

**CWU SUBMISSION TO OFCOM CONSULTATION:
REVIEW OF REGULATORY CONDITIONS JANUARY 2012**

Introduction

1. The Communication Workers' Union (CWU) is the largest union in the communications sector in the UK, representing over 200,000 employees in the postal, telecoms and related industries. It is the recognised union in the Royal Mail Group for all non-management grades.
2. The CWU welcomes Ofcom's consultation on the future regulatory conditions governing postal services, and the opportunity to contribute toward the development of a new regulatory model.
3. We support many of Ofcom's proposals, notably around notification requirements for new end-to-end postal operators, which go some way to ensuring the regulator is in a position to protect the universal service from the recognised risks posed by competition in end-to-end deliveries.
4. The genuine concerns we have over the impact of Ofcom's proposals on the future affordability of the universal service mean that we feel it necessary to make the case once again for continued measures to ensure the affordability of all universal service products. We believe the interests of domestic customers and small businesses continue to need some protection.
5. It is striking that many of the measures proposed by Ofcom simply establish regulatory parity between Royal Mail and its competitors. It is deeply regrettable that competition was previously allowed to take place under unequal regulatory conditions, and is undoubtedly a major factor in Royal Mail's loss of business to access operators and consequent financial difficulties. The CWU supports proposals which seek to level the playing field between Royal Mail and its competitors.

Summary of Ofcom's proposals

6. In October 2011 Ofcom published an extensive consultation, 'Securing the Universal Postal Service Proposals for the Future Framework for Economic Regulation'. That consultation recognised significant failings in the previous regulatory regime, which have greatly contributed to the financial difficulties now faced by Royal Mail, and in the long term threatened the company's ability to deliver the universal postal service.
7. Accordingly, Ofcom proposed a set of essentially deregulatory measures, which include the removal of long standing price controls for all Royal Mail services, with the exception of the price of a second class stamp which is to be capped.

8. This consultation seeks views on a wide range of changes to the regulatory conditions, which Ofcom proposes as means of implementing the proposals of the October consultation.
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9. Significant proposals which go beyond measures discussed in the October consultation include:
 - a. The first Universal Postal Service Order;
 - b. Changes to publication and notification requirements for terms of Royal Mail services;
 - c. and a new notification requirement for operators considering entry or expansion of end-to-end letter delivery services.
10. Further changes are proposed for many aspects of the regulatory framework, including measures relating to:
 - a. Provision of access points;
 - b. Quality of service monitoring;
 - c. Consumer protection codes;
 - d. Compensation arrangements;
 - e. Downstream access;
 - f. and Regulatory accounting.

CWU Response

The Universal Postal Service Order (UPSO)

11. The universal postal service is currently set out in designated universal service provider (DUSP) condition 1, which replaced the equivalent section in Royal Mail's former licence. DUSP 1 sets out the products which make up the universal service.
12. s.30(1)(a) of the Postal Services Act 2011 (The Act) instructs Ofcom to make an order setting out a description of the services making up the universal service. Ofcom therefore proposes to replace DUSP 1 with the UPSO, which will set out a description of characteristics of the universal service, rather than a list of its constituent products.
13. The CWU has no objection to the principle of moving from a description of universal service products to a description of the characteristics of the universal service.
14. We would be concerned if this move excluded from the scope of UPSO any products currently covered by DUSP 1. Insofar as Ofcom is correct in its claim that this is not the case, we are satisfied with the draft UPSO. The future implications or effect of

this change on the components of the universal service are however difficult to gauge, and we urge Ofcom to take great care to ensure no downgrading of the universal service does arise.

Collection and delivery times

15. Ofcom proposes not to include delivery or collection times in the universal service characteristics, but to regulate them separately through DUSP conditions.
16. In line with the current regime, Ofcom propose to retain a requirement under which Royal Mail is obliged to notify the regulator of specified delivery and collection times from post boxes, and of any changes Royal Mail intend to make to these times.
17. The CWU has serious concerns over the gradual deterioration of delivery times which customers have experienced over a number of years, as a result of Royal Mail operational decisions, underpinned by the regulatory regime.
18. The impact of late deliveries on small businesses is particularly damaging. Small and medium sized enterprises (SMEs) often depend on the arrival of mail to begin their working day. For many, it is essential to have the ability to respond to correspondence and process invoices and receipts on the same day. The situation is made worse for small businesses by the move towards earlier collection times. SMEs need a proper 'window' of time between delivery and the last collection time in order to operate effectively and make best use of their time and resources.
19. We would like to see improved commitments by Royal Mail on collection and delivery times, and believe these would benefit from inclusion in the universal service conditions. While we recognise that Ofcom's proposals reflect the current situation, we continue to believe that the importance of collection and delivery times to universal service users warrants their inclusion in the universal service obligation.

