



**Ofcom's review of the Regulation of Royal Mail**

**Date: 03 August 2016**

**Contact: Kellin McCloskey or Michael Legg**

**Our (PID) reference number: 2351**

## **1. Who we are and what we do**

1.1 The Consumer Council is a non-departmental public body (NDPB) established through the General Consumer Council (Northern Ireland) Order 1984. Our principal statutory duty is to promote and safeguard the interests of consumers in Northern Ireland (NI).

1.2 The Consumer Council has specific statutory duties in relation to energy, postal services, transport, and water and sewerage. These include considering consumer complaints and enquiries, carrying out research and educating and informing consumers.

## **2. Ofcom's review of the Regulation of Royal Mail**

2.1 As the statutory representative for consumers of postal services in NI the Consumer Council is pleased to respond to Ofcom's consultation on the review of the Regulation of Royal Mail.

2.2 We note that the purpose of the review is to ensure the regulatory framework remains appropriate and secures an efficient and financially sustainable universal postal service. It is in this context that the Consumer Council provides its response.

2.3 We also offer further insight into those areas of particular relevance to postal consumers in NI. We would ask Ofcom to fully consider this before reaching its final decision on the proposed regulatory framework.

**3. Question 1: Do you agree that the evidence summarised in Section 4 and set out in more detail in the annexes to this consultation does not support the imposition of (i) further price controls on parts of Royal Mail's business or (ii) efficiency targets? Please state your reasons and provide evidence to support your view.**

3.1 The Consumer Council believes that the evidence presented in the consultation document is insufficient to argue for the introduction of further price controls on parts of Royal Mail's business or efficiency targets.

3.2 We welcome Ofcom's conclusion that the universal postal service is in a financially sustainable position with no short to medium term financial risks. This is an indicator that the current approach to regulation has achieved the desired outcome to ensure the universal postal service is financially sustainable. This outcome will benefit consumers in NI as many are reliant on the universal service.

3.3 We also note Ofcom has concluded that Royal Mail has made efficiencies since the introduction of the new regulatory framework. This is of some comfort alongside evidence of Royal Mail's pricing restraint in recent years. However, it is important to note that Ofcom has asserted that there is scope for greater efficiency improvements than those set out in Royal Mail's 2015 Business Plan.

3.4 It is equally important that consumers in NI especially the more vulnerable are adequately protected. Continuing with the current

regulatory approach with the three key safeguards - monitoring, affordability and competition - is the most appropriate way to achieve this in the existing market conditions, in partnership with robust and appropriate consumer protection conditions.

3.5 The continuation of a robust monitoring regime is crucial over the next regulatory period. This will allow Ofcom to identify areas where the consumers' interest is at risk and for it to intervene. For example, if Royal Mail does not achieve adequate efficiencies and instead relies on unnecessary price increases that negatively affect consumers. Effective monitoring and intervention helps to make Royal Mail accountable for any actions which lead to consumer detriment.

3.6 Future price increases will be an area of particular concern for consumers in NI. For instance, Ofcom research shows a greater proportion of consumers (34%) in NI say First Class stamps are poor value for money compared to those across the UK (27%).<sup>1</sup> It will be vital for Ofcom to monitor this situation across the UK and to fully understand how any future price rises affect consumers in the different nations. Our research shows that the cost of postage is the part of the postal service with the highest level of dissatisfaction with nearly a third (29%) unhappy with this. The postal service must remain affordable and represent value for money for consumers here.

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<sup>1</sup> Ofcom Residential Postal Tracker Survey. Q2 2014- q 2015.

**4. Question 2: Do you agree that the regulatory framework should remain in place until March 2022 following the anticipated completion of Ofcom's review by the end of 2016-17? Please state your reasons and provide evidence to support your view.**

4.1 The Consumer Council believes it is reasonable that the regulatory framework is in place for a further five years until 2022. This duration should provide a degree of market certainty for postal operators that should allow consumers to benefit from a stable postal market. In these circumstances prices should be kept within reasonable tolerances and consumers should continue to receive a high level of service.

