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## **Recovering consumer advocacy costs**

Supplementary statement on minor amendments to  
Consumer Protection Condition 1

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**STATEMENT**

Publication Date: 13 October 2021

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## 1. Overview

- 1.1 This statement sets out our decision on our proposed minor amendments to Consumer Protection Condition 1 (“**CPC1**”) in our consultation published on 7 July 2021. Those amendments follow on from our 2019 statements on the cost recovery mechanism for the work of the consumer advocacy bodies (“**CABs**”) on post.
- 1.2 Our January 2019 statement modified our regulatory rules imposed under Consumer Protection Condition 1 (“**CPC1**”), which sets out the cost recovery mechanism for CABs’ work. Our modification resulted in a wider range of postal operators becoming liable to contribute towards costs of the CABs. This was followed by a decision in July 2019 making some minor modifications to exclude revenues associated with international mail from that mechanism.
- 1.3 Since those 2019 statements, we were made aware of a divergence from our intended interpretation of CPC1 among some postal operators. That divergence mainly concerns the way in which revenues associated with intermediary postal operators are treated under CPC1. Our July 2021 consultation sought to address that divergence and, following our consideration of the consultation responses we have received, we have decided to adopt our proposed amendments to CPC1 to bring about greater consistency in its interpretation, thereby resulting in improved certainty and transparency.

### What we have decided – in brief

We have decided to modify CPC1 in three respects:

- to change the definition of an “intermediary postal operator” in order to clarify the scope of ‘relevant parcels postal services’ for which revenue must be reported for the purpose of the cost recovery mechanism; revenues from postal services provided by postal operators acting as true intermediaries would remain excluded from that mechanism, but our decision seeks to ensure that this exclusion does not apply where postal operators retain responsibility for delivery of a parcel to the recipient when using other operators, such as contractors, sub-contractors or self-employed workers;
- to insert an ancillary provision making it clear that, when postal services (and postal turnover) are bundled with non-postal services, the postal operator must allocate a reasonable proportion of such turnover to the relevant turnover for the purpose of CPC1; and
- to correct a discrepancy in our definition of ‘relevant parcel’.

### Next steps

- 1.4 The changes to CPC1 take effect immediately. They are reflected in the new CPC1 set out in Annex 1 to this statement. As a result, we have also updated our previous associated guidance to relevant postal operators, which is found in Annex 2 to this statement. We will

## Recovering consumer advocacy costs – supplementary statement

therefore now proceed with the recovery of costs from postal operators providing relevant postal services with these new changes in mind for the purpose of the CABs' work on post.

- 1.5 Shortly after publication of this statement, we will issue relevant postal operators with an information request to determine which relevant postal operators are liable to contribute towards the consumer advocacy fees, and the level of their contributions.
- 1.6 Subject to the information gathering process, we intend to issue invoices to liable relevant postal operators by middle of November 2021.

## 2. Background

### How our cost recovery mechanism has evolved in recent years

- 2.1 In July 2017, we published a consultation proposing changes to how the costs of the CABs were recovered (“**July 2017 consultation**”).<sup>1</sup> We proposed, in essence, that end to end (“E2E”) letter services, bulk letter services and access mail services should be the postal services liable to contribute (with parcel operators excluded from that proposal), and proposed a threshold of £5 million relevant turnover for letters services. Having considered stakeholders responses received to that consultation, we decided to amend some of our proposals and re-consulted accordingly.
- 2.2 In March 2018, we published our amended proposals (“**March 2018 consultation**”)<sup>2</sup>, which proposed that E2E letter services, bulk letter services and parcels services should be the postal services liable to contribute (with access mail services excluded from that proposal), and proposing thresholds of £10 million relevant turnover for letters services and £350 million relevant turnover for parcels services.
- 2.3 In January 2019, after careful consideration of the consultation responses, we published our statement (“**January 2019 statement**”)<sup>3</sup> adopting our proposals from our March 2018 consultation. In that statement, we also published our associated guidance to relevant postal operators.
- 2.4 In June 2019, we published a further supplementary consultation (“**June 2019 consultation**”)<sup>4</sup>, which corrected a drafting error in our legal instrument to ensure that international mail (both in respect of ‘relevant letters postal services’ and ‘relevant parcels postal services’) is excluded from the scope of the funding mechanism. These modifications were confirmed and took effect in our subsequent statement (“**July 2019 statement**”).<sup>5</sup>
- 2.5 In July 2021, we published a further supplementation consultation (“**July 2021 consultation**”)<sup>6</sup>, which proposed minor amendments to our legal instrument. Our proposals aimed to clarify three specific aspects of the cost recovery mechanism. In summary, we proposed to change the meaning of what an intermediary postal operator is; specify that when postal services are bundled with other services, there should be a reasonable allocation of revenue of postal services to the relevant revenues for the

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<sup>1</sup> Ofcom, [Recovering postal regulation and consumer advocacy costs](#), Consultation, 27 July 2017.

<sup>2</sup> Ofcom, [Recovering postal regulation and consumer advocacy costs](#), Consultation and Statement, 29 March 2018,

<sup>3</sup> Ofcom, [Recovering consumer advocacy costs](#), Statement, 16 January 2019,

<sup>4</sup> Ofcom, [Recovering consumer advocacy costs](#), Further Consultation on excluding international letters and parcels from Consumer Protection Condition 1, 5 June 2019,

<sup>5</sup> Ofcom, [Recovering consumer advocacy costs](#), Supplementary Statement on excluding international letters and parcels from Consumer Protection Condition 1, 26 July 2019,

<sup>6</sup> Ofcom, [Recovering consumer advocacy costs](#), Supplementary consultation on minor amendments to Consumer Protection Condition 1, 7 July 2021

purpose of the CPC1 mechanism; and tighten the definition of ‘relevant parcel’ for the purpose of the cost recovery mechanism.

- 2.6 We received 8 consultation responses to our July 2021 consultation, including one confidential stakeholder and the following seven stakeholders: Citizens Advice Scotland, DX, Royal Mail, the Consumer Council for Northern Ireland, the Mail Competition Forum (MCF), UPS and Whistl.<sup>7</sup>
- 2.7 Overall, the respondents supported Ofcom’s proposals and agreed that the changes would bring clarity and stability to the collection of CAB fees as well as ensure that the provisions were future proof. We discuss the stakeholder comments we received in the next section.

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<sup>7</sup> These can be found published on our website – <https://www.ofcom.org.uk/consultations-and-statements/category-2/recovering-consumer-advocacy-costs>.

## 3. Our decisions

### Meaning of an intermediary postal operator

#### Our proposal

- 3.1 We proposed to amend the definition of postal intermediaries in CPC1, because we were concerned that some postal operators might not be interpreting this definition in line with our policy intentions. Such divergence could lead to an inconsistent approach towards CAB fee payments among postal operators.
- 3.2 Our proposal sought to clarify the exclusion relating to intermediaries under CPC1.1.2(o), so that the intermediary exclusion would not apply where, in particular, postal operators retain responsibility for delivery of a parcel to the recipient even when using other operators, such as contractors, sub-contractors or self-employed workers. Therefore, irrespective of the final mile delivery arrangements that parcel operators use (unless they hand over the parcel to another parcel operator acting as a true intermediary), such arrangements would be regarded as a relevant parcels postal service under our proposal.

#### Stakeholder comments

- 3.3 All stakeholders expressed support for our proposed amendments as they clarify the position for stakeholders and future proof the provisions.<sup>8</sup>

#### Our rationale and decision

##### Overview of existing intermediary exclusion

- 3.4 As explained in the previous section, postal operators who provide a relevant parcels postal service and who exceed the relevant turnover threshold of £350 million are liable to contribute towards CAB fees. This was our main decision in the January 2019 statement and we also defined in our legal instrument what we considered a relevant parcels postal service to be, including a list of services excluded from relevant parcels postal service.
- 3.5 Since publishing our January 2019 statement (as amended by our July 2019 statement), a couple of stakeholders made us aware that some postal operators appear to be interpreting the intermediary exclusion in a way that does not align with Ofcom's original policy intention.
- 3.6 That intermediary exclusion refers to one of several services excluded from the scope of 'relevant postal parcel services' under CP 1.1.2 (o)(3), namely:

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<sup>8</sup> CAS response to July 2021 consultation, page 2; CCNI response to July 2021 consultation, page 2; DX response to July 2021 consultation, page 2; MCF response to July 2021 consultation, page 1; Royal Mail response to July 2021 consultation, page 2; UPS response to July 2021 consultation, page 2; Whistl response to July 2021 consultation, page 2 and a confidential response.

*(3) services provided while acting in the capacity of an intermediary postal operator, that is to say a postal operator that hands over relevant parcels to another postal operator (including but not limited to the universal service provider) for subsequent conveyance and delivery to the intended recipients of the relevant parcels;*

- 3.7 We adopted that exclusion based on our understanding at the time of how the parcels market operated, as well as our desire to exclude true intermediaries within the parcel market. Specifically, our policy intention was to exclude the revenue from such parcel operators who simply handed over a parcel to another parcel operator for final mile end delivery, and where such parcel operators were acting as ‘true intermediaries’, as they would not be expected to have any responsibility over the parcel once this was passed onto the parcel operator who is conducting final mile delivery.
- 3.8 We remain of the view that in those instances turnover from such services should be excluded for the purposes of CPC1, because such intermediary operators are unlikely to be responsible to the recipients for any issues that occur during the delivery of the parcel. As a result, intermediary operators are unlikely to drive the costs of the CABs’ work on advising consumers on resolving or responding to parcel delivery issues.
- 3.9 In all cases other than that of ‘true intermediaries’, our original policy intention of the cost recovery mechanism was to capture all postal operators responsible in some way to the recipient for the delivery of the parcel, irrespective of the form of the final mile delivery arrangements (for example, irrespective of whether postal operators used their own employees, self-employed workers, contractors or sub-contractors, etc).
- 3.10 We continue to believe that, where a parcel operator remains responsible to the recipient for the delivery of an item, it is ultimately that parcel operator’s responsibility to ensure the safe transit of the parcel to the recipient, through whatever final mile delivery arrangements the parcel operator chooses (unless it is handing it over to another parcel operator acting as a true intermediary, as stated above). This is because, if there is a problem with the delivery of the parcel, the recipient will likely contact the main, original parcel operator – who has overall responsibility for safe delivery to the recipient. Consumers are unlikely to be contacting and complaining to sub-contractors, individual contractors, or other types of agents, and indeed may not know how to contact these parts of the postal supply chain.
- 3.11 We referred to this briefly in our associated guidance to relevant postal operators that we also published in Annex 2 to our January 2019 statement, particularly where we dealt with postal operators delivering parcels “through own delivery network or agents”.

### **Reasons for changing the meaning of an intermediary**

- 3.12 We recognise that that the meaning of an intermediary is open to different interpretations which has resulted in divergence among some stakeholders in their application of the intermediary exclusion. This is leading to an inconsistent approach in interpreting CPC1 and the understanding and application of the ‘intermediary exclusion’ within the relevant parcel postal services.

- 3.13 We consider that improved regulatory certainty is necessary, because a wide interpretation of the meaning of intermediaries may result in the unintended consequence of excluding large parcel operators or large parts of parcel operators' delivery chain, who, for example, rely on subcontractors rather than employees for delivery from the cost recovery mechanism. In addition, we consider that an inconsistent interpretation of the meaning of intermediaries by different operators would not adhere to our guiding principle of fairness for the cost recovery mechanism.

