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# Recovering postal regulation and consumer advocacy costs

Statement and consultation

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## Statement and Consultation

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# About this document

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Ofcom is responsible for regulating the UK postal market. In doing so, we incur costs. We published proposals to change the way in which we recover these costs in July 2017. This document sets out our final decision on the way in which we will recover our costs of regulating the postal sector in future.

Ofcom is also responsible for recovering the costs of consumer advocacy bodies, such as Citizens Advice, in relation to their work in the postal sector. Our July 2017 consultation also included proposals to change the way in which these costs are recovered. This document sets out revised proposals on the way in which we recover consumer advocacy costs in relation to postal services.

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# 1. Executive summary

- 1.1 In carrying out our postal services functions, Ofcom incurs administrative costs. Ofcom recovers these costs through administrative charges that are payable to Ofcom by postal operators whom we determine are liable to pay such charges in accordance with the legislation. Each year, our administrative charges must be set so as to meet, but not exceed, Ofcom’s annual costs of carrying out those functions.<sup>1</sup>
- 1.2 Under the Postal Services Act 2011 (the “**2011 Act**”), Ofcom is required to impose administrative charges on relevant postal operators in accordance with its charging principles. Postal operators’ liability to pay such charges to Ofcom are fixed in our Statement of Charging Principles for postal services (the “**SoCP**”).
- 1.3 Separately, under section 51 of the 2011 Act, Ofcom may also require all postal operators (or every postal operator of a specified description) to make payments relating to costs for work carried out by the United Kingdom’s consumer advocacy bodies (“**CABs**”) in relation to postal services. The CABs in the UK are Citizens Advice, Citizens Advice Scotland and the General Consumer Council for Northern Ireland.<sup>2</sup> Those payments are recovered via Ofcom through obligations we impose on specified postal operators liable to pay under Consumer Protection Condition 1 (“**CP1**”).<sup>3</sup> However, Ofcom has no role in setting the level of the CABs’ fees or examining the calculation of consumer advocacy costs, which is a matter for the Secretary of State. We are, in essence, simply responsible for determining the basis on which consumer advocacy costs should be recovered and recovering such costs on behalf of the Secretary of State.
- 1.4 In July 2017, we published a consultation (the “**July 2017 Consultation**”) in which we proposed to amend both the SoCP (for recovery of our administrative costs) and CP1 (for the recovery of the CABs’ costs).<sup>4</sup> In summary, we proposed that postal operators who provide access or bulk mail services, in addition to postal operators who provide single piece end-to-end letter services, would be liable to contribute both towards Ofcom’s administrative costs and the CABs’ costs. We also proposed reducing the threshold above which liable operators would be required to pay both Ofcom’s costs and the CABs’ costs, from annual relevant revenues of £10 million to £5 million.

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<sup>1</sup> Our fee setting process each year is based on Ofcom’s budgeted postal regulation costs for the forthcoming Ofcom financial year (i.e. 1 April to 31 March), with any over- or -under recovery in expenditure from the previous financial year reflected in the administrative charge to stakeholders.

<sup>2</sup> In this document, where we refer to the “CABs”, we refer (unless the context otherwise suggests) jointly to the National Association of Citizens Advice Bureaux (also known as Citizens Advice), the Scottish Association of Citizens Advice Bureaux (also known as Citizens Advice Scotland) and the General Consumer Council for Northern Ireland (also known as the Consumer Council for Northern Ireland).

<sup>3</sup> An unofficial consolidated version of Consumer Protection Condition 1 (“CP1”) is available on our website via this link: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0018/8352/con1.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0018/8352/con1.pdf)

<sup>4</sup> See our consultation document entitled ‘*Recovering postal regulation and consumer advocacy costs: A review*’, published on 27 July 2017, which is available at [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/105238/consultation-postal-regulation-review.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/105238/consultation-postal-regulation-review.pdf)

## Recovering Ofcom's administrative costs

- 1.5 Having considered the responses we received, we have decided to adopt our proposals in the July 2017 Consultation without any modifications in relation to the recovery of our own administrative costs.
- 1.6 We have therefore revised the SoCP (which is published at Annex 5) to determine those postal operators required to pay our administrative charges as each of those who fall within our description of a 'relevant postal operator' (as defined in the SoCP). In summary, postal operators who provide single piece end-to-end letter services and/or bulk (including access) mail services, and who generate 'relevant turnover' exceeding £5 million in the relevant financial year, will be liable to pay an administrative charge.
- 1.7 Our decision will take effect from the 2018/19 charging year (i.e. the period beginning 1 April 2018 and ending with 31 March 2019). The amount that each relevant postal operator is required to pay will be calculated based on each operator's relevant revenue in the financial year in the last but one 12 month period prior to the charging year.
- 1.8 As a consequence of that decision, we will require data from such liable operators so that we can verify their relevant turnover, calculate each operator's share of relevant revenue and therefore determine the level of any administrative charge that a particular operator is liable to pay. Accordingly, we are also publishing at Annex 6 a General Demand for Information directed to such postal operators who are liable to contribute towards Ofcom's administrative costs. That General Demand places a legal obligation on each of those operators to provide Ofcom with its relevant revenue data for the charging year in question by no later than 5pm on the last working day of May every year, until further notice by Ofcom. The General Demand for Information comes into effect in the 2018/19 charging year, commencing on 1 April 2018, for liable operators to provide their respective relevant revenue for the period between 1 April 2016 and 31 March 2017.

