

Communications Consumer Panel and ACOD response to Ofcom's Review of Royal Mail Regulation

The Communications Consumer Panel (the Panel) and the Advisory Committee for Older and Disabled People (ACOD) welcome the opportunity to respond to Ofcom's Review of Royal Mail Regulation.

The Panel works to protect and promote people's interests in the communications sector, including the postal sector. We are an independent statutory body set up under the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, governments, the EU, industry and others to look at issues through the eyes of consumers, citizens and microbusinesses.

The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of micro businesses, which have many of the same problems as individual consumers.

Four members of the Panel also represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively. They liaise with the key stakeholders in the Nations to understand the perspectives of consumers in all parts of the UK and input these perspectives to the Panel's consideration of issues. Following the alignment of ACOD with the Panel, the Panel is more alert than ever to the interests of older and disabled consumers and citizens.

Response

In our response to Ofcom's 2015 Discussion Document we highlighted the following priorities:

- Affordability is a key issue.
- Any changes to the overall postal regulatory framework must ensure that a reliable universal service is secured and sustained.
- Continued efficiency improvements by Royal Mail are a vital part of the equation, especially in a market with little or no meaningful competition.

The consultation document sets out proposals for a new framework for post based on the following key areas:

- Maintaining a regulatory approach that recognises the structural decline in letters and increasingly competitive parcels market, and extending the regulatory framework for a further five years;
- Supporting competition and innovation in the parcels sector;
- Tightening rules on access competition;
- Focusing mail integrity regulation on appropriate areas and securing good consumer outcomes; and
- Ensuring all regulatory conditions remain appropriate and fit-for-purpose.

Maintaining the existing regulatory approach

We note that Ofcom's proposal to retain the approach set out in 2012 until 2022 is based on the opinion that Royal Mail is now financially sustainable - and is likely to remain so in the immediate future; has made some improvements in efficiency; and has achieved an increase in customer satisfaction ratings.

Ofcom's thorough review of the postal sector has led it to the conclusion that flexibility needs to be retained. However while flexibility may be beneficial to the market, with no price controls, there is nothing to stop Royal Mail raising its prices at a later date. As we highlighted in our response to the 2015 Discussion Document, since the significant price increases in April 2012, unadjusted for inflation, the price for a First Class stamp has continued to rise - by an additional 5% by 2015, and sending a Second Class letter has become 8% more expensive. These increases can have a disproportionate impact on some vulnerable consumers (e.g. older people and those on low incomes) as well as micro businesses.

The chart below from Ofcom's Communications Market Report (CMR)¹ illustrates the increases.

Figure 6.19 First and Second Class single-piece stamp prices



Source: Royal Mail. Figures are nominal. Prices refer to Royal Mail First and Second Class Standard and Large Letter list prices for letters up to 100g.

Royal Mail's financial position should in our view be maintained and strengthened through cost efficiencies rather than price rises. Therefore we would strongly encourage Ofcom to emphasise to Royal Mail that it could and would take action on pricing if necessary in the future.

Efficiency

Given the absence of any meaningful competition, the Panel believes that continued progress on Royal Mail's efficiency is vital - so that cost management and reduction can link directly to sustaining the universal service at an affordable price. We hope that this

¹ http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr15/UK_6.pdf

link is fully considered in any review of the postal regulatory framework. The universal service must be affordable for all who choose - or need - to use it, including people on lower incomes and those who live or work in harder to reach addresses, such as remote rural locations or high-rise tower blocks.

The CMR reports that older people send the most items of post per month. We note that the average number of items sent per month increases with age, with those aged 55+ sending an average of 7.9 items per month compared to 4.0 items each month among those aged 16-34. The incidence of sending personal mail also increases by age, with 81% of those aged 55+ sending this type of post compared to 63% of 16-34s.

The consultation document highlights that improvements have been made but notes Ofcom's belief that Royal Mail can improve on the future aims that it has set itself. We believe more evidence could be provided of the reasons for Ofcom's confidence, given the lengthy nature of the efficiency exercise. In the interests of transparency in regulation, we would recommend that Ofcom requires Royal Mail to publish a plan to set out in detail how it intends to secure its more ambitious efficiency gains - including contingency options if its plans do not succeed.