#### Our new intermediary exclusion

Therefore, we have decided to amend the wording of the exclusion relating to intermediaries under CPC1.1.2(o), by replacing it with the following new exclusion (with text in red font showing the added new text as we set out in our July 2021 consultation):

services provided while acting in the capacity of an intermediary postal operator, that is to say a postal operator ('Operator A') who acts as an intermediary for one or more postal operators and intended recipients that hands over relevant parcels to another postal operator (including but not limited to the universal service provider) ('Operator B') for subsequent conveyance and delivery to the intended recipients of the relevant parcels but for which conveyance and delivery Operator A is not responsible in relation to the intended recipients; for the purposes of this exclusion, Operator A shall also be deemed not to be an intermediary where:

- (i) Operator A directs, controls or otherwise seeks to influence the manner in which Operator B conveys and delivers the relevant parcels; or
- (ii) Operator B is employed by Operator A either as an employee or a worker (within the meanings of those expressions under section 230 of the Employment Rights Act 1996) for that conveyance and delivery; and

- 3.14 With this new exclusion we aim to clarify, firstly, that a parcel operator (Operator A) is not able to rely on the intermediary exclusion to exclude revenue when it remains responsible for the parcel to the recipient, even if it hands the parcel over to another operator for delivery (Operator B). Secondly, we supplement that main change by ensuring that Operator A would also be unable to rely on the intermediary exclusion in two specific circumstances.
- 3.15 The first circumstance is where our new wording states: "*Operator A directs, controls or otherwise seeks to influence the manner in which Operator B conveys and delivers the relevant parcels*". We set out below non-exhaustive examples of what is meant by '*directs, controls or otherwise seeks to influence the manner...*' in relation to some delivery options which we consider would be caught by this first circumstance, such as where Operator A provides Operator B with an application ('app') or a device which does any of the following:
- i) provides suggested delivery routes for Operator B to take;
  - ii) provides delivery routes which Operator B is required to take;

- iii) provides recommended or required targets for Operator B to meet (e.g. number of parcels drops per given time period, etc);
  - iv) scans the parcel to provide tracking/proof of delivery;
  - v) requires the recipient to sign on the device to confirm they have received the parcel; and
  - vi) monitors the performance of Operator B.
- 3.16 The second circumstance is where our new wording states: *“Operator B is employed by Operator A either as an employee or a worker (within the meanings of those expressions under section 230 of the Employment Rights Act 1996) for that conveyance and delivery”*. In accordance with the judicial construction in similar circumstances, we have adopted a broad definition of employee and worker.
- 3.17 A non-exhaustive example is where Operator A is employing Operator B as an individual contractor (e.g. a single individual driving their own car). In that regard, we note that the meaning of a worker is potentially broad under section 230 of the Employment Rights Act 1996 and as such an individual worker should not be treated as a separate operator to Operator A. Indeed, if the individual worker’s delivery would be subject to complaint by the recipient, we consider it likely that the recipient would complain to Operator A and not to the individual worker.
- 3.18 Accordingly, under both circumstances, complaints about delivery would be made to Operator A which in turn would drive CABs’ work in relation to such deliveries.
- 3.19 Therefore, for the purpose of the cost recovery mechanism, we consider that an original parcel operator who retains an element of control over the delivery would not qualify as an intermediary, such as where that operator uses final-mile deliveries by an individual worker, temporary or seasonal employment agency workers, arrangement with individual contractors or formalised arrangements via sub-contracted companies or any such other delivery options.
- 3.20 We have also considered whether the issue of divergence in the interpretation of this exclusion could be addressed by removing the intermediary exclusion altogether from the definition of a ‘relevant parcels postal service’. However, as we explained in our July 2021 consultation, we remain of the view that there may be instances where postal operators simply hand over the parcel to another postal operator – acting as a true intermediary – in which case they do not add to the CABs’ work and therefore should not be liable to contribute towards their fees.<sup>9</sup>
- 3.21 We also consider that there may be a need for an intermediary exclusion for bulk mail letters operators who may also provide parcels but appoint Royal Mail (or another parcel operator) to deliver parcels. Likewise, it is possible to envisage a situation in the future where a third party could be considered a true intermediary, such as a ‘parcel

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<sup>9</sup> We have previously stated why we do not believe access operators should contribute towards CAB fees; see Ofcom, January 2019 Statement, paragraph 3.78.

consolidator'<sup>10</sup> who would be effectively acting as an access operator (as in the example stated previously) within the parcel industry. Therefore, we remain of the view explained in our July 2021 consultation that the intermediary exclusion needs to be retained and removing it altogether would be inappropriate.

- 3.22 In the letters market, we believe there is no longer a need for the intermediary exclusion. As we explained in our July 2021 consultation, this is because the main form of competition in the letters market is access competition, where access operators inject mail into Royal Mail's network. Access operators are already excluded from the scope of the cost recovery mechanism, by virtue of a specific exclusion (under CP 1.1.2(m)(6), which has now become (m)(5)), as they do not provide final mile delivery.
- 3.23 An intermediary exclusion would therefore only be needed if an operator (Operator A) handed over letters to another operator other than Royal Mail (Operator B) for final delivery. This is because Operator A would not qualify as an access operator in the absence of an access relationship with Royal Mail. Given that Whistl has now exited the market for final mile letter delivery, and there is little prospect of scale E2E competition in that market<sup>11</sup>, we do not consider that this scenario would arise, and therefore we believe the intermediary exclusion is now redundant. Consequently, as proposed in our July 2021 consultation, we have decided to remove that exclusion altogether from the definition of a 'relevant letters postal service' under CP 1.1.2(m).
- 3.24 In light of the above considerations and the support of the stakeholders to our proposed wording of the intermediary exclusion under CP 1.1.2(o), we have decided to adopt our proposed changes to the intermediary exclusion without any modifications to the wording set out in the July 2021 consultation.

## Appropriate turnover allocation for bundled services

### Our proposal

- 3.25 We explained in our July 2021 consultation that, in light of the increasingly complex parcels market, new business models for parcel operators may exist both now and in the future. In particular, parcel operators may provide other, non-postal services as a bundle alongside their parcel delivery service. We therefore proposed to strengthen our previous guidance on the reporting of relevant revenues by including a new corresponding provision under CPC1 as part of our formal regulation. In particular, we proposed that a new condition would make clear that, when postal services (and postal turnover) are bundled with non-postal services, the postal operator must allocate a reasonable proportion of such turnover to the relevant turnover for the purpose of CPC1.

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<sup>10</sup> By a 'parcel consolidator', we mean someone who consolidates demand from different senders and then chooses (on the behalf of the sender) which final mile company or delivery method to use (but is not active in his own right in final mile delivery).

<sup>11</sup> Postal operators who provide single piece end-to-end letter services and/or bulk (excluding access) mail services are excluded from the scope of the cost recovery mechanism if they generate 'relevant turnover' below £10 million per year

## Stakeholder comments

3.26 All stakeholders agreed with our proposal.<sup>12</sup>

## Our rationale and decision

3.27 We explained in our July 2021 consultation that the definition of a ‘relevant parcels postal service’ was adopted in our January 2019 statement. In that statement, we also set out how our decision was impacted by recent cases in the Court of Justice of the European Union.<sup>13</sup> As such, we stated that:

*“where a third-party retailer uses an e-commerce marketplace, and uses a delivery network provided by the marketplace to fulfil these orders, in this instance, we would consider the part of the e-commerce marketplace which is fulfilling the orders to be acting as a postal operator”.*

3.28 Moreover, in the guidance published in our January 2019 statement, we said:

*“We recognise that some postal operators who provide a relevant parcels postal service may offer several models of delivery options for consumers<sup>14</sup> and/or ancillary services as part of providing a delivery service,<sup>15</sup> and therefore have different charging models for delivery. In such instances where a postal operator offers such bundled services, it is for such postal operators to allocate an appropriate proportion from its bundled services revenue to parcels delivery that is representative of the cost of such delivery when submitting its relevant turnover to Ofcom”<sup>16</sup>*

3.29 We have now decided to strengthen our guidance by making the inclusion of a reasonable proportion of bundled turnover a regulatory obligation. We have decided to do this to bring about greater clarity, for operators who provide a ‘relevant parcels postal service’ and/or ‘relevant letters postal service’ as part of a bundled service, that they have an obligation to allocate a reasonable proportion of their revenues from such bundled services to postal services. This would also provide greater clarity for industry generally.

3.30 In the absence of such clarity, some postal operators may take an interpretation of our guidance which is inconsistent with our intention and this may again lead to a divergence in approach to the reporting of relevant turnover. We consider that this would not be in line with our guiding principle of fairness for the cost recovery mechanism.

3.31 Therefore, we have decided to add a new provision in CP 1.2.1A, which states that where relevant postal operators offer or provide a relevant parcels postal services and/or relevant

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<sup>12</sup> CAS response to July 2021 consultation, page 3; CCNI response to July 2021 consultation, page 2; confidential response to July 2021 consultation, page 2; DX response to July 2021 consultation, page 2; MCF response to July 2021 consultation, page 1; Royal Mail response to July 2021 consultation, page 2; UPS response to July 2021 consultation, page 2; Whistl response to July 2021 consultation, page 2.

<sup>13</sup> Ofcom, January 2019 Statement, paragraphs 3.80-3.86 and Annex 2.

<sup>14</sup> For instance, in addition to offering consumers the chance to pay for delivery per item, some companies offer the ability to subscribe for a one-off or recurring fee and receive an unlimited amount of deliveries for free.

<sup>15</sup> For example, fees for providing space on a company’s website.

<sup>16</sup> Ofcom, January 2019 Statement, paragraph A2.30.

letters postal service as part of a bundled service, such relevant postal operators should allocate a reasonable proportion of such bundled turnover as part of their relevant turnover for the purposes of CPC1. We believe this decision will not only bring about greater clarity and certainty for the postal industry, but it will also future proof CPC1 to reflect new postal business and / or delivery models which may emerge in the future.

3.32 For the avoidance of doubt, this requirement applies to those operators who offer bundled services, where part of the bundled service is providing a ‘relevant letters postal service’ and/or a ‘relevant parcels postal service’.

3.33 Our new apportionment of turnover requirement imposed under CP1.2.1A reads:

Where a postal operator generates turnover (whether as part of a subscription fee or otherwise) for a bundle of goods or services that include relevant letters postal services or relevant parcels postal services, that operator shall allocate a reasonable proportion of such turnover to be included in its total relevant turnover from relevant letters postal service or relevant parcels postal service for the purpose of CP 1.2.1(a) and (b).

3.34 In that regard, as we explained in our July 2021 consultation, we note that there is no precise definition of reasonable allocation of turnover. However, we would expect a reasonable allocation to align with internal accounting processes where appropriate and that relevant postal operators should record their reasoning on the reasonableness of any such allocation. We may use our information gathering powers to review the justifications of a postal operator’s reasonable allocation of turnover. If necessary, we will consider giving more guidance on that concept in the future.

3.35 In light of our new requirement on bundled turnover allocation, we have made small amendments to the exclusions from relevant letters postal service and relevant parcels postal service. As a result, postal operators must take account of the new requirement under CP 1.2.1A prior to excluding from their relevant services a service for which the postal operator has not received any payment, reward, profit or advantage with respect to the conveyance of the relevant letters and parcels (CP 1.2.1(m)(1) and CP 1.2.1(o)(1) for letters and parcels respectively).

3.36 Our amendment makes these exclusions subject to our new requirement on bundled turnover allocation, so it is clear that the new requirement applies to the scenario where a postal service may appear to be “free” because the fee for those services is included in the price of the bundled service, and that the operator cannot rely on the exclusion from relevant turnover of postal services where no payment, reward, profit or advantage is received to avoid allocating appropriate revenue.

