasonable'.

Similarly Ofcom proposes to change the level of compensation that Royal Mail provides for loss, damaged and delayed mail from prescribed amounts to 'reasonable' compensation.

Generally, we are supportive of the approach by Ofcom to move to a more outcome-based approach. We understand that Ofcom has considerable experience in the telecoms sector in judging unfair terms and issues of reasonableness. We are confident that the Regulator will be able to apply such experience to the postal sector. We also believe that a reduction in terms of notification of changes to terms and conditions to one month is more in line with current consumer practices in other markets.

However, we are concerned at the removal of all consultation and advance notification requirements for changes to Royal Mail's non-price terms and conditions for universal services. Royal Mail will be able to implement significant changes to their product offering without sufficient public scrutiny for a service that has major social implications. Its recent behaviour in this regard does not lead us to believe that these changes will necessarily be in consumers' interests.

Ofcom proposes removing some of the regulatory reporting requirements on Royal Mail. We accept that it is useful to amend the reporting requirements in the DUSP and consumer protection conditions in order to remove those areas where reporting has become unnecessary. However, in light of Ofcom's stated intention to rely on performance monitoring and the shift in regulatory approach, it is important that the monitoring system is robust, credible and instils confidence in the mail market in the UK. The system must also ensure that sufficient information is provided by the universal service provider.

Ofcom proposes to remove the requirement for Royal Mail to include the postcode area information and statement of action plan in the reports on the operation of the compensation schemes. We are concerned at the removal of these existing reporting requirements which Consumer Focus has found useful for keeping consumer issues under review and engaging with Royal Mail on important issues.

End to end notifications

Consumer Focus appreciates the importance of market competition and the impact that this has on improving and delivering good consumer outcomes. We note the introduction of an end-to-end notification condition for entry or expansion, in line with statutory requirements. We suggest that in light of the uncertainty which the notification requirement can pose in the market there is a need for Ofcom to provide greater certainty on the circumstances in which this is likely to lead to imposition of a USP condition.

Implementation of price control proposals

The consultation document also seeks to implement the proposals in a previous Ofcom consultation paper *Securing the Universal Postal Service: Proposals for the future framework of economic regulation* of 20 October 2011.

The paper includes draft legal instruments on

- Safeguard cap for Second Class letter stamps
- Access
- Regulatory accounting

Consumer Focus remains concerned around the manner in which the price control proposals in Ofcom's earlier paper will impact on consumers. Ofcom proposes in that paper to remove the significant majority of price controls for Royal Mail's universal service and access products.

Our response to the price control paper presented and discussed our economic modelling research which suggests that Royal Mail can achieve reasonable margins going forward without significant price rises, once it addresses its cost inefficiencies and restrains its costs.¹ Our research also suggests that over the medium and longer term cost efficiency and cost restraint at Royal Mail are the key drivers of its ability to finance universal service provision.

Consumer Focus does not agree with the removal of caps on First and Second Class products as we are concerned that allowing Royal Mail to substantially increase its prices could:

- foster financial indiscipline at the company
- increase the pace of mail volume decline
- impact adversely upon consumers and SMEs at a moment where they are already squeezed elsewhere

If Ofcom was to proceed with this proposal we would support the safeguard cap on Second Class letters and have argued for its extension to Second Class large letters and packets. We consider that there should be further public consultation on the precise framework of an extended safeguard cap on Second Class products.

Consumer Focus is supportive of the approach in the proposed regulatory accounting condition that seeks to increase transparency in relation to Royal Mail's costs. However we are concerned that the timing for the provision of the first accounting reports from Royal Mail will be after Ofcom has already made its decision to remove ex ante regulation through price controls.

We appreciate the importance of market competition in postal services and the impact that this has on improving and delivering good consumer outcomes. However Consumer Focus also places considerable importance on the role of ex ante regulatory controls to promote competition and promote efficiency in the market. Overall we are concerned at the scale of changes and the impact on consumers and believe that competition has not developed sufficiently, in universal and non-universal services to justify a totally de-regulatory approach. We believe that the de-regulation of the postal services' environment is proceeding too swiftly, with insufficient evidence to support the reforms and limited consideration of the impact this will have on consumers and particularly vulnerable consumers, who remain captive.²

In order to be helpful and provide a measure of assistance our responses to the consultation questions on economic regulation in the present proposals largely assume that the proposed price control regime is adopted by Ofcom, albeit that we have set out in our response to that consultation why we believe Ofcom's approach to be flawed.

¹ *Consumer Focus response to Ofcom consultation in relation to Securing the Universal Postal Service: Proposals for the future framework of economic regulation*. December 2011.

<http://bit.ly/v5F7uR>

² *Consumer Focus report on potential impacts of stamp price increases on consumers, A supplement to the Consumer Focus response to Ofcom's consultation Securing the Universal Postal Service: Proposals for the future framework of economic regulation*, January 2012

<http://bit.ly/Ac5r6x>

Future consultations

We note that, in addition to Ofcom's detailed proposals on the regulatory conditions, the consultation document also signals future Ofcom consultations on:

- Universal service review of the reasonable needs of postal users including access points density requirements and the level of quality of service targets
- Complaint handling and consumer redress
- Postal Common Operations Procedure
- Draft guidance on access framework
- Dispute Settlement Framework as applied to post rather than communications

Consumer Focus welcomes these future Ofcom consultations in postal services and is keen to provide substantive evidence and share its expertise and views on these matters as they arise.