## Recovering CABs' consumer advocacy costs on postal services

- 1.9 In light of the responses we received to our July 2017 Consultation, and further evidence we have obtained since our consultation, we have revised our initial proposals set out in our July 2017 Consultation concerning the recovery of the CABs' costs on postal services. This further evidence showed, amongst other things, that the CABs do a significantly greater proportion of work on parcels than originally envisaged in our July 2017 Consultation proposals.
- 1.10 For reasons set out in Section 4 of this document, we are now proposing to amend CP1 (see Annex 7 for our statutory notification on proposed detailed changes), so that postal operators who provide the following types of postal services would be liable to contribute towards the CABs' consumer advocacy costs on postal services:
- a 'relevant letters postal service' (which refers to all UK domestic single piece and bulk letter services provided on an end-to-end basis); and/or

- a ‘relevant parcels postal service’ (which refers to all UK domestic parcels services subject to certain size and weight restrictions).
- 1.11 Moreover, our revised proposals state that such postal operators would only be liable to contribute towards those costs if they exceed the following annual relevant revenue thresholds:
- in respect of ‘relevant letters postal services’, relevant revenue in excess of £10 million; and,
  - in respect of ‘relevant parcels postal services’, relevant revenue in excess of £350 million.
- 1.12 While we remain of the view set out in the July 2017 Consultation that postal operators that provide ‘relevant letters postal services’ should in principle be liable to contribute towards these costs, we no longer propose that services provided under a mandated access agreement should be included in that liability. This is because these services are provided between businesses and are unlikely to have any relevance to the work of the CABs. In addition, we have changed our view from the July 2017 Consultation in relation to parcel services for reasons discussed in Section 4 of this document, and we now believe that postal operators that provide certain parcel services should be liable to contribute towards consumer advocacy costs.
- 1.13 In response to our July 2017 Consultation, we also proposed that specific costs incurred by the CABs relating to the provision of a public consumer advice scheme via a caller helpline (i.e. calls costs) be recovered from the same group of postal operators as non-calls costs, subject to a relevant postal operator generating at least £100 worth of calls costs per annum. We did not receive any stakeholder objections to this proposal.
- 1.14 We therefore propose to apply our revised definition of what postal services constitute a ‘relevant postal operator’ to both the recovery of non-calls costs and calls costs. As a result of this, postal operators providing relevant letters and parcels services will be liable to contribute to caller helpline costs if they exceed the minimum threshold. Additionally, as proposed in our July 2017 Consultation, we have made some revisions in CP1 relating to the recovery of calls costs to reflect some recent legislative changes to the wording of section 51 of the 2011 Act, such as those introduced by the Scotland Act 2016.
- 1.15 We invite comments from stakeholders on our revised proposals in Section 4 and Annex 7 of this document. The consultation runs for 8 weeks and the deadline for responses is 5pm, Thursday 24 May 2018. Annex 1 provides further details of how to respond.

## 2. Background and legal framework

### Ofcom's duties for postal regulation

- 2.1 The legal framework relating to our regulation of postal services is set out in the 2011 Act. The 2011 Act provided for the transfer of responsibility for the regulation of postal services to Ofcom. Prior to 2011, the Postal Services Commission (known as Postcomm) was the regulator responsible for postal services in the UK.
- 2.2 Ofcom's principal duty under the Communications Act 2003 is to further the interests of citizens and of consumers, where appropriate by promoting competition, in carrying out our functions. For postal services, we also have a duty under the 2011 Act to secure the provision of the universal postal service, to which we must give priority if we consider that there is any conflict with our principal duty.
- 2.3 Section 29(1) of the 2011 Act provides that Ofcom must carry out its functions in relation to postal services in a way that it considers will secure the provision of a universal postal service. Section 29(2) provides that Ofcom's power to impose access or other regulatory conditions is subject to the duty imposed by section 29(1).
- 2.4 Section 29(3) provides that, in performing its duty under section 29(1), Ofcom must have regard to the need for the provision of a universal postal service to be:
- financially sustainable; and
  - efficient before the end of a reasonable period and for its provision to continue to be efficient at all subsequent times.
- 2.5 Section 29 does not, however, require that Ofcom gives more weight to one of those considerations over the other. We must take them both into account in arriving at our judgement as to how we ought to carry out our functions, including when considering imposing or modifying regulatory conditions.

### The role of the consumer advocacy bodies in the postal sector

- 2.6 The CABs provide free, confidential and independent advice to, and advocacy on behalf of, citizens of the United Kingdom in relation to their rights as consumers and citizens. Some of the work carried out by the CABs relates to postal services. Their work on postal services is consequently focused on the services which consumers most use. The CABs ensure that consumers are represented in relevant policy decisions, for example by responding to public consultations, as well as advocating on behalf of consumers based on carrying out and publishing research.
- 2.7 Under section 51 of the 2011 Act, Ofcom may impose consumer protection conditions on every postal operator, or every postal operator of a specified description, to do one or more of the things laid down in section 51(2), including:

- to make payments relating to qualifying consumer expenses of Citizens Advice or the General Consumer Council for Northern Ireland;
- to make payments relating to such amounts as the Secretary of State considers reasonable in respect of the provision, in or as regards Scotland, of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office, in relation to users of postal services; and
- to make payments relating to qualifying consumer expenses of the Secretary of State.