Redelivery and Return to Sender

20. Ofcom questions whether redelivery and return to sender should be included in the universal service, and set out some arguments on both sides. The draft UPSO does include these services.
21. In addition, it is proposed that Royal Mail no longer be required to provide return to sender free of charge. Ofcom recognises that this would enable Royal Mail to charge senders for returns.
22. The CWU believes that redelivery and return to sender are important part of the universal service and should remain such. Royal Mail is required to ensure that reasonable steps are taken to ensure delivery; unless such steps have been taken to ensure that the item has reached the addressee, delivery cannot be said to have taken place.
23. We believe that current redelivery arrangements, which include 'caller's service' under which the addressee collects the item from the delivery office, represent a minimum standard under which delivery can be said to have been effected, and should therefore remain.

24. There is a risk that if redelivery is not required, a disincentive to effect deliveries may develop in some instances, leading to a deterioration in the service customers receive.

25. The cost of the redelivery and return to sender services are implicit in current prices. Allowing return to sender services to be priced separately could be seen as a means of asking customers to pay again for the service. Moreover, the complexity of the system that would be needed to charge for this service makes such a system unattractive.

26. It is important that existing aspects of the universal service are guaranteed, given the wider deregulatory agenda. It is likely the removal of price controls for most universal service products will lead to price increases. It would be unacceptable for customers to be hit with a double effect of potentially large price increases along with a reduced service.

Provision of access points

27. s.29(6) of The Act imposes a duty on Ofcom to carry out their functions in relation to postal services in a way that they consider will secure the provision of sufficient access points (such as letter boxes) to meet the reasonable needs of users of the universal postal service.

28. Under the current regime DUSP 3 regulates the provision of access points. DUSP 3.2 sets out a series of tests to establish whether Royal Mail is meeting the reasonable needs of users. The test for non-rural areas is whether 99% of service users are within 500 metres of a post office letter box.

29. Ofcom propose to retain DUSP 3 in its entirety for the time being. Ofcom also discuss whether the tests in DUSP 3.2 are necessary to ensure service user needs are met, and state this will be considered as part of a forthcoming review.

30. The CWU supports Ofcom's proposal to retain DUSP 3, which is an appropriate and long standing means of fulfilling the duty in s.29 of the Act.

31. As Ofcom note, Royal Mail does not meet the requirements in DUSP 3.2 relating to non-rural areas. Ofcom will address this situation as part of a full review into user needs. We are keen to see that there is no reduction in access points and will respond in detail to Ofcom's forthcoming review.

32. While we note the recent announcement of a ten year commercial contract between Royal Mail and the Post Office, we nevertheless have significant concerns over the future of the Post Office network, and consequently over future access to post boxes currently situated at post offices, following the separation of Royal Mail from Post Office Ltd.

33. The CWU accepts that an opportunity to make arguments for protecting, not reducing, the provision of access points will arise as part of the review of user needs. In the meantime it is proper that no changes are made to the provision of access criteria until that review has taken place.

Quality of Service (QoS)