Response to Ofcom's consultation questions

The first Universal Postal Service Order

Q4.1 Do you agree that we have identified the correct characteristics of a universal service in order to ensure that the universal service remains essentially the same? If not please identify those characteristics that should or should not be specified in the Order, and provide reasons.

Ofcom has set out the proposed description of services that should be provided within the universal postal service, as required under s.30 of the Postal Services Act 2011. It intends to retain all the essential features of the current universal service, pending a review of user needs.

The characteristics that Ofcom proposes to specify are: definition of the product, delivery and collection six days a week for letters, five for packets; universal access; uniform and affordable prices; single piece where applicable; speed and associated quality of service targets; dimensions and weight; tracking. Ofcom does not intend to specify price, format of items, requirements imposed on customers and those specified elsewhere such as compensation, times of collection and delivery.

Consumer Focus agrees that describing the characteristics of the universal service in this manner, is a sensible approach and that the correct characteristics have been identified to cover existing services.

We also support this characteristics approach in light of the clear evidence of consumer confusion around the current brand names of Royal Mail products. Our preliminary research in this area shows that the current product names do not help consumers and there is uncertainty as to what features are provided by individual products. On completion of our research we will be presenting additional evidence to Royal Mail and Ofcom on this area. We suggest that the change in approach provides an ideal opportunity for Royal Mail to re-think its approach to the branding of postal products.

We also have a wider concern that the branding of products does not necessarily provide the opportunity for consumers to choose the services that they need. As we indicated in a previous response to a Postcomm consultation on the composition of the universal service we would prefer to see a different approach to the provision of secure mail services.³ Certificates of posting, Recorded Signed For and Special Delivery currently offer different attributes and options for delivery and security. As we previously suggested these options need to be separated out so that consumers are able to choose only those options that they need. Consumers could then choose the most appropriate delivery service and 'bolt' on any of the security services they required to make it a more customisable package. It is questionable whether the current £5.45 charge for the bundled Special Delivery service makes registered and insured services affordable as is required under the Postal Services Act 2011.

³ *Consumer Focus response to Postcomm's consultations on the universal service analysis of markets and access review* May 2011 <http://bit.ly/v5F7uR>

We hope that providing a description of the services to be included in the universal service means that it will be easier to ensure that registered and insured services are affordable if they are provided separately.

Consumer Focus strongly agrees with Ofcom's proposal to maintain the existing characteristics of the universal service pending the review of user needs. Any changes to the universal service should be made based on evidence of changing consumer need and we expect this to be informed by the separate research projects, to be undertaken by both Consumer Focus and Ofcom over the next year. Consumer Focus's research will investigate what motivates consumers when choosing a communication method to use and if possible how these choices will change over the medium-term. This will involve asking consumers to think beyond the products and services that are currently available to consider their needs in a more abstract manner. This should complement proposed research by Ofcom which is likely to also cover the detailed products and services offered by Royal Mail.

Q4.2 Do you agree we should specify that the duration of redirections, Keepsafe and Poste Restante should be reasonable? If not, please provide your reasons.

Consumer Focus agrees that Redirections, Keepsafe and Poste Restante services should have 'reasonable' duration periods. We expect that these periods will differ in line with the nature of the products.

Q4.3 Do you agree redelivery and return to sender are part of the characteristics of a universal service and should be specified in the order? Please also provide the reasons for your view.

Consumer Focus agrees that both return to sender and redelivery are an essential part of the universal service and should be specified in the order.

Redelivery is particularly important for consumers and should be universally available. The increasing use of fulfilment mail by consumers means that there is growing need for delivery convenience for consumers who are not available at the time of delivery due to work or other commitments.

The return to sender service is also important to consumers, being used by social consumers to indicate that mail has been delivered to an addressee who does not reside at the address. There are also implications for data accuracy if return to sender is not universally offered as it may impact on the ability of businesses to keep personal information files up to date.

Q4.4 Do you agree return to sender should not continue to be required to be provided free of charge? If not please provide your reasons.

Consumer Focus agrees that return to sender should not continue to be required to be provided by Royal Mail free of charge. However, we wish to highlight the significant implications arising from the proposal to change the return to sender service to a paid-for service. We caution that this proposal raises complex issues which need to be fully researched before a final decision is made by Ofcom.

Consumer Focus considers that charging for return to sender raises several interconnected issues which needs to be assessed before the proposal can be implemented in a manner that safeguards consumer interests. We note that the proposal is likely to have different implications for social customers and bulk mailers/direct mailers and also raises significant issues on data protection and accuracy of personal information.

From the perspective of the domestic consumer as a receiver of mail from businesses, return to sender is presently used as a tool to notify businesses that the addressee does not reside at the address. Consumer communication in this way can lead to responsible businesses updating their records to ensure that the level of 'nuisance' mail is reduced to a minimum. However we are concerned that should return to sender be offered by Royal Mail as a paid service it is unclear whether all businesses would pay for items to be returned, potentially leading to consumer difficulties in ensuring that mail addressed to an individual who does not live at the address on the envelope is no longer being delivered to their address.