2.8 Therefore, section 51 of the 2011 Act permits Ofcom to impose a condition that allows us to recover the relevant expenses of those bodies involved in consumer advocacy (including the Secretary of State). Section 51 goes on, however, to specify what those expenses are. Broadly speaking, they are such a proportion of the following expenses as the Secretary of State considers reasonable:

- expenses of Citizens Advice<sup>5</sup> relating to<sup>6</sup>:
  - its functions in relation to users of postal services;
  - a transfer scheme made in respect of the National Consumer Council;
  - its support of any “qualifying public consumer advice scheme”<sup>7</sup>;
- expenses of the General Consumer Council for Northern Ireland relating to its functions in relation to users of postal services;<sup>8</sup>
- payments relating to the provision, in or as regards Scotland, of such consumer advocacy and advice as is referred to in section 51(2)(ca) of the 2011 Act (see above); and
- the “qualifying consumer expenses of the Secretary of State”, which are detailed in section 51(4ZA) of the 2011 Act.

2.9 The CABs have informed us that their role also includes work in relation to the Post Office network. However, the 2011 Act only allows Ofcom to recover qualifying consumer expenses from postal operators. Royal Mail and Post Office Limited became separate companies on 1 April 2012, and Post Office Limited is not a postal operator within the meaning of section 27(3) of the 2011 Act. As such, we can only recover the costs incurred by the CABs in relation to their work concerning the Post Office network from relevant postal operators and not from Post Office Limited.

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<sup>5</sup> i.e. the National Association of Citizens Advice Bureaux (which is distinct from the Scottish Association of Citizens Advice Bureaux).

<sup>6</sup> These “qualifying consumer expenses of Citizens Advice” are specified in section 51(a) to (c) of the 2011 Act.

<sup>7</sup> i.e. “a scheme that is supported by Citizens Advice in a manner that the Office of Fair Trading [which is now the Competition and Markets Authority (CMA)] is prohibited from using by section 8A of the Enterprise Act 2002”: section 51(4A) of the 2011 Act.

<sup>8</sup> Section 51(4)(g) of the 2011 Act.



- 2.10 As explained in Section 1 of this document, Ofcom has imposed CP1 under section 51 of the 2011 Act. It is through this condition that Ofcom requires postal operators of a specified description to make payments in relation to the relevant costs of the CABs.
- 2.11 Again as noted in Section 1, Ofcom’s role is strictly limited to administering (including apportioning) the recovery of the relevant costs of the CABs. We have no role in setting the level or examining the calculation of these costs. The CABs are responsible for calculating their costs and they are then submitted to the Secretary of State.<sup>9</sup> The Secretary of State then informs Ofcom of the level of costs that we are to recover on behalf of the CABs every year.
- 2.12 We have amended CP1 three times since we first imposed the condition on 27 March 2012.<sup>10</sup> Changes were made on two occasions to reflect a transfer of responsibilities or functions between different organisations in relation to consumer advocacy, and once to rectify a drafting error.

## Ofcom’s Statement of Charging Principles

- 2.13 Schedule 4 to the 2011 Act sets out how (and from whom) Ofcom may recover its own administrative costs incurred in carrying out our postal services functions.<sup>11</sup> In particular, that Schedule sets out that, if a postal operator provides ‘a service within the scope of the universal postal service’<sup>12</sup>, the operator in question must (in respect of the relevant service) pay annually to Ofcom the administrative charge that is fixed by Ofcom as applicable to the operator for relevant services.
- 2.14 Therefore, every postal operator whom Ofcom has determined to be liable to pay an administrative charge must pay such a charge to Ofcom in order to meet costs incurred by us in carrying out our postal services functions. This is a statutory duty imposed directly on such operators by virtue of paragraph 1(1) of that Schedule 4.
- 2.15 Ofcom can impose different charges on different persons. We can also exclude particular persons from the liability to pay charges.

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<sup>9</sup> Currently, the relevant Secretary of State is the Secretary of State for BEIS.

<sup>10</sup> See paragraphs 2.37 to 2.39 of our July 2017 Consultation (Ofcom, *Recovering postal regulation and consumer advocacy costs - a review*, Consultation, 27 July 2017, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/105238/consultation-postal-regulation-review.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/105238/consultation-postal-regulation-review.pdf)).

<sup>11</sup> Ofcom’s postal services functions for the purposes of recovering our annual administrative costs are set out in paragraph 2 of Schedule 4 to the 2011 Act.

<sup>12</sup> Section 40 of the 2011 Act provides that a postal service (including a part of a service) is ‘within the scope of the universal postal service’ in three circumstances, namely (1) the service falls within the description of a service set out in the universal postal service order; (2) the service would fall within the description of a service set out in that order but for the fact that (i) in the case of a service consisting of the delivery or collection of letters or other postal packets, the delivery or collection is not made on each of the days required by section 31; (ii) the service is not provided throughout the United Kingdom, or (iii) the service is not provided at an affordable price in accordance with a public tariff which is uniform throughout the United Kingdom; and (3) **the service is in Ofcom’s opinion of a kind that, from the point of view of users of postal services, could reasonably be said to be interchangeable with a service of a description set out in that order.**

The latter type of service is particularly relevant to our conclusions reached on the recovery of our administrative charges, as discussed in Section 3 of this document.