Retaining appropriate safeguards

In the absence of price controls, it is even more vital that robust and secure safeguards remain in place to protect consumers and SMEs, particularly micro businesses with 10 or fewer employees. The consultation document highlights that Royal Mail still holds an advantage in single parcels for consumers and single, smaller or lightweight bulk parcels for SMEs. We believe it is essential to retain all three safeguards that were put in place in 2012:

- a) **Monitoring:** *an effective and on-going monitoring regime to track Royal Mail's performance in respect of the universal service, efficiency levels and pricing and competition;*

We believe it is appropriate that Ofcom continues to monitor the postal market closely and retains the right to intervene, for reasons explained throughout this response. To inform this work, it is essential that Ofcom continues to gather information about the reasonable needs of postal users and uses this to help assess impact when determining the need for intervention. This must include micro and smaller businesses and those living in multiple occupancy dwellings. It should also ensure that it has a significantly robust sample of older people and people on low incomes, to enable clear analysis of their needs and attitudes.

The consultation document states that it is **likely** that Ofcom will conduct a review of postal users' needs during the course of the five year period. We would suggest that Ofcom commits to such a review within the five year period.

- b) **Affordability:** *a cap on the price of Second Class stamps for letters and parcels up to 2kg so vulnerable consumers can access a basic universal service;*

We strongly support the retention of this important safeguard. The consultation document provides evidence that the cap does not impose undue constraints on Royal Mail.

While competition in the single piece parcel service is developing, Royal Mail is a well-known and established brand, offering access to all consumers, including those who are not online and therefore not able to benefit from the services of some of its competitors, the practicalities of which are explained clearly in the consultation document.

Many of Royal Mail's competitors use parcel surcharging for deliveries to the Highlands, Islands and Northern Ireland- this serves to underscore the importance of retaining a robust and affordable USO for those consumers and businesses who do not have access to the benefits of wider competition.

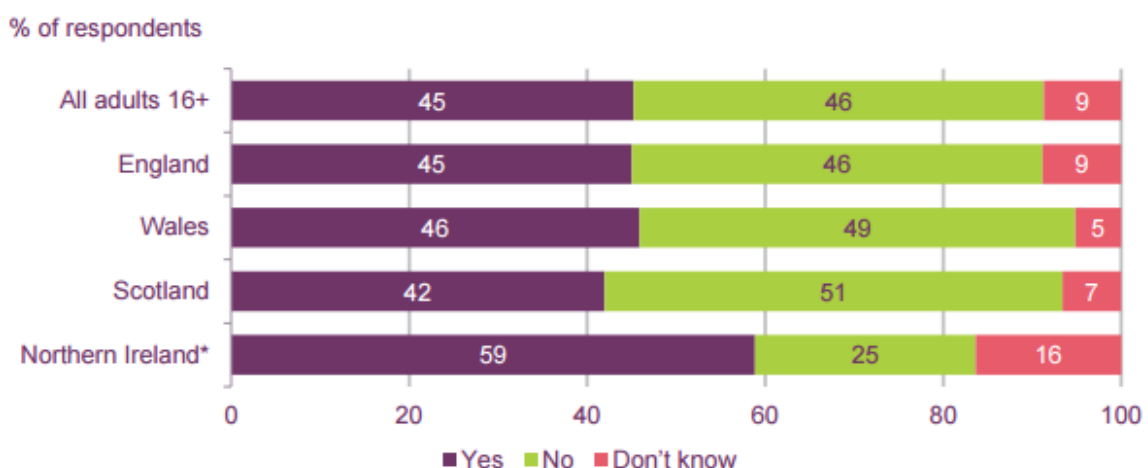
c) **Competition:** *Royal Mail to continue to provide access to its network for letter competitors;*

The potential for market failure cannot be underestimated and Ofcom must continue to promote access for Royal Mail's letter competitors. Ofcom's research has identified the threat of Royal Mail potentially using its strong power in the letters sector to impact the parcels sector. We agree with Ofcom's proposal to review regulatory accounting guidelines and build a costing model to help develop a view of how Royal Mail allocates costs.

