

# Statutory Notification: proposed consumer protection conditions

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

### BACKGROUND

**A.** On 13 June 2011, the Postal Services Act 2011 (the “**Act**”) received Royal Assent, which Act makes provision (among other things) about the new regulation of postal services. The new regulatory regime is set out in Part 3 of the Act, which Part came into force on 1 October 2011 and on which day the regulatory responsibility was also transferred from Postcomm to Ofcom. The provisions of the Act also give effect to Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008, which amends Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services.

**B.** On 29 September 2011, following a consultation, Ofcom published a statement entitled ‘*Postal regulation: Transition to the new regulatory framework*’<sup>1</sup> (the “**September Statement**”) setting out various decisions, including the provisional designation of Royal Mail as universal service provider with effect from 1 October 2011 under paragraph 3(1) of Schedule 9 to the Postal Services Act 2011 (see Annex 1 to that Statement). Ofcom also imposed various regulatory conditions and directions in accordance with the transitional provisions under section 66 of, and paragraphs 4 to 6 of Schedule 9 to, the Act.

**D.** Ofcom is proposing changes to those regulatory conditions, which it proposes to implement by revoking the regulatory conditions in their entirety (with the exception of certain paragraphs of Acc 1) and replacing them as proposed in this consultation, with effect from 1 April 2012.

### PROPOSAL

**1.** Ofcom hereby proposes, in accordance with section 51 of, and paragraph 3 of Schedule 6 to, the Act and pursuant to powers in section 51 of the Act, to impose on regulated postal operators (as defined in the proposed condition), a consumer protection condition to make provision for matters set out in that section 51, to be in force from **1 April 2012**.

**2.** The proposed consumer protection condition is specified in the Schedule hereto.

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

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/postal-regulation/statement/statement.pdf>

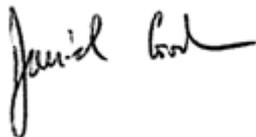
## **OFCOM'S DUTIES AND LEGAL TESTS**

4. Ofcom is satisfied that this proposal satisfies the general test in paragraph 1 of Schedule 6 to the Act.
5. In making this proposal, Ofcom has considered and acted in accordance with its principal duty in section 29 of the Act and its general duties in section 3 of the Communications Act 2003.

## **MAKING REPRESENTATIONS**

6. Representations may be made to Ofcom about the proposal set out in this Notification by no later than **31 January 2012**.
7. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.
8. By virtue of paragraph 3(5) of Schedule 6 to the Act, Ofcom may give effect, with or without modifications, to a proposal with respect to which it has published a notification only if Ofcom has—
  - (a) considered every representation about the proposal that is made to Ofcom within the period specified in this Notification; and
  - (b) had regard to every international obligation of the United Kingdom (if any) which has been notified to Ofcom for this purpose by the Secretary of State.
9. The Schedule to this Notification shall form part of this Notification.

Signed by **Daniel Gordon**

A handwritten signature in black ink, appearing to read 'Daniel Gordon', written in a cursive style.

**Competition Policy Director**

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

**13 December 2011**

## SCHEDULE

### CONSUMER PROTECTION CONDITION 1 PAYMENTS RELATING TO QUALIFYING CONSUMER EXPENSES OF THE NATIONAL CONSUMER COUNCIL OR THE OFT

#### 1.1. Application, Definitions and Interpretation

<b>CP 1.1.1</b>	This consumer protection condition (“ <b>CP Condition</b> ”) shall apply to <u>regulated postal operators</u> .
<b>CP 1.1.2</b>	<p>In this CP Condition—</p> <p>(a) “<b>access payments</b>” means payments made to any other <u>regulated postal operator</u> for the conveyance of <u>letters</u> conveyed by the <u>regulated postal operator</u> from its customers to that other <u>regulated postal operator</u>;</p> <p>(b) “<b>Act</b>” means the Postal Services Act 2011 (c.5);</p> <p>(c) “<b>appointed day</b>” means 1 October 2011;</p> <p>(d) “<b>Consumer Direct expansion expenses</b>” has the meaning it is given in CP X.2.2;</p> <p>(e) “<b>Council</b>” means the National Consumer Council established by s.1 of the Consumers, Estate Agents and Redress Act 2007;</p> <p>(f) “<b>OFT</b>” means the Office of Fair Trading;</p> <p>(g) “<b>relevant year</b>” means any year beginning on 1 April;</p> <p>(h) “<b>regulated postal operator</b>” means a <u>postal operator</u> which provides services in relation to which, had those services been carried out prior to the <u>appointed day</u>, it would have been required to hold a licence under the Postal Services Act 2000;</p> <p>(i) “<b>regulated postal service</b>” means a <u>postal service</u> the provision of which, had it been carried out prior to the <u>Appointed Day</u>, would have required the provider to hold a licence under the Postal Services Act 2000.</p>
<b>CP 1.1.3</b>	<p>For the purpose of interpreting this CP Condition—</p> <p>(a) except in so far as the context otherwise requires, any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Act<sup>2</sup>;</p> <p>(b) headings and titles shall be disregarded;</p> <p>(c) expressions cognate with those referred to in this CP Condition shall be construed accordingly;</p>

<sup>2</sup> A table for information identifying such defined terms is provided at the end of this condition. This table is intended only as a guide and does not form a part of this condition. We make no representations as to its accuracy or completeness.

	(d) the Interpretation Act 1978 (c. 30) shall apply as if this CP Condition were an Act of Parliament
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**1.2. Payments relating to qualifying consumer expenses of the National Consumer Council or the OFT**

CP 1.2.1	For the purposes of this Condition, the turnover taken into account shall be turnover from <u>regulated postal services</u> , (excluding <u>access payments</u> in the case of <u>postal operators</u> other than the <u>universal service provider</u> ).
CP 1.2.2	A <u>regulated postal operator</u> that generated turnover exceeding £10 million, in the preceding year beginning on 1 April, shall pay to <u>Ofcom</u> in any <u>relevant year</u> such proportion as <u>Ofcom</u> may specify of:  (a) the <u>qualifying consumer expenses</u> of the <u>Council</u> ; and  (b) the estimated <u>qualifying consumer expenses</u> of the <u>OFT</u> which relate to the expansion of Consumer Direct to enable it to cater for <u>postal service</u> customers, (the “Consumer Direct expansion expenses”)  likely to be incurred during the <u>relevant year</u> .
CP 1.2.3	The proportion will be calculated by multiplying the sum of the total <u>qualifying consumer expenses</u> and the <u>Consumer Direct expansion expenses</u> by that <u>regulated postal operator</u> ’s share of turnover expressed as a percentage of the total turnover generated by all <u>regulated postal operators</u> .
CP 1.2.4	A <u>regulated postal operator</u> shall pay to <u>Ofcom</u> in any <u>relevant year</u> such proportion as <u>Ofcom</u> may specify of the <u>qualifying consumer expenses</u> of the <u>OFT</u> other than the <u>Consumer Direct expansion expenses</u> .
	In the first <u>relevant year</u> in which this Condition CP 1 is in force:  (a) any request for payment by the Postal Services Commission under any condition of a licence issued under the Postal Services Act 2000 shall be deemed to be a request for payment by <u>Ofcom</u> in respect of either or both of CP 1.2.2 and CP 1.2.4 as appropriate; and  (b) any payment made to the Postal Services Commission under any condition of a licence issued under the Postal Services Act 2000 shall be deemed to be a payment made under either or both of CP 1.2.2 and CP 1.2.4 as appropriate.