4.2 We welcome Ofcom's commitment to assess whether the reasonable needs of users are being met in the future at some point in this five year period. It will be important for Ofcom to gain a better understanding of the fast paced changes within the postal and parcel market. The Consumer Council has evidence to show that competition in the parcel market is not benefiting all consumers in NI.<sup>2</sup> For instance, consumers can pay up to £10 or £7.70 if free or standard delivery costs are withdrawn respectively. We are aware that as part of Ofcom's annual plan for 2016-17, it is investigating delivery surcharges to NI and the Highlands and Islands of Scotland. The outcome of this review should be considered in line with the overall picture of how the postal market is working for all consumers across the UK.

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<sup>2</sup> Consumer Council. The Online Parcel Premium. September 2015.

4.3 This year the Consumer Council is carrying out research into the current and future needs of consumers in NI including the more vulnerable. We look forward to sharing our findings with Ofcom which should complement its existing evidence base so a better understanding of the needs of consumers in NI is developed.

**5. Question 3: Do you agree that the analysis summarised in Section 4 and set out in more detail in the annexes to this consultation accurately reflects the UK postal market? Please state your reasons and provide evidence to support your view.**

5.1 The Consumer Council recognises the complexity of the UK postal market which consists of single piece letters and parcels alongside bulk letters and parcels, and where there are different transactional relationships between consumers and businesses across the UK.

5.2 We share the view that Royal Mail is a near monopolist provider in the provision of single piece letters, large letters and parcels. For instance, in our response to Ofcom's discussion document on the regulation of Royal Mail, we highlighted that end-to-end competition did not penetrate the postal market in NI like it did in other parts of the UK. Instead consumers and small businesses here stayed dependent upon universal service products with the post office network being a vital access point. This means Royal Mail remains in a strong position in NI as it is the only provider for single piece letters.

5.3 Although Royal Mail holds this dominant position in the single piece mail market, the Consumer Council notes that overall it did not raise prices as much as it could. However, postal tariffs have increased significantly since the move away from the traditional price control to the price safeguard cap. For example:

- The cost of First Class stamps increased by 39% from 2012-2016; and
- The cost of Second Class stamps by 53% from 2011 -2016.<sup>3</sup>

5.4 It is important that the cost of the postal service does not push consumers away from mail in favour of digital communication methods. This could leave more captive consumers exposed to increasing prices in the postal market leading to detriment which would affect more vulnerable groups.

5.5 The Consumer Council recognises Royal Mail has made efficiencies over recent years which benefitted consumers by keeping prices down. We also note the consumer friendly initiatives that have taken place over recent years. For example, the modernisation of delivery offices including longer opening hours which will improve the consumer experience. This is encouraging.

5.6 The Consumer Council acknowledges that some competition exists in the parcel market in NI compared to the single piece letter market. However, it is not as well developed compared to other parts of the

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<sup>3</sup> Ofcom consultation. Review of the Regulation of Royal Mail. May – August 2016.

UK. In our response to Ofcom's discussion document we highlighted NI consumers have not fully benefitted from competition in the parcel market and are susceptible to higher postage costs and fewer innovative solutions. This remains the case and it is not clear if competition and the benefits it can bring to consumers here will catch up with other parts of the UK.

- 5.7 The Consumer Council notes that Ofcom feels the maintenance of a competitive parcel market should be the main regulatory objective for the parcel market. We are also supportive of competition and how it can benefit consumers, for example, through greater choice and keeping downward pressure on prices. But we would suggest that Ofcom monitors how competition is developing at a more granular level across the different nations of the UK. This would mean Ofcom can make more informed strategic decisions about how to promote the interests of consumers with a particular regard to consumers in peripheral areas as outlined in the previous question.

**6. Question 4: Do you agree with our proposal not to amend the Universal Service Order or the DUSP conditions to include tracking as standard on First and Second Class single piece parcels? Please state your reasons and provide evidence to support your view.**

- 6.1 The Consumer Council is supportive of greater choice in the postal market and enhanced product features can benefit consumers by providing products and services that better meet their needs. Tracking is one feature that can improve the consumer experience.