## Definition of ‘relevant parcel’

### Our proposal

3.37 We proposed in our July 2021 consultation to amend the definition of a ‘relevant parcel’ to close a gap in CPC1 and ensure that small, lightweight parcels, which are bigger than the dimensions of a standard large letter but which weigh less than 750g, are captured by CPC1. We proposed to do this to reflect our original policy intention that all parcels below 31.5kg should be within scope of CPC1.

### Stakeholder comments

3.38 All stakeholders agreed with our proposal.<sup>17</sup> Royal Mail added that it would be helpful to understand to what extent other operators had under-declared relevant revenues (and to what extent Royal Mail had over-paid its share of the cost of the postal work of the CABs) as a result of the current regulatory gap.<sup>18</sup>

### Our rationale and decision

3.39 As we set out in our January 2019 statement, postal operators’ contributions to the CABs’ work are based on their total relevant turnover. The relevant turnover is the turnover that derives from relevant postal services, namely, ‘relevant letters postal service’ and ‘relevant parcels postal service’. These are subsequently determined by the definitions of a ‘relevant letter’ and ‘relevant parcel’.

3.40 At the time of our July 2021 consultation, our definitions of a ‘relevant letter’ (in CP 1.1.2(l)) and ‘relevant parcel’ (in CP 1.1.2(n)) were as follows:

(l) “**relevant letter**” means a postal packet that is up to no more than 353mm in length, up to no more than 250mm in width, up to no more than 25mm thick and which weighs up to no more than 750g;

(n) “**relevant parcel**” means a postal packet that is larger in dimensions than a relevant letter, and weighs no less than 750g but no more than 31.5kg;

3.41 We initially adopted those definitions to align CPC1 with corresponding definitions under our current Essential Condition 1 (EC1). Given that CPC1 is regulating similar services we were therefore seeking regulatory alignment, where possible, across our postal regulations.

3.42 Since our legal instrument took effect in July 2019, we explained in our July 2021 consultation that we had been informed by Royal Mail that there may be a gap between these two definitions – specifically, that small, lightweight parcels, which are bigger than

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<sup>17</sup> CAS response to July 2021 consultation, page 3; CCNI response to July 2021 consultation, page 2; a confidential response to July 2021 consultation, page 2; DX response to July 2021 consultation, page 3; MCF response to July 2021 consultation, page 1; UPS response to July 2021 consultation, page 2; Whistl response to July 2021 consultation, pages 2-3.

<sup>18</sup> Royal Mail response to July 2021 consultation, page 2.

the dimensions of a standard large letter (353mm x 250mm x 25mm, as set out in the definition of a relevant letter) but less than 750g in weight, would not be covered by either of the aforementioned definitions.

- 3.43 Since the implementation of our legal instrument of July 2019, Royal Mail has voluntarily included revenue from postal packets that fell within the gap of the definition of relevant letter and relevant parcel, as part of its relevant revenue. Given our knowledge of the parcels market,<sup>19</sup> we did not deem this to significantly affect other parcel operators' contributions to the funding mechanism, and in any event, we are not aware that they excluded small lightweight parcels from the relevant revenues they reported for the purpose of the cost recovery mechanism.
- 3.44 As the largest liable stakeholder, Royal Mail's voluntary action to include revenue from postal packets precisely reflects the spirit of this condition. We further acknowledge Royal Mail's concerns that other liable stakeholders may have underpaid in previous years as a result of this gap in the definition. However, having cross checked this data with the information we already hold as part of our monitoring of the postal sector, we have no reason to consider that this resulted in underpayments to date. Therefore, we updated the definition to address any future concerns.
- 3.45 For regulatory certainty, and given we are making other minor amendments to CPC1, we believe it is an opportune time to ensure the accuracy of our policy intentions is reflected in our legal instruments and to future proof the condition. Our policy position remains unchanged – we continue to believe that all parcels weighing less than 31.5kg should be included as a relevant parcel.
- 3.46 We believe it is important to clarify this for all stakeholders, to the extent that this may affect any future relevant postal operators liable to contribute to CAB fees, who may offer either a 'relevant parcels postal service' and/or a 'relevant letters postal service'.
- 3.47 Therefore, we have decided to remove the words "no less than 750g but" from our definition of relevant parcel (marked up change below), to ensure all parcels below 31.5kg are captured.

"relevant parcel" means a postal packet that is larger in dimensions than a relevant letter, and weighs ~~no less than 750g but~~ no more than 31.5kg;

## Conclusion

- 3.48 In light of overall support from the stakeholders who responded to our consultation and our decisions set out above, we have modified version 6 of the CPC1 by means of revoking it and imposing a new Consumer Protection Condition 1 specified in the Schedule to the

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<sup>19</sup> For instance, in our most review of the postal market in 2017, we noted Royal Mail had a 60-80% share of the 0-2kg parcels market for both single piece and bulk parcels (Ofcom, [Review of Royal Mail Regulation](#), Statement, 3 March 2017, paragraphs 3.129-3.130, 3.145, 4.20)

statutory notification published in Annex 1 to this statement, which adopts all the changes we consulted on in our July 2021 consultation without any modifications.

## Other stakeholder comments

- 3.49 A confidential stakeholder said that to further ensure fairness, they believe the threshold for parcel operators should be reduced from £350 million to £100 million.<sup>20</sup> We have previously considered this issue in our January 2019 statement.<sup>21</sup> In the absence of significant evidence to the contrary, we continue to believe the existing threshold for parcel operators remains appropriate as it balances the need to capture those operators likely to impact significantly the work of the CABs with the need to remain proportionate towards both smaller and larger operators and in operating a cost-effective cost recovery mechanism.
- 3.50 The same confidential stakeholder also requested that Ofcom ask parcel operators to reconcile the revenue declared in parcel operators' annual volume and revenue submissions, as part of Ofcom's annual information requests for monitoring the postal sector, with the revenue parcel operators declare for Consumer Protection Condition 1.<sup>22</sup> We have considered this request as part of aligning our information requests on stakeholders, but note that there are practical obstacles to using our postal monitoring information for the purpose of CPC1, for instance slight differences in the definitions of the services included or excluded in the respective information requests.
- 3.51 In regard to comparing revenue information we already hold from our annual monitoring programme with information on annual relevant turnover from relevant parcel operators liable to contribute towards CAB fees, while the two sets of information have different objectives, this is a practice we already undertake. This is to cross-check the revenue information provided to us for CPC1 broadly reflects our understanding of the parcels market.
- 3.52 DX agreed with our proposed definition, although stated they had reservations over the maximum weight of 31.5kg that Ofcom use to define what constitutes a relevant parcel. They suggested a weight of 20kg for a parcel would be a better option, as they believe the size and volume of a parcel may be more of a factor.<sup>23</sup> We recognise that there can be other dimensions than weight to define parcels, but weight is a common measurement for parcels across operators and is therefore a practical way of defining parcels for the purpose of CPC1. The upper limit of 31.5kg aligns to the definition of parcels we use to collect information on the parcel market as part of Ofcom's annual information requests for monitoring the postal sector, and we consider it remains appropriate.
- 3.53 The MCF expressed concern that the regulation of CPC1 is "opt in", noting that Ofcom leaves it to postal operators to decide whether or not they provide relevant postal services

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<sup>20</sup> Confidential response to July 2021 consultation, page 2

<sup>21</sup> See paragraphs 4.34-4.38 and 4.42-4.47 in our January 2019 statement

<sup>22</sup> Confidential response to July 2021 consultation, page 2

<sup>23</sup> DX response to July 2021 consultation, page 3

and have relevant revenue, and encouraged Ofcom to be proactive by ensuring its formal information requests are sent to businesses who previously believed they were exempt from CPC1.<sup>24</sup> In that regard, we keep under review every year from the general information available to us as to whom it may be appropriate to issue information requests, bearing in mind also the needs of proportionality and targeting such requests only at cases we believe are needed. However, Ofcom also takes regulatory compliance very seriously and, where we have reasons to believe that non-compliance might be an issue, we proactively look to take enforcement action where appropriate.

- 3.54 The MCF expressed interest in knowing what retrospective adjustments could be made to cost recovery charges. The MCF were concerned that liable operators may be paying more than they should because some companies previously decided that CPC1 did not apply to them and therefore that they were not liable to contribute to the CABs cost recovery mechanism.<sup>25</sup>
- 3.55 As referenced above, our annual information requests to parcel operators (as part of our postal monitoring programme) collect information on revenues from the main parcel operators, covering the vast majority of the parcels market. That information helps us assess whether it is appropriate to ask information from other parcel operators for the purpose of CAB fees. For the first year of the funding mechanism (charging year 2019/20), we sought information from all the main parcel operators to establish a baseline. Through a combination of both of these sources, we do not believe any retrospective adjustments are required. We have decided to implement the aforementioned changes now to the funding mechanism, whilst the number, and identity of, liable parcel operators has remained relatively stable.
- 3.56 The MCF also encouraged Ofcom to issue new guidance once it had made its decision on its proposals, so that it is as clear as possible to companies whether they are exempt or not.<sup>26</sup> We agree with the MCF that updating the guidance is important to ensure further clarity among industry, and our updated guidance is published in Annex 2 to this statement, in light of our decision to adopt our proposals set out in the July 2021 consultation.
- 3.57 Royal Mail reiterated that it did not agree with Ofcom’s previous decision to exclude access operators from the scope of CPC1.<sup>27</sup> As stated previously,<sup>28</sup> we have already addressed why we consider access operators are not liable for CAB fees, and do not believe the situation to have changed.
- 3.58 Whistl stated that Ofcom should consider separate classifications for letters, business large letters, general large letters and lightweight parcels in CPC1, following Ofcom’s work on the regulation of access competition in the letters market (as part of the 2022 review of postal regulation).<sup>29</sup> In this regard, we would expect that, if any changes were made as part

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<sup>24</sup> MCF response to July 2021 consultation, page 2

<sup>25</sup> MCF response to July 2021 consultation, page 2.

<sup>26</sup> MCF response to July 2021 consultation, page 2.

<sup>27</sup> Royal Mail response to July 2021 consultation, page 2.

<sup>28</sup> Ofcom, January 2019 Statement, paragraphs 3.37-3.54.

<sup>29</sup> Whistl response to July 2021 consultation, page 3.

of Ofcom’s 2022 review of postal regulation that has an impact on the definitions of CPC1, we would consider relevant changes at that time.

## Our updated Guidance to relevant postal operators

- 3.59 As noted above, as part of our January 2019 statement, we previously published our guidance aimed at assisting relevant postal operators when they consider their obligations under CPC1 (“**Updated Guidance**”).
- 3.60 Considering our decision to update CPC1 and make the changes on which we consulted, we have decided to also update our Guidance in order to take account of the latest modifications. The updated Guidance can be found under Annex 2 which now also includes a Version History table specifying the sections that have been updated since the guidance was published in our January 2019 statement.