CP 1.2.5	The amounts payable under CP 1.2.2 and CP 1.2.4 as appropriate in a <u>relevant year</u> shall include the amount of the difference, if any, between the costs actually incurred during the previous <u>relevant year</u> and the estimate of the costs in question upon which charges in the previous <u>relevant year</u> were based, where the latter exceeds the former the amount of the difference being treated as a negative amount.
CP 1.2.6	The amount due under either or both of CP 1.2.2 and CP 1.2.4 shall be payable on 30 June in the <u>relevant year</u> or, if later, on the expiry of one month from the day on which <u>Ofcom</u> serves notice on the <u>regulated postal operator</u> of such amount.

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

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

<b>Defined term</b>	<b>Section</b>
<i>Letter</i>	<i>65(1)</i>
<i>Ofcom</i>	<i>90</i>
<i>Postal operator</i>	<i>27(3)</i>
<i>Postal packet</i>	<i>27(2)</i>
<i>Qualifying consumer expenses</i>	<i>51(4)</i>
<i>Universal service provider</i>	<i>65(1) and Schedule 9 paragraph 3(3)</i>

# Statutory Notification: proposed consumer protection condition and associated direction

## NOTIFICATION OF PROPOSALS TO IMPOSE REGULATORY CONDITIONS AND ISSUE A DIRECTION IN ACCORDANCE WITH SECTION 51 OF, AND PARAGRAPHS 3 AND 4 OF SCHEDULE 6 TO, THE POSTAL SERVICES ACT 2011

### BACKGROUND

**A.** On 13 June 2011, the Postal Services Act 2011 (the “**Act**”) received Royal Assent, which Act makes provision (among other things) about the new regulation of postal services. The new regulatory regime is set out in Part 3 of the Act, which Part came into force on 1 October 2011 and on which day the regulatory responsibility was also transferred from Postcomm to Ofcom. The provisions of the Act also give effect to Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008, which amends Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services.

**B.** On 29 September 2011, following a consultation, Ofcom published a statement entitled ‘*Postal regulation: Transition to the new regulatory framework*’<sup>1</sup> (the “**September Statement**”) setting out various decisions, including the provisional designation of Royal Mail as universal service provider with effect from 1 October 2011 under paragraph 3(1) of Schedule 9 to the Postal Services Act 2011 (see Annex 1 to that Statement). Ofcom also imposed various regulatory conditions and directions in accordance with the transitional provisions under section 66 of, and paragraphs 4 to 6 of Schedule 9 to, the Act.

**D.** Ofcom is proposing changes to those regulatory conditions, which it proposes to implement by revoking the regulatory conditions in their entirety and replacing them as proposed in this consultation.

### PROPOSAL

- 1.** Ofcom hereby proposes, in accordance with section 51 of, and paragraph 3 of Schedule 6 to, the Act and pursuant to powers in section 51 and Schedule 3 of the Act, to impose a consumer protection condition to make provision for matters set out in that section 51.
- 2.** The proposed consumer protection condition is specified in Schedule 1 hereto.
- 3.** Ofcom hereby proposes, in accordance with section 51 and paragraph 4 of Schedule 6 to, the Act and pursuant to powers in section 51 and Schedule 4 of the Act, to issue a direction under the proposed consumer protection condition to make provision for matters set out in that section 51.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/postal-regulation/statement/statement.pdf>

4. The proposed direction is specified in Schedule 2 hereto. Changes to the existing text are highlighted.
5. The effect of, and Ofcom's reasons for making, this proposal are set out in the accompanying consultation document.

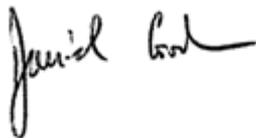
#### **OFCOM'S DUTIES AND LEGAL TESTS**

6. Ofcom is satisfied that this proposal satisfies the general test in paragraph 1 of Schedule 6 to the Act.
7. In making this proposal, Ofcom has considered and acted in accordance with its principal duty in section 29 of the Act and its general duties in section 3 of the Communications Act 2003.

#### **MAKING REPRESENTATIONS**

8. Representations may be made to Ofcom about the proposal set out in this Notification by no later than **31 January 2012**.
9. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.
10. By virtue of paragraph 3(5) of Schedule 6 to the Act, Ofcom may give effect, with or without modifications, to a proposal with respect to which it has published a notification only if Ofcom has—
  - (a) considered every representation about the proposal that is made to Ofcom within the period specified in this Notification; and
  - (b) had regard to every international obligation of the United Kingdom (if any) which has been notified to Ofcom for this purpose by the Secretary of State.
11. The Schedules to this Notification shall form part of this Notification.

Signed by **Daniel Gordon**



#### **Competition Policy Director**

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

**13 December 2011**

## SCHEDULE 1

### CONSUMER PROTECTION CONDITION 2 POSTAL COMMON OPERATIONAL PROCEDURES

#### 1. Application, Definitions and Interpretation

CP 2.1.1	This consumer protection condition (" <b>CP Condition</b> ") shall apply to <u>Code operators</u> .
CP 2.1.2	<p>In this CP Condition—</p> <p><b>(a) "access agreement"</b> means:</p> <ul style="list-style-type: none"><li>(i) an agreement entered into between <u>postal operators</u> for the provision by one <u>postal operator</u> of access to the other <u>postal operator's postal facilities</u> for the partial provision of a <u>postal service</u>; and</li><li>(ii) an agreement between a <u>postal operator</u> and a <u>user of postal services</u> for the <u>postal operator</u> to provide <u>postal services</u> to fulfil the obligations that the user has under an agreement with <u>Royal Mail</u> for access to its <u>postal facilities</u>;</li></ul> <p><b>(b) "access party"</b> means a <u>postal operator</u>, other than the <u>universal service provider</u>, which is party to an <u>access agreement</u>;</p> <p><b>(c) "Act"</b> means the Postal Services Act 2011 (c.5);</p> <p><b>(d) "appointed day"</b> means 1 October 2011;</p> <p><b>(e) "Code identifier"</b> means:</p> <ul style="list-style-type: none"><li>(i) in the case of a <u>regulated postal operator</u>, such mark, number or other identifier unique to each <u>regulated postal operator</u> as may be allocated and notified to each <u>regulated postal operator</u> from time to time prior to the <u>appointed day</u> by the <u>Postal Services Commission</u> or, from the <u>appointed day</u>, by <u>Ofcom</u>; or</li><li>(ii) in the case of an <u>access party</u>, such mark, number or other identifier unique to each <u>access party</u> as is specified in the <u>access agreement</u> for identifying the party;</li></ul> <p><b>(f) "Code Objectives"</b> means the objectives set out in paragraph CP [2.3.1];</p> <p><b>(g) "Code operator"</b> is a postal operator which is either a <u>regulated postal operator</u> or an <u>access party</u>;</p> <p><b>(h) "Code packet"</b> means:</p> <ul style="list-style-type: none"><li>(i) in the case of the <u>universal service provider</u> and an <u>access party</u>, a <u>postal packet</u>;</li><li>(ii) in the case of any other <u>regulated postal operator</u> (including an <u>access party</u> not acting in the capacity of <u>access party</u>) a <u>Letter</u> which:<ul style="list-style-type: none"><li>o is conveyed in consideration of a payment of not more than £1 made by or on behalf of the person for whom it is conveyed; and</li></ul></li></ul>

- o weighs less than 350 grams;
- (iii) any postal packet deemed to be a Code packet in accordance with CP [2.3.8] of the Code;