Customer satisfaction

While Ofcom's on-going research - highlighted on page 6 of the consultation document - shows that Royal Mail's customer satisfaction ratings are improving across the UK, Ofcom's Communications Market Report 2015 showed that about the same proportion of consumers had concerns about postal deliveries as did not (45% v 46%). This is a far from good result in our view and alongside efficiency we would urge Ofcom to do all that it can to ensure that improved customer satisfaction is a key outcome from this review. Results were similar across the UK nations, with the exception of Northern Ireland, where 59% of postal users had not completed an online order due to a delivery concern.

Figure 6.9 Whether delivery concerns have ever stopped an order being made



Source: YouGov, *Innovations in Retailing*, fieldwork March 2015.

Base: All adults 16+, 2114, England, 1771, Wales, 104, Scotland, 178, Northern Ireland, 61. Q: Have you ever not ordered a product because of concerns over the delivery?

*Note: Base size for Northern Ireland is <100.

As shown in the chart below, the main reason for non-completion of an order was concern over price:

Figure 6.10 Delivery concerns that have stopped an order being made

% of respondents



Source: YouGov, *Innovations in Retailing*, fieldwork March 2015.

Base: All adults 16+ who have not ordered a product due to delivery concerns, 954. Q: Why did your concerns regarding delivery stop you from ordering the product? Please choose all that apply.

As some retailers use delivery providers which charge a surcharge for delivering to Northern Ireland, this may partly explain why those in Northern Ireland are more likely to have abandoned an order because of factors related to the cost of delivery; and the issue of surcharging in the parcels sector is significant for rural consumers across the UK, so it is important that monitoring continues.

The Consumer Futures 2013 report, *Signed, sealed... delivered?* research into parcel delivery issues in remote locations found evidence across England, Wales and Northern Ireland that some consumers experience problems with their parcel deliveries.

Specifically, online shoppers living in remote and island areas are significantly more likely than those in rural and urban areas to have experienced a range of delivery issues both during and after online shopping, including higher cost for delivery, longer delivery times and no deliveries. They are also significantly more likely to have paid for a premium delivery service that they did not then receive. In particular, shoppers on the Isle of Wight and Scilly Isles are significantly more likely to have experienced these issues than those on Anglesey, which has strong connections to mainland Wales.

Additionally, shoppers in Northern Ireland are significantly more likely than those in mainland England and Wales to have experienced all of these issues. The research found that shoppers across rural, remote and island communities are significantly more likely than those in urban areas to say that they see online shopping as essential because they do not feel they have much choice in the local shops where they live. This means that those

consumers who feel most dependent on online shopping are the most likely to experience delivery issues both when shopping, and after they complete their orders.

The Citizens Advice Scotland Sept 2015 report, The Postcode Penalty: The Distance Travelled revisited research from 2012 and found that while fewer online retailers impose

surcharges for delivery to the Highlands and Islands, those who do impose a surcharge actually charge more than they did three years ago. Scots in the Highlands now pay 17.6% more than in 2012 and those in the Islands pay 15.8% more.

The Consumer Council NI report The Online Parcel Premium also refers to the Millward Brown Ulster - Annual Mail and Post Office Satisfaction Survey (2014) for Consumer Futures (Post) NI which found that 39% of customers surveyed had abandoned an online purchase because of delivery restrictions or having to pay more for delivery. The Consumer Council NI highlight that 33% of online retailers have delivery exclusions for NI and only 50% of online retailers offer the same price for delivery for NI and GB customers.

The CMR highlights the fact that business mail makes up 48% of the letters sector by revenue. We would like to draw attention to the impact of postal charges on micro businesses, which need to complete the same types of transactions as larger businesses, but may not have the choices, resources or bargaining power of their larger competitors.

However, without any end-to-end competition of significant scale for letters, and with limited competition in access provision, we believe that it is vital that these consumers are protected by regulation - especially from disproportionate price rises - and that they receive a sustainably high quality of service.