- 2.16 As noted in Section 1 of this document, the way in which Ofcom determines those postal operators whom are liable to pay our administrative charges (including the principles we apply in setting these charges) is through the publication of the SoCP. The SoCP therefore explains how and from whom Ofcom will recover its costs.
- 2.17 After Ofcom took over responsibility for the regulation of postal services in October 2011, we published our SoCP for the postal sector in 2012 (the “**2012 SoCP**”).<sup>13</sup>
- 2.18 The 2012 SoCP states that administrative charges are payable by postal operators that provide letter services which generate relevant turnover exceeding £10 million per annum. For the purpose of the relevant turnover calculation set out in the 2012 SoCP, turnover from access services<sup>14</sup>, express services (i.e. guaranteed next day delivery) and premium services<sup>15</sup> were excluded.
- 2.19 In 2014, Ofcom published our preliminary consultation reviewing our statements of charging principles applying to the electronic communications, postal, radio and television sectors (the “**2014 SoCP Review**”).<sup>16</sup> The 2014 SoCP Review set out the following guiding criteria in setting fees and charges for the sectors we regulate:
- **Fairness and equity:** the charging structure should raise Ofcom’s required funding across the regulated sectors in a manner which is fair and equitable;
  - **Simplicity and transparency:** charges should be as simple and as clear as possible for stakeholders, and wherever practicable use data that stakeholders would anyway gather for their own management purposes. Charges should also be relatively simple to administer for Ofcom;
  - **Cost-reflective:** Ofcom is required to ensure that revenues from each individual sector meet the costs of regulation for that sector. Furthermore, we also seek to ensure, so far as possible, that charges should broadly reflect the underlying cost of regulating each type of licence or regulatory activity within the sectors where such category types exist;
  - **Verifiable:** the information required for the setting of charges should be easily verifiable to ensure industry-wide compliance;
  - **Adaptable:** charging principles and structures should be capable of adapting to a changing market environment and be consistent with wider policy;
  - **Relevance:** charges should be based on an operator’s activities that flow from the licence or authorisation, but only those activities;

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<sup>13</sup> Ofcom, *Statement of Charging Principles - Postal Services*, Statement, 28 March 2012, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/53893/socp-post-statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/53893/socp-post-statement.pdf)

<sup>14</sup> Access services are defined as the conveyance and delivery of letters to the universal service provider (i.e. Royal Mail) for onward conveyance and delivery.

<sup>15</sup> Premium services are defined as any postal service including additional features which are paid for, such as recorded delivery, insured delivery and tracked items.

<sup>16</sup> Ofcom, *Principles for setting license fees and administrative charges: Review of Ofcom’s Statement of Charging Principles*, Preliminary Consultation, 27 March 2014, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0017/83060/socp\\_review\\_preliminary\\_consultation.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0017/83060/socp_review_preliminary_consultation.pdf)

- **Reliability:** the charging base should be stable over time, and not prone to erratic movements. Charges should not move substantially each year so long as the overall regulatory costs for that sector remain steady; and
- **Harmonisation:** the harmonisation of fee setting methods across the sectors, where it is practicable to do so, can help to ensure consistency and simplification, especially in an increasingly convergent communications industry.

2.20 We referred to those criteria in our July 2017 Consultation and we remain of the view that these guiding criteria are relevant to us setting the specific charging principles in relation to our administrative charges for our work in the postal sector. We have had regard to all of those criteria in considering the issues discussed in Section 3 to guide our thinking, with a view of reaching our judgement on what is appropriate overall in these particular circumstances. In so doing, we consider that cost-reflectiveness, adaptability and fairness and equity are particularly important to ensure that our charging principles are objectively justifiable and proportionate. Of these three criteria, we consider that it is paramount that the basis on which costs are recovered is cost-reflective of the work undertaken as this ensures fairness and equity in the way that charges are apportioned.

## Impact assessment

- 2.21 The analysis presented in this document represents an impact assessment, as defined in section 7 of the Communications Act 2003.
- 2.22 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 policy-making. 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.<sup>17</sup>

## Equality Impact Assessment (EIA)

- 2.23 Ofcom is separately required by statute to assess the potential impact of all our functions, policies, projects and practices on equality.<sup>18</sup> Equality Impact Assessments ("EIAs") also

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<sup>17</sup> 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](https://www.ofcom.org.uk/data/assets/pdf_file/0026/57194/better_policy_making.pdf)

<sup>18</sup> 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 reassignment, pregnancy and maternity, race, religion or belief and sexual orientation) and those who do not, and to foster good relations between persons who share a relevant protected characteristic and those who do not.

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.

- 2.24 We have considered whether our decision on Ofcom’s administrative charges (as discussed in Section 3 of this document), as well as our revised proposals for the recovery of consumer advocacy costs (as discussed in Section 4), 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.
- 2.25 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.

## 3. Statement: our decision on Ofcom's administrative charges

### Introduction

- 3.1 In this Section, we firstly set out our assessment of the responses we received to our proposals in the July 2017 Consultation to change the 2012 SoCP, and we then set out our conclusions and final decision on how (and from whom) we will recover our own administrative costs incurred in carrying out our postal services functions, through the publication of our new SoCP (see Annex 5). In short, we have decided to adopt our proposals in that regard without any modifications.
- 3.2 Our new SoCP takes effect so that it 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). In this Section 3, we explain in particular which postal operators will be required to pay our administrative charges annually (collectively referred to in the new SoCP as 'relevant postal operators') and, who as a consequence, is also required to provide Ofcom with such associated information specified in our General Demand for information on an annual basis (see Annex 6).
- 3.3 However, in light of responses to our July 2017 Consultation, and further evidence we have obtained recently, we have decided to revise our proposals in respect of the recovery of the CABs' consumer advocacy costs in relation to the postal sector. We deal with our revised proposals in the next Section 4.