## Relevant legal tests for changing CPC1

- 3.61 We consider that our above-mentioned decision is reflected transparently in our modified CPC1 as set out in the statutory notification published at Annex 1 to this statement, and that it satisfies the relevant tests set out in paragraph 1 of Schedule 6 to the 2011 Act, which must be met where we may impose or modify a regulatory condition, namely that our amendments to CPC1:
- are objectively justifiable;
  - do not unduly discriminate against a particular person or a particular description of persons;
  - are proportionate; and
  - are transparent in relation to what they are intended to achieve.
- 3.62 We consider that our amendments of CPC1 satisfy those tests, in particular:
- **Objectively justifiable** - we believe that our changes to the scope of CPC1 are objectively justifiable because they recover the costs of the CABs from postal services that materially drive the work of the CABs, and therefore they aim to ensure that the cost recovery mechanism is fair and equitable, and cost-reflective; in particular we consider that our changes to the meaning of an intermediary will ensure that postal operators that are not acting as true intermediaries report turnover from relevant ‘parcels postal services’ under CPC1 and thereby ensure cost-reflectiveness; our new apportionment of turnover requirement seeks to ensure fairness and equity in apportionment of relevant turnover by requiring that postal operators who provide relevant letters postal service or relevant parcel postal service, as part of a bundled service, allocate a reasonable proportion of such turnover.
  - **Not unduly discriminatory** - we believe that our changes to CPC1 are not unduly discriminatory, in particular our changed meaning of an intermediary continues to

ensure that our regulation is targeted at those postal operators that we consider are appropriate to meet our regulatory objective of ensuring the recovery of the CABs' costs of consumer advocacy in the postal market, and will apply to both those providing a 'relevant letters postal service' and a 'relevant parcels postal service'.

- **Proportionate** - we believe that our changes to CPC1 are proportionate because they only impose requirements that we consider are appropriate and necessary to ensure that only true intermediaries take advantage of the relevant exclusion and that those that have bundled turnover allocate a fair reasonable proportion, without imposing an undue burden on those relevant postal operators which would be subject to obligations under CPC1.
- **Transparent** - we consider that our changes to the meaning of intermediary and introduction of bundled turnover allocation CPC1 are transparent because CPC1 clearly sets out what is expected from relevant postal operators.

3.63 In addition, in making these modifications to CPC1 and having had regard to their potential impact, we have overall considered and acted in accordance with our duty in section 29 of the 2011 Act and our general duties in section 3 of the Communications Act 2003. Ofcom has also had regard to the Statement of Strategic Priorities in making the above-mentioned decision.

## Impact assessment

3.64 The analysis presented in this statement represents an impact assessment, as defined in section 7 of the Communications Act 2003.

3.65 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policymaking. This is reflected in section 7 of the Communications Act 2003, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see our guidelines entitled 'Better Policy Making: Ofcom's approach to impact assessment', which are available on our website.<sup>30</sup>

## Equality Impact Assessment (EIA)

3.66 Section 149 of the Equality Act 2010 (the "2010 Act") imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct related to the following protected

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<sup>30</sup> Ofcom, [Better Policy Making – Ofcom's approach to impact assessment](#), 21 July 2005.

characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The 2010 Act also requires Ofcom to have due regard to the need to advance equality of opportunity and foster good relations between persons who share specified protected characteristics and persons who do not.

- 3.67 Section 75 of the Northern Ireland Act 1998 (the “1998 Act”) also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations across a range of categories outlined in the 1998 Act. Ofcom’s Revised Northern Ireland Equality Scheme explains how we comply with our statutory duties under the 1998 Act.
- 3.68 To help us comply with our duties under the 2010 Act and the 1998 Act, we assess the impact of our decision on persons sharing protected characteristics and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations.
- 3.69 We have considered whether our modifications to CPC1 (as discussed above) would have an adverse impact on promoting equality. We have looked at whether our decision would have a different or adverse effect on UK consumers and citizens in the following equality groups: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation, and, in Northern Ireland, political opinion and persons with dependents. Our assessment is that they would not and therefore we do not consider that our decision has equality implications under the 2010 Act or the 1998 Act.

## Next Steps

- 3.70 Our decision takes effect immediately, meaning that it impacts the next charging year of 2021/22, and that we will be seeking information on relevant operators’ revenues, and recovering the CABs’ postal fees, on the basis of CPC1 as amended by this statement.
- 3.71 We have received the consumer advocacy fees recovery letter from BEIS for the charging year 2021/22 and will now proceed to issue information requests based on the updated changes to CPC1 as set out in this document.

# A1. Statutory notification: Modified Consumer Protection Condition 1

## NOTIFICATION OF MODIFICATIONS TO CONSUMER PROTECTION CONDITION 1 PURSUANT TO SECTION 51 OF, AND IN ACCORDANCE WITH SECTION 53 OF, AND PARAGRAPH 3 OF SCHEDULE 6, TO THE POSTAL SERVICES ACT 2011

### **BACKGROUND**

- (A) On 27 March 2012, following consultation, Ofcom published a statement *entitled ‘Securing the Universal Postal Service: Decision on the new regulatory framework’*<sup>31</sup> setting out various decisions, including the imposition of consumer protection conditions to make provision for matters set out in section 51 of the Act, such as Consumer Protection Condition 1 (“**version 1 of CPC1**”).
- (B) On 28 March 2013, following consultation, Ofcom published a statement *entitled ‘Decision on modification to Consumer Protection Condition 1: Statement to modify Consumer Protection Condition 1 to reflect the change in the provision of consumer advice for postal services to Citizens Advice and Citizens Advice Scotland’*<sup>32</sup> setting out its decision to modify version 1 of CPC1 in order to allow Ofcom to collect payments from regulated postal operators relating to the expenses of Citizens Advice and Citizens Advice Scotland (“**version 2 of CPC1**”).
- (C) On 1 April 2014, following consultation, Ofcom published a statement *entitled ‘Amendments to regulatory conditions DUSP 1.8 and CP 1 and minor amendments to other regulatory conditions’*<sup>33</sup> setting out various decisions, including the revocation of version 2 of CPC1 and the imposition of a new Consumer Protection Condition 1 (“**version 3 of CPC1**”).
- (D) On 4 December 2015, following consultation, Ofcom published a statement *entitled ‘Modification to Consumer Protection Condition 1: Collection of qualifying consumer expenses of the Consumer Advocacy Bodies’*<sup>34</sup> setting out its decision to modify version 3 of CPC1 to correct an error in the drafting of CPC1 with regard to the calculation of the contributions of postal operators to the qualifying consumer expenses of the Consumer Advocacy Bodies (“**version 4 of CPC1**”).
- (E) On 16 January 2019, following consultation, Ofcom published a statement *entitled ‘Recovering consumer advocacy costs’*<sup>35</sup> setting out its decision to modify version 4 of CPC1 by giving effect,

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<sup>31</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0029/74279/Securing-the-Universal-Postal-Service-statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0029/74279/Securing-the-Universal-Postal-Service-statement.pdf)

<sup>32</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0033/37689/statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0033/37689/statement.pdf)

<sup>33</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/amendments-dusp-cp/statement/Statement.pdf>

<sup>34</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/84165/cp1\\_statement\\_04dec2015.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/84165/cp1_statement_04dec2015.pdf)

<sup>35</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/recovering-postal-regulation-costs>

with some modifications, to its proposals, with Annex 1 to that statement containing Ofcom’s notification of the modified CPC1 in its entirety (“**version 5 of CPC1**”).

- (F) On 26 July 2019, following consultation, Ofcom published a statement entitled ‘*Recovering consumer advocacy costs – Supplementary statement on excluding international letters and parcels from Consumer Protection*’<sup>36</sup> setting out its decision to modify version 5 of CPC1 by giving effect with some modifications, to its proposals, so that international mail is excluded from the scope of the cost recovery mechanism, with Annex 1 to that statement containing Ofcom’s notification of the modified CPC1 in its entirety (“**version 6 of CPC1**”).
- (G) On 7 July 2021, Ofcom published a further consultation entitled ‘*Recovering consumer advocacy costs – Supplementary consultation on minor amendments to Consumer Protection Condition 1*’<sup>37</sup>. In Annex 1 to that document, Ofcom published its notification of proposals to make modifications to version 6 of CPC1 (the “**Consultation Notification**”), which sets out the cost recovery mechanism for the work of consumer advocacy bodies in relation to the postal services sector. In particular, the Consultation Notification set out proposals for (i) changing the meaning of what is an intermediary postal operator; (ii) specifying when postal services are bundled with other services there should be a reasonable allocation of revenue of postal services to the relevant revenues for the purposes of that mechanism; and (iii) amending the definition of a “relevant parcel”.
- (H) A copy of the Consultation Notification was sent to the Secretary of State on 5 July 2021 in accordance with paragraph 5(1)(a) of Schedule 6 to the Act and section 24A(1) of the Communications Act 2003.
- (I) Ofcom invited representations about the proposals set out in the Consultation Notification by 18 August 2021. Ofcom received responses from seven stakeholders to the Consultation Notification.
- (J) In accordance with paragraph of 3(5) of Schedule 6 to the Act, Ofcom has considered those responses in making the decision set out below to give effect, without any modifications, to its proposals set out in the Consultation Notification. In doing so, the Secretary of State has not notified Ofcom of any international obligations on the United Kingdom for the purpose of Ofcom giving effect to those proposals.

## **DECISION**

1. Ofcom hereby decides, in accordance with section 53 of, and paragraph 3 of Schedule 6 to, the Act and pursuant to its powers under section 51 of the Act, to make modifications to version 6 of CPC1 by means of revoking it and imposing a new Consumer Protection Condition 1 specified in the Schedule to this Notification (“**version 7 of CPC1**”) that includes the above-mentioned modifications.
2. Those modifications (including version 7 of CPC1 as a whole) take immediate effect on the publication of this Notification.

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<sup>36</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/recovering-postal-regulation-costs>

<sup>37</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0025/221596/cab-fees-condoc-june-21.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0025/221596/cab-fees-condoc-june-21.pdf)

3. The effect of, and Ofcom’s reasons for making, this decision are set out in the statement accompanying this Notification.

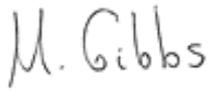
### **OFCOM’S DUTIES AND LEGAL TESTS**

4. Ofcom is satisfied that this decision satisfies the general test in paragraph 1 of Schedule 6 to the Act.
5. In making this decision, 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. Ofcom has also had regard to the Statement of Strategic Priorities in making the proposals referred to in this Notification.
6. A copy of this Notification has been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act and section 24A(1) of the Communications Act 2003.

### **INTERPRETATION**

7. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Act.
8. In this Notification—
  - (a) “**Act**” means the Postal Services Act 2011 (c.5);
  - (b) “**Consultation Notification**” has the meaning given to it in **recital (G)** to this Notification;
  - (c) “**Ofcom**” means the Office of Communications;
  - (d) “**Statement of Strategic Priorities**” means the Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services designated by the Secretary of State for Digital, Culture, Media and Sport for the purposes of section 2A of the Communications Act 2003 on 29 October 2019;
  - (e) “**version 6 of CPC1**” has the meaning given to it in **recital (F)** to this Notification; and
  - (f) “**version 7 of CPC1**” has the meaning given to it in paragraph 1 of this Notification.
9. For the purpose of interpreting this Notification—
  - (a) headings and titles shall be disregarded;
  - (b) expressions cognate with those referred to in this Notification shall be construed accordingly; and
  - (c) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.
10. The Schedule to this Notification shall form part of this Notification.

Signed by

A handwritten signature in black ink that reads "M. Gibbs". The letters are cursive and slightly slanted to the right.

