

Annex 11

Statutory Notification: new Consumer Protection condition 3

NOTIFICATION OF THE IMPOSITION OF A NEW CONSUMER PROTECTION CONDITION 3 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 a consultation, Ofcom published a statement entitled “*Securing the Universal Postal Service: Decision on the new regulatory framework*”¹ (the “**2012 Statement**”) setting out various decisions, including the imposition of consumer protection conditions to make provision for matters set out in section 51 of the Act. These conditions included Consumer Protection Condition 3 (“**CP 3**”).
- (B) On 1 April 2014, following a consultation, Ofcom published a statement entitled “*Amendments to regulatory conditions DUSP 1.8 and CP 1 and minor amendments to other regulatory conditions*”² setting out various decisions, including the decision to modify CP 3 (the “**2014 Modification**”).³ In the 2014 Modification, Ofcom explained that this revised version replaced the previous published version notified in the 2012 Statement and took effect when this notification was published.
- (C) On 25 May 2016 Ofcom published a consultation document entitled “*Review of the Regulation of Royal Mail*”⁴ (the “**2016 Consultation**”) setting out a notification of Ofcom’s proposal to revoke CP 3 and replace it with a new consumer protection condition to make further provision about matters set out in section 51 of the Act (the “**First Notification**”).
- (D) A copy of the First Notification was sent to the Secretary of State in accordance with Schedule 6 paragraph 5(1)(a) of the Act.
- (E) Ofcom invited representations about the proposals set out in the First Notification (and the 2016 Consultation) by 3 August 2016.
- (F) Ofcom received responses to the First Notification and has considered every such representation made to it in respect of the proposals set out in the First Notification and the 2016 Consultation in accordance with paragraph 3(5) of Schedule 6 to the Act. The Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose.

DECISION

1. In accordance with section 53 of, and paragraph 3 of Schedule 6 to, the Act and pursuant to powers and duties in section 51 of the Act:

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/0018/55530/statement.pdf

³ https://www.ofcom.org.uk/_data/assets/pdf_file/0031/46786/cp2_3.pdf

⁴ <https://www.ofcom.org.uk/consultations-and-statements/category-1/royal-mail-review2016>

- (a) Ofcom hereby revokes CP 3 with effect from the date of publication of this Notification. Section 16 of the Interpretation Act 1978 shall apply as if this revocation were a repeal of an enactment by an Act of Parliament.
 - (b) Ofcom hereby imposes a new consumer protection condition, as specified in the Schedule to this Notification, to make provision for matters set out in section 51 of the Act, which shall take effect on the date of publication of this Notification and shall have effect until the publication of a notification under the Act revoking such condition.
2. The effect of, and Ofcom's reasons for making, this decision are set out in the accompanying statement.

Ofcom's duties and legal tests

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

5. 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 CP 3 (as relevant).
6. In this Notification—
 - (c) “**2012 Statement**” has the meaning given to it in recital (A) to this Notification;
 - (d) “**2014 Modification**” has the meaning given to it in recital (B) to this Notification;
 - (e) “**2016 Consultation**” has the meaning given to it in recital (C) to this Notification;
 - (f) “**Act**” means the Postal Services Act 2011 (c.5);
 - (g) “**CP 3**” means consumer protection condition referred to in recital (A) to this Notification as modified and replaced by the 2014 Modification;
 - (h) “**First Notification**” has the meaning given to it in recital (C) to this Notification; and
 - (i) “**Ofcom**” means the Office of Communications.
7. 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;

(c) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.

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

Signed by

A handwritten signature in blue ink, appearing to read 'Jonathan Oxley'.