### Our consultation proposal

- 3.4 In the July 2017 Consultation, we described the types of postal services we proposed should be regarded as within the scope of the universal postal service for the purpose of setting administrative charges. In summary, we proposed to amend the 2012 SoCP so that:
- Turnover derived from services provided under a mandated access agreement<sup>19</sup> or bulk mail services and single piece end-to-end letters services are considered as relevant turnover, on a net revenue basis, for the purposes of recovering administrative charges; and,
  - The threshold for payment of an administrative charge is reduced from turnover of £10 million to relevant turnover (i.e. turnover from services set out above) of £5 million, on a net revenue basis.

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<sup>19</sup> Access services provided under a mandated access agreement are services where a postal operator hands over postal items to the universal service provider for subsequent conveyance and delivery to the intended recipients of the postal items.

- 3.5 We also considered and proposed in the July 2017 Consultation that parcel operators should not be required to pay our administrative charges.
- 3.6 In making these proposals, we noted that Ofcom’s postal budget is primarily allocated to regulation of the universal postal service (84%), with a notable proportion allocated to regulation of the wider letters market (15%). We also noted that only a very small proportion of Ofcom’s postal budget (1%) relates to parcels projects. On this basis, we said that limiting relevant turnover to letters services was objectively justifiable, because it would ensure that the approach to administering fees is cost-reflective of the work that we do; this would also be proportionate because it ensures that those postal operators who do generate work for Ofcom contribute to our costs.<sup>20</sup>
- 3.7 We also argued that it was appropriate to retain a minimum relevant turnover threshold, so that postal operators whose relevant turnover is below the relevant threshold are not required to contribute to Ofcom’s regulatory costs. We noted that applying such a threshold reduces the risk of a regulatory cost contribution acting as a barrier to market entry.<sup>21</sup> However, we proposed that the threshold should be reduced from £10 million to £5 million in order to harmonise our fee setting threshold across the sectors we regulate, and because it is fair that our regulatory costs are borne more widely by those who are subject to or benefit from our regulation.
- 3.8 We received 14 responses to the July 2017 Consultation. They were from Royal Mail, the Mail Competition Forum (MCF), DX, Hermes, Citipost, the BBC License Fee Unit, One Post, UK Mail, Secured Mail, TechUK, Whistl, Citizens Advice, Citizens Advice Scotland (CAS) and the Consumer Council for Northern Ireland (CCNI).
- 3.9 In the following paragraphs, we summarise the stakeholder responses for each element of our consultation proposals and we then set out our assessment and final decision.

## Revenues from single piece end-to-end letter services

- 3.10 We proposed that single piece end-to-end letter services should continue to be considered within scope of the universal postal service for the purpose of setting administrative charges. The considerable majority of such services are provided by Royal Mail, with a very small proportion provided by smaller end-to-end operators who typically operate in defined geographic areas.
- 3.11 We made this proposal on the basis that such services are substitutable to letter services provided as part of the universal postal service in the geographic areas in which they are offered, and that postal operators providing such services are subject to some of our regulatory conditions. As such, some of the administrative costs that we incur in regulating postal services relate to the activities of single piece end-to-end letter operators. We

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<sup>20</sup> See paragraph 3.52 of the July 2017 Consultation.

<sup>21</sup> See paragraph 3.47 of the July 2017 Consultation.

considered that cost-reflectiveness, fairness and equity were all relevant in reaching this proposal.

## Stakeholder responses

- 3.12 There was general agreement amongst stakeholders that single piece end-to-end letter delivery services were within the scope of the universal service and that operators providing such services contribute to Ofcom's regulatory costs.<sup>22</sup> However, some stakeholders, for example Citipost, were concerned that including single piece revenue in the calculation and reducing the minimum threshold to £5m would extend the liability to pay a part of Ofcom's administrative charges to smaller postal operators, which would be damaging to competition, whilst others argued Royal Mail should continue to pay the majority of Ofcom's regulatory costs.<sup>23</sup>
- 3.13 Royal Mail agreed that smaller postal operators providing single piece end-to-end letter delivery services are substitutable to Royal Mail's end-to-end delivery service in geographic areas where the two services are offered, and thus should also be liable to contribute. Royal Mail also noted that such smaller letter operators benefit from Ofcom's regulation and thus the new charging principles should ensure the regime is futureproofed to cover these operators, should their activities increase from current levels.<sup>24</sup> TechUK said that smaller operators "are unlikely to qualify for the revised threshold."<sup>25</sup>

## Our assessment

- 3.14 We note that no stakeholder argued that single piece end-to-end letter services should not be considered within scope of the universal postal service for the purpose of setting administrative charges. In regard to the concerns raised about the impact on competition from extending the liability to pay to single piece operators with revenues of less than £10 million (but more than £5 million), we do not consider that this proposal is likely to have an impact on the development of competition.
- 3.15 We note that, in 2015-16 and 2016-17, combined end-to-end letter services provided by postal operators other than Royal Mail accounted for only 0.2% and 0.1% respectively of total letter volumes, and £8 million and £6 million in revenues in each respective year. On this basis, it is very unlikely that any one operator providing single piece end-to-end letter services other than Royal Mail will qualify to make contributions based on current market activity.
- 3.16 However, should such operators record annual revenues in excess of £5 million in future, then they would be liable to contribute in proportion to their share of relevant turnover.