**Marina Gibbs**  
**Director of Post**

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

**13 October 2021**

**SCHEDULE**

**CONSUMER PROTECTION CONDITION 1**

**PAYMENTS RELATING TO QUALIFYING EXPENSES**

**1.1. Application, Definitions and Interpretation**

<p>CP 1.1.1 <i>Application</i></p>	<p>This consumer protection condition (“<b>CP Condition</b>”) shall apply to every <u>relevant postal operator</u> to whom any of the obligations to make payments to <u>OFCOM</u> prescribed in CP 1.2.1 apply.</p>
<p>CP 1.1.2 <i>Definitions</i></p>	<p>In this CP Condition—</p> <p>(a) “<b>Act</b>” means the Postal Services Act 2011 (c.5);</p> <p>(b) “<b>appointed day</b>” means 1 October 2011;</p> <p>(c) “<b>assessment year</b>” means the <u>relevant year</u> minus two years, beginning on 1 April;</p> <p>(d) “<b>calls relating to a relevant postal operator</b>” means calls to a <u>consumer advocacy body</u> recorded by such a body as relating to a specific <u>relevant postal operator</u> save that where a call is recorded by a <u>consumer advocacy body</u> as relating to more than one specific <u>relevant postal operator</u> <u>OFCOM</u> will consider the call as relating to no <u>relevant postal operator</u>;</p> <p>(e) “<b>closed user group network</b>” means a system providing for the conveyance of <u>postal packets</u> (and the incidental services of receiving, collecting, sorting and delivering <u>postal packets</u>) between—</p> <p style="padding-left: 40px;">(1) the premises of one firm and another firm;</p> <p style="padding-left: 40px;">(2) a government department and a third party firm;</p> <p style="padding-left: 40px;">(3) branches and/or units in the same firm; or</p> <p style="padding-left: 40px;">(4) government departments,</p> <p style="padding-left: 40px;">where both the sender and the recipient of the <u>postal packets</u> have entered into specific arrangements with the <u>postal operator</u> for the conveyance of <u>postal packets</u> to or from other members of that system, which, for the avoidance of doubt, includes a document exchange;</p> <p>(f) “<b>consumer advocacy body (or bodies)</b>” means each of the following—</p> <p style="padding-left: 40px;">(1) <u>Citizens Advice</u>;</p> <p style="padding-left: 40px;">(2) <u>Citizens Advice Scotland</u> or such other body that provides, in or as regards Scotland, consumer advocacy and advice to which section 51(2)(ca) of the Act refers; and</p> <p style="padding-left: 40px;">(3) the General Consumer Council for Northern Ireland;</p>

	<p>(g) “<b>express and secured service</b>” means a service involving the conveyance of <u>postal packets</u> and any incidental services of collecting, sorting and delivering those <u>postal packets</u> which have at least one of the following features—</p> <p style="padding-left: 40px;">(1) a guarantee for delivery by a certain time or date;</p> <p style="padding-left: 40px;">(2) a facility enabling the sender and the recipient to monitor the progress of a <u>postal packet</u> through the <u>postal operator’s</u> network, including confirmation of delivery;</p> <p>(h) “<b>public holiday</b>” means a Christmas Day, Good Friday and a day which is a bank holiday under the Banking and Financial Dealings Act 1971;</p> <p>(i) “<b>qualifying calls expenses</b>” has the meaning given to it in CP 1.2.4;</p> <p>(j) “<b>qualifying calls threshold</b>” has the meaning given to it in CP 1.2.4;</p> <p>(k) “<b>qualifying expenses</b>” has the meaning given to it in CP 1.2.2;</p> <p>(l) “<b>relevant letter</b>” means a <u>postal packet</u> that is up to no more than 353mm in length, up to no more than 250mm in width, up to no more than 25mm thick and which weighs up to no more than 750g;</p> <p>(m) “<b>relevant letters postal service</b>” means a service of conveying <u>relevant letters</u> which have been sent from one location within the United Kingdom to another location within the United Kingdom by post and the incidental services of receiving, collecting, sorting and delivering such <u>relevant letters</u>, excluding—</p> <p style="padding-left: 40px;">(1) subject to CP 1.2.1A, services for which the <u>postal operator</u> has not received any payment, reward, profit or advantage with respect to the conveyance of the <u>relevant letters</u>;</p> <p style="padding-left: 40px;">(2) services provided by a charity which comprise solely the collection, conveyance and delivery of Christmas cards;</p> <p style="padding-left: 40px;">(3) <u>express and secured services</u>;</p> <p style="padding-left: 40px;">(4) services consisting of the conveyance of <u>relevant letters</u> within a <u>closed user group network</u>; and</p> <p style="padding-left: 40px;">(5) services provided by a party to a <u>USP Access Agreement</u> with the <u>universal service provider</u> to other <u>postal operators</u> and <u>users</u> of <u>postal services</u> by obtaining access to the <u>universal service provider’s postal network</u> under, or as a result of, the party’s <u>USP Access Agreement</u>; for the avoidance of doubt, services provided by the <u>universal service provider</u> itself to a party to a <u>USP Access Agreement</u> do not fall under this exclusion;</p> <p>(n) “<b>relevant parcel</b>” means a <u>postal packet</u> that is larger in dimensions than a <u>relevant letter</u>, and weighs no more than 31.5kg;</p>
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	<p><b>(o) “relevant parcels postal service”</b> means a service of conveying <u>relevant parcels</u> which have been sent from one location within the United Kingdom to another location within the United Kingdom by post and the incidental services of receiving, collecting, sorting and delivering such <u>relevant parcels</u>, excluding—</p> <p>(1) subject to CP 1.2.1A, services for which the <u>postal operator</u> has not received any payment, reward, profit or advantage with respect to the conveyance of the <u>relevant parcels</u>;</p> <p>(2) services consisting of the conveyance of <u>relevant parcels</u> within a <u>closed user group network</u>;</p> <p>(3) services provided while acting in the capacity of an intermediary postal operator, that is to say a <u>postal operator</u> (‘Operator A’) who acts as an intermediary for one or more postal operators and intended recipients that hands over <u>relevant parcels</u> to another <u>postal operator</u> (including but not limited to the <u>universal service provider</u>) (‘Operator B’) for subsequent conveyance and delivery to the intended recipients of the <u>relevant parcels</u> but for which conveyance and delivery Operator A is not responsible in relation to the intended recipients; for the purposes of this exclusion, Operator A shall also be deemed not to be an intermediary where:</p> <p>(i) Operator A directs, controls or otherwise seeks to influence the manner in which Operator B conveys and delivers the relevant parcels; or</p> <p>(ii) Operator B is employed by Operator A either as an employee or a worker (within the meanings of those expressions under section 230 of the Employment Rights Act 1996) for that conveyance and delivery; and</p> <p>(4) services consisting of the conveyance of <u>relevant parcels</u> provided by the <u>postal operator</u> only as part of a sales contract between the <u>postal operator</u> and a user under which the <u>postal operator</u> conveys and delivers such <u>relevant parcels</u> that are subject of that contract directly to the user without any arrangements with another <u>postal operator</u>; in this exclusion “a sales contract” refers to a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration;</p> <p><b>(p) “relevant postal operator”</b> means each of the following—</p> <p>(1) a <u>postal operator</u> that provides a <u>relevant letters postal service</u>;</p> <p>(2) a <u>postal operator</u> that provides a <u>relevant parcels postal service</u>;</p> <p><b>(q) “relevant turnover”</b> means each of the following—</p> <p>(1) turnover from <u>relevant letters postal services</u>;</p> <p>(2) turnover from <u>relevant parcels postal services</u></p>
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	<p>(r) “<b>relevant year</b>” means any year beginning on 1 April, the first year of which begins on 1 April 2019;</p> <p>(s) “<b>Scottish consumer advice amounts</b>” mean such amounts as the Secretary of State considers reasonable in respect of the provision, in or as regards Scotland, of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office, in relation to <u>users of postal services</u>; and</p> <p>(t) “<b>USP Access Agreement</b>” means an agreement under which the <u>universal service provider</u> provides access to its <u>postal network</u> in accordance with requirements set out in a condition imposed under section 38 of the Act.</p>
<p><b>CP 1.1.3</b> <i>Interpretation</i></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 same meaning as it has been ascribed for the purpose of Part 3 of the Act<sup>38</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 “<b>day</b>” are references to a period of twenty-four hours beginning with one midnight and ending with the next, which period shall be treated to include a Saturday, a Sunday and public holidays.</p>

## **1.2. Payments relating to qualifying expenses**

<p>CP 1.2.1 <i>Obligations to make payments to OFCOM</i></p>	<p>A <u>relevant postal operator</u> is liable to make payments to <u>OFCOM</u> in one or more (as applicable to that operator) of the following three circumstances—</p> <p>(a) where a <u>postal operator</u> that provides <u>relevant letters postal services</u> that generated <u>relevant turnover</u> exceeding £10 million in the <u>assessment year</u>, that operator shall pay to <u>OFCOM</u> in any <u>relevant year</u> such proportion (calculated in accordance with CP 1.2.3) as <u>OFCOM</u> may specify of the <u>qualifying expenses</u>;</p> <p>(b) where a <u>postal operator</u> that provides <u>relevant parcels postal services</u> that generated <u>relevant turnover</u> exceeding £350 million in the <u>assessment year</u>, that operator shall pay to <u>OFCOM</u> in any <u>relevant year</u> such proportion</p>
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<sup>38</sup> A table for information identifying such defined terms is provided at the end of this CP Condition. This table is intended only as a guide and does not form a part of this CP Condition. We make no representations as to its accuracy or completeness.

	<p>(calculated in accordance with CP 1.2.3) as <u>OFCOM</u> may specify of the <u>qualifying expenses</u>;</p> <p>(c) where a <u>relevant postal operator</u> has reached the <u>qualifying calls threshold</u> in the <u>relevant year</u>, that operator shall pay to <u>OFCOM</u> in any <u>relevant year</u> such proportion (calculated in accordance with CP 1.2.5) as <u>OFCOM</u> may specify of <u>qualifying calls expenses</u>.</p>
<p>CP 1.2.1A</p> <p><i>Apportionment of turnover</i></p>	<p>Where a <u>postal operator</u> generates turnover (whether as part of a subscription fee or otherwise) for a bundle of goods or services that include <u>relevant letters postal services</u> or <u>relevant parcels postal services</u>, that operator shall allocate a reasonable proportion of such turnover to be included in its total <u>relevant turnover</u> from <u>relevant letters postal services</u> or <u>relevant parcel postal services</u> for the purpose of CP 1.2.1(a) and (b).</p>
<p>CP 1.2.2</p> <p><i>Meaning of “qualifying expenses”</i></p>	<p>The “<b>qualifying expenses</b>” are—</p> <p>(a) the <u>qualifying consumer expenses of Citizens Advice</u>;</p> <p>(b) the <u>qualifying consumer expenses of the General Consumer Council for Northern Ireland</u>;</p> <p>(c) the <u>Scottish consumer advice amounts</u>; and</p> <p>(d) the <u>qualifying consumer expenses of the Secretary of State</u>,</p> <p>likely to be incurred during the <u>relevant year</u> in respect of functions other than the <u>consumer advocacy bodies’ functions</u> in dealing with <u>calls relating to relevant postal operators</u>.</p>
<p>CP 1.2.3</p> <p><i>Calculation of proportion for the purposes of CP 1.2.1(a) and (b)</i></p>	<p>The proportion referred to in CP 1.2.1(a) and (b) will be calculated by multiplying the sum of the total <u>qualifying expenses</u> referred to in CP 1.2.2 by that <u>relevant postal operator’s share of relevant turnover</u> expressed as a percentage of the total <u>relevant turnover</u> generated by all <u>relevant postal operators</u> to which CP 1.2.1(a) and (b) refer in the <u>assessment year</u> in question.</p>
<p>CP 1.2.4</p> <p><i>Meanings of “qualifying calls threshold” and of “qualifying calls expenses”</i></p>	<p>A <u>relevant postal operator</u> shall be liable to make payments to <u>OFCOM</u> for the purposes of CP 1.2.1(c) only where the following calculation gives an amount greater than £100 (the “<b>qualifying calls threshold</b>”)—</p> <p>(a) take the total <u>qualifying calls expenses</u> in the <u>relevant year</u>,</p> <p>(b) multiply it by that <u>relevant postal operator’s share of calls relating to relevant postal operators</u> in the <u>relevant year</u> expressed as a percentage of the total <u>calls relating to relevant postal operators</u>.</p>

