
Recovering consumer advocacy costs

Further consultation on excluding international letters and parcels from Consumer Protection Condition 1

CONSULTATION

Publication Date: 5 June 2019

Closing Date for Responses: 8 July 2019

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1. Overview

This short consultation follows from our statement on the cost recovery mechanism for the consumer advocacy bodies (CABs) work on post, which was published earlier this year.

It has come to our attention that our policy intention to exclude postal operators' turnover from providing international mail (letters and parcels) for the purposes of that mechanism has not been properly reflected in the regulatory condition implementing our statement, Consumer Protection Condition 1. Therefore, we are now proposing minor modifications to provide clarity and certainty in Consumer Protection Condition 1 about the exclusion of international letters and parcels.

What we are proposing – in brief

We propose to modify Consumer Protection Condition 1, which implements the new cost recovery mechanism for consumer advocacy in post, so that international mail (both in respect of 'relevant letters postal services' and 'relevant parcels postal services') is excluded from the scope of the mechanism. These modifications seek to clarify that only UK domestic postal services are caught by the cost recovery mechanism.

Next steps

- 1.1 This consultation is open until 8 July 2019.
- 1.2 Subject to consultation and stakeholder responses, we plan to publish our statement on the above proposal as soon as possible after the consultation deadline, so to allow us to enough time to recover fees due from relevant stakeholders, on behalf of BEIS, by autumn 2019.

2. Proposal to exclude international letters and parcels

Introduction

- 2.1 On 16 January 2019, we published our statement changing the way the cost of the work by the consumer advocacy bodies (“**CABs**”)¹ is recovered from operators in the postal sector.² Our decision changed the description of postal operators who are now liable to contribute towards consumer advocacy costs. The broad implication of our decision is that, in practice, some additional postal operators, other than Royal Mail, will become liable to contribute to those costs.
- 2.2 Operators now liable to contribute broadly correspond to:
- End-to-end (“**E2E**”) letter operators with relevant turnover in excess of £10 million per annum; and/or
 - Parcel operators with relevant turnover in excess of £350 million per annum.
- 2.3 Relevant turnover is a defined concept we have used to determine which operators are liable to contribute to the new cost recovery mechanism, as well as the proportion of each operator’s contribution. Specifically, ‘relevant turnover’ is defined as turnover from ‘relevant letters postal services’ and ‘relevant parcels postal services’, respectively. Those respective services have been defined broadly subject to certain size and weight restrictions and, to limit the scope of the cost recovery mechanism, we also excluded some specific categories of postal services.
- 2.4 Our decision in the statement was implemented by our modifications to Consumer Protection Condition 1 (“**CP1**”), which was published in Annex 1 to our statement. Those modifications took effect on 1 April 2019.

Background to this document

- 2.5 In July 2017, we published a consultation proposing changes to how the costs of the CABs were recovered (“**July 2017 consultation**”).³ We proposed, in essence, that E2E letter services, bulk letter services and access mail services should be the postal services liable to contribute (with parcel operators excluded from that proposal), and proposed a threshold of £5 million relevant turnover for letters services. Having considered stakeholders

¹ The CABs are made up of Citizens Advice, Consumer Advice Scotland (CAS) and the General Consumer Council for Northern Ireland (CCNI).

² https://www.ofcom.org.uk/data/assets/pdf_file/0017/112454/statement-consultation-recovering-postal-regulation-costs.pdf

³ https://www.ofcom.org.uk/data/assets/pdf_file/0019/105238/consultation-postal-regulation-review.pdf

responses received to that consultation, we decided to amend some of our proposals and re-consulted accordingly.

- 2.6 In March 2018, we published our amended proposals (“**March 2018 consultation**”)⁴, which proposed that E2E letter services, bulk letter services and parcels services should be the postal services liable to contribute (with access mail services excluded from that proposal), and proposed a threshold of £10 million relevant turnover for letters services and £350 million relevant turnover for parcels services.
- 2.7 In January 2019, after careful consideration of the consultation responses, we published our statement (“**January 2019 statement**”)⁵ adopting our proposals from our March 2018 consultation.

