

Frequently Asked Questions (FAQs) relating to the General Demand for Information

Introduction

On 29 March 2018, we published our revised Statement of Charging Principles for carrying out our postal services functions (see Annex 5 to our [March 2018 Statement](#)) (the “SoCP”). Our revised SoCP:

- applies in relation to the 2018/19 charging year (i.e. the period beginning 1 April 2018 and ending with 31 March 2019) and any subsequent charging year (i.e. any subsequent period of 12 months beginning with 1 April); and
- fixes that administrative charges will be payable by each of those postal operators which is a ‘**relevant postal operator**’ (as defined in the SoCP, see further in **Q1 below**), if (and only if) the relevant postal operator in question generated ‘**relevant turnover**’ (as defined in the SoCP, see further in **Q2 below**) exceeding £5 million, in the last but one 12 month period commencing on 1 April prior to the charging year in question (for example, for the charging year commencing on 1 April 2018, the last but one 12 month period commencing on 1 April is 1 April 2016 until 31 March 2017).

It is important for postal operators who may be liable to pay an administrative charge to Ofcom to carefully consider how that liability might apply to their own specific circumstances.

This is because, firstly, paragraph 1(1) of Schedule 4 to the Postal Services Act 2011 imposes a statutory duty on a postal operator to pay to Ofcom the administrative charge fixed by Ofcom as applicable to the operator.

Secondly, in our accompanying [General Demand for Information](#) (see Annex 6 to our [March 2018 Statement](#)) (the “General Demand”), we require that relevant postal operators liable to pay our administrative charges provide us with details of (among other things) their respective relevant turnover, for the purposes of us calculating administrative charges, in relation to the above-mentioned 2018/19 charging year and any subsequent charging year. As our General Demand explains, that information must so be provided to Ofcom by **no later than 5pm on the last working day of October every year**, until further notice by Ofcom. It also notes that, given the seriousness of the potential penalties and offences involved in any failure to comply with it, liable operators may want to seek their own independent legal advice about its contents.

Since publishing our revised SoCP, with accompanying General Demand, we have received some queries from postal operators who may be liable to pay an administrative charge to Ofcom. In particular, operators have sought additional clarity about the basis on which they should comply with the information requirements set out in our General Demand. These FAQs seek to provide the clarity sought. That said, whether or not (and, if so, how) a particular matter is regulated will usually turn on the specific facts in each case. Therefore, potentially liable operators should seek their own independent advice on specific matters, taking into account the facts in question to answer specific questions on their duties imposed under the SoCP and the General Demand. It is a matter for individual operators to satisfy themselves in the first instance as to whether they are caught by definitions, such as a ‘relevant postal operator’ or ‘relevant turnover’.

Question 1: I have a USP Access Agreement with the universal service provider and I rely on it to access the universal network on regulated terms – am I a relevant postal operator?

Yes, you are likely to fall within the meaning of ‘relevant postal operator’ where it provides: “(1) a postal operator that is a party to a USP Access Agreement with the universal service provider, including the universal service provider itself;”.

For the avoidance of doubt, even if you do fall within that definition, you are only liable to pay Ofcom’s administrative charge — and thus you are only required to respond to the General Demand — if (and only if) you generated ‘**relevant turnover**’ **exceeding £5 million**, in the last but one 12 month period commencing on 1 April prior to the charging year in question. In other words, if your relevant turnover is below that threshold, the General Demand is not addressed to you.

Key factors for you consider in relation to the above question are likely to be:

1. Do you fall within the broad definition of a ‘postal operator’?

Section 27(3) of the Postal Services Act 2011 provides that “*“Postal operator” means a person who provides—(a) the service of conveying postal packets from one place to another by post, or (b) any of the incidental services of receiving, collecting, sorting and delivering postal packets.*” In that regard, it should be noted that “postal packet” means a letter, parcel, packet or other article transmissible by post (see section 27(2) of that Act). Also, a person is not to be regarded as a postal operator merely as a result of receiving postal packets in the course of acting as an agent for, or otherwise on behalf of, another (see section 27(4) of that Act).

2. If you are a ‘postal operator’, are you a party to a ‘USP Access Agreement’ with the universal service provider (i.e. Royal Mail), including the universal service provider itself?

‘USP Access Agreement’ is defined in the General Demand (and the SoCP) as “*an agreement under which the universal service provider provides access to its postal network in accordance with requirements set out in a condition imposed under section 38 of the Act.*” Our current condition imposing requirements under section 38 is known as the ‘USPA Condition’ concerning access to the universal service provider’s postal network at the Inward Mail Centre for the purposes of providing D+2 and later than D+2 Letters and Large Letters services, see: https://www.ofcom.org.uk/_data/assets/pdf_file/0022/105259/usp-access-condition.pdf

3. If so, is your ‘relevant turnover’ exceeding £5 million, in the last but one 12 month period commencing on 1 April prior to the charging year in question?

For the avoidance of doubt, even if you are not a party to a ‘USP Access Agreement’ with the universal service provider, you might nonetheless be a ‘relevant postal operator’ if you are a postal operator that provides a ‘relevant letters postal service’ (see the General Demand for details about this definition).