Jonathan Oxley

Group Director, Competition Group

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

1 March 2017

Schedule

CP 3

CONSUMER PROTECTION CONDITION 3: COMPLAINTS HANDLING AND REDRESS

3.1. Application, definitions and interpretation

CP 3.1.1	This consumer protection condition (“ CP Condition ”) shall apply as follows: (a) CP 3.2 - all <u>postal operators</u> ; and (b) CP 3.3 - the <u>universal service provider</u> .
CP 3.1.2	In this CP Condition— (a) “ Act ” means the Postal Services Act 2011 (c.5); (b) “ Citizens Advice Consumer Service ” means the telephone and online consumer advice service operated by the National Association of Citizens Advice Bureaux, registered company number 1436945; (c) “ complainant ” means a person who has made a <u>consumer complaint</u> ; (d) “ complaint ” means any expression of dissatisfaction made to a <u>postal operator</u> , related to one or more of its products or services or the manner in which the <u>postal operator</u> has dealt with any such expression of dissatisfaction, where a response is explicitly or implicitly required or expected to be provided; (e) “ complaints handling procedure ” means the procedure required by Condition CP 3.3.1; (f) “ completed complaint ” means a <u>consumer complaint</u> in respect of which there remains no outstanding action to be taken by the <u>postal operator</u> in accordance with its <u>complaint handling procedure</u> ; (g) “ consumer ” means a person who uses <u>postal services</u> either as a sender or an addressee; (h) “ consumer complaint ” means a <u>complaint</u> which is made against the <u>universal service provider</u> either— i. by a person in that person's capacity as a <u>relevant consumer</u> ; or ii. by a person acting on behalf of such a relevant consumer; (i) “ Consumer Advocacy Bodies ” means Citizens Advice, Citizens Advice Scotland and the General Consumer Council for Northern Ireland; (j) “ DUSP condition ” means a designated USP condition imposed under s.36 of the Act;

	<p>(k) “public holiday” means a Christmas Day, Good Friday and a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom;</p> <p>(l) “qualifying redress scheme” means a redress scheme which is approved by <u>OFCOM</u> in accordance with Schedule 5 of the Act⁵;</p> <p>(m) “relevant consumer” means a consumer of a <u>relevant postal service</u>;</p> <p>(n) “relevant postal service” means a <u>postal service</u> which the <u>universal service provider</u> is required to provide by a <u>DUSP condition</u>;</p> <p>(o) “specified time period” means the time period specified by the <u>universal service provider</u> in its <u>complaint handling procedure</u> or as otherwise agreed with a <u>relevant consumer</u>, as the maximum period that the <u>universal service provider</u> has to complete a <u>consumer complaint</u> before the <u>universal service provider</u> who made that <u>consumer complaint</u>, or on whose behalf that <u>consumer complaint</u> was made, becomes entitled to refer that <u>consumer complaint</u> to a <u>qualifying redress scheme</u>;</p> <p>(p) “vulnerable consumer” means a consumer who cannot reasonably be expected to pursue a <u>complaint</u> on their own behalf;</p> <p>(q) “working day” means any day other than a Saturday, a Sunday or a <u>public holiday</u>.</p>
<p>CP 3.1.3</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;</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; and</p> <p>(d) the Interpretation Act 1978 (c. 30) shall apply as if this CP Condition were an Act of Parliament.</p>

3.2. Obligation on postal operators

<p>CP 3.2</p>	<p>A <u>postal operator</u> shall establish, make available and comply with transparent, simple and inexpensive procedures for dealing with <u>complaints of consumers of postal services</u>, which facilitate the fair and prompt settlement of disputes.</p>
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⁵ OFCOM approved IDRS Ltd to administer the Postal Redress Service under section 52 and Schedule 5 of the Postal Services Act 2011 on 1 October 2011.

