



# Proposed modification to Consumer Protection Condition 1

Collection of qualifying consumer expenses of the  
Consumer Advocacy Bodies

Consultation

Publication date: 29 October 2015

Closing Date for Responses: 30 November 2015



## About this document

This document proposes to modify Consumer Protection Condition 1 (CP1) to rectify an error in the drafting of the condition with regard to the calculation of the contributions of postal operators to the qualifying consumer expenses of the Consumer Advocacy Bodies (“CABs”).

# Contents

Section		Page
1	Amendment to CP1 regarding collection of quality consumer expenses	1

Annex		Page
1	Responding to this consultation	3
2	Ofcom's consultation principles	5
3	Consultation response cover sheet	6
4	Statutory Notification: proposed modification of Consumer Protection condition 1	8



## Section 1

# Amendment to CP1 regarding collection of quality consumer expenses

## Background

- 1.1 Under section 51 of the Postal Services Act 2011 (“PSA 2011”), Ofcom may set regulatory conditions which require postal operators to make payments relating to the expenses of specified consumer bodies in relation to postal services activities. Ofcom imposed Consumer Protection Condition 1 (“CP1”) under that section on 27 March 2012.<sup>1</sup>
- 1.2 On 28 March 2013, following the transfer of responsibilities for the consumer advice service from the Office of Fair Trading (OFT) to Citizens Advice and Citizens Advice Scotland, Ofcom amended CP1 to allow us to collect payments from regulated postal operators relating to the expenses of Citizens Advice and Citizens Advice Scotland.<sup>2</sup> On 1 April 2014, Ofcom amended CP1 to reflect the abolition of the National Consumer Council and the transfer of its functions regarding consumer advocacy with regard to postal services to Citizens Advice, Citizens Advice Scotland and the General Consumer Council for Northern Ireland, collectively referred to as the Consumer Advocacy Bodies (the “CABs”). At this time we also modified the methodology for calculating the recovery from industry of the expenses of the consumer advocacy bodies.<sup>3</sup>
- 1.3 Section 51(4) of PSA2011 states that the “qualifying consumer expenses” are “such proportion of the expenses of Citizens Advice, Citizens Advice Scotland and GCCNI as the Secretary of State considers reasonable”. Two types of qualifying consumer expenses are identified in the Postal Services Act 2011 (PSA 2011) and CP1:
  - The qualifying consumer expenses of the CABs and the Secretary of State, likely to be incurred during the relevant year in respect of functions other than the CABs’ function of providing a public consumer advice scheme. These expenses are dealt with under CP1.2.1 to CP1.2.3, CP1.2.7 and CP1.2.9.
  - The qualifying consumer expenses of Citizens Advice and Citizens Advice Scotland in respect of their function of providing a public consumer advice scheme. These expenses are dealt with under CP1.2.4 to CP1.2.6, CP1.2.8 and CP1.2.9.

## Purpose of this consultation

- 1.4 With regard to the CAB expenses, CP1.2.1 applies a qualifying threshold, i.e. only regulated postal operators with turnover from regulated postal services in excess of £10 million are required to contribute to the CAB expenses (which are defined in CP1.2.2). This threshold was carried over from the Postcomm licensing regime.

---

<sup>1</sup> Available at: <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/annex8.pdf>

<sup>2</sup> Available at: <http://stakeholders.ofcom.org.uk/binaries/consultations/cpc1/statement/statement.pdf>

<sup>3</sup> Available at <http://stakeholders.ofcom.org.uk/consultations/amendments-dusp-cp/statement/>

CP1.2.4 sets out how the CAB expenses should be shared between the regulated postal operators with relevant turnover exceeding £10 million.

- 1.5 It has been drawn to our attention that there is an error in the drafting of the condition. CP1.2.3 defines the denominator in the calculation as all regulated postal services turnover from all regulated postal operators. Given that at least some regulated postal operators are excluded by the CP1.2.1 threshold, the calculation in CP1.2.3 would inevitably lead to an under-recovery of the qualifying consumer expenses.
- 1.6 This was clearly not Ofcom's intent in drafting CP1. As is clear from the PSA 2011 and Ofcom's various consultations and statements relating to this issue, CP1 is intended to recover the total sum of the qualifying consumer expenses of the consumer bodies.
- 1.7 Therefore, Ofcom is consulting to correct this error in the drafting of CP1.2.3.

### **Ofcom's proposal**

- 1.8 To address the error identified above, we propose to add, after the words "regulated postal operators" the phrase "to which this condition applies that generated relevant turnover in excess of £10 million in the assessment year" to CP1.2.3 as set out in the attached notification.
- 1.9 We consider that the proposed changes are:
  - objectively justifiable;
  - not unduly discriminatory;
  - proportionate; and
  - transparent.

### **Impact assessment**

- 1.10 The proposed amendment does not alter intent of the charging regime or how it has been implemented since 2012. It only corrects a drafting error in the condition. We therefore do not consider the proposal is likely to have a significant impact on businesses or consumers, or any particular impact on any groups with protected characteristics.