	<p>The “<b>qualifying calls expenses</b>” are—</p> <p>(a) the <u>qualifying consumer expenses of Citizens Advice</u>;</p> <p>(b) the <u>qualifying consumer expenses of the General Consumer Council for Northern Ireland</u>; and</p> <p>(c) the <u>Scottish consumer advice amounts</u>,</p> <p>likely to be incurred during the <u>relevant year</u> in respect of the <u>consumer advocacy bodies’ functions in dealing with calls relating to relevant postal operators</u>.</p>
<p>CP 1.2.5</p> <p><i>Calculation of proportion for the purposes of CP 1.2.1(c)</i></p>	<p>The proportion referred to in CP 1.2.1(c) to be paid by a <u>relevant postal operator</u> reaching the <u>qualifying calls threshold</u> will be calculated by multiplying the total <u>qualifying calls expenses</u> in the <u>relevant year</u> by that <u>relevant postal operator’s</u> share of <u>calls relating to relevant postal operators</u> falling within CP1.2.4 expressed as a percentage of the total <u>calls relating to relevant postal operators</u> falling within CP1.2.4.</p>
<p>CP 1.2.6</p> <p><i>Adjusted amounts payable under CP 1.2.1(a) and (b)</i></p>	<p>The amounts payable under CP 1.2.1(a) and (b) 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.</p>
<p>CP.1.2.7</p> <p><i>Adjusted amounts payable under CP 1.2.1(c)</i></p>	<p>The amounts payable under CP 1.2.1(c) in a <u>relevant year</u> shall include the amount of the difference, if any, between the amounts charged to the <u>relevant postal operator</u> in the previous <u>relevant year</u>, based on estimates; and the amounts which would have been charged had the calculation been based on actual numbers of <u>calls relating to relevant postal operators</u> (including to calls relating to that specific <u>relevant postal operator</u>) and actual <u>qualifying calls expenses</u>. Where the latter exceeds the former, the amount of the difference shall be treated as a negative amount.</p>
<p>CP 1.2.8</p> <p><i>Payments due dates</i></p>	<p>The amount due under each of the three circumstances specified in CP 1.2.1 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> serve notice on the <u>relevant postal operator</u> of such amount.</p>

**Table of terms defined in the Act**

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

<b>Defined term</b>	<b>Section</b>
<i>Citizens Advice</i>	<i>65(1)</i>
<i>Citizens Advice Scotland</i>	<i>65(1)</i>
<i>letter</i>	<i>65(1)</i>
<i>OFCOM</i>	<i>90</i>
<i>postal network</i>	<i>38(3)</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>qualifying consumer expenses of Citizens Advice</i>	<i>51(4)(a) to (c)</i>
<i>qualifying consumer expenses of the General Consumer Council for Northern Ireland</i>	<i>51(4)(g)</i>
<i>qualifying consumer expenses of the Secretary of State</i>	<i>51(4ZA)</i>
<i>universal service provider</i>	<i>65(1) and Schedule 9 paragraph 3(3)</i>
<i>user</i>	<i>65(1)</i>

## A2. Updated Guidance on the application of CPC1 to relevant postal operators

### Introduction

- A2.1 On 16 January 2019, Ofcom published a statement (“**January 2019 statement**”) to modify our regulatory rules imposed under Consumer Protection Condition 1 (“**CPC1**”), which sets out the cost recovery mechanism for the work of the consumer advocacy bodies (“**CABs**”) on post. That modification resulted in a wider range of postal operators becoming liable to contribute towards costs of the CABs, and we also published our associated guidance to explain how we expected the new rules to be applied in practice. It was followed by our decision in July 2019 making some minor modifications to exclude revenues associated with international mail from that mechanism.
- A2.2 To reflect the further modifications we have decided to make to CPC1 in today’s accompanying statement, we set out below our updated guidance aimed at assisting relevant postal operators when they consider their obligations under CPC1. We strongly urge that relevant postal operators take this guidance into account, including when preparing their responses to our annual information requests.
- A2.3 As a starting point, it is important to note the broad definition of ‘postal operator’ under section 27 of the Act, which has the potential to capture a wide variety of persons operating in the postal market.

### Meaning of ‘postal operator’

- A2.4 For that reason, before we discuss types of postal operators liable to contribute to the CABs’ costs under CPC1, we set out below broad guidance on the meaning of a ‘postal operator’, as this expression is fundamental to the three different payment obligations in CPC1.
- A2.5 The definition of ‘postal operator’ (which applies to CPC1) is set out in section 27(3) of the Act. It provides that:

*“Postal operator” means a person who provides—*

*(a) the service of conveying postal packets<sup>39</sup> from one place to another by post, or*

*(b) any of the incidental services of receiving, collecting, sorting and delivering postal packets.*

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<sup>39</sup> Section 27(2) of the Act defines a ‘postal packet’ to mean a letter, parcel, packet or other article transmissible by post.

- A2.6 Importantly, section 27(4) clarifies that *a person is not to be regarded as a postal operator merely as a result of receiving postal packets in the course of acting as an agent for, or otherwise on behalf of, another.*
- A2.7 As already noted above, the definition of ‘postal operator’ is, however, broad and has the potential to capture a wide variety of persons operating in the postal market.
- A2.8 For example, in the case of *The Queen on the application of DHL International (UK) Limited (“DHL”) v Ofcom* [2016] EWHC 938 (Admin), it was held by the Administrative Court that DHL, as an international door-to-door courier of goods,<sup>40</sup> was a ‘postal operator’ within the meaning of the Act, and it was therefore liable to respond to Ofcom’s information request. In particular, the Administrative Court took a broad approach to the meaning of the phrase ‘by post’ in the postal operator definition. It decided, for instance, that none of the features of DHL’s international business were inconsistent with the conclusion that DHL was a postal operator. The Court noted that the legislative history demonstrated that there was no constraint as to the means by which packets, parcels etc. may be conveyed from sender to addressee (or, in the language of carriage, from consignor to consignee). The Court therefore concluded that it would have still been conveyance ‘by post’ if e.g. the Royal Mail had arrangements akin to those of DHL. The Court also noted that the Act reflected the independent reviews of the UK postal services which were conducted by Mr Richard Hooper in 2008 and 2010, and it noted in particular that the 2008 report in its definition of the postal market included both standard parcels (i.e. falling within the universal postal service) and “express and courier items which are guaranteed to arrive on a particular day or time, and/or which require a signature on delivery or ‘track and trace’ facility”.
- A2.9 The Administrative Court also noted that the Act implements the Postal Services Directive. The Court of Justice of the European Union (“CJEU”) has ruled on the Directives’ concept corresponding to a ‘postal operator’ in several cases. On 31 May 2018, the CJEU gave its ruling in Joined Cases C-259/16 and C-260/16. These Joined Cases concerned undertakings and associations of undertakings operating in the haulage, freight-forwarding and mail courier sector (Case C-259/16) or only in the mail courier sector (Case C-260/16). One of the issues was whether haulage, freight-forwarding and express mail undertakings providing services involving the clearance, sorting, transport and distribution of postal items could be classified (except where their business is limited to the transport of postal items) as postal service providers within the Directive’s meaning.
- A2.10 The CJEU ruled that they could be so classified. Specifically, as regards road haulage and freight-forwarding service, it ruled that “...an undertaking must be classified as a ‘postal

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<sup>40</sup> Paragraph 9 of the Judgment explains in more detail DHL’s essential service as it was at the time, especially “...The business is predominantly business to business carriage of international express parcels and freight. The wider DHL group operates in some 220 countries. Its infrastructure includes ownership of over 280 aeroplanes. The request for the service comes from the customer and normally parcels or freight are collected directly from the account customer’s premises or from the sender of the goods. After collection they are taken to a DHL local station and then on to the country’s gateway export clearance. They are then either driven or flown to the import clearance gateway of the inbound country, taken on to the local station within the inbound country and from there delivered to the consignee’s address. The process is reversed when sent from an overseas country for delivery to a specific address in the UK...”

*service provider’ within the meaning of Article 2(1a) of Directive 97/67 where it provides at least one of the services set out in Article 2(1) of the Directive or the service or services thus provided relate to a postal item, although its business cannot consist merely in the provision of transport services. It follows that haulage and freight-forwarding enterprises offering, as their principal business, a service entailing the transport of postal items and, as an ancillary activity, services entailing the clearance, sorting, and distribution of postal items does not fall outside the scope of the directive.”* (paragraph 34 of the Judgment).

- A2.11 The CJEU dismissed the applicants’ argument that an undertaking which, as its principal business, provides a service involving the transport of postal items and offers one of the other services referred to in Article 2(1) of Directive 97/67 only as an ancillary business, cannot be classified as a ‘postal service provider’. That argument was dismissed in particular because “*...if it were to be accepted that haulage or freight-forwarding undertakings were excluded from the scope of Directive 97/67, on the sole ground that they engage in the activities of collecting, sorting and distributing postal items only on an ancillary basis, that would give rise to numerous difficulties in interpreting the Directive. Indeed, it would be necessary, in order to determine the legal rules applicable, to assess, on a case-by-case basis, the greater or lesser proportion of services provided on an ancillary basis in relation to the main transport service provided.*” (paragraph 35 of the Judgment)
- A2.12 As regards express mail services, the CJEU noted that it is the Court’s established case-law that what distinguishes express mail services from the universal postal service is the added value which they bring to the customers, for which the customers agree to pay more. Nonetheless, the CJEU classified also express mail undertakings providing services involving the clearance, sorting, transport and distribution of postal items as postal service providers within the meaning of Directive 97/67, except where their business is limited to the transport of postal items. The CJEU noted in particular that “*...while a distinction can be made between the universal service and express mail services, on the basis of whether or not added value is provided by the service, it is clear that such a criterion for distinction is wholly irrelevant as regards the nature of the services set out in Article 2(1) of Directive 97/67. Thus, the fact that such services bring, in some circumstances, added value cannot alter the fact that they are ‘postal services’ within the meaning of that provision.*” (paragraph 40 of the Judgment)
- A2.13 In light of this broad meaning of a ‘postal operator’, we excluded as part of our January 2019 statement certain services from the definitions of ‘relevant letters postal services’ and ‘relevant parcels postal services’, respectively, for the purposes of CPC1. We explained why we have decided on these exclusions in Section 3 of our January 2019 statement, and further discuss those exclusions below in light of the decision we have taken today in the accompanying statement. However, as they constitute exclusions from the general principle, they should be interpreted strictly and narrowly.
- A2.14 In regard to postal operators offering a relevant parcels postal service, we recognise that within a business different parts of the organisation, or different categories of activity within the business, may be acting as a postal operator providing relevant letters postal services and/or relevant parcels postal services by virtue of the exclusions below. To

ensure they properly comply with their obligations under CPC1, postal operators should seek their own independent advice on how specific matters might apply to the facts in their own circumstances, having regard to our guidance.