Clarifying the geographic scope of relevant postal services

- 2.8 Our intention to focus the geographical scope of CP1 on domestic services was covered in the March 2018 consultation on the cost recovery mechanism, where we set out our proposed definitions of ‘relevant letters postal services’ and ‘relevant parcels postal services’ (both of which referred to only UK mail of certain size and weight restrictions).^{6 7}
- 2.9 As such, we intended to exclude international mail from those respective definitions. Therefore, our proposal also envisaged that turnover associated with providing international mail would be excluded by postal operators when reporting to Ofcom their own respective relevant turnover figures for the purpose of the cost recovery mechanism. Indeed, our internal analysis to determine the relevant threshold for operators to contribute to the cost recovery mechanism was based on domestic revenues.⁸
- 2.10 We focused on domestic mail because we did not believe that issues relating to international mail services materially drove the work of the CABs, and therefore capturing domestic services only would be consistent with our main principle of cost reflectivity.⁹
- 2.11 As we recognised in our January 2019 statement, it is difficult to be exact in determining the specific work-strands which drive the costs of the CABs, as the CABs do not have a way of recording this,¹⁰ but we considered the projects undertaken by the CABs as one factor that helped us determine the drivers behind the CABs’ costs. From this, we understand that international mail is unlikely to materially drive the CABs’ costs; we acknowledge this

⁴ https://www.ofcom.org.uk/data/assets/pdf_file/0017/112454/statement-consultation-recovering-postal-regulation-costs.pdf

⁵ https://www.ofcom.org.uk/data/assets/pdf_file/0019/133543/Statement-recovering-consumer-advocacy-costs.pdf

⁶ https://www.ofcom.org.uk/data/assets/pdf_file/0017/112454/statement-consultation-recovering-postal-regulation-costs.pdf

⁷ See paragraph 1.10 of our March 2018 consultation.

⁸ Though we did not state this explicitly in our January 2019 statement (paragraphs 4.29 to 4.47).

⁹ As stated in our March 2018 consultation and January 2019 statement, the three criteria we attached particular importance to in determining our decision throughout our re-consultation and statement were cost reflectivity, fairness and equity and adaptability, and of these, we attached paramount importance to cost reflectivity. See paragraph 2.11 of our January 2019 statement.

¹⁰ As stated in our January 2019 statement, the CABs do not have a time recording system for its projects and related staff costs (paragraphs 3.11, 3.15 and 3.115).

does not mean that CABs will not on occasion deal with queries or issues relating to international mail. Therefore, we remain of the opinion that international mail should be excluded from the scope of CP1.

- 2.12 In order to determine a relevant postal operator's relevant turnover, we issued draft information requests to operators in April 2019. During subsequent engagement with stakeholders on this draft information request, we received feedback that our modifications to CP1 did not appear to reflect our previous policy intention to capture only revenues related to domestic services, and not to capture international mail (parcels and letters). They therefore requested that we clarify the position.
- 2.13 Accordingly, we are now proposing to modify the definitions of a 'relevant letters postal service' and 'relevant parcels postal service' in CP1 to reflect our policy intention and to provide clarity and certainty about the exclusion of international mail.
- 2.14 Our proposed textual changes to deal with that issue are set out in our statutory notification published in Annex 1 to this consultation document. We invite stakeholders for their views and comments on those proposed modifications to CP1.
- 2.15 We are seeking stakeholder views on the following question (as stated in Annex 5):

Question 1: Do you agree with our proposed amendments to Consumer Protection Condition 1? Please support your response with reasoning.

Legal tests and impact assessment

Relevant legal tests for changing CP1

- 2.16 We consider that our proposals above (as reflected in our proposed amendments of CP1 as set out in Annex 1) satisfy the relevant tests set out in paragraph 1 of Schedule 6 to the 2011 Act, which must be met where we impose or modify a regulatory condition, namely that they:
- a) are objectively justifiable;
 - b) do not unduly discriminate against a particular person of a particular description of persons;
 - c) are proportionate; and
 - d) are transparent in relation to what they are intended to achieve.
- 2.17 We consider that our proposed amendments of CP1 satisfy those tests, in particular:
- a) **Objectively justifiable** - we believe that our proposed changes to the scope of CP1 are objectively justifiable because they recover the costs of the CABs from postal services that materially drive the work of the CABs (something which we believe international mail services do not do), and therefore they aim to ensure that the cost recovery mechanism is fair and equitable and cost-reflective.

- b) **Not unduly discriminatory** - we believe that our proposed changes to CP1 are not unduly discriminatory because they will ensure that our regulation is targeted at those postal operators that we consider are appropriate to meet our regulatory objective of ensuring the recovery of the CAB's costs of consumer advocacy in the postal market, and will apply to both those providing a 'relevant letters postal service' and a 'relevant parcels postal service'.
- c) **Proportionate** - we believe that our proposed changes to CP1 are proportionate because they only impose requirements that we consider are appropriate and necessary to meet our that regulatory objective, without imposing an undue burden on those relevant postal operators which would be subject to obligations under CP1.
- d) **Transparent** - we consider that our proposed changes to the scope of CP1 are transparent because our proposed CP1 would help clarify which postal operators are within its scope. Further, we consider that our proposed CP1 would also clearly set out the obligations imposed upon those providers, i.e. to make payments to recover the relevant costs of the CABs.