- (i) **“complainant”** means a person who has made a complaint;
- (j) **“complaint”** means any expression of dissatisfaction made to a postal operator, related to one or more of its products or services or the manner in which the postal operator has dealt with any such expression of dissatisfaction, where a response is explicitly or implicitly required or expected to be provided;
- (k) **“Council”** means the National Consumer Council established by section 1 of the Consumers, Estate Agents and Redress Act 2007;
- (l) **“intended operator”** means the Code operator which, in accordance with arrangements agreed between that Code operator and its customer, is responsible for the conveyance and delivery of a relevant Code packet;
- (m) **“miscollected packets”** means Code packets which have been collected in error by a Code operator which is not the intended operator;
- (n) **“misdirected packets”** means Code packets, other than miscollected packets (but, for the avoidance of doubt, including misposted packets), which have entered the postal facilities of a Code operator which is not the intended operator in respect of those Code packets;
- (o) **“misposted packets”** means Code packets which due to customer error have entered the postal facilities of a Code operator which is not the intended operator in respect of those Code packets and which have not been delivered to the relevant addressee;
- (p) **“Postal Common Operational Procedures Code”** means the Code of Practice in section 3 of this Condition;
- (q) **“postal facilities”** means the physical and human resources deployed by a postal operator (and, where relevant, by its contractors and agents) for the purpose of providing postal services;
- (r) **“receiving postal operator”** means the Code operator whose postal facilities the relevant Code packets (in respect of which it is not the intended operator) have entered;
- (s) **“regulated postal operator”** means a postal operator which provides services in relation to which, had those services been carried out prior to the appointed day, it would have been required to hold a licence under the Postal Services Act 2000;

	<p>(t) <b>“regulatory condition”</b> means any condition of authorisation set by Ofcom under the Act;</p> <p>(u) <b>“relevant Code packet”</b> means a <b>miscollected packet</b> or a <b>misdirected packet</b>, as the case may be;</p> <p>(v) <b>“Royal Mail”</b> means Royal Mail Group Limited (registered number 4138203);</p> <p>(w) <b>“sender”</b> in relation to any <b>postal packet</b> or other communication, means the person whose communication it is;</p> <p>(x) <b>“Voluntary Code Packet”</b> means any <b>postal packet</b> which is not a <b>Code packet</b> for the purposes of paragraph (ii) of the definition of <b>Code packet</b>;</p>
<p><b>CP 2.1.3</b></p>	<p>For the purpose of interpreting this CP Condition—</p> <p>(a) except in so far as the context otherwise requires, any word or expression shall have the meaning set out in CP [2.1.2] above and otherwise the same meaning as it has been ascribed for the purpose of Part 3 of the Act<sup>2</sup>;</p> <p>(b) headings and titles shall be disregarded;</p> <p>(c) expressions cognate with those referred to in this CP Condition shall be construed accordingly;</p> <p>(d) the Interpretation Act 1978 (c. 30) shall apply as if this CP Condition were an Act of Parliament;</p> <p>(e) references to a day are references to a period of twenty-four hours beginning with one midnight and ending with the next, which period shall be treated to include a Saturday, a Sunday, a Bank Holiday, Christmas Day, Good Friday or other public holiday;</p> <p>(f) unless the context requires otherwise, the words “include”, “including” and “in particular” are to be construed as being by way of illustration or emphasis and do not limit or prejudice the generality of any foregoing words. The singular includes the plural and vice versa;</p> <p><b>(g) references to <u>letters</u> and <u>postal packets</u> exclude—</b></p> <p style="padding-left: 40px;">(i) <b><u>postal packets</u></b> which are excepted under section 33(1) of the Act; and</p> <p style="padding-left: 40px;">(ii) <b><u>postal packets</u></b></p> <p style="padding-left: 80px;">a. <b>containing items which it is reasonable to exclude from carriage by post; or</b></p> <p style="padding-left: 80px;">b. <b>which do not comply with conditions reasonably</b></p>

<sup>2</sup> A table for information identifying such defined terms is provided at the end of this condition. This table is intended only as a guide and does not form a part of this condition. We make no representations as to its accuracy or completeness.

	imposed on their carriage by post, for reasons of potential harm to health, public security or compliance with law.
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## **2. Obligation to abide by the Postal Common Operational Procedures Code**

<b>CP 2.2.1</b>	Unless <u>Ofcom</u> otherwise consents, each <u>Code operator</u> shall comply with the <u>Postal Common Operational Procedures Code</u> .
<b>CP 2.2.2</b>	Unless <u>Ofcom</u> otherwise consents, a <u>Code operator</u> shall become and remain a party to the <u>Postal Common Operational Procedures Agreement</u> which shall apply insofar as the <u>Code operator</u> has not established alternative arrangements with other <u>Code operators</u> relating to the treatment of <u>misdirected packets</u> and <u>miscollected packets</u> .
<b>CP 2.2.3</b>	Unless <u>Ofcom</u> otherwise consents, a <u>Code operator</u> shall at all times refrain from acting in a manner which is inconsistent with the <u>Code Objectives</u> or which is likely to prejudice the effective functioning of the <u>Postal Common Operational Procedures Code</u> .
<b>CP 2.2.4</b>	If nominated by <u>Ofcom</u> by direction in writing given for the purposes of this Condition generally to the office of Secretary of the <u>Postal Common Operational Procedures Agreement</u> , a <u>Code operator</u> shall perform the functions of that office in an efficient, timely, impartial and professional manner, subject to reimbursement by <u>Ofcom</u> of the costs reasonably incurred in the discharge of those functions.
<b>CP 2.2.5</b>	<p>The <u>Postal Common Operational Procedures Agreement</u> shall be modified in accordance with this paragraph if:</p> <p>(a) <u>Ofcom</u> has received a proposal to change the <u>Postal Common Operational Procedures Agreement</u> from a person entitled under its provisions to make such a proposal, and</p> <p>(b) that proposal has been submitted to <u>Ofcom</u> in the manner, and containing the information, provided for in the <u>Postal Common Operational Procedures Agreement</u>, and</p> <p>(c) <u>Ofcom</u>:</p> <ul style="list-style-type: none"> <li>(i) is of the opinion that modification of the <u>Postal Common Operational Procedures Agreement</u> in the manner proposed will enable the <u>Code Objectives</u> better to be fulfilled and that such modification is consistent with its statutory duties,</li> <li>(ii) has given notice of the proposed modification in accordance with CP <u>[2.2.6]</u> and CP <u>[2.2.7]</u>,</li> <li>(iii) has considered any representations made in accordance with that notice and not withdrawn, and</li> <li>(iv) has directed by a direction given for the purpose of this</li> </ul>

	Condition generally that the proposed modification be made.
<b>CP 2.2.6</b>	<p>A notice under CP [2.2.5(c)(ii)] shall be in accordance with this paragraph if it states:</p> <ul style="list-style-type: none"> <li>(a) that <u>Ofcom</u> proposes to make the modification,</li> <li>(b) the effect of the proposed modification,</li> <li>(c) the reasons for the proposed modification, and</li> <li>(d) the period (of not less than 28 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed modification.</li> </ul>
<b>CP 2.2.7</b>	<p>A notice under CP [2.2.5(c)(ii)] shall be in accordance with this paragraph if it is given by:</p> <ul style="list-style-type: none"> <li>(a) serving a copy of the notice on each of the parties to the <u>Postal Common Operational Procedures Agreement</u> as at the date of such notice and on the <u>Council</u>, and</li> <li>(b) publishing the notice in such manner as <u>Ofcom</u> considers appropriate for the purpose of bringing the matters included in the notice to the attention of persons likely to be affected by them.</li> </ul>

### **3. The Postal Common Operational Procedures Code**

#### **Introduction**

- CP 2.3.1 This is the Code of Practice covering common operational procedures for handling misdirected or miscollected packets and misdirected complaints or other enquiries. Its purpose is to achieve the following objectives in respect of such matters (the “**Code Objectives**”):
- (a) the furtherance of the interests of users of postal services;
  - (b) ensuring that miscollected packets and misdirected packets are:
    - (i) returned to the intended operator; or
    - (ii) if such return is not reasonably practicable, otherwise handled (including, where appropriate, delivered to the intended user)

in either case in an efficient, economic and timely manner;
  - (c) ensuring complaints or other enquiries (including from customers) in relation to Code packets made to a Code operator which is not the Code operator to which the complaint or other enquiry should have been made, are handled in an efficient, economic and timely manner; and
  - (d) so far as is consistent with sub-paragraphs (a) to (c), the promotion of

effective competition between Code operators.