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<sup>22</sup> Royal Mail Consultation response, paragraphs 2.5-2.6; TechUK Consultation response, page 1; Secured Mail Consultation response, page 1; UK Mail Consultation response, paragraph 2.5; DX Consultation response, pages 2-3; BBC License Fee Consultation response, page 5.

<sup>23</sup> Citipost Consultation response, pages 1-2; Hermes Consultation response, page 3; OnePost Consultation response, page 2; MCF Consultation response, page 2.

<sup>24</sup> Royal Mail Consultation response, paragraph 2.6-2.7.

<sup>25</sup> TechUK Consultation response, page 1.

Given that any contribution they would be liable to pay would be proportionate to their share of relevant turnover, we do not believe that competition would be damaged as new market entrants with relatively small revenues would only be required to pay a small part of our fee. We consider that this approach is cost reflective, fair and equitable, and adaptable.

- 3.17 For these reasons, we have decided to adopt our proposal in the July 2017 Consultation so that postal operators providing single piece end-to-end letter delivery services will be required to pay administrative charges to Ofcom if they generate a relevant turnover exceeding £5 million for the year in question (see below about minimum threshold). Their liability to pay Ofcom is captured in the new SoCP as postal operators that provide ‘relevant letters postal services’.

## Revenues from bulk mail and access services

- 3.18 We proposed that bulk letter services including access should be considered within scope of the universal postal service for the purposes of the recovery of administrative charges. We made this proposal on the basis that certain bulk letters services are interchangeable with some single-piece services and that it is therefore appropriate to treat bulk mail including access as within scope of the universal postal service for the purposes of the recovery of administrative charges.<sup>26</sup> In addition, we set out our view that providers of access services are subject to and benefit from Ofcom’s regulation to a significant degree and contribute significantly to some of our regulatory costs in relation to the postal sector.<sup>27</sup>

## Stakeholder responses

- 3.19 Royal Mail and the BBC License Fee Unit agreed with Ofcom’s view that bulk mail including access services are interchangeable with some single piece services. Royal Mail argued that all postal services are interchangeable from the point of view of the addressee and that all bulk mail services (including Royal Mail’s retail bulk services and access services) therefore meet the legal requirement under the 2011 Act for being eligible to contribute to Ofcom’s charges.<sup>28</sup>
- 3.20 However, the MCF, UK Mail, Whistl and DX disagreed that bulk mail and access services are interchangeable with universal service products, arguing that Ofcom had failed to consider

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<sup>26</sup> See paragraph 3.25 of the July 2017 Consultation.

<sup>27</sup> See paragraph 3.23 of the July 2017 Consultation.

<sup>28</sup> Royal Mail Consultation response, paragraphs 3.1-3.2.



relevant factors,<sup>29</sup> such as payment methods, how the services are facilitated<sup>30</sup> and differences between the products themselves.<sup>31</sup>

- 3.21 UK Mail, Citipost and Hermes also disagreed that bulk mail services including access should be considered within scope of the universal service for the purposes of setting administrative charges, with Hermes stating that, Ofcom “does not have the legal power to levy these charges” on bulk mail and access services.<sup>32</sup>
- 3.22 Whistl, OnePost, the MCF, UK Mail, Secured Mail and DX said that access operators have much smaller profit margins than Royal Mail, and that the competitive nature of the upstream access market would mean operators would be unable to pass these extra costs onto customers (via increased prices).<sup>33</sup> Some of these respondents also argued that our proposals would both strengthen Royal Mail’s financial position whilst weakening its competitors, which would undermine Ofcom’s duty under the 2003 Communications Act to further the interest of consumers by promoting competition.<sup>34</sup>
- 3.23 Several stakeholders also stated that Ofcom was mistaken in characterising access services as benefiting from Ofcom regulation, arguing the regulation of access services is to prevent Royal Mail from abusing its dominant position in the letters market, and that the majority (if not all) of Ofcom’s work is derived from either Royal Mail’s universal service provision or from Royal Mail’s market power.<sup>35</sup> DX and OnePost argued that Ofcom’s work in the wider letters market contained projects that are irrelevant to bulk/access mail, whilst Whistl noted that Ofcom’s work plan for 2017-18 “does not include any projects relating to access services”.<sup>36</sup>
- 3.24 The BBC License Fee Unit, TechUK, OnePost and Royal Mail agreed with our view that access and bulk mail benefit from the regulatory regime, noting that the access market is highly regulated as operators can use Royal Mail’s network and raise complaints to Ofcom in regard to the access condition, as well as benefit from Ofcom’s wider postal work.<sup>37</sup>

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<sup>29</sup> MCF Consultation response, page 2; Whistl Consultation response, paragraphs 3.2.4-3.2.6; UK Mail Consultation response, paragraphs 3.18-3.21; DX Consultation response, page 2.

<sup>30</sup> Whistl noted that services are provided for utilising the universal service network whilst “other postal providers provide services using separate infrastructure”.

<sup>31</sup> DX claimed “it’s very clear that CBC, OBC and Mailmark services are very different from single piece universal services”.

<sup>32</sup> Citipost Consultation response, page 2; UK Mail Consultation response, paragraphs 3.4, 3.8, 3.10; Hermes Consultation response, page 3.

<sup>33</sup> OnePost Consultation response, page 3; MCF Consultation response, page 2; Whistl Consultation response, paragraph 3.1.7; UK Mail Consultation response, paragraph 3.14; DX Consultation response, page 2-3; Secured Mail Consultation response, page 2.

<sup>34</sup> Whistl Consultation response, paragraph 3.1.8; UK Mail Consultation response, paragraph 3.15.

