

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’*¹ 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 (the “**initial 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’*² setting out its decision to modify initial CPC1 in order to allow Ofcom to collect payments from regulated postal operators relating to the expenses of Citizens Advice and Citizens Advice Scotland.
- (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’*³ setting out various decisions, including the revocation of the initial CPC1 (as modified in 2013) and the imposition of a new Consumer Protection Condition 1 (“**CP1**”).
- (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’*⁴ setting out its decision to modify CP1 to correct an error in the drafting of CP1 with regard to the calculation of the contributions of postal operators to the qualifying consumer expenses of the Consumer Advocacy Bodies.
- (E) On 27 July 2017, Ofcom published a consultation entitled *‘Recovering postal regulation and consumer advocacy costs - A review’*⁵ setting out its proposals for modifying CP1 to change the way in which costs of consumer advocacy bodies should be recovered. Having considered

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0029/74279/Securing-the-Universal-Postal-Service-statement.pdf

² https://www.ofcom.org.uk/data/assets/pdf_file/0033/37689/statement.pdf

³ <http://stakeholders.ofcom.org.uk/binaries/consultations/amendments-dusp-cp/statement/Statement.pdf>

⁴ https://www.ofcom.org.uk/data/assets/pdf_file/0024/84165/cp1_statement_04dec2015.pdf

⁵ https://www.ofcom.org.uk/data/assets/pdf_file/0019/105238/consultation-postal-regulation-review.pdf

responses received to that consultation, Ofcom decided to re-consult on some changes to its proposals for modifying CP1, as set out in its notification contained in Annex 7 to its consultation document entitled *'Recovering postal regulation and consumer advocacy costs: Statement and consultation'*⁶, which was published on 29 March 2018 (the "**March 2018 Notification**").

- (F) On 16 January 2019, following that re-consultation, Ofcom published a statement entitled *'Recovering consumer advocacy costs'*⁷ setting out its decision to modify CP1 by giving effect, with some modifications, to its proposals set out in the March 2018 Notification, with Annex 1 to that statement containing Ofcom's notification of the modified CP1 in its entirety (the "**January 2019 Notification**").
- (G) On 5 June 2019, Ofcom published a further consultation entitled *'Recovering consumer advocacy costs'*⁸ (the "**June 2019 Notification**") setting out its proposals to modify the definitions of 'relevant letters postal service' and 'relevant parcels postal service', respectively, in CP1 as set out in the January 2019 Notification. This was because it had come to Ofcom's attention that those definitions did not reflect Ofcom's intended policy with respect to the treatment of international mail and therefore proposed to exclude international mail from the scope of those definitions to provide clarity and certainty.
- (H) A copy of the June 2019 Notification was sent to the Secretary of State on 5 June 2019 in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.
- (I) Ofcom invited representations about the proposals set out in the June 2019 Notification by 8 July 2019. Ofcom received responses from seven stakeholders to the June 2019 Notification. Ofcom has considered every such representation. In accordance with paragraph 3(5) of Schedule 6 to the Act, Ofcom has made the decision set out below to give effect to its proposals set out in the June 2019 Notification. The Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for the purpose of Ofcom giving effect to those proposals.

DECISION

1. Ofcom hereby—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—modifies the definitions of 'relevant letters postal service' and 'relevant parcels postal service', respectively, in CP1 as proposed in the June 2019 Notification.
2. Those modifications, which take immediate effect, have been included in the revised full version of CP1 set out in the Schedule to this Notification, which replaces the version of CP1 set out in the January 2019 Notification with effect on the publication of this Notification.
3. The effect of, and Ofcom's reasons for making, this decision are set out in the accompanying statement.

OFCOM'S DUTIES AND LEGAL TESTS

⁶ <https://www.ofcom.org.uk/consultations-and-statements/category-2/recovering-postal-regulation-costs>

⁷ <https://www.ofcom.org.uk/consultations-and-statements/category-2/recovering-postal-regulation-costs>

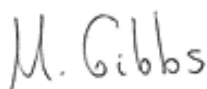
⁸ <https://www.ofcom.org.uk/consultations-and-statements/category-2/recovering-postal-regulation-costs>

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.

INTERPRETATION

6. 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 or for the purpose of CP1 (as relevant).
7. In this Notification—
 - (a) “**Act**” means the Postal Services Act 2011 (c.5);
 - (b) “**CP1**” means Consumer Protection Condition 1 (as modified) as referred to in recital (F) to this Notification;
 - (c) “**January 2019 Notification**” has the meaning given to it in recital (F) to this Notification;
 - (d) “**June 2019 Notification**” has the meaning given to it in recital (G) to this Notification; and
 - (e) “**Ofcom**” means the Office of Communications.
8. 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.
9. The Schedule to this Notification shall form part of this Notification.