CP 2.3.2 The Code sets out the requirements and procedures to be followed in order to satisfy the Code Objectives.

CP 2.3.3 This Code applies to all Code operators. Compliance is obligatory for all Code operators in accordance with regulatory conditions.

CP 2.3.4 Code operators will need to enter into contractual arrangements separate to this Code in order to comply with and give effect to the provisions of the Code: for example, day-to-day arrangements for the repatriation of misdirected packets and any charges payable for that service will need to be established. Code operators are required to be party to a separate "default agreement" – the Postal Common Operational Procedures Agreement – so as to ensure that in the absence of any bespoke negotiated arrangements between Code operators, Code operators will be able to comply with this Code.

CP 2.3.5 This Code shall not be interpreted in any way which is inconsistent with the Code Objectives.

### **Code Identifier and voluntary application of the Code**

CP 2.3.6 Subject to CP [2.3.7-8], each Code operator must take all reasonable steps:

- (a) to ensure that its Code identifier is clearly and legibly marked in accordance with industry practice on each Code packet in respect of which it is the intended operator;
- (b) not to mark its Code identifier on any postal packet in respect of which it is the intended operator which is not a Code packet.

CP 2.3.7 Royal Mail will be taken to have satisfied its obligations under paragraph 3.6(a) if a Code packet in respect of which Royal Mail is the intended operator bears:

- (a) a Royal Mail postage stamp; or
- (b) a mark or impression which includes the words "Royal Mail" or other reasonably recognisable Royal Mail text or symbol.

CP 2.3.8 A regulated postal operator (other than the universal service provider acting in any capacity and an access party acting in its capacity as an access party) may elect to extend the application of the Code to Voluntary Code Packets. If a regulated postal operator makes an election in accordance with this paragraph, those Voluntary Code Packets in respect of which the election is made:

- (a) must be clearly and legibly marked in accordance with industry practice with the relevant Code Identifier; and
- (b) if so marked, shall be deemed to constitute for all purposes of this Code, Code Packets.

### **Treatment of misdirected packets**

CP 2.3.9 Code operators must take all reasonable steps to ensure that misdirected packets are:

- (a) returned to the intended operator; or
- (b) if such return is not reasonably practicable, otherwise handled (including, where appropriate, delivered to the intended user);

in either case, in an efficient, economic and timely manner.

CP 2.3.10 **Code operators** may:

- (a) charge the relevant intended operator for the reasonable costs properly and reasonably incurred in returning or otherwise handling the relevant misdirected packets in accordance with CP [2.3.9];
- (b) where in accordance with paragraph CP [2.3.9] they deliver or return the relevant misdirected packet to the relevant intended user or sender, as the case may be, charge the user or sender for such delivery or return on the same basis that they would be entitled to charge if they were the intended operator of the relevant misdirected packet.

### Treatment of **miscollected packets**

CP 2.3.11 **Code operators** must take all reasonable steps to ensure that miscollected packets are returned to the intended operator or its customer, in either case, in an efficient, economic and timely manner.

CP 2.3.12 **Code operators** may not charge for returning miscollected packets in accordance with CP [2.3.11].

### Customer service enquiries

CP 2.3.13 If a **Code operator** receives a complaint or other enquiry in relation to a Code packet that should have been made to another **Code operator**, the **Code operator** receiving the complaint or other enquiry shall:

- (a) treat that complaint or other enquiry with the same degree of care and importance that it would if the complaint or other enquiry should have been made to that **Code operator**;
- (b) explain to the complainant that the complainant should contact the other relevant **Code operator**; and
- (c) provide to the complainant the contact details of that other relevant **Code operator**.

CP 2.3.14 If a **Code operator** receives a complaint or other enquiry where the identity of the **Code operator** to which that complaint or other enquiry should have been made is not discernable from the relevant Code packet, the **Code operator** receiving the complaint or other enquiry is only required to refer the complainant to the sender of the Code packet.

CP 2.3.15 **Code operators** must take all reasonable steps to ensure that they have sufficient personnel properly trained (and with access to all relevant information) in order to handle complaints or other enquiries in accordance with CP [2.3.13] and [14].

### Information and Reporting

CP 2.3.18 Within 3 months of 31 March each year, each **Code operator** must provide to Ofcom details of:

- (a) the total number of **misdirected packets** in respect of which that **Code operator** was the receiving operator during the relevant year ending 31 March; and
- (b) where relevant, the total such number broken down by intended operator.

**Table of terms defined in the Act**

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

<b>Defined term</b>	<b>Section of the Act</b>
<i>Letter</i>	<i>65(1)</i>
<i>Ofcom</i>	<i>90</i>
<i>Postal operator</i>	<i>27(3)</i>
<i>Postal packet</i>	<i>27(2)</i>
<i>Postal services</i>	<i>27(1)</i>
<i>Universal service provider</i>	<i>65(1) and Schedule 9, paragraph 3</i>
<i>User</i>	<i>65(1)</i>

## **SCHEDULE 2**

### **DIRECTION UNDER CONSUMER PROTECTION CONDITION 2**

#### **Direction under Regulatory Condition CP 2.2.4**

This Direction is issued by Ofcom under Regulatory Condition CP 2.2.4 and has effect from 1 April 2012.

Ofcom hereby nominates Royal Mail Group Limited (registered number 4138203) as secretary to the Postal Common Operational Procedures Agreement.

# Statutory Notification: proposed consumer protection condition

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

### BACKGROUND

**A.** On 13 June 2011, the Postal Services Act 2011 (the “**Act**”) received Royal Assent, which Act makes provision (among other things) about the new regulation of postal services. The new regulatory regime is set out in Part 3 of the Act, which Part came into force on 1 October 2011 and on which day the regulatory responsibility was also transferred from Postcomm to Ofcom. The provisions of the Act also give effect to Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008, which amends Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services. Finally, it revoked parts of the Consumers Estate Agents and Redress Act 2007 which applied to postal operators.

**B.** On 29 September 2011, following a consultation, Ofcom published a statement entitled ‘*Postal regulation: Transition to the new regulatory framework*’<sup>1</sup> (the “**September Statement**”) setting out various decisions, including the provisional designation of Royal Mail as universal service provider with effect from 1 October 2011 under paragraph 3(1) of Schedule 9 to the Postal Services Act 2011 (see Annex 1 to that Statement). Ofcom also imposed various regulatory conditions and directions in accordance with the transitional provisions under section 66 of, and paragraphs 4 to 6 of Schedule 9 to, the Act, including conditions relating to consumer protection to carry forward corresponding provisions in the licences of postal operators and the now revoked provisions of statutory instruments made under the Consumers Estate Agents and Redress Act 2007.