### **‘Relevant letters postal services’**

- A2.15 The expression ‘relevant letters postal services’ as set out in CPC1 captures, as a general principle, every service of conveying ‘relevant letters’ from one place to another by post and the incidental services of receiving, collecting, sorting and delivering ‘relevant letters’. The expression ‘relevant letter’ is defined in CPC1 as a ‘postal packet’ (as defined in section 27(2) of the Act) that is up to no more than 353mm in length, up to no more than 250mm in width, up to no more than 25mm thick and which weighs up to no more than 750g.
- A2.16 However, CPC1 excludes the following services from the meaning of ‘relevant letters postal services’ and, as such, they fall outside the definition of ‘relevant letters postal services’:
- a) subject to CP1.2.1A, services for which the postal operator has not received any payment, reward, profit or advantage with respect to the conveyance of the relevant letters;
  - b) services provided by a charity which comprise solely the collection, conveyance and delivery of Christmas cards;
  - c) express and secured services;
  - d) services consisting of the conveyance of relevant letters within a closed user group network;
  - e) services provided by a party to a USP Access Agreement with the universal service provider to other postal operators and users of postal services by obtaining access to the universal service provider’s postal network under, or as a result of, the party’s USP Access Agreement; for the avoidance of doubt, services provided by the universal service provider itself to a party to a USP Access Agreement do not fall under this exclusion.

### **Closed user group networks**

- A2.17 In both a relevant letters postal service, and a relevant parcels postal service (detailed below), we exclude ‘services consisting of the conveyance of relevant letters within a closed user group network’. Below we set out examples which may constitute a closed user group and hence form part of this exemption. These include:
- a) Organisations (e.g. businesses, government departments) that have an internal delivery exchange solely between their own business units (e.g. between their warehouse and retail stores, or between offices); and,

- b) Organisations who have a specific arrangement in place for the exchange of items within the closed user group (e.g. the delivery of medical samples from a laboratory to clinics / hospitals who form part of the same internal delivery exchange / closed user group or the movement of legal document bundles between law firms or law firms and the courts). These types of arrangements typically include an ongoing fee to be part of the closed user group arrangements.

### **‘Relevant parcels postal service’**

A2.18 The expression ‘relevant parcels postal services’, as set out in CPC1, captures, as a general principle, every service of conveying ‘relevant parcels’ from one place to another by post and the incidental services of receiving, collecting, sorting and delivering ‘relevant parcels’. The expression ‘relevant parcel’ is defined in CPC1 as a ‘postal packet’ (as defined in section 27(2) of the Act) that is larger in dimensions than a ‘relevant letter’ and weighs no more than 31.5kg.

A2.19 However, CPC1 excludes the following services from the meaning of ‘relevant parcels postal services’ and, as such, they fall outside the definition of a ‘relevant parcels postal services’:

- a) subject to CP1.2.1A, services for which the postal operator has not received any payment, reward, profit or advantage with respect to the conveyance of the relevant parcels;
- b) services consisting of the conveyance of relevant parcels within a closed user group network;
- c) services provided while acting in the capacity of an intermediary postal operator, that is to say a postal operator (‘Operator A’) who acts as an intermediary for one or more postal operators and intended recipients that hands over relevant parcels to another postal operator (including but not limited to the universal service provider) (‘Operator B’) for subsequent conveyance and delivery to the intended recipients of the relevant parcels but for which conveyance and delivery Operator A is not responsible in relation to the intended recipients; for the purposes of this exclusion, Operator A shall also be deemed not to be an intermediary where:
  - (i) Operator A directs, controls or otherwise seeks to influence the manner in which Operator B conveys and delivers the relevant parcels; or
  - (ii) Operator B is employed by Operator A either as an employee or a worker (within the meanings of those expressions under section 230 of the Employment Rights Act 1996) for that conveyance and delivery; and

d) services consisting of the conveyance of relevant parcels provided by the postal operator only as part of a sales contract between the postal operator and a user under which the postal operator conveys and delivers such relevant parcels that are subject of that contract directly to the user without any arrangements with another postal operator; in this exclusion “a sales contract” refers to a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration.

A2.20 As stated above, it is for each individual postal operator to consider their own legal advice as to whether they offer a relevant parcels postal service. However, we believe that it might assist stakeholders if we give some hypothetical examples and practical guidance below as to what Ofcom would and would not consider a relevant parcels postal service.

### Intermediaries (for parcel delivery)

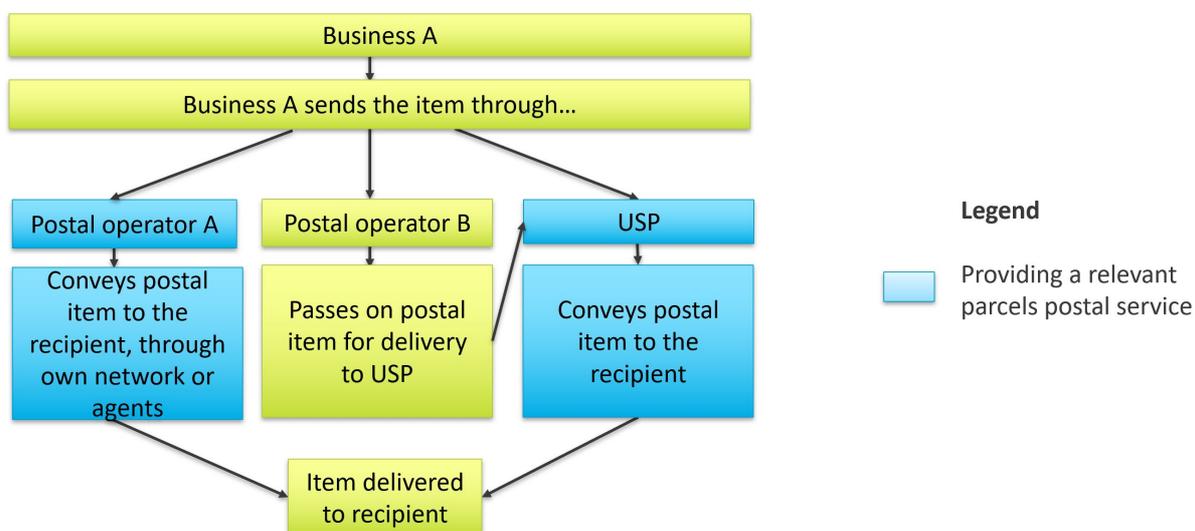
A2.21 Consider Business A in the example set out at Figure A2.1 (below). Business A hands over its parcels to another provider, namely either Postal Operator A, Postal Operator B, or the USP (Royal Mail) for final delivery to the recipient.

A2.22 In Figure A2.1, it is also assumed that Business A is the sender of the parcels and is not a postal operator. In the same diagram below, if Business A uses either Postal Operator A, who conveys and finally delivers the parcels through its own network or agents, or uses the USP (Royal Mail) to complete the final delivery of the parcels, Business A would not be providing a relevant parcels postal service, but rather Postal Operator A or the USP would be doing so.

A2.23 Where Business A uses Postal Operator B in that diagram, it is assumed that Postal Operator B passes on the parcels to the USP for final delivery and that Postal Operator B is not responsible for the conveyance and delivery of the parcels to the intended recipients. In other words, Postal Operator B would in this scenario be acting as a ‘true’ intermediary, that is to say, one that satisfies the corresponding exclusion in the definition of a “relevant parcel postal service” without being responsible in relation to the intended recipients for the conveyance and delivery of the parcel and is otherwise not deemed to be an intermediary under that exclusion. In that case, the USP would be providing the relevant parcels postal service.

A2.24 In terms of how to report relevant revenues in the above scenarios, Postal Operator A or, as the case may be, the USP reports all the revenues related to the postal service of conveying the parcels from Business A to the recipients. In contrast, revenues paid from Postal Operator B to the USP should be included in Royal Mail’s own relevant turnover.

**Figure A2.1 - Examples where Ofcom would and would not likely consider a business to be offering a relevant parcels postal service: intermediaries**



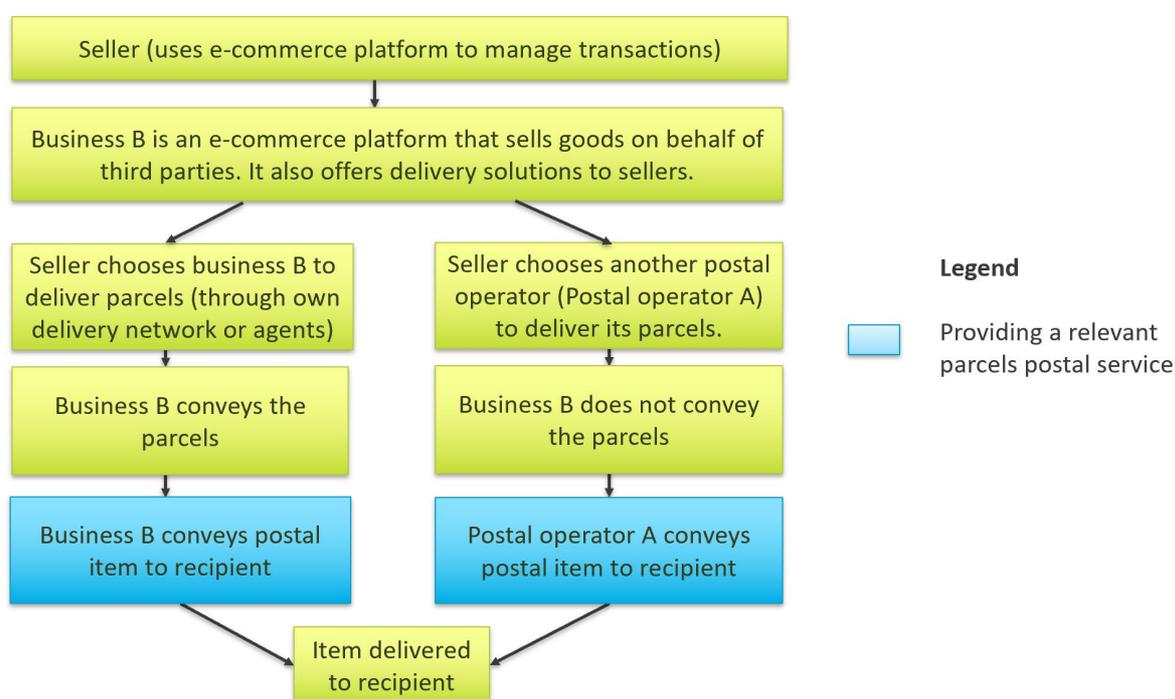
### Delivering items on behalf of third party sellers

A2.25 Consider Business B in the example at Figure A2.2 (below), which has its own delivery network, and who operates an e-commerce platform for third party sellers to use. It facilitates delivery services on behalf of its third party sellers, where one option is the use of its own E2E (End to End) delivery service. In this situation, we would consider Business B to be providing a relevant parcels postal service, if it delivers the parcels on behalf of third party sellers to the recipients through its own delivery network and agents. Any revenues paid for such conveyance or deliveries are to be included in Business B’s relevant turnover.<sup>41</sup>

<sup>41</sup> In this example, in regard to relevant turnover, we refer such relevant postal operators to our guidance in paragraph A2.30 below.

A2.26 In the same example in Figure A2.2, the third party seller, whilst still using Business B’s e-commerce platform, may choose to use an external postal operator. Where the third party seller chooses an external Postal Operator A, provided that Business B is not directing, controlling or otherwise seeking to influence the manner in which the Postal Operator A conveys or delivers the parcels<sup>42</sup>, we would consider Postal Operator A to be providing a relevant parcels postal service and Business B would be acting as an intermediary. Any revenue received for such conveyance or deliveries by Postal Operator A should be included as part of its relevant turnover.