Signed by



Marina Gibbs

Competition Policy Director

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

26 July 2019

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 (“CP Condition”) 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) “Act” means the Postal Services Act 2011 (c.5);</p> <p>(b) “appointed day” means 1 October 2011;</p> <p>(c) “assessment year” means the <u>relevant year</u> minus two years, beginning on 1 April;</p> <p>(d) “calls relating to a relevant postal operator” 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) “closed user group network” 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) “consumer advocacy body (or bodies)” 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) “express and secured service” means a service involving the conveyance of <u>postal packets</u> and any incidental services of collecting, sorting and</p>

	<p>delivering those <u>postal packets</u> which have at least one of the following features—</p> <ol style="list-style-type: none">(1) a guarantee for delivery by a certain time or date;(2) a facility enabling the sender and the recipient to monitor the progress of a <u>postal packet</u> through the <u>postal operator</u>'s network, including confirmation of delivery; <p>(h) “public holiday” 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) “qualifying calls expenses” has the meaning given to it in CP 1.2.4;</p> <p>(j) “qualifying calls threshold” has the meaning given to it in CP 1.2.4;</p> <p>(k) “qualifying expenses” has the meaning given to it in CP 1.2.2;</p> <p>(l) “relevant letter” 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) “relevant letters postal service” 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> <ol style="list-style-type: none">(1) 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>;(2) services provided by a charity which comprise solely the collection, conveyance and delivery of Christmas cards;(3) <u>express and secured services</u>;(4) services consisting of the conveyance of <u>relevant letters</u> within a <u>closed user group network</u>;(5) services provided while acting in the capacity of an intermediary postal operator, that is to say a <u>postal operator</u> that hands over <u>postal packets</u> to another <u>postal operator</u> (including but not limited to the <u>universal service provider</u>) for subsequent conveyance and delivery to the intended recipients of the <u>postal packets</u>; and(6) 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</u>'s <u>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;
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	<p>(n) “relevant parcel” means a <u>postal packet</u> that is larger in dimensions than a <u>relevant letter</u>, and weighs no less than 750g but no more than 31.5kg;</p> <p>(o) “relevant parcels postal service” 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 style="padding-left: 40px;">(1) 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 style="padding-left: 40px;">(2) services consisting of the conveyance of <u>relevant parcels</u> within a <u>closed user group network</u>;</p> <p style="padding-left: 40px;">(3) services provided while acting in the capacity of an intermediary postal operator, that is to say a <u>postal operator</u> that hands over <u>relevant parcels</u> to another <u>postal operator</u> (including but not limited to the <u>universal service provider</u>) for subsequent conveyance and delivery to the intended recipients of the <u>relevant parcels</u>; and</p> <p style="padding-left: 40px;">(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>(p) “relevant postal operator” means each of the following—</p> <p style="padding-left: 40px;">(1) a <u>postal operator</u> that provides a <u>relevant letters postal service</u>;</p> <p style="padding-left: 40px;">(2) a <u>postal operator</u> that provides a <u>relevant parcels postal service</u>;</p> <p>(q) “relevant turnover” means each of the following—</p> <p style="padding-left: 40px;">(1) turnover from <u>relevant letters postal services</u>;</p> <p style="padding-left: 40px;">(2) turnover from <u>relevant parcels postal services</u>;</p> <p>(r) “relevant year” means any year beginning on 1 April, the first year of which begins on 1 April 2019;</p> <p>(s) “Scottish consumer advice amounts” 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</u> of <u>postal services</u>; and</p>
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	<p>(t) “USP Access Agreement” 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>CP 1.1.3 <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 Act⁹;</p> <p>(b) headings and titles shall be disregarded;</p> <p>(c) expressions cognate with those referred to in this CP Condition shall be construed accordingly;</p> <p>(d) the Interpretation Act 1978 (c. 30) shall apply as if this CP Condition were an Act of Parliament;</p> <p>(e) references to a “day” are references to a period of twenty-four hours beginning with one midnight and ending with the next, which period shall be treated to include a Saturday, a Sunday 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 (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 1.2.2</p>	<p>The “qualifying expenses” are—</p> <p>(a) the <u>qualifying consumer expenses of Citizens Advice</u>;</p>

⁹ 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><i>Meaning of “qualifying expenses”</i></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>, likely to be incurred during the <u>relevant year</u> in respect of functions other than the <u>consumer advocacy bodies’ functions in dealing with calls relating to relevant postal operators</u>.</p>
<p>CP 1.2.3 <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 <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 “qualifying calls threshold”)—</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 “qualifying calls expenses” 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 <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 share of 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 <i>Adjusted amounts</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</p>

<i>payable under CP 1.2.1(a) and (b)</i>	in the previous <u>relevant year</u> were based, where the latter exceeds the former the amount of the difference being treated as a negative amount.
CP.1.2.7 <i>Adjusted amounts payable under CP 1.2.1(c)</i>	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.
CP 1.2.8 <i>Payments due dates</i>	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.

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.

Defined term	Section
<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>

Recovering consumer advocacy costs – supplementary statement

<i>User</i>	<i>65(1)</i>
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