2.18 Also, in making these proposals for CP1 and their potential impact, we have overall considered and acted in accordance with our principal duty in section 29 of the 2011 Act and our general duties in section 3 of the Communications Act 2003.

Impact assessment

- 2.19 The analysis presented in this document represents an impact assessment, as defined in section 7 of the Communications Act 2003.
- 2.20 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policymaking. This is reflected in section 7 of the Communications Act 2003, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see our guidelines entitled 'Better Policy Making: Ofcom's approach to Impact Assessment', which are available on our website.¹¹

Equality Impact Assessment (EIA)

- 2.21 Ofcom is separately required by statute to assess the potential impact of all our functions, policies, projects and practices on equality.¹² Equality Impact Assessments ("EIAs") also

¹¹ Ofcom, Better Policy Making – Ofcom's approach to impact assessment, 21 July 2005, https://www.ofcom.org.uk/data/assets/pdf_file/0026/57194/better_policy_making.pdf

¹² Ofcom has a general duty under the 2010 Equality Act to have due regard to the need to eliminate discrimination, advance equality of opportunity between those who share a relevant 'protected characteristic' (age, disability, sex, gender

assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.

- 2.22 We have considered whether our proposed amendments to CP1 (as discussed above) would have an adverse impact on promoting equality. We have looked at whether that decision and those proposals would have a different or adverse effect on UK consumers and citizens in the following equality groups: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation, and, in Northern Ireland, political opinion and persons with dependents. Our assessment is that they would not.
- 2.23 We do not expect any of the equality groups to be negatively affected by our decision and revised proposals, respectively, to a material extent. We have not carried out separate EIAs in relation to the additional equality groups in Northern Ireland: religious belief, political opinion and dependents. This is because we anticipate that our decision and revised proposals, respectively, will not have a differential impact in Northern Ireland compared to consumers in general.

Next steps

- 2.24 This consultation is open for one month beginning with the day after the day this consultation document is published, i.e. until 8 July 2019.
- 2.25 Subject to any stakeholder responses to this consultation, we aim to reach our decision on this proposal in time to allow us to recover the monies from liable relevant postal operators in this financial year.
- 2.26 Specifically, we plan to publish a statement by around mid-July. Alongside publishing that statement, we also plan to issue our final information requests to relevant postal operators shortly thereafter with a likely two-week period to reply. On that timetable, we expect to be able to invoice operators by late September.

A1. Proposed amendments to Consumer Protection Condition 1

NOTIFICATION OF PROPOSALS TO MODIFY CONSUMER PROTECTION CONDITION 1 PURSUANT TO SECTION 51 OF, AND IN ACCORDANCE WITH SECTION 53 OF, AND PARAGRAPH 3(3) OF SCHEDULE 6 TO, THE POSTAL SERVICES ACT 2011

BACKGROUND

(A) On 16 January 2019, following consultation, Ofcom published a statement entitled ‘Recovering consumer advocacy costs’¹³ setting out its decision to modify Consumer Protection Condition 1 (“CP1”) to make further provision for matters set out in section 51 of the Postal Services Act 2011 (the “Act”) and to impose that CP1 on every postal operator of a description specified in the modifications to CP1 as set out in the Schedule to the notification published in Annex 1 to that statement.

(B) Ofcom is now consulting only on amending the definitions of ‘relevant letters postal service’ and ‘relevant parcels postal service’, respectively, since it has come to Ofcom’s attention that they do not reflect its intended policy in the statement with respect to the treatment of international mail.

PROPOSALS

1. Ofcom hereby proposes, in accordance with section 53 of, and paragraph 3(3) of Schedule 6 to, the Act and pursuant to its powers under section 51 of the Act, to modify the following definitions in CP 1.1.2(m) and (o)¹⁴—

“(m) “**relevant letters postal service**” means a service of conveying relevant letters **which have been sent** from one **location place within the United Kingdom** to another **location within the United Kingdom** by post and the incidental services of receiving, collecting, sorting and delivering **such** relevant letters, excluding—

- (1) services for which the postal operator has not received any payment, reward, profit or advantage with respect to the conveyance of the relevant letters;
- (2) services provided by a charity which comprise solely the collection, conveyance and delivery of Christmas cards;
- (3) express and secured services;
- (4) services consisting of the conveyance of relevant letters within a closed user group network;
- (5) services provided while acting in the capacity of an intermediary postal operator, that is to say a postal operator that hands over postal packets to another postal operator (including

¹³ https://www.ofcom.org.uk/_data/assets/pdf_file/0019/133543/Statement-recovering-consumer-advocacy-costs.pdf