**Figure A2.2 - Examples where Ofcom would likely consider a business to be offering a relevant parcels postal service: delivery on behalf of third party sellers**



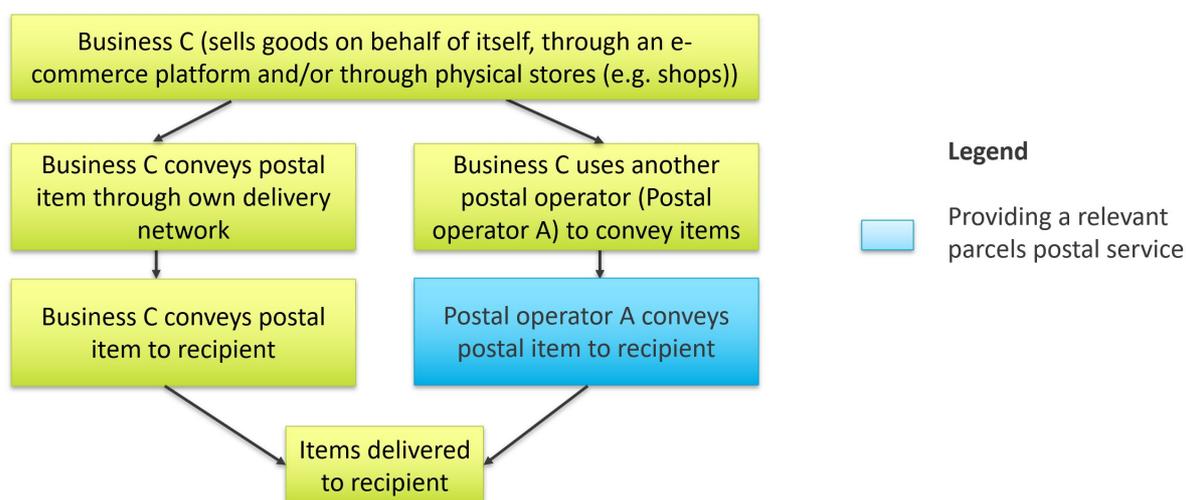
### Self-delivery

A2.27 Now consider Business C in the example set out in Figure A2.3 (below), which operates a retail platform (whether that be online or in physical stores), has its own E2E delivery network, and is responsible for the end delivery of the parcel. Business C as part of its sales contract may give customers some choice over which delivery service to use for the fulfilment of an order/purchase, including delivery via its own network. Under the left hand side of the example set out in Figure A2.3, where the customer opts for Business C to

<sup>42</sup> Examples of such behaviour could be where Business A (BA) provides Postal Operator A (POA) with an application ('app') or a device which does any of the following: i) provides suggested delivery routes for POA to take; ii) provides delivery routes which POA is required to take; iii) provides recommended or required targets for POA meet (e.g. number of parcels drops per given time period, etc); iv) scans the parcel to provide tracking/proof of delivery; v) requires the recipient to sign on the device to confirm they have received the parcel; and vi) monitors the performance of POA.

deliver the parcel using its own delivery service, we would consider this to be excluded under CPC1.1.2(o)(4) (which aims to exclude self-delivery) and therefore not a relevant parcels postal service. A practical example here might be where an online retailer selling a microwave fulfils this order to the customer directly, and so delivers it to the customer’s home using its own network.

A2.28 In the same example given in Figure A2.3, if the customer choses to have their parcel delivered through another postal operator (e.g. Postal Operator A) offering a relevant parcels postal service, then provided that Business C is not directing, controlling or otherwise seeking to influence the manner in which the Postal Operator A conveys or delivers the parcels, then Postal Operator A will be offering a relevant parcels postal service (e.g. an E2E parcels delivery service) and we would consider Business C to not be providing a relevant parcels postal service.



## Obligations on relevant postal operators to pay non-calls costs

### Relevant letters postal services

A2.29 CP 1.2.1(a) requires that a ‘postal operator’ providing ‘relevant letters postal services’ that generated ‘relevant turnover’ exceeding £10 million in the ‘assessment year’ pays to Ofcom in any ‘relevant year’ (i.e. any year beginning on 1 April) such proportion as we will specify of the ‘qualifying expenses’ (that proportion will be calculated by Ofcom in accordance with CP 1.2.3).

A2.30 As explained in the previous section, we will use our formal powers to require information annually. As a consequence, it is important for operators to carefully consider on an ongoing basis whether their services are captured by the definition of ‘relevant letters postal services’ and, if so, that they ensure that their systems are properly and accurately set up so that they can provide the associated information and data to Ofcom annually.

## Relevant parcels postal services

- A2.31 CP 1.2.1(b) requires that a ‘postal operator’ providing ‘relevant parcels postal services’ that generated ‘relevant turnover’ exceeding £350 million in the ‘assessment year’ pays to Ofcom in any ‘relevant year’ (i.e. any year beginning on 1 April) such proportion as we will specify of the ‘qualifying expenses’ (that proportion will be calculated by Ofcom in accordance with CP 1.2.3).
- A2.32 As explained in the previous section, we will use our formal powers to require information annually from various operators. Therefore, it is important for operators to carefully consider on an ongoing basis whether their services are captured by the definition of ‘relevant parcels postal services’ and, if so, that they ensure that their systems are properly and accurately set up so that they can provide the associated information and data to Ofcom on an annual basis.

## Apportionment of Turnover

- A2.33 In order to address a complex parcel market which increasingly has both a wide variety of delivery methods and business models and to future proof the CPC1, we have decided to introduce a new condition CP 1.2.1A dealing with the apportionment of turnover. In short, where a postal operator offers relevant parcels postal services or relevant letters postal services as part of a subscription for a bundle of goods or services, the operator shall allocate a reasonable proportion of such turnover to be included in its total relevant turnover from relevant letters postal services or relevant parcels postal services for the purpose of CP 1.2.1(a) and (b).
- A2.34 In that regard, we expect that relevant postal operators will use a reasonable allocation to align with internal accounting processes where appropriate and that relevant postal operators should record their reasoning on the reasonableness of any such allocation. We may use our information gathering powers to review the justifications of a postal operator’s reasonable allocation of turnover.

## Obligations on relevant postal operators to pay calls costs

- A2.35 CP 1.2.1(c) requires that a ‘postal operator’ providing either:
- a) ‘relevant letters postal services’; and/or
  - b) ‘relevant parcels postal services’,
- reaching the ‘qualifying calls threshold’ in any ‘relevant year’ (i.e. any year beginning on 1 April) pays to Ofcom in any ‘relevant year’ (i.e. any year beginning on 1 April) such proportion as we will specify of the ‘qualifying calls expenses’ (that proportion will be calculated by Ofcom in accordance with CP 1.2.5.). In short, if an operator is liable to pay CABs’ non-call costs, then if it is the source of complaints amounting to more than £100 of call costs for the CABs, it is also liable to pay a proportion of call costs.

- A2.36 CP 1.2.4 explains the meaning of the ‘qualifying calls threshold’, namely the above-mentioned postal operators will be liable to make payments to Ofcom where the following calculation gives an amount greater than £100:
- a) take the total ‘qualifying calls expenses’ in the ‘relevant year’,
  - b) multiply it by that relevant postal operator’s share of calls relating to ‘relevant postal operators’ in the ‘relevant year’ expressed as a percentage of the total calls relating to ‘relevant postal operators’.
- A2.37 The meaning of ‘qualifying calls expenses’ is also set out in that CP 1.2.4, namely:
- a) the qualifying consumer expenses of Citizens Advice;
  - b) the qualifying consumer expenses of the General Consumer Council for Northern Ireland; and
  - c) the Scottish consumer advice amounts,
- likely to be incurred during the ‘relevant year in respect of the consumer advocacy bodies’ functions in dealing with calls relating to ‘relevant postal operators’.
- A2.38 We then calculate the proportion in accordance with CP 1.2.5 to be paid by a relevant postal operator reaching the ‘qualifying calls threshold’ by multiplying the total ‘qualifying calls expenses’ in the ‘relevant year’ by that relevant postal operator’s share of calls relating to relevant postal operators expressed as a percentage of the total calls relating to relevant postal operators, after making any adjustments of the amounts payable in accordance with CP 1.2.7. As required by CP 1.2.8, the actual amount due shall be paid to Ofcom on 30 June in the ‘relevant year’ or, if later, on the expiry of one month from the day on which Ofcom serves notice on the ‘relevant postal operator’ of such amount.
- A2.39 In regard to determining whether a postal operator has exceeded the £100 calls threshold, when we receive the annual funding letter from BEIS to recover the qualifying consumer expenses for the relevant year, this will include the calls costs to recover from relevant postal operators (which is calculated by whether the relevant postal operators exceeded the calls costs threshold of £100 in the previous relevant year), and applied to the estimated calls costs for the following relevant year.<sup>43</sup>

## Role and status of this specific guidance

- A2.40 Guidance has the benefit of contributing to effective regulation by improving transparency and understanding. In particular, this specific guidance is aimed at encouraging compliance by explaining Ofcom’s approach to the application of the obligations of ‘relevant postal operators’ under CPC1, thereby ensuring that they properly understand those obligations and what Ofcom expects from them.

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<sup>43</sup> As outlined in CP 1.2.7, amendments are then made in the following financial year to reflect the actual numbers of calls made, and thus calls costs generated, for each relevant postal operator.

- A2.41 One of Ofcom’s regulatory principles is that Ofcom will regulate in a transparent manner. Guidance can serve as a useful means to achieving this principle and to increasing understanding of Ofcom’s policy objectives and approach to regulation.
- A2.42 Ofcom would normally expect to rely on this guidance should it investigate any potential failure to comply with the respective obligations under CPC1. If Ofcom decides to depart from this guidance, it will set out its reasons for doing so. This guidance may also be subject to revision from time to time.
- A2.43 That said, whether or not (and, if so, how) a particular matter is regulated will usually turn on the specific facts in each case. ‘Relevant postal operators’ should therefore seek their own independent advice on specific matters, taking into account the facts in question to answer specific questions on their statutory obligations.
- A2.44 Ofcom cannot, as a matter of law, fetter its discretion as to any future decision. Accordingly, although this guidance sets out the approach Ofcom would normally expect to take, this guidance does not have binding legal effect, and each case will be considered on its own merits.
- A2.45 In the event of any inconsistency between the words or expressions in this Updated Guidance and the CPC1 as published under Annex 1 of this Statement of 13 October 2021, the CPC1 under this Statement will prevail.

## Version History

The table below sets out the date and effect of changes that have been made to the Guidance document for the purposes of CPC1, in order to assist users in accessing the most up-to-date version of the Guidance.

Date	Guidance to CPC1, paragraph affected	Summary of change	Relevant Ofcom document
16 January 2019	All	First version of the guidance published under Annex 2 of our 16 January 2019 Statement: <i>Recovering consumer advocacy costs</i>	Recovering consumer advocacy costs, Statement, 16 January 2019
13 October 2021	A2.1	Updating the introductory paragraph to highlight the changes made under version 7 of the CPC1.	This document
	A2.16	Reflecting the exclusion to the relevant letters postal service is made subject to the new apportionment of turnover condition under A1.2.1A	This document
	A2.19	Replaced subsection 3 with guidance on the new intermediary exclusion.  Reflecting that the exclusion to the relevant parcel postal service is made subject to the new apportionment of turnover condition under A1.2.1A	This document
	A2.21 – A2.28	Updating the example of what constitutes an intermediary in light of the new condition under A2.18.  Updated the definition of ‘own delivery network or agents’ in light of the new intermediary exclusion under A2.18.	This document
	A2.33 -34	Drawing attention to the new requirement for` the apportionment of turnover condition introduced under CP 1.2.1A	This document