<sup>35</sup> Whistl Consultation response, paragraphs 3.13-3.14, 3.19, 3.1.11-3.1.12; Secured Mail Consultation response, page 2; UK Mail Consultation response, paragraph 3.11.

<sup>36</sup> OnePost Consultation response, page 3; DX Consultation response, page 2; Whistl Consultation response, paragraph 3.1.10.

<sup>37</sup> OnePost Consultation response, page 3; Royal Mail Consultation response, paragraphs 3.3-3.5; BBC License Fee Consultation response, page 5.

TechUK also noted that as bulk letter and access mail are a large proportion of letter volumes, they should contribute to Ofcom's postal regulatory costs.<sup>38</sup>

## Our assessment

### Substitutability of bulk mail services (including access) with universal postal services

- 3.25 As set out in the July 2017 Consultation, in order for providers of bulk mail and access services to be subject to an administrative charge, it is a precondition that such services fall within the meaning of a postal service within the scope of the universal postal service (as set out in section 40<sup>39</sup> of the 2011 Act), for the purposes of setting administrative charges. We consider that section 40(1)(c) of the 2011 Act is most relevant in this context; namely such postal services that are, in our opinion, of a kind that, from the point of view of users of postal services, could reasonably be said to be interchangeable with a service of a description set out in the universal postal service order.
- 3.26 We note that some consultation respondents argued that bulk services are not interchangeable with single piece services and therefore should not be considered within scope of the universal postal service for the purposes of setting administrative charges. Respondents referred to differences in payment methods, how the services are facilitated and differences between the products themselves.
- 3.27 We recognise that there may be differences in how particular single piece and bulk services are paid for, facilitated or offered. However, in our view, this does not mean that such services are not interchangeable from the point of view of users of postal services. In particular, and as set out in the July 2017 Consultation, we note that for small business users there is some substitutability between meter and PPI services (which are both within the universal postal service) and bulk mail services including access. This is particularly the case given the trend for postal operators to reduce their minimum posting levels to qualify for bulk services including access in recent years.
- 3.28 Notwithstanding certain differences in the specific terms of different products, we remain of the opinion that, from the point of view of users of postal services, some bulk mail including access services could reasonably be said to be interchangeable with single piece services. This is particularly so for low volume or low minimum spend bulk mail including access products. For these reasons, we continue to consider that for present purposes bulk mail including access services are interchangeable with some single piece postal services.
- 3.29 We emphasise, however, that our opinion on that interchangeability in this context should not be taken as an indication of our approach to market definition, since the considerations are entirely different. For this reason, our opinion on this matter is without prejudice to our view as to the scope of the universal postal service for other considerations.

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<sup>38</sup> TechUK Consultation response, page 1.

<sup>39</sup> See Section 2 of this document for more details about section 40 of the 2011 Act.

### Impact on competition in the postal market from our proposals

- 3.30 Some stakeholders, especially access operators, expressed concern that extending the liability to pay a part of our administrative charges to postal operators other than Royal Mail would have a material negative impact on competition in the postal sector. It was argued that the nature of the upstream access market, where operators compete with each other on price, would mean that operators would be less able to pass on any additional costs to their customers and therefore would have to bear the cost themselves.
- 3.31 We have considered this point very carefully, particularly in light of our duty under the Communications Act 2003 to further the interests of citizens and consumers, where appropriate by promoting competition. Our analysis suggests that implementing our proposed change to our SoCP would not have any material detrimental impact on competition in the postal market.
- 3.32 Indeed, our proposal was designed to minimise any such impact. Firstly, we proposed that postal operators providing certain letters services should be liable to pay a part of our administrative charge in proportion to their relevant turnover, and subject to a minimum threshold. This approach is designed to ensure that any charge that a postal operator is liable to pay is proportionate to the amount of revenue it generates. Operators who account for only a small proportion of relevant revenue, and who may therefore be less able to pay, would only be required to pay a small proportion of our fee. This consideration is also consistent with our criterion of fairness and equity.
- 3.33 Secondly, when considering whether our proposals would be likely to have a detrimental impact on competition, we have further considered what our proposals are likely to mean in practice for postal operators who do not currently contribute to our administrative charges. As shown in our Annual Monitoring Update on the postal market for 2016-17, the total UK addressed letters market was worth £4,182m in 2016-17 with revenue retained by Royal Mail accounting for £4,020m of that overall figure.<sup>40</sup> Royal Mail therefore accounts for 96% of all revenues in the UK addressed letters market.
- 3.34 Our total administrative charge in 2018-19 is £3.21 million.<sup>41</sup> Given that Royal Mail's share of relevant revenue was 96% in 2016-17, it would be liable to pay 96% of that amount (approximately £3.1 million). Accordingly, the total administrative charges borne by all other letters operators together would amount to approximately 4%, or around £125,000. In that regard, we note that operators (other than Royal Mail) retained combined revenues of £163 million in 2016-17. Our anticipated administrative charge would therefore represent a very small proportion of the revenues retained by the postal operators who between them would be liable to meet this charge. We do not consider that the payment of such a charge would be likely to have a material negative impact on the development of

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<sup>40</sup> Ofcom, *Annual monitoring update on the postal market - Financial year 2016-17*, Market update, 23 November 2017, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0019/108082/postal-annual-monitoring-report-2016-2017.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0019/108082/postal-annual-monitoring-report-2016-2017.pdf), Figure 1.2.