¹⁴ The proposed modifications are marked up against the existing CP1 to show the changes which Ofcom is proposing to its substance, as highlighted in yellow and in red font for new text and highlighted in yellow and in black font for deleted text, which mark-ups, for the avoidance of doubt, do not form part of the proposed modifications as such.

but not limited to the universal service provider) for subsequent conveyance and delivery to the intended recipients of the postal packets; and

~~(6) services consisting of conveying relevant letters, which have been sent from a location outside of the United Kingdom and which are addressed for delivery to a location outside of the United Kingdom, out of the United Kingdom; and~~

~~(6) (7)~~ services provided by a party to a USP Access Agreement with the universal service provider 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; for the avoidance of doubt, services provided by the universal service provider itself to a party to a USP Access Agreement do not fall under this exclusion;”

“(o) “**relevant parcels postal service**” means a service of conveying relevant parcels which have been sent from one location place within the United Kingdom to another location within the United Kingdom by post and the incidental services of receiving, collecting, sorting and delivering such relevant parcels, excluding—

(1) services for which the postal operator has not received any payment, reward, profit or advantage with respect to the conveyance of the relevant parcels;

(2) services consisting of the conveyance of relevant parcels within a closed user group network;

(3) services provided while acting in the capacity of an intermediary postal operator, that is to say a postal operator that hands over relevant parcels to another postal operator (including but not limited to the universal service provider) for subsequent conveyance and delivery to the intended recipients of the relevant parcels; and

~~(4) services consisting of conveying relevant parcels, which have been sent from a location outside of the United Kingdom and which are addressed for delivery to a location outside of the United Kingdom, out of the United Kingdom; and;~~

~~(4) (5)~~ services consisting of the conveyance of relevant parcels provided by the postal operator only as part of a sales contract between the postal operator and a user under which the postal operator conveys and delivers such relevant parcels that are subject of that contract directly to the user without any arrangements with another postal operator; in this exclusion “a sales contract” refers to a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration;”

2. Those modifications to CP1 are proposed to come into force with effect from the date of a publication in accordance with section 53 of, and paragraph 3(1) of Schedule 6 to, the Act.

3. The effect of, and Ofcom's reasons for making, these proposals are set out in the accompanying consultation document.

OFCOM'S DUTIES AND LEGAL TESTS

4. Ofcom is satisfied that these proposals satisfy the general test in paragraph 1 of Schedule 6 to the Act.

5. In making these proposals, 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 proposals set out in this Notification by no later than 8 July 2019.

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.

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 paragraph 6 of 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.

INTERPRETATION

9. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Act or for the purpose of CP1 (as relevant).

10. In this Notification—

(a) “**Act**” means the Postal Services Act 2011 (c.5);

(b) “**CP1**” means Consumer Protection Condition 1 as referred to in recital (A) to this Notification; and

(c) “**Ofcom**” means the Office of Communications.

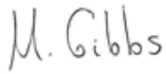
11. For the purpose of interpreting this Notification—

(a) headings and titles shall be disregarded;

(b) expressions cognate with those referred to in this Notification shall be construed accordingly; and

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

Signed by

A handwritten signature in black ink, appearing to read 'M. Gibbs'.

Marina Gibbs

Competition Policy Director

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

5 June 2019

A2. Responding to this consultation

How to respond

- A2.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 8 July 2019.
- A2.2 You can email your response, to gianpiero.roscelli@ofcom.org.uk as an attachment in Microsoft Word or PDF format, together with the [cover sheet](#).
- A2.3 Responses may alternatively be posted to the address below, marked with the title of the consultation:

Gianpiero Roscelli
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

- A2.4 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A2.5 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A2.6 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A2.7 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A2.8 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 5. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A2.9 If you want to discuss the issues and questions raised in this consultation, please contact Gianpiero Roscelli on 0207 784 4729, or by email to gianpiero.roscelli@ofcom.org.uk.

Confidentiality

- A2.10 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources

or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on [the Ofcom website](#) as soon as we receive them.

- A2.11 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A2.12 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A2.13 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A2.14 Following this consultation period, Ofcom plans to publish a statement in July 2019.
- A2.15 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A2.16 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 3.
- A2.17 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A2.18 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A3. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A3.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. 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

- A3.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A3.3 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 for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A3.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A3.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A3.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A3.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A4. Consultation coversheet

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 ☐

Name/contact details/job title ☐

Whole response ☐

Organisation ☐

Part of the response ☐

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)

A5. Consultation question

Question 1: Do you agree with our proposed amendments to Consumer Protection Condition 1? Please support your response with reasoning.