**D.** Ofcom is proposing changes to those regulatory conditions, which it proposes to implement by revoking the regulatory conditions in their entirety and replacing them as proposed in this consultation, with effect from 1 April 2011.

### PROPOSAL

**1.** Ofcom hereby proposes, in accordance with section 51 of, and paragraph 3 of Schedule 6 to, the Act and pursuant to powers in section 51 of the Act, to impose a consumer protection condition with effect from 1 April 2011 on postal operators and on specified descriptions of postal operators to make provision for matters set out in that section 51.

**2.** The proposed consumer protection condition is specified in the Schedule hereto. Proposed changes to the existing condition are highlighted.

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

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/postal-regulation/statement/statement.pdf>

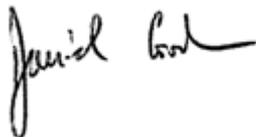
## **OFCOM'S DUTIES AND LEGAL TESTS**

4. Ofcom is satisfied that this proposal satisfies the general test in paragraph 1 of Schedule 6 to the Act.
5. In making this proposal, Ofcom has considered and acted in accordance with its principal duty in section 29 of the Act and its general duties in section 3 of the Communications Act 2003.

## **MAKING REPRESENTATIONS**

6. Representations may be made to Ofcom about the proposal set out in this Notification by no later than **31 January 2012**.
7. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.
8. By virtue of paragraph 3(5) of Schedule 6 to the Act, Ofcom may give effect, with or without modifications, to a proposal with respect to which it has published a notification only if Ofcom has—
  - (a) considered every representation about the proposal that is made to Ofcom within the period specified in this Notification; and
  - (b) had regard to every international obligation of the United Kingdom (if any) which has been notified to Ofcom for this purpose by the Secretary of State.
9. The Schedules to this Notification shall form part of this Notification.

Signed by **Daniel Gordon**

A handwritten signature in black ink, appearing to read 'Daniel Gordon', written in a cursive style.

**Competition Policy Director**

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

**13 December 2011**

## SCHEDULE

### CONSUMER PROTECTION CONDITION 3 COMPLAINTS HANDLING AND REDRESS

#### 3.1. Application, definitions and interpretation

<b>CP 3.1.1</b>	This consumer protection condition (" <b>CP Condition</b> ") shall apply as follows: (a) CP 3.2 - all <u>postal operators</u> ; (b) CP 3.3 apart from CP 3.3.15 - <u>regulated postal operators</u> ; (c) CP 3.3.15 – the universal service provider.
<b>CP 3.1.2</b>	In this CP Condition—  (1) " <b>Act</b> " means the Postal Services Act 2011 (c.5);  (2) " <b>Appointed Day</b> " means 1 October 2011;  (3) " <b>Citizens Advice Consumer Service</b> " means the telephone and online consumer advice service operated by the National Association of Citizens Advice Bureaux, registered company number 1436945;  (4) " <b>Complainant</b> " means a person who has made a <u>consumer complaint</u> ;  (5) " <b>Complaint</b> " means any expression of dissatisfaction made to a <u>postal operator</u> , related to one or more of its products or services or the manner in which the <u>postal operator</u> has dealt with any such expression of dissatisfaction, where a response is explicitly or implicitly required or expected to be provided;  (6) " <b>Complaints handling procedure</b> " means the procedure required by Condition CP 3.3.1;  (7) " <b>Completed complaint</b> " means a <u>consumer complaint</u> in respect of which there remains no outstanding action to be taken by the <u>postal operator</u> in accordance with its <u>complaint handling procedure</u> ;  (8) " <b>Consumer</b> " means a person who uses <u>postal services</u> either as a sender or an addressee;  (9) " <b>Consumer complaint</b> " means a <u>complaint</u> which is made against a <u>regulated postal operator</u> either—  (a) by a person in that person's capacity as a <u>relevant consumer</u> ; or  (b) by a person acting on behalf of such a <u>relevant consumer</u> ;  (10) " <b>Contract customer</b> " means a person who is a <u>consumer</u> in relation to a <u>regulated postal service</u> where the provision of the

	<p><u>regulated postal service</u> is governed by a contract between that <u>consumer</u> and the <u>regulated postal operator</u>;</p> <p>(11) “<b>Council</b>” means the National Consumer Council established by s.1 of the Consumers, Estate Agents and Redress Act 2007;</p> <p>(12) “<b>DUSP condition</b>” means a designated USP condition imposed under s.36 of the Act;</p> <p>(13) “<b>Qualifying redress scheme</b>” means a redress scheme which is approved by <u>Ofcom</u> in accordance with Schedule 5 of the Act<sup>2</sup>;</p> <p>(14) “<b>Regulated postal operator</b>” means a <u>postal operator</u> which provides services in relation to which, had those services been carried out prior to the <u>appointed day</u>, it would have been required to hold a licence under the Postal Services Act 2000;</p> <p>(15) “<b>Regulated postal service</b>” means a <u>postal service</u> the provision of which, had it been carried out prior to the <u>Appointed Day</u>, would have required the provider to hold a licence under the Postal Services Act 2000, or which was required by such a licence to be provided, or which is required to be provided by a DUSP condition;</p> <p>(16) “<b>Relevant consumer</b>” means a consumer of <u>regulated postal services</u> or of a service provided as part of the <u>universal postal service</u>, who is not a <u>contract customer</u>;</p> <p>(17) “<b>Specified time period</b>” means the time period specified by the <u>regulated postal operator</u> in its <u>complaint handling procedure</u> or as otherwise agreed with a <u>relevant consumer</u>, as the maximum period that the <u>regulated postal operator</u> has to complete a <u>consumer complaint</u> before the <u>relevant consumer</u> who made that <u>consumer complaint</u>, or on whose behalf that <u>consumer complaint</u> was made, becomes entitled to refer that <u>consumer complaint</u> to a <u>qualifying redress scheme</u>;</p> <p>(18) “<b>Vulnerable consumer</b>” means a consumer who cannot reasonably be expected to pursue a <u>complaint</u> on their own behalf;</p> <p>(19) “<b>Working day</b>” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.</p>
CP 3.1.3	<p>For the purpose of interpreting this CP Condition—</p> <p>(a) except in so far as the context otherwise requires, any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Act<sup>3</sup>;</p>

<sup>2</sup> Ofcom approved IDRS Ltd to administer the Postal Redress Service under section 52 and Schedule 5 of the Postal Services Act 2011 on 1 October 2011.

	<p>(b) headings and titles shall be disregarded;</p> <p>(c) expressions cognate with those referred to in this CP Condition shall be construed accordingly;</p> <p>(d) the Interpretation Act 1978 (c. 30) shall apply as if this CP Condition were an Act of Parliament;</p> <p>(e) references to a day are references to a period of twenty-four hours beginning with one midnight and ending with the next, which period shall be treated to include a Saturday, a Sunday, a Bank Holiday, Christmas Day, Good Friday or other public holiday.</p>
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### **3.2. Obligation on postal operators**

<b>CP 3.2</b>	A <u>postal operator</u> shall establish, make available and comply with transparent, simple and inexpensive procedures for dealing with <u>complaints of consumers of postal services</u> , which facilitate the fair and prompt settlement of disputes.
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### **3.3. Obligations on regulated postal operators and the universal service provider**

<b>CP 3.3.1</b>	A <u>regulated postal operator</u> shall establish, make available and comply with a <u>complaints handling procedure</u> in accordance with CP 3.2 and CP 3.3.2 for dealing with complaints of <u>relevant consumers of regulated postal services</u> .
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<sup>3</sup> A table for information identifying such defined terms is provided at the end of this condition. This table is intended only as a guide and does not form a part of this condition. We make no representations as to its accuracy or completeness.