Question 2: How do I calculate ‘relevant turnover’ when reporting information to Ofcom under the General Demand as an access operator?

As noted above, you are only required to respond to the General Demand — if (and only if) you are a ‘relevant postal operator’ who generated ‘relevant turnover’ **exceeding £5 million**, in the last but one 12 month period commencing on 1 April prior to the charging year in question.

Our General Demand (and the SoCP) defines ‘relevant turnover’ as follows:

“means each of the following—

(1) turnover from relevant letters postal services;

(2) in the case of the universal service provider, turnover from giving access to its postal network to other postal operators and users of postal services under, or as a result of, USP Access Agreements;

(3) in the case of other parties to USP Access Agreements with the universal service provider, turnover from postal services provided to other postal operators and users of postal services by obtaining access to the universal service provider’s postal network under, or as a result of, the party’s USP Access Agreement, but deducting from that turnover all charges paid or payable to the universal service provider for access under the party’s USP Access Agreement for the period corresponding to the last but one 12 month period commencing on 1 April prior to the charging year;¹”

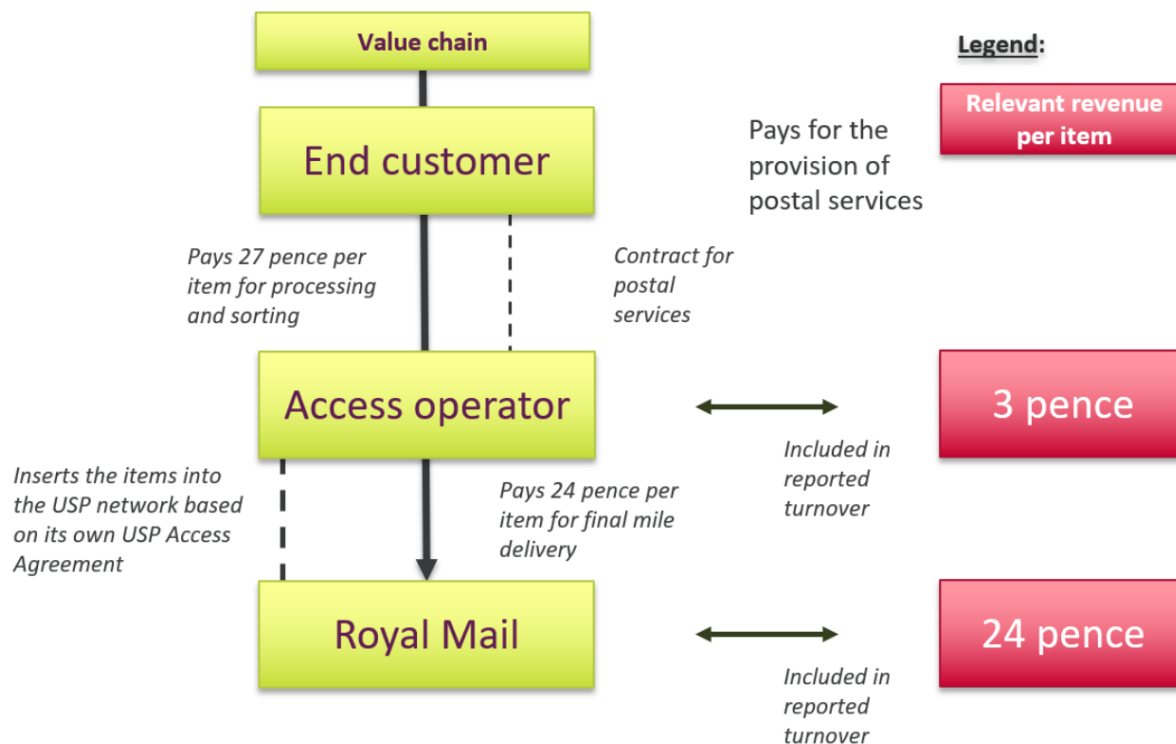
In answering this Q2, we set out an example in Figure 1 below to deal with an arrangement between an end customer, an access operator and the universal service provider (i.e. Royal Mail) (“USP”).

For the avoidance of doubt, revenue figures to be reported to Ofcom should include only ‘net revenue’, and exclude revenue paid or payable to the universal service provider: see in particular where the above definition provides: “...deducting from that turnover all charges paid or payable to the universal service provider for access under the party’s USP Access Agreement...”.

Consistent adoption of this approach by all relevant postal operators will ensure that there is no double counting of revenues. Where there is a payment of money between postal operators neither of whom is the universal service provider, this is not relevant turnover and does not need to be reported to Ofcom. This may occur further up the value chain in the upstream part of the market. This is because such revenue is not paid on regulated terms via a USP Access Agreement, since a USP Access Agreement can only be agreed between the universal service provider and another postal operator.

¹ For example, when Ofcom is considering the ‘charging year’ 2018/19, relevant postal operators will report relevant turnover for financial year 2016/17 for analysis.