34. Under the current regime, DUSP 5 requires Royal Mail to meet QoS targets for universal services. Another regulatory condition - Consumer Protection Condition 1 - requires Royal Mail to meet QoS targets for universal and non-universal services.
35. Under the current regime, Registered Postal Operators (RPOs) other than Royal Mail are required to record and report to Ofcom on their performance in relation to QoS targets set out in their contracts with their customers. There is no statutory obligation for specified quality standards other than for universal service products.
36. Ofcom proposes to remove those requirements which apply to Royal Mail's bulk mail and business mail products, but to maintain the regime for universal service products.
37. Ofcom also proposes to remove performance recording and reporting requirements from other RPOs, as they believe market forces will ensure sufficient information about quality standards will be available to customers. Ofcom intend to carry out market research, to mitigate against the loss of reporting requirements, and have information gathering powers in the event further information on an RPO is required.
38. The CWU welcomes the general approach of establishing regulatory parity between Royal Mail and competitors in the same market. However we oppose achieving this by removal of QoS requirements from both, and instead believe both should be subject to the same QoS reporting regime.
39. As Ofcom recognise, consumer access to information about operators' performance is important in a competitive market. The proposed deregulation leaves consumers with insufficient information.
40. We agree that the requirements currently imposed on other RPOs are inadequate, as they are limited to agreed contract targets.
41. We therefore believe Royal Mail and other RPOs should be required to record and report on objective QoS targets, similar to those applied to the universal service.
42. We support the retention of QoS requirements on universal services. Universal service customers have no choice of supplier, and require protection from degradation of service quality. Cost pressures on Royal Mail mean that a regulatory regime which specified characteristics of the universal service, but did not regulate quality, would inevitably lead to a deterioration in the quality of the service.

Notification period for changes to universal service terms

43. Article 6 of Directive 97/96/EC requires member states to ensure universal service users are given appropriate up to date information on terms of the service.

44. The Directive does not prescribe any timeframe for notifying users of changes to these terms, but under the current regime Royal Mail is required to give three months notice of changes.
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45. Ofcom propose to reduce this notification period to one month, which they believe strikes the right balance between the needs of residential and business customers to changes in terms, and the commercial flexibility required by Royal Mail.
46. The CWU supports a reduction, as the current notification period imposes an unnecessary restraint on Royal Mail's commercial flexibility.
47. We also agree with Ofcom that complete removal of the notification condition could hamper the ability of business and residential customers to plan and budget effectively. We believe the proposed one month notification period strikes a reasonable balance.

Postal Common Operational Procedures Code of Practice and Mail Integrity Code

48. Ofcom propose to extend the consumer protection measures in the Postal Common Operational Procedures Code and the Mail Integrity Code to apply to access operators.
49. Ofcom also discuss extending these measures to other end-to-end providers, but proposes not to do so on the basis that these are less likely to be misposted, more likely to be tracked, and the providers are directly accountable to customers.
50. The CWU supports Ofcom's proposal to amend the Mail Integrity Code so that its protections apply to access operators. As noted by Ofcom around 40% of mail is carried by access operators, and customers are entitled to the protection the code offers.
51. Extending the protections of the Mail Integrity Code will also remove an unfair competitive advantage which access operators currently enjoy.
52. The CWU also believe the protection offered to consumers by the Postal Common Operational Procedures Code of Practice, and the Mail Integrity Code, should at this stage be extended to other end-to-end providers.
53. The arguments for not doing so put forward by Ofcom – that their items are less likely to be misposted, more likely to be tracked and that these operators are more accountable to their customers are not sufficient to justify the absence of important consumer protections.

Compensation arrangements

54. Ofcom propose to maintain compensation arrangements for loss, delay, or damage for universal service products, including Redirection and Keepsafe services, and where there has been a failure to obtain proof of delivery for Recorded Signed For

and Special Delivery Next Day. No compensation is to be paid for services which are free of charge.

55. Ofcom propose to change the compensation reporting regime, removing two reporting requirements which they consider not to improve consumer protection, but impose a regulatory burden on RM.
- RM will no longer be required to report on the number of complaints and compensation paid, broken down by postcode area. Reporting will still be required on national compensation levels.
 - Ofcom propose to remove the requirement to publish a statement of action intended to address the causes of compensation claims.
56. The CWU supports the retention of compensation arrangements for the universal service. Consumers have no choice of operator, and due to the relatively small sums involved, cannot be expected to seek legal redress for service failures. It is therefore essential a regulated compensation structure is in place.
57. The CWU is also satisfied that the commercial flexibility gained by Royal Mail as a result of the proposed removal of reporting requirements outweighs any loss to consumers from no longer receiving the reported information.
58. While postcode reporting could identify local service issues, these are an operational matter for Royal Mail, which is incentivised by costs of compensation payments to improve their service.