3.3. Obligations on the universal service provider

CP 3.3.1	The <u>universal service provider</u> shall establish, make available and comply with a <u>complaints handling procedure</u> in accordance with CP 3.2 and CP 3.3.2 for dealing with <u>complaints</u> of <u>relevant consumers</u> of <u>relevant postal services</u> .
CP 3.3.2	A <u>complaints handling procedure</u> must: <ul style="list-style-type: none">(a) be in plain and intelligible language;(b) allow for <u>consumer complaints</u> to be made orally or in writing (including electronically);(c) set out contact details to allow a <u>relevant consumer</u> to make a <u>consumer complaint</u>;(e) allow for <u>consumer complaints</u> to be progressed through each stage of the <u>complaints handling procedure</u> orally or in writing (including electronically);(f) allow for <u>consumer complaints</u> with no evidence base to be dealt with;(g) describe the process which the <u>universal service provider</u> will follow with a view to investigating and resolving a <u>consumer complaint</u> and the likely timescales for that process;(h) provide for an internal review of an existing <u>consumer complaint</u> where a <u>complainant</u> indicates that they would like such a review to occur because he or she is dissatisfied with the handling of that <u>consumer complaint</u>;(i) set out contact details for <u>Citizens Advice Consumer Service</u>;(j) describe the <u>complainant's</u> right to refer a <u>consumer complaint</u> to a <u>qualifying redress scheme</u>:<ul style="list-style-type: none">(i) from the point at which the <u>universal service provider</u> notifies the <u>complainant</u> in writing, that it is unable to complete the <u>consumer complaint</u> to the <u>complainant's</u> satisfaction; or(ii) after the expiry of the <u>specified time period</u>.
CP 3.3.3	The <u>universal service provider</u> shall, not less than once every three calendar years, review the <u>complaints handling procedure</u> and seek feedback from a reasonable number of <u>complainants</u> to ensure the <u>complaints handling procedure</u> meets the needs of <u>relevant consumers</u> .
CP 3.3.4	Upon receipt of a <u>consumer complaint</u> made through the <u>complaints handling procedure</u> the <u>universal service provider</u> shall record in a written or electronic format the following details: <ul style="list-style-type: none">(a) the date that the <u>consumer complaint</u> was received;(b) whether the <u>consumer complaint</u> was made orally or in writing;(c) the identity and contact details of the <u>complainant</u>; and(d) a summary of the <u>consumer complaint</u>.

<p>CP 3.3.5</p>	<p>For each <u>consumer complaint</u> received through <u>its complaints handling procedure</u> the <u>universal service provider</u> must also record:</p> <ul style="list-style-type: none"> (a) a summary of any subsequent contact with the <u>complainant</u> and any advice given or action taken in response to the <u>consumer complaint</u>; (b) the date (if any) on which the <u>consumer complaint</u> became a <u>completed complaint</u>; and (c) the date (if any) on which the <u>universal service provider</u> sends a written notice to a <u>complainant</u> in accordance with CP 3.3.7.
<p>CP 3.3.6</p>	<p>Where a <u>universal service provider</u> has recorded a <u>consumer complaint</u> as a <u>completed complaint</u> but within three months of the date of making that record a subsequent contact is made by or on behalf of the <u>complainant</u> in relation to that <u>consumer complaint</u> which indicates that it is not a <u>completed complaint</u>, the <u>universal service provider</u>:</p> <ul style="list-style-type: none"> (a) must as soon as reasonably practicable take account of that <u>consumer complaint</u> in any report which it is obliged to prepare and publish in accordance with CP 3.3.14; (b) shall not otherwise be entitled to treat that <u>consumer complaint</u> as a <u>completed complaint</u> until that <u>consumer complaint</u> is demonstrably a <u>completed complaint</u>.
<p>CP 3.3.7</p>	<p>The <u>universal service provider</u> must send a notice to a <u>complainant</u> on the earlier of:</p> <ul style="list-style-type: none"> (a) the first <u>working day</u> after the day on which the <u>universal service provider</u> becomes aware that it is not able to complete a <u>consumer complaint</u> made through its <u>complaints handling procedure</u> to the <u>complainant's</u> satisfaction; or (b) the first <u>working day</u> after the day on which the <u>specified time period</u> for that <u>consumer complaint</u> expires.
<p>CP 3.3.8</p>	<p>The notice referred to in CP 3.3.7 must be in writing (including electronically) unless another format has been agreed with the <u>complainant</u>, and notify the <u>complainant</u>—</p> <ul style="list-style-type: none"> (a) of their right to refer the <u>consumer complaint</u> to a <u>qualifying redress scheme</u>; (b) of the contact details of the <u>qualifying redress scheme</u>; (c) that the <u>qualifying redress scheme</u> process is independent of the <u>universal service provider</u>; (d) that the <u>qualifying redress scheme</u> process is free of charge to the <u>complainant</u>; (e) of the types of redress that may be available under a <u>qualifying redress scheme</u>; and (f) that any outcome of the <u>qualifying redress scheme</u> process is binding upon the <u>universal service provider</u> but not upon the <u>complainant</u>.