We agree that Royal Mail should not have to bear the cost of returning mail to sender. However, unless bulk mailers agree to meet the cost of returned incorrectly addressed mail, consumers will be unable to stop delivery of this mail without reference to the more formal process through the Information Commissioner under the Data Protection Act 1998.⁴ We consider that there needs to be an incentive placed on bulk mailers/direct mailers to keep their information up to date. It may be that Royal Mail and Ofcom will need to address this issue by reflecting the costs in the customer segment which is responsible for the majority of mail returned to sender or that a solution will need to be crafted with the assistance of the Information Commissioner.

Another issue which will require clarification is the identity of the operator responsible for bearing the cost of return to sender. Where mail is being sent through access operators, we would be interested to understand whether mail returned to sender is returned directly through Royal Mail or through the access company and the party which bears the cost of this. We'd also like to know how this is reflected in the Postal Operational Procedures Code of Practice and access agreements. These factors contribute to the complexity of the implementation of this proposal.

On the other hand from the perspective of the domestic consumer as a sender of mail, return to sender is primarily used as notification that their mail has not reached its intended recipient allowing them to update addressee details or use alternative methods. For these consumers it may be preferable that this service is offered on an opt-in upfront payment possibly as a 'bolt on' to other delivery services. In these instances the consumer may wish to use return to sender as a secured service in a similar manner to Special Delivery. We would also note that in light of the premium attached to services such as Special Delivery, the purpose of which is to ensure a signature on delivery (indicating that customers may be more likely to wish to have these items returned) premium services should probably be considered to include element of payment for return to sender.

We note the proposed provision in DUSP condition 1.4.1 that the return to sender service 'may be paid for by reasonable methods'. However, as discussed there are difficulties in determining the appropriateness of surcharges or opt-in charges. As we would expect the cost of the service to be cost-reflective we would consider that an opt-in charge is likely to be more transparent, affordable and convenient for consumers than a surcharge. By its very nature a surcharge includes an element of averaging out to account for those who do not use the service. Determination of the payment method should be an issue for further analysis.

⁴ Businesses processing personal data are likely to be data controllers who are required by law to change inaccurate personal details for their data subject within a 'reasonable amount of time' upon being notified by the data subject and provided with sufficient evidence for the change. Complaints can be made to the Information Commissioner for failure to do so. <http://bit.ly/yit4af>

Consumer Focus stresses the importance of discussions with the Information Commissioner on this matter in light of the data accuracy implications of the proposals and the need to ensure that consumers have a simple method for stopping unwanted mail.

We would urge Ofcom to fully consider and address all the implications of this proposal before making a final decision. Consumer Focus is willing to work with Royal Mail, Ofcom and the Information Commissioner to ensure that any return to sender system implemented is fair and reasonable and meets consumer needs on availability of the service at affordable and universal prices while ensuring that there is no detrimental knock on effect on consumers' ability to ensure accuracy of personal data.

Q4.5 Do you think the notification period for changes to the list of services provided as part of the universal service should be one month, or three months?

We agree that the notification period for changes to the list of Royal Mail's universal service products can be reduced to one month and consider that this should provide sufficient notice to consumers. This would align Royal Mail with the standard notification practices of many other businesses.

Setting the conditions for the provision of the Universal Postal Service

Q5.1 Do you agree with a proposed condition to require Royal Mail to provide a universal postal service in line with specified characteristics, which requires them to meet specified standards; requires the provision of access points to particular criteria and which will now also require them to publish a list of universal service products, and to notify us and customers of any changes to that list? If not, please explain why.

Consumer Focus agrees that Royal Mail should be required to provide the universal service as it is the only possible provider at this time.

We agree that the proposed DUSP condition 1 to secure the provision of a universal service, to specify the performance targets for universal services and to cover the provision of information on charges to users of universal services is an important condition for safeguarding the universal service.

Q5.2 Do you agree with our proposed condition which specifies universal postal service performance standards? If not, please explain why.

Ofcom proposes that the DUSP condition includes the quality of service targets for universal services and Royal Mail's obligations regarding the measurement of performance against the targets.

Consumer Focus supports and welcomes the retention of the current performance targets pending the user review. The current targets are achievable and there is no evidence to support a reduction in targets or a review at this time.

We note that the performance standards will now be subject to investigation and sanction if performance falls below the prescribed level as the 'safe harbour' for which there are no automatic consequences will be removed. Further in the absence of price controls, other than the safeguard cap, there is no C-factor where if Royal Mail fails its quality of service targets, permissible price rises will be lower than would otherwise be the case.

We consider that in order to incentivise Royal Mail to meet its quality of service targets for universal services, it is important that Ofcom stresses that it will consider investigation of any failure of Royal Mail to meet its performance targets and that performance that does not meet quality of service standards will mean the regulatory sanctions regime under Schedule 7 of the Postal Services Act 2011 will be applied.

We believe that it is important that the investigations and sanctions regime is rigorous, robust and credible. While we recognise the need to consider *force majeure* conditions we would stress the need for comprehensive preliminary investigations by Ofcom into *force majeure* events to ensure that there is a causal link between the reason proffered by Royal Mail for failures and degradation of quality standards and the actual circumstances.