<p><b>CP 3.3.2</b></p>	<p>A <u>complaints handling procedure</u> must:</p> <ul style="list-style-type: none"> <li>(a) be in plain and intelligible language;</li> <li>(b) allow for <u>consumer complaints</u> to be made orally or in writing (including electronically);</li> <li>(c) set out contact details to allow a <u>relevant consumer</u> to make a <u>consumer complaint</u>;</li> <li>(e) allow for <u>consumer complaints</u> to be progressed through each stage of the <u>complaints handling procedure</u> orally or in writing (including electronically);</li> <li>(f) allow for <u>consumer complaints</u> with no evidence base to be dealt with;</li> <li>(g) describe the process which the <u>regulated postal operator</u> will follow with a view to investigating and resolving a <u>consumer complaint</u> and the likely timescales for that process;</li> <li>(h) provide for an internal review of an existing <u>consumer complaint</u> where a <u>complainant</u> indicates that they would like such a review to occur because he or she is dissatisfied with the handling of that <u>consumer complaint</u>;</li> <li>(i) <b>set out contact details for Citizens Advice Consumer Service;</b></li> <li>(j) describe the <u>complainant's</u> right to refer a <u>consumer complaint</u> to a <u>qualifying redress scheme</u>: <ul style="list-style-type: none"> <li>(i) from the point at which the <u>regulated postal operator</u> notifies the <u>complainant</u> in writing, that it is unable to complete the <u>consumer complaint</u> to the <u>complainant's satisfaction</u>; or</li> <li>(ii) after the expiry of the <u>specified time period</u>.</li> </ul> </li> </ul>
<p><b>CP 3.3.3</b></p>	<p>The <u>regulated postal operator</u> shall, not less than once every three calendar years, review the <u>complaints handling procedure</u> and seek feedback from a reasonable number of complainants to ensure the <u>complaints handling procedure</u> meets the needs of <u>relevant consumers</u>.</p>
<p><b>CP 3.3.4</b></p>	<p>Upon receipt of a <u>consumer complaint</u> made through the <u>complaints handling procedure</u> the <u>regulated postal operator</u> shall record in a written or electronic format the following details:</p> <ul style="list-style-type: none"> <li>(a) the date that the <u>consumer complaint</u> was received;</li> <li>(b) whether the <u>consumer complaint</u> was made orally or in writing;</li> <li>(c) the identity and contact details of the <u>complainant</u>; and</li> <li>(d) a summary of the <u>consumer complaint</u></li> </ul>

<p><b>CP 3.3.5</b></p>	<p>For each <u>consumer complaint</u> received through <u>its complaints handling procedure</u> the <u>regulated postal operator</u> must also record:</p> <p>(a) a summary of any subsequent contact with the complainant and any advice given or action taken in response to the <u>consumer complaint</u>;</p> <p>(b) the date (if any) on which the <u>consumer complaint</u> became a <u>completed complaint</u>; and</p> <p>(c) the date (if any) on which the <u>regulated postal operator</u> sends a written notice to a complainant in accordance with CP 3.3.7.</p>
<p><b>CP 3.3.6</b></p>	<p>Where a <u>regulated postal operator</u> has recorded a <u>consumer complaint</u> as a <u>completed complaint</u> but within three months of the date of making that record a subsequent contact is made by or on behalf of the <u>complainant</u> in relation to that <u>consumer complaint</u> which indicates that it is not a <u>completed complaint</u>, the <u>regulated postal operator</u>:</p> <p>(a) must as soon as reasonably practicable take account of that <u>consumer complaint</u> in any report which it is obliged to prepare and publish in accordance with CP 3.3.14;</p> <p>(b) shall not otherwise be entitled to treat that <u>consumer complaint</u> as a <u>completed complaint</u> until that <u>consumer complaint</u> is demonstrably a <u>completed complaint</u>.</p>
<p><b>CP 3.3.7</b></p>	<p>Each <u>regulated postal operator</u> must send a notice to a <u>complainant</u> on the earlier of:</p> <p>(a) the first <u>working day</u> after the day on which the <u>regulated postal operator</u> becomes aware that it is not able to complete a <u>consumer complaint</u> made through its <u>complaints handling procedure</u> to the <u>complainant's</u> satisfaction; or</p> <p>(b) the first <u>working day</u> after the day on which the <u>specified time period</u> for that <u>consumer complaint</u> expires.</p>

<p><b>CP 3.3.8</b></p>	<p>The notice referred to in CP 3.3.7 must be in writing (including electronically) unless another format has been agreed with the <u>complainant</u>, and notify the <u>complainant</u>—</p> <ul style="list-style-type: none"> <li>(a) of their right to refer the <u>consumer complaint</u> to a <u>qualifying redress scheme</u>;</li> <li>(b) of the contact details of the <u>qualifying redress scheme</u>;</li> <li>(c) that the <u>qualifying redress scheme</u> process is independent of the <u>regulated postal operator</u>;</li> <li>(d) that the <u>qualifying redress scheme</u> process is free of charge to the <u>complainant</u>;</li> <li>(e) of the types of redress that may be available under a <u>qualifying redress scheme</u>; and</li> <li>(f) that any outcome of the <u>qualifying redress scheme</u> process is binding upon the <u>regulated postal operator</u> but not upon the <u>complainant</u>.</li> </ul>
<p><b>CP 3.3.9</b></p>	<p>Each <u>regulated postal operator</u> must allocate and maintain such level of resources as may reasonably be required to enable that <u>regulated postal operator</u> to receive, handle and process <u>consumer complaints</u> made through its <u>complaints handling procedure</u> in an efficient and timely manner and in accordance with this Condition.</p>
<p><b>CP 3.3.10</b></p>	<p>Each <u>regulated postal operator</u> must put in place arrangements to deal with <u>complaints</u> made through its <u>complaints handling procedure</u> in relation to which the <u>Council</u> makes representations on behalf of a <u>vulnerable consumer</u>. If a <u>regulated postal operator</u> identifies a <u>consumer</u> as a <u>vulnerable consumer</u> with a <u>consumer complaint</u>, or the <u>Council</u> refers such a <u>consumer</u> to a <u>regulated postal operator</u>, that <u>regulated postal operator</u> must take such additional steps as it considers necessary or appropriate with a view to assisting that <u>vulnerable consumer</u> and completing their <u>consumer complaint</u> in an appropriate and prompt manner.</p>
<p><b>CP 3.3.11</b></p>	<p>Each <u>regulated postal operator</u> must:</p> <ul style="list-style-type: none"> <li>(a) publish its <u>complaints handling procedure</u> in such a manner as will ensure reasonable publicity for it;</li> <li>(b) ensure that its <u>complaints handling procedure</u> appears at a clear and prominent location on any relevant website it operates or controls; and</li> <li>(c) ensure that details of how to make a <u>consumer complaint</u> are made available at all its business premises which are accessible to the public, including the premises of its agents.</li> </ul>
<p><b>CP 3.3.12</b></p>	<p>Where a <u>regulated postal operator</u> becomes aware, following contact by or on behalf of the <u>complainant</u>, that a <u>consumer complaint</u> which the <u>postal operator</u> had recorded as a <u>completed complaint</u> is not a <u>completed complaint</u>, the</p>