Mail integrity

Protecting postal items from loss, theft or damage is key in promoting consumer trust in the postal sector and limiting harm and detriment on financial and other levels; and in the absence of universal parcel tracking, we believe the strengthening of mail integrity regulations are even more important.

We agree that some of the most vulnerable items are those which do not have additional protections, particularly those containing personal, sensitive or confidential information, such as financial statements and medical details and equipment.

We note that alongside the review of regulations relating to Royal Mail, Ofcom is looking at the scope and priorities regarding Automatic Compensation; we would urge Ofcom to consider how this could work in the postal sector, so that postal consumers can be compensated in a timely and hassle-free manner for loss, theft, or damage.

Given that Ofcom quotes Whistl as saying that “access to a tracked parcel service would provide greater choice for customers, better customer service and service innovation in a growing area of the market” in reply to the 2015 Discussion Document, we are concerned that Ofcom is not proposing to take the opportunity to add tracking to the Universal Service Obligation.

One of the reasons stated in the consultation document is that Royal Mail could gain a price advantage in tracked parcels, as universal service products are exempt from VAT. However, we believe there must be a way around this, through regulation or industry agreement. The consultation document does state that Royal Mail is not in a position to offer tracking universally, which is perhaps more relevant. In any event, what appears to be an industry issue should not prevent a good outcome for consumers.

Retention and potential extension of access obligations

We support the retention of access competition regulation and amendments made to strengthen protection for consumers of Royal Mail's access services - which consumers may or may not be aware of.

However, the consultation document states that under the Postal Services Act 2011, Ofcom cannot impose a condition requiring access to the universal service provider's network unless it appears that a condition is appropriate for each of the following purposes: promoting efficiency; promoting effective competition; and conferring significant benefits on the users of postal services.

In response to the 2015 Discussion Document, Whistl, Royal Mail's recent and only competitor in the end-to-end delivery market warned of the lack of competition in the market, as highlighted in the consultation document: "Whistl believed there is no competition below 1.5kg for tracked parcel services and no competition below 2kg for untracked parcel delivery". The consultation document then states that there is not enough evidence to suggest a need to extend access obligations at this time.

We are pleased to note from the consultation document that Ofcom remains open to considering requests to expand access. However, having stated that a significant level of evidence is needed in order to satisfy legal conditions, we believe that Ofcom should specify what extent of evidence is needed; and what evidence they will need to see before the access to Royal Mail's network can be opened further.

Treatment of mis-collected and mis-directed mail

We agree that postal service operators should continue to be obliged to handle customer service enquiries it receives which should have been directed to other relevant postal operators.

Notification obligations

We agree with the amendment to USPA 7 to make it clear that Royal Mail may not embed shorter notification periods in the standard terms and conditions for its products and/or operational processes.

We agree with the removal of the requirement on Royal Mail to notify price decreases, but strongly support the retention of the requirement for consumers to be given advance warning of changes in terms, particularly price increases, with a minimum of one month's notice of any price increases across all Royal Mail services. As highlighted in the consultation document, for smaller businesses this is important - and we believe a month is the shortest realistic timeframe, allowing for monthly banking cycles and allowing them to recuperate additional costs.

We therefore support **Option 1**: *"Retain the one month notification obligation for changes to terms and conditions, including prices, except where a price decrease is proposed, in which case no advance notification would be required."*

We agree with the proposal to reduce the advance notice period for specified collection times to one month (from three months), but disagree with the proposal to remove

completely the advance notice period for latest delivery times (currently at three months). We believe this should be in line with the notice period for specified collection times, for consistency and for consumer awareness.