We also believe that transparency in these processes will be facilitated by building public consultation into the process for considering *force majeure* applications. This will ensure that Ofcom can get a credible view from other operators who would have faced similar problems and from consumer organisations monitoring the sector.

The importance of robust investigations into the underlying reasons for failure of the universal service provider to meet performance standards, and the vital role that consumer organisations can play in this process were demonstrated in 2011. Royal Mail's Quality of Service figures for 2010-11 showed that it missed its targets for First and Second Class mail and Special Delivery for the year, with particularly poor service recorded during Quarters 3 and 4. In the accompanying press release Royal Mail argued that these results were due to the 'exceptional challenges' of volcanic ash during April 2010 and poor winter weather. The company self adjusted its quality of service figures stating it had met its targets.⁵ Consumer Focus presented evidence to Postcomm indicating that the service failures were not restricted to the periods of severe weather, and that there appeared to be a link between these service failures and the rollout of Royal Mail's modernisation programme. Postcomm subsequently agreed that contrary to the statements in the company's press release, Royal Mail had not met all its targets.⁶ Royal Mail's approach to this issue will have damaged consumer confidence that the company will always behave in a transparent way in the future.

Consumer Focus disagrees with the scope of the notification and publication obligations set out in proposed DUSP condition 1.8. We suggest that these be strengthened and amended to facilitate greater transparency of the information as follows:

Quarterly performance standards reports

- The proposed DUSP condition 1.8.5 must provide that the quarterly performance standards reports are to be notified to Consumer Focus as well as to Ofcom. This is in accordance with the existing condition 4.9. and Consumer Focus actively uses this information to monitor Royal Mail's performance
- The proposed DUSP condition 1.8.5 should also be extended to place an obligation on Royal Mail to ensure that information on the quarterly performance standards is made publicly available. Current condition 4.2.3 (a) (b) (c) requires that Royal Mail make the quarterly reports publicly available. It is critical that this level of information disclosure and transparency be continued in the new regulatory environment

⁵ Royal Mail Quality of Service Report, 28 February 2011 <http://bit.ly/xqoh5S>

⁶ Postcomm decision letter 26 July 2011 in relation to Royal Mail's force majeure application of may 2011.

Annual performance standards reports

- The proposed DUSP condition 1.8.6 which provides for publication of EC standards and performance targets and selected domestic standards should be clarified to indicate that the report submitted after the Christmas period covers the calendar year

Enhanced performance monitoring in an ex post regulatory regime should apply across all areas, not just in financial reporting, in order to give consumers confidence that the universal service provider is providing a suitable service as well as providing the Regulator with a clear view of the consumer experience of the performance of the monopoly provider.

Q5.3 Do you agree with our approach to DUSP4 – which means Royal Mail would have to maintain appropriate contingency plans but will have no regulatory requirements in relation to a priority list? If not, please explain why.

Consumer Focus agrees with Ofcom's proposal for Royal Mail to maintain appropriate contingency plans to ensure the provision of the universal service and conduct a review of its contingency plans at least every two years and provide Ofcom with a report.

We agree that the requirement to keep a priority list is an operational matter for Royal Mail.

Q5.4 Do you agree with our proposal to reduce the notice period for price and non-price changes to universal services to one month? If not, please provide evidence to support your view.

Consumer Focus agrees that the proposed reduction of the advance notification period for price and non-price changes to retail universal services is acceptable, subject to our comments about prior consultation on non-price changes discussed in our response to Q. 5.5.

We stress that any reduction in notification must be accompanied by appropriate publicity and Royal Mail must take care to communicate effectively and provide consumers with sufficient publicity, by a variety of printed and electronic methods, on any changes.

Q5.5 Do you agree that, given we will now be defining the characteristics of universal services, we should not impose prior approval requirements on Royal Mail for non-price changes to the universal services? If not, please provide evidence to support your view.

Ofcom proposes to replace the current approval process for non-price changes to the universal services with a post implementation process for consumers to complain about changes that they believe are not 'fair and reasonable'.

Consumer Focus strongly disagrees with the proposal to drop the existing prior approval requirements for non-price changes to the universal services. Royal Mail is currently required to consult with Consumer Focus on non-beneficial price changes. If changes are not agreed between Consumer Focus and Royal Mail, then Postcomm (now Ofcom) will consult with the public on the proposals.

We would draw your attention to two recent examples of where the consultation requirement on Royal Mail on non-price universal service changes has proved vital for consumers. These are the 'delivery to neighbour' trial and the 'reduction in the compensation claim times'.

Delivery to neighbour trial

Royal Mail applied to Postcomm for a trial of a change in its delivery practice to allow postmen and women to leave undeliverable items, too large to fit through a letterbox or which require a signature, (excluding Special Delivery or International Signed For) with a neighbour of the recipient, instead of returning the items automatically to the Delivery Office.⁷ Royal Mail conducted very little research prior to this trial to enable them to assess the interests of consumers and had not fully considered the implications of this proposal for recipients or senders of mail. The public response to the consultation plus our more extensive research showed Royal Mail and Postcomm that the trial had to include an opt-out provision

As a result of the consultation process Postcomm decided that the proposed trial had to include provision for consumers to opt-out, that compensation arrangements in relation to mail delivered in the trial areas should be applied in the same way as mail delivered elsewhere and that the obligations in the Mail Integrity Code governing security of mail would also remain applicable.⁸

Compensation claim times

Royal Mail initially proposed reducing claim times to one month, and then 60 days. Given that consumers have to allow 15 working days (three weeks) to elapse before they can submit claims this would have left only a maximum of five weeks for them to submit claims.