- 6.2 However, a clearer understanding about how the inclusion of this additional feature on standard universal service parcels would affect prices and competition in the parcel market is required. This is important so products are affordable, represent value for money and that there are no unintended consequences leading to consumer detriment. Only then should a final decision be made on this issue.
- 6.3 We also note Royal Mail's recent proposal to include within the UK Post Scheme a delivery event confirmation for small and medium parcels sent by First and Second Class mail.<sup>4</sup> This delivery event confirmation service is not a tracking facility as defined under DUSP 1.1.3. A "tracking facility" is defined as a facility enabling a sender to monitor the progress of a postal packet through the postal network. We believe that many consumers who opt for a tracking service only require a proof of delivery, as this is generally the proof required for pursuing a complaint with a retailer, customer or parcel operator. Indeed research commissioned by Royal Mail found that c.90% of business users, including small to medium enterprises (SMEs), rated confirmation of delivery as important. However, we would caution against any significant increase in tariffs to cover the cost for this 'as standard' service, as this will negate the affordability of parcel products available as part of the universal postal service.
- 6.4 Given the proposed introduction of the delivery event confirmation, we believe there is merit in keeping the inclusion of a tracking service

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<sup>4</sup> Royal Mail's Parcel Delivery Event Consultation. July 2016.

as standard on First and Second Class single piece parcels under review. We would suggest that Ofcom assesses this area as part of its user needs review. If a clear need is identified Ofcom should discuss this with postal industry stakeholders to understand how this would affect consumers and postal operators both directly and indirectly.

**7. Question 5: Do you agree with our proposal to retain the safeguard cap in its current form? Please state your reasons and provide evidence to support your view.**

7.1 The Consumer Council is pleased that Ofcom is proposing to retain the safeguard cap for Second Class stamps for letters and parcels up to 2kgs. In our response to Ofcom's discussion document on the regulation of Royal Mail we explained that the existing price cap or a similar safeguard for consumers represents the minimum standard of protection consumers should receive against price increases. Our view is this must continue so we agree with Ofcom's proposal.

7.2 The monitoring safeguard is also essential to the price cap as it complements the affordability safeguard. Ofcom must continue to carefully review price increases and how this affects consumers. As mentioned, future price increases will be an area of concern for consumers in NI and the postal service must be affordable and represent value for money for consumers here. Ofcom must continue to monitor price increases throughout the regulatory period.

- 7.3 As previously mentioned, Royal Mail is the most dominant operator for single piece parcels which underlines the need for the price cap to continue for parcel products. It has the most extensive network of access points for consumers and small businesses through post offices across NI. This network is highly valued by postal consumers and is more accessible than competitors' access points. It helps to strengthen Royal Mail's importance to consumers and this is unlikely to change in the short to medium term. This is another reason to retain the price cap in its current form.
- 7.4 Additionally, few consumers and small or micro businesses use alternative parcel services. For instance, our research shows the majority (88%) of residential consumers send parcels with Royal Mail through the post office network.<sup>5</sup> The second most used operator is Parcelforce with 15% and the third myHermes with 8% sending parcels with this operator. Similarly, the majority (75%) of small or micro businesses send parcels with Royal Mail through the post office network. Again, the second most used operator is Parcelforce (9%) and third is DHL with 8% using this provider. This is further evidence of Royal Mail's dominance in NI and the need for the price cap to be retained.
- 7.5 The Consumer Council notes that depending on how competition develops in the single piece parcels market, Ofcom will reconsider the need for the safeguard cap in relation to parcels in the future. Consumers and small businesses here are dependent upon universal

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<sup>5</sup> Consumer Focus (Post) research. March 2014.

service products including parcel products provided by Royal Mail so any changes in future will need to be thoroughly understood by Ofcom. We reiterate the point that competition in the parcel market is not currently as well developed in NI compared to other parts of the UK. We would caution against any changes at a UK level which would unintentionally cause detriment to consumers in NI and could lead to significant price increases.