Other postal regulations

USP Accounting Condition (USPAC)	Requires the USP to maintain accounting separation, costing methodologies and regulatory financial reporting. ²⁷⁰
Notification Condition	Requires any postal operator to notify Ofcom three months in advance if they are intending to enter or expand end-to-end letter delivery operations (by a minimum of 2.5m items per quarter).
Essential Condition 1	Requires 'regulated postal operators' ²⁷¹ to put in place processes that protect the integrity of mail, with regards to minimising its exposure to interference, damage, theft or loss.
Consumer Protection Condition (CP) 1	Requires regulated postal operators to make payments relating to qualifying consumer expenses ²⁷² incurred by the Consumer Advocacy Bodies (i.e. Citizens Advice, Citizens Advice Scotland and The Consumer Council) with regards to their functions relating to postal services.
CP 2	Requires regulated postal operators to comply with rules (called Postal Common Operational Procedures, or PCOP) that aim to ensure there are processes in place to return mis-directed or mis-collected mail to the intended operator.
CP 3	Requires all postal operators to have a complaints handling procedure in place, and imposes additional requirements on regulated postal operators, including the need to be a member of a redress scheme.
CP 4	Requires the USP to offer compensation for universal service products.
CP 5	Requires a regulated postal operator to deliver mail it receives in the course of operating its business as a postal operator.

Extension of Essential Condition 1

We support Ofcom's proposal that the scope of Essential Condition 1 be amended to include end-to-end letter and large letter delivery services and universal service, untracked single piece parcels.

As we previously commented to Ofcom in our response to the 2015 Discussion Document, the definition of 'regulated postal operator' and 'regulated postal service' are unclear and we support Ofcom's replacement of them. However the new terms 'relevant postal operator' and 'relevant postal service' also need to be clearly defined so that consumers and small businesses know their rights and can act upon them.

Consumer Protection Regulations

We strongly warn against removal or reduction of the above-listed rights for consumers.

As far as CP3 is concerned we note that only Royal Mail will be obliged to offer mandatory access to an Alternative Dispute Resolution service. Whilst we understand the reasons for this, we would urge Ofcom to monitor complaints in the post and parcels sector and to be prepared to review the situation if there is evidence of consumer harm by dint of users of other services having no access to independent redress.

Ofcom has proposed the removal of CP5, which places an obligation on the operator to deliver mail it receives in the course of its business. The explanation for this appears to be because the regulation is not called upon very often and with the general intent to reduce regulation. However, the fact that it is not called upon very often is not in itself an over-riding argument to remove a regulation - it could be that the existence of the regulation is in and of itself the very thing that ensures that it is rarely called upon. Furthermore, if it is not often called upon, it is difficult to see how it could pose a burden on Royal Mail or new entrants.

We are pleased to see that in 2016 Ofcom will also review whether the regulation in relation to Royal Mail's **quality of service** remains appropriate in light of market developments. We hope this will encompass quality of service in multi occupancy premises.

Summary

- We would strongly encourage Ofcom to emphasise to Royal Mail that it could and would take action on pricing if necessary in the future;
- We recommend that Ofcom requires Royal Mail to publish a plan to set out how it intends to secure its more ambitious efficiency gains;
- We support the proposal that Ofcom continues to monitor the postal market closely and retains the right to intervene;
- We consider it vital that Ofcom commits to a review of postal users' needs within the five year period to 2022. This - and the forthcoming quality of service work - should include representation of micro businesses, older people and people living in multiple occupancy dwellings - as well as people in harder-to-reach locations (rural areas or high rise buildings);
- We support the proposal to retain a cap on the price of Second Class stamps for letters and parcels up to 2kg so vulnerable consumers can access a basic universal service;
- We agree with Ofcom's proposal to review regulatory accounting guidelines and build a costing model to help develop a view of how Royal Mail allocates costs;
- We support the strengthening of mail integrity regulations;
- We support the retention of access competition regulation and amendments made to strengthen protection for consumers of Royal Mail's access services;
- We agree with the removal of the requirement on Royal Mail to notify price decreases, but strongly support the retention of the requirement for consumers to be given advance warning of changes in terms, particularly price increases, with a minimum of one month's notice of any price increases across all Royal Mail services;

- We support Ofcom's proposal that the scope of Essential Condition 1 be amended to include end-to-end letter and large letter delivery services and universal service, untracked single piece parcels;
- We strongly warn against removal or reduction of the postal regulations listed earlier, which enshrine important rights for consumers.