Our analysis of Royal Mail's claims data for 2010/11 indicated that 90 days was much more appropriate. According to Royal Mail's own data for compensation claims for loss, only 3%⁹ per cent of consumers submitted their claims for lost items within two months. This left almost 97% per cent of consumers who submitted their claims after this time and who would have been cut off from claiming under the proposal.

Royal Mail's data also showed that 3% per cent of claims were submitted within three months, which left a more acceptable 97% per cent of consumer claims that would be rejected under the proposal. Postcomm agreed with our suggestion to increase the claim times and decided that Royal Mail should increase the claim time period to 80 days.¹⁰

We understand that non-price universal service terms must be reasonable but if changes are made without any consultation there is no mechanism for consumers to indicate if they feel that the changes are unreasonable. Royal Mail's recent behaviour in this regard with respect to the Delivery to Neighbour trial and compensation claim times does not give us confidence that it will make changes that are in the public interest if it no longer has to seek approval for them. We note that consumers will have the ability to complain after implementation of the changes but the process is considerably less effective if it requires a 'roll-back' of changes. Retention of the prior approval requirement serves as a constructive engagement process that can prevent issues arising, not just for consumers but also for Royal Mail.

⁷ Postcomm's consultation on Royal Mail's application to run a Delivery to Neighbour trial, July 2011 <http://bit.ly/AcaxZJ>

⁸ Postcomm decision on Royal Mail's application to run a Delivery to Neighbour trial, September 2011. <http://bit.ly/yS5Kiq>

⁹ % = redacted commercially confidential material

¹⁰ Postcomm decision on Royal Mail's applications to change its terms and conditions <http://bit.ly/yS5Kiq>

Q5.6 Do you agree with our proposal not to impose any notification and publication requirements on Royal Mail in respect of retail non-universal services? If not please provide evidence to support your views.

Ofcom proposes removing the requirement for Royal Mail to give advance notice of changes to price or non-price terms of retail non-universal services as most universal service customers have a choice of operators.

Consumer Focus neither agrees nor disagrees with this proposal. However we note that this may have an impact on SMEs particularly those in rural areas who are dependent on Royal Mail retail non-universal services and may find a notification period important for business planning.

Conditions required to protect consumers

Q6.1 Do you agree with our proposal to delete the requirement in CP 1.2 and the related changes to the PCOPC and Mail Integrity Code? If not, please explain why.

Ofcom proposes to delete the current consumer protection requirements on regulated postal operators – for collecting postal packets as agreed with customers and delivery of postal packets within a reasonable time – on the basis that contractual and competitive drivers can help sustain service levels for collections and delivery. These changes are to be supplemented by a strengthening of the Postal Common Operational Procedures Code of Practice (PCOPC) which aims to minimise the risk of mis-posted, mis-collected or mis-directed code letters not being repatriated to the correct regulated postal operator, customer or address and the Mail Integrity Code which aims to reduce exposure to the risk of loss, theft, damage and/or interference to mail.

Consumer Focus agrees with the expansion of the PCOPC and the Mail Integrity Code. Ofcom proposes to extend the PCOPC to cover additional postal packets than letters (within specified cost and weight limits) sent by Royal Mail, access operators and regulated postal operators and to extend the Mail Integrity Code to cover access operators. These revisions will ensure that the codes cover a larger category of operators handling mail and should enhance consumer confidence in the sector. Recipient social consumers generally have no choice over which postal operator senders use and the extension of protections to cover other operators is welcomed.

Q6.2 Do you agree with our proposed requirement for Royal Mail's compensation arrangements for universal services? If not, please explain why.

Royal Mail's obligations on compensation arrangements are derived from several sources including consumer protection conditions in respect of the retail compensation scheme for delay; schemes made under s.89 of the Postal Services Act 2000 in respect of loss and damage and contractual arrangements.

Ofcom proposes imposing a requirement that Royal Mail provide 'fair and reasonable' (retail) compensation for universal services. Ofcom further proposes that the compensation reporting requirement for each postcode area and the requirement to state the action that Royal Mail intends to take in the future to address issues are removed.

Consumer Focus agrees with the proposed requirement that compensation for universal services be fair and reasonable but we strongly disagree with Ofcom's proposal to remove postcode area reporting and the statement of action from the annual compensation report.

Compensation

Consumer Focus agrees with the proposed requirement in consumer protection condition 4.2 for Royal Mail to provide reasonable (retail) compensation for universal services. We believe that the compensation scheme needs to be strengthened so that there is 'fair and reasonable' compensation for all services within the universal service including redirections and recorded signed for as individual services.

Currently redirection customers can claim compensation for lost, damaged and delayed mail however there is no compensation available for it as an individual/stand-alone service.

Consumer Focus also believes that consideration of the 'reasonableness' of the compensation levels for individual services should be linked to the cost paid for the service in order to provide incentives on Royal Mail to reduce claims to a minimum.