Figure 1: an illustrative example of an arrangement between an end customer, an access operator and the USP



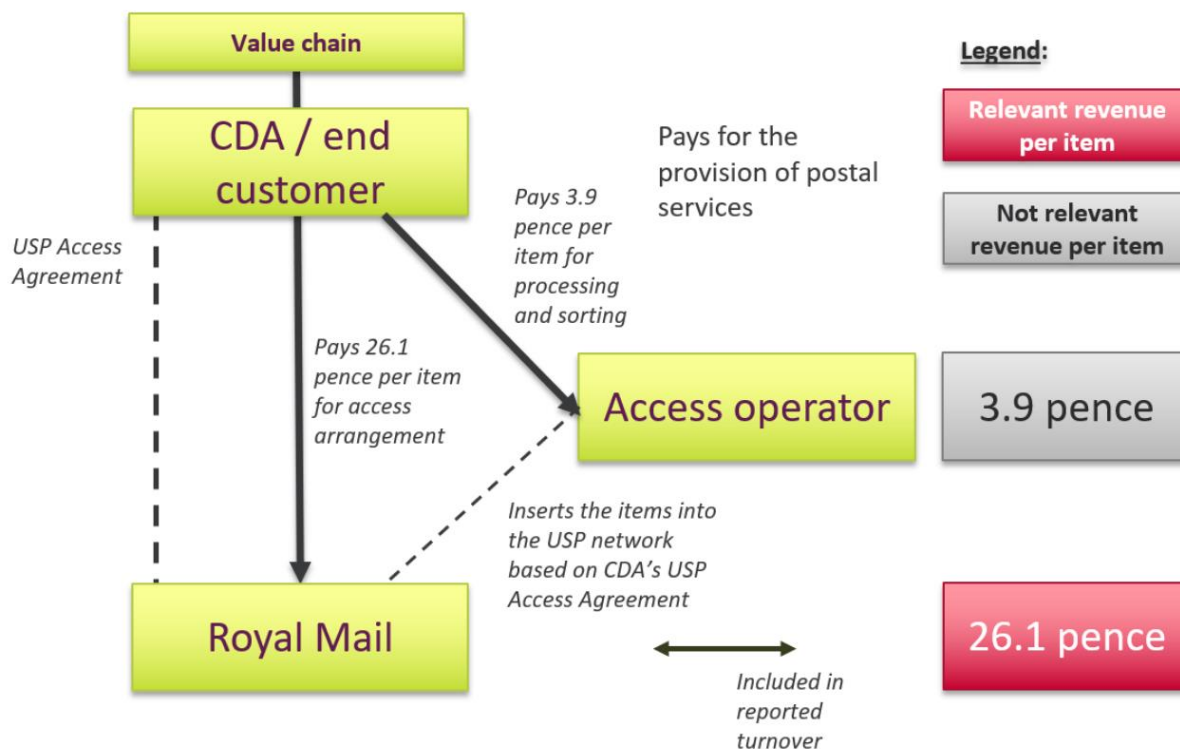
In this example, the access operator in a supply chain is a party to a USP Access Agreement with the USP, and injects mail directly into Royal Mail’s network under the terms of a USP Access Agreement for the purposes of providing postal services to other postal operators and users of postal services. Any revenue retained by the access operator should be reported if its turnover exceeds the £5 million threshold. Any revenue paid or payable to the USP for such access does not count towards its relevant turnover (see above concerning ‘net revenue’).

For the purposes of reporting relevant turnover to Ofcom in this example, the access operator should report net revenue – 3 pence per item — if its total revenue exceeds £5 million. (The USP should then report to Ofcom revenue which includes the 24 pence per item received from the access operator.)

Question 3: I am an Access Operator and a party to a USP Access Agreement with the universal service provider. However, one of my customers who pays me to process and insert relevant postal items into the USP network has its own direct USP Access Agreement and pays monies to the USP – what should be included as relevant revenue in company returns issued to Ofcom?

In answering this Q3, we set out an example in Figure 2 below to deal with this scenario.

Figure 2: an illustrative example of an arrangement between a Customer Direct Access (CDA) / end customer, an access operator and the USP



In this example, it is assumed that the end customer described has a CDA arrangement in place with the USP. Under this CDA arrangement, the end customer is itself a party to a USP Access Agreement with the USP and therefore pays an access charge directly to the USP.

In this example, the end customer also relies on another access operator and pays it to do the collection, distribution and handover of mail to the USP. In this scenario, that access operator is not doing those things pursuant to its own USP Access Agreement with the USP, but rather pursuant to the end customer's own USP Access Agreement under the CDA arrangement. Therefore, the illustrated 3.9 pence per item would not be considered as relevant turnover of that access operator, because access is not obtained to the USP's postal network under, or as a result of, the party's (here, the access operator's) USP Access Agreement, as per our definition of relevant turnover.

However, for the purposes of the USP reporting its relevant turnover to Ofcom, it will need to include revenues it receives for items inserted into its network under, or as a result of, USP Access Agreements, including in this example the 26.1 pence per item received from the end customer under this CDA arrangement.