- 7.6 The Consumer Council also notes the risk that Ofcom identifies in its consultation document (paragraph 5.33 and 5.34) where higher prices for letters could cross-subsidise the cost of parcel services. We welcome Ofcom's commitment to consider this further as part of the USP Accounting Condition and Regulatory Accounting Guidelines Review where the cost allocation between parcels and letters will be considered.

**8. Question 6: Do you agree that we should amend the USPA Condition so that it is clear that access operators cannot be required to accept general terms and conditions that include shorter notification periods than those provided for under USPA 7?**

- 8.1 The Consumer Council recognises access operators are best placed to provide a detailed response to this question. However, consumers benefit indirectly from access competition as it incentivises Royal Mail to be more efficient and innovative. It also keeps downward pressure on prices. The regulatory framework should continue to

deliver benefits to consumers by appropriately regulating the access segment of the market.

**9. Question 7: Do you agree with our proposal to amend the scope of Essential Condition 1 to cover untracked letter and large letter mail, and single piece universal service parcels, and to remove the remaining universal service products from the scope of the Essential Condition 1?**

9.1 The Consumer Council believes making sure consumers are adequately protected from mail integrity issues is of great importance. Ofcom's research shows that nearly one in ten (9%) consumers in NI have experienced lost mail.<sup>6</sup> Reducing the risk of such incidents will increase confidence in the postal market and will further increase the overall high levels of satisfaction with the postal service. We agree with Ofcom that this condition is still necessary.

9.2 The scope of the protection should continue to capture those items that do not benefit from additional features which significantly reduce the likelihood of experiencing loss, damage, theft or interference. We agree the condition must cover untracked letter and large letter mail, and single piece universal service parcels.

9.3 The Consumer Council also believes the Mail Integrity Code should continue to cover access operators for untracked postal products. Consumers as receivers of mail have no choice over which postal

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<sup>6</sup> Ofcom Residential Postal Tracker Survey. Q2 2014-Q1 2015.

operator the sender uses especially for items which contain private and confidential information. We would ask Ofcom to reconsider its position to remove mail integrity obligations from access operators.

9.4 Consumers would benefit from mail integrity safeguards in the wider parcel market. Ofcom should consider this further before making its final decision. It is reasonable for consumers to benefit from similar safeguards especially as competition develops in this area and product design changes. All operators should focus on good consumer outcomes in this area and a streamlined regulatory approach would allow them to design the best procedures which do not create unnecessary burdens. Ensuring adequate protection in the growing parcel market is important.

9.5 If Ofcom continues with its existing proposal in this area, it will be essential to monitor mail integrity issues in the wider parcel market and for Ofcom to intervene where necessary.

**10. Question 8: Do you agree with the proposed streamlining revisions to Essential Condition 1, including the removal of the Mail Integrity Code of Practice, as drafted in Annex 12?**

10.1 The Consumer Council understands that Ofcom is proposing to move more towards an outcome based approach. We accept postal operators will be best placed to design their own procedures in a way which ensures consumers do not experience any harm caused by mail integrity issues. We agree with this approach in principle.

- 10.2 However, the regulatory approach to monitoring must be sufficient. If the objectives of Essential Condition 1 are not achieved we trust that Ofcom will respond appropriately.
- 10.3 The Consumer Council notes the obligations Ofcom is focusing on as described in paragraph 7.37 of the consultation document. These are all reasonable steps to safeguard consumers from loss, damage and interference.
- 10.4 The Consumer Council also notes Ofcom's proposal for a more streamlined reporting mechanism as explained in paragraphs 7.38 and 7.39. This would see a move from quarterly reporting on mail integrity issues to annual reporting including to the Consumer Council. We are prepared to accept this approach but would seek assurances from Ofcom that if consumer detriment was identified the regulator would act promptly and ensure the UK Consumer Advocacy bodies were part of this resolution process.
- 10.5 The Consumer Council believes it is appropriate to reiterate the point above made in our response to question 7 that consumers would benefit from mail integrity safeguards in the wider parcel market. Ofcom should consider this further before making its final decision.
- 10.6 At a minimum we would suggest Ofcom continues to monitor mail integrity issues in the wider and growing parcel market and intervene where necessary to ensure adequate mail integrity protection. We do

not believe the mail integrity complaint data in the consultation document<sup>7</sup> provides sufficient information to allow for a full understanding of mail integrity issues. This is one area where a better understanding can be developed.