	<p><u>regulated postal operator</u> must as soon as reasonably practicable—</p> <p>(a) direct the <u>complainant</u> to the <u>complaints handling procedure</u>; and</p> <p>(b) offer to provide a copy of the <u>complaints handling procedure</u> to the <u>complainant</u> free of charge.</p>
<b>CP 3.3.13</b>	Each <u>regulated postal operator</u> must provide a copy of its <u>complaints handling procedure</u> , free of charge, to any person who requests it.
<b>CP 3.3.14</b>	<p>Each <u>regulated postal operator</u> must—</p> <p>(a) publish by 30th June each year a <u>consumer complaints</u> report in such a manner as will ensure reasonable publicity for it;</p> <p>(b) publish its <u>consumer complaints</u> report at a clear and prominent location on any website it operates or controls; and</p> <p>(c) provide a copy of its <u>consumer complaints</u> report, free of charge, to any person who requests it.</p>
<b>CP 3.3.15</b>	<p>A <u>consumer complaints</u> report is a report in relation to the twelve month period ending on 31st March of the year in which the report is published which contains the following information:</p> <p>(a) the number of <u>consumer complaints</u> which the <u>regulated postal operator</u> received during that period, which had not become <u>completed complaints</u> within that period; and</p> <p>(b) the number of <u>consumer complaints</u> which the <u>regulated postal operator</u> received, during that period, which had become <u>completed complaints</u> within that period,</p> <p>in each case presenting the information broken down by no more than ten of the main causes of <u>consumer complaint</u>.</p>

CP 3.3.16	<p>The <u>universal service provider</u> shall submit to <u>Ofcom</u> and to the <u>Council</u>, and publish in such a manner as will ensure reasonable publicity for them, not later than two months from the end of the quarter to which they relate, written quarterly reports which shall</p> <p>(a) set out -</p> <p>(i) the number of <u>consumer complaints</u> received during that quarter from <u>relevant consumers</u> which have not become <u>completed complaints</u>; and</p> <p>(ii) the number of <u>consumer complaints</u> received during that quarter from <u>relevant consumers</u> which have become <u>completed complaints</u>.</p> <p>(b) present the information referred to in paragraph (a) for the United Kingdom as a whole -</p> <p>(i) broken down by no less than ten main categories of <u>consumer complaint</u>, and</p> <p>(ii) showing the compensation that has been paid to <u>relevant consumers</u> in relation to <u>consumer complaints</u> that were found to be valid.</p>
CP 3.3.16	<p>A <u>regulated postal operator</u> must be a member of a <u>qualifying redress scheme</u> in relation to <u>consumer complaints</u> about the provision of a <u>regulated postal service</u>.</p>

**Table of terms defined in the Act**

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

<b>Defined term</b>	<b>Section of the Act</b>
<i>Ofcom</i>	90
<i>Postal operator</i>	27(3)
<i>Postal packet</i>	27(2)
<i>Universal service provider</i>	65(1) and Schedule 9 paragraph 3
<i>User</i>	65(1)

# Statutory Notification: proposed consumer protection conditions

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

### BACKGROUND

**A.** On 13 June 2011, the Postal Services Act 2011 (the “**Act**”) received Royal Assent, which Act makes provision (among other things) about the new regulation of postal services. The new regulatory regime is set out in Part 3 of the Act, which Part came into force on 1 October 2011 and on which day the regulatory responsibility was also transferred from Postcomm to Ofcom. The provisions of the Act also give effect to Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008, which amends Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services.

**B.** On 29 September 2011, following a consultation, Ofcom published a statement entitled ‘*Postal regulation: Transition to the new regulatory framework*’<sup>1</sup> (the “**September Statement**”) setting out various decisions, including the provisional designation of Royal Mail as universal service provider with effect from 1 October 2011 under paragraph 3(1) of Schedule 9 to the Postal Services Act 2011 (see Annex 1 to that Statement). Ofcom also imposed various regulatory conditions and directions in accordance with the transitional provisions under section 66 of, and paragraphs 4 to 6 of Schedule 9 to, the Act.

**D.** Ofcom is proposing changes to those regulatory conditions, which it proposes to implement by revoking the regulatory conditions in their entirety (with the exception of certain paragraphs of Acc 1) and replacing them as proposed in this consultation with effect from 1 April 2012.

### PROPOSAL

**1.** Ofcom hereby proposes, in accordance with section 51 of, and paragraph 3 of Schedule 6 to, the Act and pursuant to powers in section 51 of the Act, to impose on the universal service provider a consumer protection condition with effect from 1 April 2012, to make provision for matters set out in that section 51.

**2.** The proposed consumer protection condition is specified in the Schedule hereto.

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

### OFCOM’S DUTIES AND LEGAL TESTS

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

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/postal-regulation/statement/statement.pdf>

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

#### **MAKING REPRESENTATIONS**

6. Representations may be made to Ofcom about the proposal set out in this Notification by no later than **31 January 2012**.

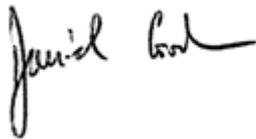
7. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.

8. By virtue of paragraph 3(5) of Schedule 6 to the Act, Ofcom may give effect, with or without modifications, to a proposal with respect to which it has published a notification only if Ofcom has—

- (a) considered every representation about the proposal that is made to Ofcom within the period specified in this Notification; and
- (b) had regard to every international obligation of the United Kingdom (if any) which has been notified to Ofcom for this purpose by the Secretary of State.

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

Signed by **Daniel Gordon**

A handwritten signature in black ink, appearing to read 'Daniel Gordon', written in a cursive style.

**Competition Policy Director**

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

**13 December 2011**

## SCHEDULE

### CONSUMER PROTECTION CONDITION 4 COMPENSATION

#### 1. Application, Definitions and Interpretation

CP 4.1.1	This consumer protection condition (“ <b>CP Condition</b> ”) shall apply to the <u>universal service provider</u> .
CP 4.1.2	<p>In this CP Condition—</p> <p>(a) “<b>Act</b>” means the Postal Services Act 2011 (c.5);</p> <p>(b) “<b>addressee postal service</b>” means any of the services required by DUSP 1.5.1;</p> <p>(c) “<b>damage</b>” means any physical damage to a <u>postal packet</u> including its contents at any time after the date of deposit of that postal packet at an <u>access point</u> used in the provision of the universal service and before it has been delivered to the addressee or the address marked on the <u>postal packet</u>;</p> <p>(d) “<b>deemed date of collection</b>” means—</p> <p>(i) in the case of a <u>postal packet</u> deposited at an <u>access point</u> on a day on which no collection is required by a DUSP condition, the next day on which a collection is required by a <u>DUSP condition</u>;</p> <p>(ii) in the case of a <u>postal packet</u> deposited in a <u>letter box</u> on which, or at a <u>post office</u> at which, a time for last collection is advertised, after the time for last collection on a day on which a collection is required by a <u>DUSP condition</u>, the next day on which a collection is required by a <u>DUSP condition</u>; and</p> <p>(iii) in any other case, the date of deposit.</p> <p>(e) “<b>deemed delivery date</b>” means the earlier of-</p> <p>(i) the date upon which a <u>postal packet</u> is deposited at the address given on the packet;</p> <p>(ii) the date upon which a <u>postal packet</u> is handed to the individual named as the addressee on the packet;</p> <p>(iii) the date upon which delivery to the address given on the <u>postal packet</u> is attempted, but fails due to the size of the packet or the unavailability of the individual named as the addressee on the packet;</p> <p>(iv) the date upon which the <u>postal packet</u> is delivered to an alternative address or identified and delayed in accordance with the terms of an <u>addressee postal service</u> or an approval given by <u>Ofcom</u>.</p> <p>(f) “<b>domestic USO service</b>” means a <u>USO service</u> for the conveyance of <u>postal packets</u> from <u>access points</u> in the United Kingdom to addresses in the United Kingdom;</p>