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 30 November 2015**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/proposed-modification-to-consumer-protection-condition-1/>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses – particularly those with supporting charts, tables or other data – please email [jack.gaches@ofcom.org.uk](mailto:jack.gaches@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation.
- Jack Gaches  
Competition Group  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.

## Further information

- A1.6 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Jack Gaches on 020 7783 4254.

## Confidentiality

- A1.7 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.
- A1.8 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.

- A1.9 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/terms-of-use/>

## Next steps

- A1.10 Following the end of the consultation period, Ofcom intends to publish a statement in December 2015.
- A1.11 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: <http://www.ofcom.org.uk/email-updates/>

## Ofcom's consultation processes

- A1.12 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.13 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk) . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.14 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Tel: 020 7981 3601

Email [Graham.Howell@ofcom.org.uk](mailto:Graham.Howell@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

### After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## Annex 4

# Statutory Notification: proposed modification of Consumer Protection condition 1

## NOTIFICATION OF PROPOSALS TO MODIFY REGULATORY CONDITIONS IN ACCORDANCE WITH SECTION 51 OF, AND PARAGRAPH 3 OF SCHEDULE 6 TO, THE POSTAL SERVICES ACT 2011

### BACKGROUND

A. 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*<sup>4</sup> setting out various decisions, including the imposition of Consumer Protection Condition 1 ("CP 1").

### PROPOSAL

1. Ofcom hereby proposes, in accordance with section 51 of, and paragraph 3 of Schedule 6 to, the Act and pursuant to powers in section 51 of the Act, to modify CP 1 to make provision for matters set out in that section 51, to be in force immediately.
2. The proposed modifications to consumer protection condition 1 are identified using yellow highlighting in the Schedule hereto.
3. The effect of, and Ofcom's reasons for making, this proposal are set out in the accompanying consultation document.

### OFCOM'S DUTIES AND LEGAL TESTS

4. Ofcom is satisfied that this proposal satisfies the general test in paragraph 1 of Schedule 6 to the Act.
5. In making this proposal, 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.

### MAKING REPRESENTATIONS

6. Representations may be made to Ofcom about the proposal set out in this Notification by no later than **30 November 2015**.
7. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.

---

<sup>4</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/amendments-dusp-cp/statement/Statement.pdf>

8. By virtue of paragraph 3(5) of Schedule 6 to the Act, Ofcom may give effect, with or without modifications, to a proposal with respect to which it has published a notification only if Ofcom has—

- (a) considered every representation about the proposal that is made to Ofcom within the period specified in this Notification; and
- (b) had regard to every international obligation of the United Kingdom (if any) which has been notified to Ofcom for this purpose by the Secretary of State.

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

Signed by **Chris Rowsell**

A handwritten signature in black ink, appearing to read "Chris Rowsell", written over a horizontal line.

**Competition Policy Director**

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

**29 October 2015**

**Schedule 1**

# Proposed modification of Consumer Protection Condition 1

## CONSUMER PROTECTION CONDITION 1

### PAYMENTS RELATING TO QUALIFYING CONSUMER EXPENSES

#### 1.1. Application, Definitions and Interpretation

CP 1.1.1	This consumer protection condition (“ <b>CP Condition</b> ”) shall apply to <u>regulated postal operators</u> .
CP 1.1.2	<p>In this CP Condition—</p> <p>(a) “<b>Act</b>” means the Postal Services Act 2011 (c.5);</p> <p>(b) “<b>appointed day</b>” means 1 October 2011;</p> <p>(c) “<b>assessment year</b>” means the <u>relevant year</u> minus two years, beginning on 1 April;</p> <p>(d) “<b>calls relating to a regulated postal operator</b>” means calls to <u>Citizens Advice</u> or <u>Citizens Advice Scotland</u> recorded by <u>Citizens Advice</u> or <u>Citizens Advice Scotland</u> as relating to a specific <u>regulated postal operator</u> save that where a call is recorded by <u>Citizens Advice</u> or <u>Citizens Advice Scotland</u> as relating to more than one specific <u>regulated postal operator</u> <u>OFCOM</u> will consider the call as relating to no <u>regulated postal operator</u>;</p> <p>(e) “<b>consumer advocacy bodies</b>” means <u>Citizens Advice</u>, <u>Citizens Advice Scotland</u>, and the General Consumer Council for Northern Ireland;</p> <p>(f) “<b>public holiday</b>” means a Christmas Day, Good Friday and a day which is a bank holiday under the Banking and Financial Dealings Act 1971;</p> <p>(g) “<b>relevant year</b>” means any year beginning on 1 April;</p> <p>(h) “<b>relevant turnover</b>” means turnover from <u>regulated postal services</u>;</p> <p>(i) “<b>regulated postal operator</b>” means a <u>postal operator</u> which provides services in relation to which, had those services been carried out prior to the <u>appointed day</u>, it would have been required to hold a licence under the Postal Services Act 2000;</p> <p>(j) “<b>regulated postal service</b>” means a <u>postal service</u> the provision of which, had it been carried out prior to the <u>Appointed Day</u>, would have required the provider to hold a licence under the Postal Services Act 2000.</p>