CP 3.3.9	The <u>universal service provider</u> must allocate and maintain such level of resources as may reasonably be required to enable the <u>universal service provider</u> to receive, handle and process <u>consumer complaints</u> made through its <u>complaints handling procedure</u> in an efficient and timely manner and in accordance with this Condition.
CP 3.3.10	The <u>universal service provider</u> must put in place arrangements to deal with <u>complaints</u> made through its <u>complaints handling procedure</u> in relation to which the <u>Consumer Advocacy Bodies</u> makes representations on behalf of a <u>vulnerable consumer</u> . If the <u>universal service provider</u> identifies a <u>consumer</u> as a <u>vulnerable consumer</u> with a <u>consumer complaint</u> , or the <u>Consumer Advocacy Bodies</u> refers such a <u>consumer</u> to the <u>universal service provider</u> , the <u>universal service provider</u> must take such additional steps as it considers necessary or appropriate with a view to assisting that <u>vulnerable consumer</u> and completing their <u>consumer complaint</u> in an appropriate and prompt manner.
CP 3.3.11	The <u>universal service provider</u> must: <ul style="list-style-type: none"> (a) publish its <u>complaints handling procedure</u> in such a manner as will ensure reasonable publicity for it; (b) ensure that its <u>complaints handling procedure</u> appears at a clear and prominent location on any relevant website it operates or controls; and (c) ensure that details of how to make a <u>consumer complaint</u> are made available at all its business premises which are accessible to the public, including the premises of its agents.
CP 3.3.12	Where the <u>universal service provider</u> becomes aware, following contact by or on behalf of the <u>complainant</u> , that a <u>consumer complaint</u> which the <u>postal operator</u> had recorded as a <u>completed complaint</u> is not a <u>completed complaint</u> , the <u>universal service provider</u> must as soon as reasonably practicable— <ul style="list-style-type: none"> (a) direct the <u>complainant</u> to the <u>complaints handling procedure</u>; and (b) offer to provide a copy of the <u>complaints handling procedure</u> to the <u>complainant</u> free of charge.
CP 3.3.13	The <u>universal service provider</u> must provide a copy of its <u>complaints handling procedure</u> , free of charge, to any person who requests it.
CP 3.3.14	The <u>universal service provider</u> must— <ul style="list-style-type: none"> (a) publish by 30th June each year a <u>consumer complaints</u> report in such a manner as will ensure reasonable publicity for it; (b) publish its <u>consumer complaints</u> report at a clear and prominent location on any website it operates or controls; and (c) provide a copy of its <u>consumer complaints</u> report, free of charge, to any person who requests it.
CP 3.3.15	A <u>consumer complaints</u> report is a report in relation to the twelve month period ending on 31st March of the year in which the report is published which contains the following information:

	<p>(a) the number of <u>consumer complaints</u> which the <u>universal service provider</u> received during that period, which had not become <u>completed complaints</u> within that period; and</p> <p>(b) the number of <u>consumer complaints</u> which the <u>universal service provider</u> received, during that period, which had become <u>completed complaints</u> within that period,</p> <p>in each case presenting the information broken down by no more than ten of the main causes of <u>consumer complaint</u>.</p>
CP 3.3.16	<p>The <u>universal service provider</u> shall submit to <u>OFCOM</u> and to the <u>Consumer Advocacy Bodies</u>, and publish in such a manner as will ensure reasonable publicity for them, not later than two months from the end of the quarter to which they relate, written quarterly reports which shall</p> <p>(a) set out:</p> <p>(i) the number of <u>consumer complaints</u> received during that quarter from <u>relevant consumers</u> which have not become <u>completed complaints</u>; and</p> <p>(ii) the number of <u>consumer complaints</u> received during that quarter from <u>relevant consumers</u> which have become <u>completed complaints</u>; and</p> <p>(b) present the information referred to in paragraph (a) for the United Kingdom as a whole:</p> <p>(i) broken down by no less than ten main categories of <u>consumer complaint</u>, and</p> <p>(ii) showing the compensation that has been paid to <u>relevant consumers</u> in relation to <u>consumer complaints</u> that were found to be valid.</p>
CP 3.3.17	<p>The <u>universal service provider</u> must be a member of a <u>qualifying redress scheme</u> in relation to <u>consumer complaints</u> about the provision of a <u>relevant postal service</u>.</p>

Table of terms defined in the Act

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

Defined term	Section of the Act
<i>OFCOM</i>	<i>s.90</i>
<i>postal operator</i>	<i>s.27(3)</i>
<i>postal packet</i>	<i>s.27(2)</i>
<i>universal service provider</i>	<i>s.65(1) and Schedule 9 paragraph 3</i>
<i>user</i>	<i>s.65(1)</i>