Postcode area reporting

Consumer Focus disagrees with the proposal to remove the postcode area reporting requirement as we consider that this information is vital for ex post monitoring of the sector by consumers, consumer bodies and other interested persons

We acknowledge that Consumer Focus currently has a statutory right to request information from regulated companies, postal operators and regulatory bodies under section 24 of the Consumers, Estate Agents and Redress Act 2007. Consumer Focus is able to use the information provided under the Act to carry out its statutory representative, research and information dissemination functions. However the reform of the consumer landscape, means that there is uncertainty as to which consumer bodies will be responsible for future monitoring of the sector and acting as a postal consumer watchdog. Similar statutory information gathering powers may not be granted to successor bodies to Consumer Focus.

We consider it important that the current information gathering powers are not used as an excuse to remove current reporting requirements which provide useful information. The provision of information that is used and useful by consumers and consumer bodies must remain an obligation on the universal service provider to ensure that important information continues to be publicly available.

We would also point out that, although postcode area reporting may not be as useful for comparative information between different areas, it facilitates monitoring of ongoing compensation and complaints levels in certain postcode areas. For example the BT postcode area covers Belfast and provides useful information for consumers in Northern Ireland. Reporting in this format also allows identification of problem areas that may be associated with other issues such as Royal Mail's modernisation programme.

We also suggest that the information is likely to be used by consumers, elected representatives and media organisations to hold Royal Mail to account for local failures as well as by access operators or other licensed postal operators for benchmarking their performance.

Statement of action

Consumer Focus also disagrees with the proposal to remove the statement of action which indicates the action that Royal Mail intends to take in the following year to address the causes of claims for compensation. Ofcom states that this can be removed because loss, damage, and delay are the main causes of compensation claims and these would be reported on in the action plan required under the Mail Integrity Code of Practice. However, loss, damage and delay (plus unconfirmed loss) are only four of the top 10 categories of complaints.

Although loss, damage, delay, unconfirmed delay and loss are the main causes of compensation claims they are not the four main categories of complaints. The fact that they attract standard compensation means that Royal Mail has an incentive to reduce these incidences. Without this statement of action consumers will have no confidence that Royal Mail is taking action to address the other complaints categories on redirection, delivery procedure errors, mis-delivery, P739 failures, redelivery failures and proof of delivery failures.

Royal Mail pays significantly more compensation for those four complaints categories than it does for the other six complaints categories and the level of compensation paid is not relative to the number of complaints. In 2010-11 the compensation for loss, damage, delay and unconfirmed delay and loss was £11,057,406 for 742,448 complaints. For all the other categories in the top 10 complaints, the level of compensation was £579,902 for 351,577 complaints.

This means that the compensation paid by Royal Mail for loss, damage, delay and unconfirmed delay was almost 20 times that paid for the other six complaints categories, although only twice as many complaints for these four categories were logged. It is important that the information on the additional complaint categories which will not be covered in the action plan under the Mail Integrity Code continue to be provided through the statement of action.

Consumer complaints handling and redress

In this consultation document Ofcom has called for evidence from stakeholders to frame its approach to a review of complaint handling by Royal Mail and the options for consumer redress. We strongly support Ofcom's review of consumer complaints handling as we have been working with Royal Mail to improve its complaint handling procedures and look forward to feeding our views into review process.

Consumer Focus believes that a review of Royal Mail's complaints handling system is critical in order to ensure that a robust consumer complaints system is put in place. The review must include consideration of escalation procedures, and appropriate publicity of the process such as timely, appropriate and accessible placement of information on the company website. It must also address compensation for redelivery service failures.

Access to the process

Omnibus research conducted by Consumer Focus shows that consumers would like to use a variety of methods to contact Royal Mail: 48 per cent telephone, 16 per cent email, 7 per cent online form, 23 per cent in person and only 3 per cent by post.¹¹ In light of this Ofcom might like to include a requirement that Royal Mail has to provide a variety of methods for consumers to access the complaints process. Users of Royal Mail's systems have indicated difficulties in finding relevant information on the website and on the accessibility of telephone processes. Consideration of these processes must also be included in the review. It is critical that a high level of service be provided regardless of which method is used by consumers.

Escalation procedures

Many of the consumers who contact Consumer Focus do so because they are unclear as to where else to go or what their next step should be. Ofcom might consider requiring Royal Mail to advertise and signpost its escalation procedures at every stage of the complaints process.

¹¹ Omnibus research conducted by GfK, August 2011, on nationally representative sample of 2,054 consumers.

That way complainants are fully aware, from the outset and at every point thereafter, of all of the stages of the complaint handling process and the possibility of referral to an Ombudsman at deadlock. This level of information or signposting should be provided regardless as to the method used by the consumer to contact the company.

Compensation for delivery failures

Given that consumers receive more post than they send, Ofcom should consider how Royal Mail can offer compensation for delivery service failures. At the moment compensation is for consumer issues with individual items and is aimed at compensating the sender. Compensation should also be included for Recorded Signed For and Redirection as individual services.

We note that of the complaints about Recorded mail in 2010-11, 38 per cent related to proof of delivery failure. Given that all the consumer gets for Recorded Signed For is a signature it is unacceptable that there are so many complaints about this. By comparison only 3 per cent of complaints about Special Delivery related to proof of delivery failure. Consumers deserve compensation for these failures, not just a fee refund which is what is currently offered by Royal Mail.