10.7 We would also seek clarification on how Ofcom intends to monitor mail integrity in the parcel market in future and for this to be explained as part of the decision document.

**11. Question 9: Do you agree that the proposed drafting of Essential Condition 1 including relevant definitions accurately capture our intended objectives and the intended operators and mail types?**

11.1 The drafting of the essential condition seems to be consistent with what Ofcom proposes in the consultation document.

11.2 However, we would ask that Ofcom takes account of our answers to question 7 and 8 when finalising this condition. For instance, in the parcel market Ofcom could consider a volume threshold to define what parcel operators need to comply with an agreed set of minimum mail integrity standards. This would help ensure the approach is proportionate and responsive to the changing parcel market.

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<sup>7</sup> Figure 7.3: Total mail integrity complaints per item conveyed (January – December 2014).



11.3 Additionally, a report by Apex<sup>8</sup> offers a valuable insight into consumer protection. It says the key features of the parcel market across the UK include high operational gearing, low capital intensity, scale economies arising from consolidation and low customer retention. It indicates that some of these features give rise to the need for further protection as competition and market forces alone will not always guarantee adequate consumer protection. These features include low capital intensity and low customer retention. We would ask Ofcom to consider this when designing its consumer protection conditions. This could also be considered as part of Ofcom's wider work on the parcel market which forms part of its annual plan for 2016-17.

11.4 If Ofcom proceeds with its proposals in their current form we would ask that it is open to amending the condition in future to ensure there is adequate protection for consumers especially in the growing parcel market who use parcel operators other than the universal service provider.

**12. Question 10: Do you agree with the proposed revisions to Consumer Protection 2, including the removal of the PCOP code and agreement, as drafted in Annex 13?**

And

**Question 11: Do you agree that the proposed drafting of CP 2 including relevant definitions accurately capture our intended objectives and the intended operators and mail types?**

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<sup>8</sup> UK Parcels Market Insight Report 2015. Apex. December 2015.

12.1 The Consumer Council deals with these questions together. We understand Ofcom is proposing to move to a principle based approach which it feels will be equally effective as the existing arrangement. The two key desired outcomes for consumers should be:

- Mail being delayed or lost because items end up in the wrong network is minimised; and
- Clear information on who consumers should contact so their complaint is dealt with and resolved in a timely manner.

12.2 If these two outcomes are achieved there should be limited consumer detriment but like Ofcom states there must be a way to identify the relevant postal operator for these items. We would suggest that Ofcom makes sure this is part of the arrangements between the universal service provider and other postal operators.

12.3 Finally the Consumer Council believes it is necessary to monitor the proposed new approach. We are reassured by Ofcom's commitment to do this and to take the necessary enforcement action if required.

**13. Question 12: Do you agree with our proposal to amend the scope of Consumer Protection Condition 3 so that it retains a minimum requirement for all postal operators, and that additional requirements in relation to redress and reporting would apply to Royal Mail as the universal service provider only?**