	<p>(g) “<b>DUSP condition</b>” means a designated USP condition imposed under s.36 of the Act;</p> <p>(h) “<b>letter box</b>” includes any pillar box, wall box, or other box or receptacle provided by a <u>postal operator</u> for the purpose of receiving <u>postal packets</u>, or any class of <u>postal packets</u> for onwards conveyance by post;</p> <p>(i) “<b>loss</b>” means the physical loss of a <u>postal packet</u>, other than as a result of its being incorrectly addressed, at any time after the deposit of that <u>postal packet</u> at an <u>access point</u> used in the provision of the universal service and before it has been delivered to the addressee or the address marked on the <u>postal packet</u>, or collected by the addressee; and a <u>postal packet</u> shall be deemed lost if it has not been so delivered or collected within 15 <u>working days</u> of its due date of delivery;</p> <p>(j) “<b>post office</b>” means any premises or vehicle in the United Kingdom from which <u>postal services</u>, or services provided under arrangements with a government department, are provided directly to the public;</p> <p>(k) “<b>proof of delivery</b>” means a copy of a signature obtained on delivery of a <u>postal packet</u>;</p> <p>(l) “<b>public holiday</b>” means Christmas Day, Good Friday, a day which is a bank holiday under the Banking and Financial Dealings Act 1971 and any other day which <u>Ofcom</u> has by direction agreed should be treated as a public holiday;</p> <p>(m) “<b>redirection service</b>” means a service provided pursuant to the obligation in DUSP 1.5.1(a);</p> <p>(n) “<b>routing time</b>” means the target maximum time, as specified in a DUSP condition, for conveying <u>postal packets</u> from the <u>access point</u> to the delivery point in the provision of a <u>postal service</u>;</p> <p>(o) “<b>Standards document</b>” means the document entitled “<i>Standards of service compensation scheme of Royal Mail Group Ltd</i>” published by the Postal Services Commission on 18 November 2008<sup>2</sup>;</p> <p>(p) “<b>USO service</b>” means a service provided pursuant to an obligation imposed by a <u>DUSP condition</u>;</p> <p>(q) “<b>working day</b>” means any day which is not a Sunday or a <u>public holiday</u>.</p>
CP 4.1.3	For the purpose of interpreting this CP Condition—

<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/post/archive/875.pdf>.

	<p>(a) except in so far as the context otherwise requires, any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Act<sup>3</sup>;</p> <p>(b) headings and titles shall be disregarded;</p> <p>(c) expressions cognate with those referred to in this CP Condition shall be construed accordingly;</p> <p>(d) the Interpretation Act 1978 (c. 30) shall apply as if this CP Condition were an Act of Parliament;</p> <p>(e) references to a day are references to a period of twenty-four hours beginning with one midnight and ending with the next, which period shall be treated to include a Saturday, a Sunday, a Bank Holiday, Christmas Day, Good Friday or other public holiday</p> <p>(f) references to <u>postal packets</u> exclude—</p> <p>(i) <u>postal packets</u> which are excepted under section 33(1) of the Act;</p> <p>(ii) <u>postal packets</u></p> <p style="padding-left: 20px;">(i) containing items which it is reasonable to exclude from carriage by post; or</p> <p style="padding-left: 20px;">(ii) which do not comply with conditions reasonably imposed on their carriage by post, for reasons of potential harm to health, public security or compliance with law; and</p> <p>(iii) <u>postal packets</u> which are not legibly addressed.</p> <p>(g) the following directions shall be deemed to be issued by <u>Ofcom</u> under this Condition:</p> <ul style="list-style-type: none"> <li>• <i>Exceptions to Royal Mail's universal service obligation – for 26 December 22009 in the UK, bank holidays on Saturdays in the UK, as local holidays in Northern Ireland and Scotland: a decision document</i> (Postal Services Commission, October 2009).</li> </ul>
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## **2. Obligation to provide compensation**

<b>CP 4.2.1</b>	The <u>universal service provider</u> shall establish, maintain and abide by policies for the provision of fair and reasonable remedies and redress in respect of delay to the delivery of a <u>postal packet</u> conveyed only in the provision of an end-to-end <u>domestic USO service</u> required by DUSP 1.4, except for <u>legislative petitions and addresses</u> .
<b>CP 4.2.2</b>	A delay to the delivery of a <u>postal packet</u> has taken place if its <u>deemed delivery date</u> is later than that specified in the service <u>routing time</u> for a reason other than one specified in paragraph 13 of the <u>standards document</u> .
<b>CP</b>	The <u>universal service provider</u> shall establish, maintain and abide by

<sup>3</sup> A table for information identifying such defined terms is provided at the end of this condition. This table is intended only as a guide and does not form a part of this condition. We make no representations as to its accuracy or completeness.

4.2.3	<p>policies for the provision of fair and reasonable remedies and redress in respect of loss of and damage of a <u>postal packet</u> in the provision of –</p> <p>(a) a <u>domestic USO service</u>, except for <u>legislative petitions and addresses</u></p> <p>(b) any outgoing international <u>USO service</u>;</p> <p>(b) any <u>redirection service</u>;</p> <p>(c) any <u>USO service</u> providing for a delay for a specified reasonable period to the target delivery date otherwise applicable to any <u>postal packet</u>.</p>
CP 4.2.4	<p>The <u>universal service provider</u> shall establish, maintain and abide by policies for the provision of fair and reasonable remedies and redress in respect of failure to provide the following services, having agreed to provide those services –</p> <p>(a) any <u>redirection service</u>;</p> <p>(b) any <u>USO service</u> providing for a delay for a specified reasonable period to the target delivery date otherwise applicable to any <u>postal packet</u>.</p>
CP 4.2.5	<p>The <u>universal service provider</u> shall establish, maintain and abide by policies for the provision of fair and reasonable remedies and redress in respect of failure to provide <u>proof of delivery</u>, in the course of provision of a <u>USO service</u> in relation to which <u>proof of delivery</u> is offered.</p>

### **3. Obligations to notify and report**

CP 4.3.1	<p>The <u>universal service provider</u> shall prepare and publish in such a manner as will ensure reasonable publicity for it an annual report on the operation of the policies required by CP 4.2, setting out for the United Kingdom as a whole, not later than three months from the end of the year to which they relate,</p> <p>(i) the number of complaints received incorporating the number of claims for compensation made,</p> <p>(ii) the number of claims for compensation in relation to which compensation was paid, and</p> <p>(iii) the amount of compensation (including any payments in lieu of compensation) that was paid,</p> <p>in each case broken down by not less than ten of the main causes of the claims.</p>
CP 4.3.2	<p>The <u>universal service provider</u> shall notify <u>Ofcom</u> at least one month in advance of implementing any change to the policies required by CP 4.2.</p>

**Table of terms defined in the Act**

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

<b>Defined term</b>	<b>Section</b>
<i>Access points</i>	<i>29(11)</i>
<i>Legislative petitions and addresses</i>	<i>32(2)</i>
<i>Ofcom</i>	<i>90</i>
<i>Postal packet</i>	<i>27(2)</i>
<i>Universal service provider</i>	<i>65(1) and Schedule 9 paragraph 3(3)</i>