Similarly, Redirections regularly attracts the second highest number of complaints (100,000 in 2010-11, which is very high relative to the number of redirections taken out each year) but compensation for service failure is discretionary as again it requires an individual claim for each loss, delayed or damaged item.¹²

Quarterly complaints reports

Consumer Focus welcomes the retention of Royal Mail quarterly reporting on the number of consumer complaints received and completed in proposed consumer protection condition 3.3.16. This information is useful to allow more accurate monitoring of Royal Mail's complaint data as annual reports would provide data that was too aggregated for detailed analysis.

Q6.3 Do you agree with our proposal to remove CP 3 which requires other RPOs to measure and report on their contract targets? If not, please explain why.

Consumer Focus agrees with the proposal to remove this condition in light of greater competition in sector and incentives for information to be provided by market.

End-to-end competitive entry notification process

Q7.1 Do you agree with the thresholds, timescales and content of notifications under the proposed condition? If not, please provide your reasons.

Ofcom proposes an end-to-end notification condition which requires postal operators to provide three months' advance notification of proposed entry or expansion into the market. The proposed notification threshold is 'entry to deliver more than 2.5 million letters' or 'expansion to increase volume by 2.5 million letters', anywhere in the UK in the following quarter. Ofcom states that notification is not a precondition for operating in the market and is intended to allow Ofcom to collect information to enable it to review the market and the security of provision of the universal service in this light.

¹² Royal Mail Complaints Figures 2010- 2011 available on Royal Mail's website <http://bit.ly/AsnVpS>

Consumer Focus recognises that Ofcom is required to implement a notification condition on end-to-end entry or expansion as directed by the Secretary of State under section 41(4) of the Postal Services Act 2011. However we believe it is important to state that we do not believe that end-to-end competition is a threat to the universal service as competitive pressure incentivises Royal Mail to become more efficient than would otherwise be the case.

Q7.2 Do you agree with Ofcom's proposed process for handling end-to-end notifications? If not please provide your reasons.

Ofcom proposes to consider end-to-end notifications on a case by case basis but will include a consultation process prior to the imposition of any regulatory conditions.

Consumer Focus believes that end-to-end notification will act as a disincentive for entry as the threat of having a universal service provider condition imposed upon new entrants is likely to result in sufficient uncertainty to deter their entry into the market.

Consumer Focus believes that it is critical that Ofcom works closely with potential entrants to reduce the level of market uncertainty that the imposition of the notification condition poses.

This could be done through clearly defining the circumstances under which a USP condition will be imposed, working closely with potential end-to-end operators in order to discuss regulatory concerns and providing a clear indication as early in the process as feasible as to whether the potential entrant will be subject to a USP condition. We also strongly support the explicit recognition by Ofcom of the importance of confidentiality in handling commercially sensitive information in the notification process.

Implementing Ofcom's proposal for a safeguard cap for Second Class stamps

Q8.1 Do you agree with our proposed drafting for the Second Class price cap DUSP Condition? If not, please provide your reasons.

Ofcom proposes a simple cap on any price change for the basic weight step for Second Class stamps of 0-100g. Ofcom also proposes that if the safeguard cap is extended to large letters and packets a second cap would be imposed on those services which would be a simple weighted average price cap.

Consumer Focus disagrees in principle with the contents of the DUSP condition on the Second Class price cap. We provided our views for this in our substantive response to the consultation paper arguing that that Ofcom has not presented sufficient information to justify either the removal of the existing caps or the setting of a safeguard cap for Second Class Standard letters at between 45p to 55p.¹³ We further noted that Ofcom did not present a detailed financial analysis of market trends or Royal Mail's costs and revenues going forward. In the absence of this it is difficult to accept that Second Class stamps price rises under a safeguard cap from 36p to at least 45p are necessary or that they set positive incentives for Royal Mail.

¹³ *Consumer Focus response to Ofcom consultation in relation to Securing the Universal Postal Service: Proposals for the future framework of economic regulation*. December 2011.
<http://bit.ly/v5F7uR>

We are further concerned in light of Royal Mail's response to the consultation on the price control which clearly indicated its view that safeguard prices should be set at the upper end of the range suggested by Ofcom.¹⁴ In their response Royal Mail also argued against the extension of the cap to any other products on the grounds that there are no affordability issues for consumers.¹⁵

We firmly believe that the safeguard cap should be extended to include large letters and packets. We have provided Ofcom with additional consumer data to justify the extension of the safeguard cap and stressed the importance of value for money as well as affordability of these products for consumers.¹⁶ We strongly support the implementation of a Second Class price cap condition on letters, large letters and packets.

Consumer Focus is concerned at the lack of detail on the safeguard cap on letters and its extension to large letters and packets. We note the proposal to use a weighted average cost approach however we consider that this is insufficiently detailed to ensure that the cap will meet the objective of ensuring affordability particularly for vulnerable consumers.

We would expect there to be further consultation on the precise form of the proposed DUSP condition for the Second Class safeguard cap.