- 13.1 It is vital there is adequate consumer protection in this area. The Consumer Council agrees that all postal operators should be required to follow the minimum standards for complaint handling and is supportive of retaining the existing requirements.
- 13.2 The additional requirements for Royal Mail as it is the universal service provider are important to consumers so we also agree these should be retained. We would request that CP 3.3.2 (i) is amended so it reflects the Consumer Council's role for providing postal advice and information to consumers in NI. It currently only makes reference to Citizens Advice Consumer Service which is not the designated Consumer Body for consumers here.
- 13.3 We understand why Ofcom has proposed to remove more detailed requirements for other regulated postal operators. We note the differing relationship they have with consumers and the size of their customer base. Additionally, with no end-to-end competition in the letter market it is understandable why the requirements on regulated operators carrying letters on behalf of businesses can be relaxed.
- 13.4 However, with the increasing importance of the growing parcels market to consumers, additional protection beyond the minimum requirements may be required at some point in the near future. For example, to better protect those including marketplace sellers on eBay and Amazon, who use alternative operators for single piece parcels instead of the universal service provider, especially for

sending high value items. Additional protection will include reconsidering whether there should be the requirement for these operators to be a member of a qualifying Alternative Dispute Resolution scheme.

13.5 Ofcom should monitor this area. Where there is evidence that consumers are not being served by the minimum standards we would suggest Ofcom discusses how best to address this with postal industry stakeholders.

**14. Question 13: Do you agree with our proposed drafting of Consumer Protection Condition 3 given our proposal to only apply the additional requirements set out in CP 3.3 in relation to redress and reporting to Royal Mail as the universal service provider?**

14.1 The drafting of the consumer protection condition seems to be consistent with what Ofcom is proposing in the consultation document.

14.2 However, as indicated above in our response to question 12, we would ask Ofcom to consider if additional requirements should be applied to parcel operators now or in the near future. For example, those that handle a certain volume of parcels so any requirements are not burdensome on smaller parcel operators. The Consumer Council believes there is merit in further exploring this area before Ofcom makes its final decision.

**15. Question 14: Do you agree with our proposal to revoke Consumer Protection Condition 5?**

15.1 The Consumer Council understands Ofcom's reasoning for proposing to remove this consumer protection condition. With the other regulatory measures, for instance, about the universal postal service we agree there is less need for condition 5. We agree this condition can be revoked.

**16. Question 15: Do you agree with our proposal to remove the one-month notification period for price decreases to Royal Mail's universal service products and services?**

16.1 The Consumer Council's view is that option one provides the best level of consumer protection of the three detailed in the consultation document.

16.2 While in principle the removal of the one month notification period for price decreases should not negatively affect consumers, Ofcom should give further thought to those including small business that bulk buy postage including businesses that use franking machines. One possible unintended consequence could be these consumer types pay higher prices immediately before a price decrease which would cause unnecessary consumer complaints. We would expect overpayments to be refunded in these circumstances. We would ask that Ofcom considers this before reaching its final decision on whether to have no notification periods for price decreases.

**17. Question 16: Do you agree with our proposal to reduce the advance notice period for specified collection times to one month (reduced from three months)?**

17.1 The Consumer Council understands Ofcom's rationale to reduce the notification period from three months to one month. We agree that this is a reasonable approach.

17.2 However, we would highlight the need to make sure there is adequate publicity informing consumers about changes to collection times. We are reassured that the drafting of the proposed modification of DUSP condition 1 (1.10.1) states the universal service provider shall ensure reasonable publicity for its specified collection times.

**18. Question 17: Do you agree with our proposal to remove the advance notice period for latest delivery times (currently at three months)?**

18.1 The Consumer Council believes the advance notice period should be retained but reduced to one month. It is important for consumers to be aware of the latest delivery times. The advance notification provides the opportunity for consumers and stakeholders to raise any concerns they have about changes to the latest delivery time. However, we recognise the notice period could be reduced and accept this could be changed to one month. This would better

balance the needs of Royal Mail and consumers. It is also in line with other notification timescales, for example, the post box notification period.

**19. Question 18: Do you agree with our proposed restructuring and drafting of Designated Universal Service Provider Conditions 1.10.1 and 1.10.2, and the removal of Designated Universal Service Provider Conditions 1.10.3?**

19.1 The Consumer Council would suggest the drafting of the conditions should be reflective of the views we have expressed in questions 15, 16 and 17.

**20. Contact details**

20.1 If you wish to discuss any aspect of this response please contact:

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