<b>CP 1.1.3</b>	<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<sup>5</sup>;</p> <p>(b) headings and titles shall be disregarded;</p> <p>(c) expressions cognate with those referred to in this CP Condition shall be construed accordingly;</p> <p>(d) the Interpretation Act 1978 (c. 30) shall apply as if this CP Condition were an Act of Parliament;</p> <p>(e) references to a <b>day</b> are references to a period of twenty-four hours beginning with one midnight and ending with the next, which period shall be treated to include a Saturday, a Sunday and public holidays</p>
-----------------	---

## **1.2. Payments relating to qualifying consumer expenses**

CP 1.2.1	A <u>regulated postal operator</u> that generated <u>relevant turnover</u> exceeding £10 million in the <u>assessment year</u> , shall pay to <u>OFCOM</u> in any <u>relevant year</u> such proportion as <u>OFCOM</u> may specify of the expenses described in CP 1.2.2.
CP 1.2.2	The expenses are the <u>qualifying consumer expenses</u> of the <u>consumer advocacy bodies and the Secretary of State</u> , likely to be incurred during the <u>relevant year</u> in respect of functions other than the consumer advocacy bodies' function of providing a <u>public consumer advice scheme</u> .
CP 1.2.3	The proportion will be calculated by multiplying the sum of the total expenses in CP 1.2.2 by that <u>regulated postal operator's</u> share of <u>relevant turnover</u> expressed as a percentage of the total <u>relevant turnover</u> generated by all <u>regulated postal operators to which this condition applies that generated relevant turnover in excess of £10 million in the assessment year</u> .
CP 1.2.4	A <u>regulated postal operator</u> shall pay to <u>OFCOM</u> in any <u>relevant year</u> such proportion as <u>OFCOM</u> may specify of the <u>qualifying consumer expenses</u> of <u>Citizens Advice and Citizens Advice Scotland</u> in respect of their function of providing a <u>public consumer advice scheme</u> .

<sup>5</sup> A table for information identifying such defined terms is provided at the end of this condition. This table is intended only as a guide and does not form a part of this condition. We make no representations as to its accuracy or completeness.

CP 1.2.5	<p><u>OFCOM</u> shall require payments to be made by a <u>regulated postal operator</u> under CP 1.2.4 where the following calculation gives an amount greater than £100:</p> <p>(a) take the total <u>qualifying consumer expenses</u> of <u>Citizens Advice</u> and <u>Citizens Advice Scotland</u> in respect of their function of providing a <u>public consumer advice scheme</u> in the <u>relevant year</u>,</p> <p>(b) multiply it by that <u>regulated postal operator's share of calls relating to regulated postal operators</u> expressed as a percentage of the total <u>calls relating to regulated postal operators</u>.</p>
CP 1.2.6	<p>The proportion to be paid by a <u>regulated postal operator</u> falling within CP1.2.5 will be calculated by multiplying the total <u>qualifying consumer expenses</u> of <u>Citizens Advice</u> and <u>Citizens Advice Scotland</u> in respect of their function of providing a <u>public consumer advice scheme</u> in the <u>relevant year</u> by that <u>regulated postal operator's share of calls relating to regulated postal operators</u> falling within CP1.2.5 expressed as a percentage of the total <u>calls relating to regulated postal operators</u> falling within CP1.2.5.</p>
CP 1.2.7	<p>The amounts payable under CP 1.2.1 in a <u>relevant year</u> shall include the amount of the difference, if any, between the costs actually incurred during the previous <u>relevant year</u> and the estimate of the costs in question upon which charges in the previous <u>relevant year</u> were based, where the latter exceeds the former the amount of the difference being treated as a negative amount.</p>
CP.1.2.8	<p>The amounts payable under CP 1.2.4 in a <u>relevant year</u> shall include the amount of the difference, if any, between the amounts charged to the <u>regulated postal operator</u> in the previous <u>relevant year</u>, based on estimates; and the amounts which would have been charged had the calculation been based on actual numbers of <u>calls relating to that and other regulated postal operators</u> and actual <u>qualifying consumer expenses</u> of <u>Citizens Advice</u> and <u>Citizens Advice Scotland</u> in respect of their function of providing a <u>public consumer advice scheme</u>. Where the latter exceeds the former the amount of the difference shall be treated as a negative amount.</p>
CP 1.2.9	<p>The amount due under either or both of CP 1.2.1 and CP 1.2.4 shall be payable on 30 June in the <u>relevant year</u> or, if later, on the expiry of one month from the day on which <u>OFCOM</u> serve notice on the <u>regulated postal operator</u> of such amount.</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.*

<b>Defined term</b>	<b>Section</b>
<i>Citizens Advice</i>	<i>65(1)</i>
<i>Citizens Advice Scotland</i>	<i>65(1)</i>
<i>Letter</i>	<i>65(1)</i>
<i>OFCOM</i>	<i>90</i>
<i>postal operator</i>	<i>27(3)</i>
<i>postal packet</i>	<i>27(2)</i>
<i>qualifying consumer expenses</i>	<i>51(4)</i>
<i>universal service provider</i>	<i>65(1) and Schedule 9 paragraph 3(3)</i>