We also note that Ofcom has proposed that prices in the safeguard cap will increase by the Retail Price Index (RPI). The use of this index in preference to the Consumer Price Index (CPI) has not been justified by the Regulator. While we accept that the choice of the index is unlikely to make a significant difference at present we would suggest that should the movement in the indexes diverge significantly Ofcom may wish to reconsider its approach and choice of index in a mid-point review.

Implementing Ofcom's proposal for access

Q9.1 Do you agree with our proposals for the process for applying for access agreements (and variations to existing agreements); notification and publication requirements; and quality of service requirements? If not, please provide your reasons.

Consumer Focus believes that competition, in the form of downstream access to Royal Mail's network has benefitted consumers. It has provided greater choice and lower prices to large customers which can be passed on to consumers at lower prices as well as providing increased incentives for cost efficiency and innovation at Royal Mail. As has also been noted by Ofcom competition is a vital safeguard in the absence of a traditional price control.¹⁷

It is critical that the proposals for access do not weaken downstream access competition. and we would urge Ofcom to fully take into account the views and concerns of access operators to ensure that any changes to access arrangements do not adversely and unfairly impact on competitors to Royal Mail.

¹⁴ *Royal Mail Response to Ofcom consultation in relation to Securing the Universal Postal Service: Proposals for the future framework of economic regulation*. December 2011. <http://bit.ly/yy3fMx>

¹⁵ *Ibid.* December 2011.

¹⁶ *Consumer Focus report on potential impacts of stamp price increases on consumers, A supplement to the Consumer Focus response to Ofcom's consultation Securing the Universal Postal Service: Proposals for the future framework of economic regulation*, January 2012

¹⁷ Ofcom Consultation Paper, *Securing the Universal Postal Service*, October 2011.

<http://bit.ly/xYCPHx>

Q. 9.2. Do you agree with the proposals for establishing a USP access condition set out above? If not, please provide your reasons.

Ofcom proposes that there be a single USP access condition for access to the Inward Mail Centre for the purposes of providing D+2 and later than D+2 Letters and Large Letters service.

Consumer Focus is concerned at the exclusion of Packets from the USP access condition in light of the growth in this sector of the market and the importance of competition in driving efficiencies. Packet volumes are growing significantly as evidenced by Royal Mail's data that at half year 2011-12, letter volumes decreased by 6 per cent while packets and parcels volumes were up by 5 per cent.¹⁸ The increase in packets volume is also evidenced in data showing that volumes for access-based services for packets were up by 42 per cent in the year to October 2011, when access volumes overall were only up by 5.5 per cent.¹⁹

We consider that packets volumes are likely to increase further in line with expected growth in e-fulfilment, and would suggest that proposals to include only D+2 Letters and Large Letters in the USP access condition should be reconsidered.

The inclusion of packets in the access condition should assist in bringing further competition in this area and driving efficiencies in a product that is likely to make up a significant amount of consumers' use of the mail in future. In the absence of an access condition covering packets which incorporates regulatory oversight, operators will have limited negotiating power on these agreements.

In regards to the specific matters relating to assessing price squeeze, we remain concerned that a move to assessing headroom on individual contracts could provide Royal Mail with incentives to manipulate information asymmetry and abuse its negotiating power with individual operators.

Implementing Ofcom's proposals on regulatory accounting

Q10.1 Do you agree that the new condition and the direction are appropriately set out to capture accurately, completely, and transparently, the regulatory financial reporting requirements we proposed in October consultation (as summarised above)? If not, please provide your reasons.

Consumer Focus supports measures that improve the transparency of Royal Mail's regulatory financial reporting. We agree that the new condition and direction are likely to provide a higher level of transparency on the regulatory accounts of Royal Mail.

We are concerned however at the timing for the provision of accounting reports from Royal Mail. We note that the first of the detailed financial statements is due on 25 March 2012 which is after Ofcom expects to have made and issued its decision on the framework for economic regulation implementing its decision to deregulate the market. We believe that a decision to deregulate the market should only be taken after confirmation that Royal Mail can deliver the level of detailed accounts necessary for Ofcom to effectively monitor the new regulatory regime.

¹⁸ *Summary of Royal Mail's response to Ofcom consultation 'Securing the Universal Postal Service,'* Royal Mail, January 2012, page 1, <http://bit.ly/zXp8Gt>

¹⁹ *Securing the Universal Postal Service – UK Mail Response to Ofcom October 2011 Consultation,* UK Mail, December 2011, page 13, <http://bit.ly/x7xEpc>

As noted in a Deloitte report to Postcomm/Ofcom, 'the production of reliable separated statements is likely to be a key factor in determining the regulator's ability to deregulate the market.'²⁰

Ofcom's proposals regarding the transitory conditions

Q11.1 Do you agree with our approach to the cessation of the transitory conditions – and if not, for which specific transitory conditions do you disagree and why?

Ofcom proposes to allow the transitory conditions to cease with effect from the end of March 2012 on the making of the first universal service order.

Consumer Focus agrees with the approach to the cessation of the transitory conditions.

²⁰ *Regulatory Accounting Guidelines for Royal Mail – A Report for Postcomm*, Deloitte, 28 September 2011, <http://bit.ly/wrcWnm>



Consumer Focus response to Ofcom's consultation *Review of Regulatory conditions: Postal regulation*

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