End-to-end notification

59. Ofcom proposes to impose a new notification condition under which anyone planning to enter the letter delivery market and deliver more than 2.5 million letters in the quarter following the notification, or to expand the volume of their delivery operation by the same amount, will be required to give 3 months notice to the regulator.
60. The purpose of the notification condition is to allow Ofcom to consider whether to impose regulatory conditions on the entrant to avoid damage to the universal service, for example by cherry picking.
61. The potential entrant will be required to: submit their name and address; forecasted volume of deliveries in the first quarter following notification; details of which areas they intend to deliver to; and the date on which they intend to begin deliveries.
62. As we have stated in our previous consultation responses, we welcome Ofcom's recognition that end-to-end competition poses a threat to the sustainability of the universal service.
63. The fundamental question is whether the proposed measures will enable Ofcom to ensure end-to-end competition does not threaten Royal Mail's ability to provide the universal service. We are concerned that the proposed measures in themselves may not ensure this.
64. A new end-to-end operator restricted to relatively small volumes and restricted geographic area is unlikely in the short term to threaten the universal service. In the

long term however, a proliferation of small operators would have the potential to undermine Royal Mail's ability to provide the universal service. Likewise, an operator targeting business mail only in a specific geographical area could threaten the

financial viability of the universal service in that area. It is not clear from the proposals what the regulators position is to such threat, or that the measures in place would enable Ofcom to successfully intervene against this risk. We urge Ofcom to further clarify its position, and if necessary impose further regulation on new end-to-end operators.

Proposed price control mechanism – capping of 2nd class stamp price

65. Whilst other respondents to the October consultation have focused on the level at which the cap should be set within the range outlined by Ofcom, the CWU believes it is important to once again make the case for price controls to be applied to universal service products beyond the second class stamp.
66. We support greater flexibility for Royal Mail and are not opposed to all price rises for universal service products; however, we believe it is important that some form of appropriate monitoring and control mechanism remains for all universal service products.
67. We believe it is important to maintain a range of services for the public through the universal service and limiting price controls to only one or some of these products could distort prices for this range of service and mean a significant change in the nature of these products. It could, for example, result in significant additional pricing for first class stamps and the development of first class as a premium product. To avoid significant changes in the range of products, the regulator should retain an appropriate monitoring and control mechanism to apply to all products within the universal service to ensure affordability.
68. We do not support a model for postal services which requires universal service products to be self-financing. While it may be possible for universal service product prices to cover costs, it equally may not. The removal of price controls from universal service products would allow such a model to be pursued and for prices to increase accordingly. There needs to be some restriction on the extent to which prices can rise and the distribution of those rises between products if they are to remain affordable.
69. We are concerned that vulnerable consumers could suffer from the removal of price controls on universal service products. Universal service products remain essential to domestic consumers and most small businesses. Strong consideration must be given to their needs. These groups have been neglected thus far in the introduction of competition to UK postal services; they have not gained on price and have seen the erosion of their postal service and uncertainty within the industry.
70. Given our concerns regarding affordability, it follows that the appropriate level of cap should be towards the lower end of the proposed range.

Access

71. As we stated in our submission to Ofcom's October consultation, we support the full deregulation of downstream access and are opposed to the mandating of access. The introduction of downstream access and the inappropriate regulation that has accompanied it has been a major contributing factor to Royal Mail's current financial position. Past regulation has undermined Royal Mail's upstream business, and in turn undermined the viability of the Royal Mail's entire upstream operation. We would therefore like to see Ofcom go further than its current proposals; nevertheless, we recognise that Ofcom is proposing a significant move in the right direction and we welcome its proposals for partial deregulation.
72. In addition to proposals set out in the October consultation, Ofcom outline further details of how access conditions are to be implemented, including requirements to provide notice for changes to terms of access conditions. 10 weeks prior publication and notification of standard price and non-price terms (unless otherwise agreed) is prescribed.
73. The 10 week period is justified by Ofcom by reference to existing contractual arrangements. We question whether this is an appropriate basis for imposing a mandatory notification requirement, and note that in other areas of the regulatory regime shorter notification periods are in place.

Regulatory Accounting

74. Ofcom propose a new regulatory financial reporting framework, in order to carry out monitoring of various aspects of the service. The principles of this framework were outlined in the October consultation, and a draft accounting condition is now proposed.
75. We appreciate the need for some new regulatory accounting requirements, insofar as these are required for the successful operation of Ofcom's deregulatory agenda. However, our position with regards to these proposals remains that which we outlined in our submission to Ofcom's October consultation. Our key concerns are that Royal Mail should not be unfairly burdened by financial reporting requirements and that Royal Mail should not be compromised by having to publish financially sensitive information.

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