<sup>41</sup> Ofcom, *Ofcom's tariff tables 2018/19*, 28 March, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0019/112465/Tariff-Tables-2018\\_19.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0019/112465/Tariff-Tables-2018_19.pdf), Section 5.

competition in the postal market, even if some operators are less able to recover the cost of this charge from their end customers through price increases.

### Beneficiaries of Ofcom regulation

- 3.35 As we set out in the July 2017 Consultation, Royal Mail is subject to a regulatory condition to offer access to its inward mail centres for D+2 and later than D+2 letters and large letters services. Further, the only type of regulatory dispute in relation to postal services that can be referred to Ofcom are those that relate to the terms and conditions of access, as required by virtue of the USPA Condition. Providers of access services who depend on the access guaranteed by the USPA Condition therefore have recourse to Ofcom’s dispute resolution function.
- 3.36 We also monitor (and where necessary enforce) Royal Mail’s compliance with its access obligations. Therefore, access services are subject to and benefit from regulation, and contribute significantly to some of our regulatory costs in relation to the postal sector.
- 3.37 In addition, our work in the wider letters market – including bulk mail and access – accounts for a reasonable proportion (around 15%) of our postal work programme with much of this being directly relevant to access operators. For example, we undertook an extensive review of access pricing in 2014-15 which led to us publishing proposals in our Access Pricing Review of December 2014,<sup>42</sup> although these proposals were not ultimately taken forward due to changes in the market. In addition, we expect to issue a consultation shortly in relation to changes to the margin squeeze control, which is a regulatory obligation that we impose on Royal Mail to ensure that the difference between Royal Mail’s access price and retail price is kept at a level that allows efficient access competitors to compete effectively. This regulation directly benefits access operators. We also continue to meet monthly with the MCF to discuss issues they wish to raise with us.

### Our decision

- 3.38 Our overall judgement is that, based on our considerations of the responses received to our proposals, it is appropriate that postal operators providing bulk mail, including access services, should be required to pay administrative charges to Ofcom if they generate a relevant turnover exceeding £5 million for the year in question (see below about minimum threshold). Their liability to pay Ofcom is captured in the new SoCP as ‘relevant postal operators’. In reaching that view, we also consider that this outcome appropriately meets our guiding criteria, in particular fairness, equity and cost-reflectiveness.

## Using net revenues when considering access operators revenues

- 3.39 Having reached the view that revenues from bulk mail including access should be considered as relevant turnover, it is necessary to determine the basis on which such

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<sup>42</sup> Ofcom, *Royal Mail Access Pricing Review - Proposed amendments to the regulatory framework*, Consultation, 2 December 2014, <https://www.ofcom.org.uk/consultations-and-statements/category-1/rm-access-pricing>

revenues should be treated. In the July 2017 Consultation, we proposed that turnover from access revenues should be calculated on a net revenue basis rather than a gross revenue basis. In practice, this means that only the revenues retained by access operators after the payment of access charges to Royal Mail should be considered as relevant turnover. We said that such an approach would be consistent with, in particular, our fairness criterion, and it would also avoid any double counting of revenues.

## Stakeholder responses

- 3.40 All stakeholders who offered a view on this issue agreed with our proposal, noting that charging on a gross basis would result in access revenues being counted twice.<sup>43</sup>

## Our assessment

- 3.41 We remain of the view that turnover from access services should be calculated on a net revenue basis. We note that no stakeholder disagreed with this element of our proposal. We have therefore decided that revenue from access services should be calculated on a net revenue basis.

## Exclusion of parcel services from relevant turnover

- 3.42 In the July 2017 Consultation, we proposed that parcel operators should not be required to pay administrative charges in relation to Ofcom's work. In making this proposal, we noted that the only regulation that we impose on parcel operators is the requirement to establish, make available and comply with transparent, simple and inexpensive procedures for dealing with complaints of consumers of postal services. In addition, Royal Mail is subject to the universal service obligation in relation to parcels and is subject to a safeguard cap on Second Class stamped parcels products weighing less than 2kg. As such, the UK parcels market is very lightly regulated, and parcel operators do not therefore contribute significantly to, or benefit from, Ofcom's regulatory activity.
- 3.43 In addition, we noted that, to the extent we do engage with parcel operators, this is to inform our assessment of the financial sustainability of the universal postal service, rather than for the purposes of regulating the wider parcels market itself. Finally, we noted that only a very small proportion (approximately 1%) of Ofcom's work programme over the past three years related to parcel services outside of the universal service.

## Stakeholder responses

- 3.44 Royal Mail disagreed with this aspect of our proposal. It argued that Ofcom had not applied the same framework for assessing whether single piece and access letters services should

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<sup>43</sup> Royal Mail Consultation response, paragraphs 4.1-4.3; TechUK Consultation response, page 1; UK Mail Consultation response, paragraph 3.25; BBC License Fee Consultation response, page 5; DX Consultation response, page 3; Secured Mail Consultation response, page 2.

be considered as relevant revenue to parcel services. It said that applying the same framework would mean that parcel services fall within scope of services that could contribute to the administrative charges, as some parcel services are interchangeable with services provided under the universal postal service.<sup>44</sup>

3.45 Royal Mail agreed with Ofcom that the level of regulation in the parcel sector is lighter than the letter sector. However, it contended that Ofcom still spends a considerable portion of its resources on postal monitoring in the parcels sector. Finally, Royal Mail argued that parcel operators significantly influence Ofcom’s activity and benefit from the regulation of Royal Mail. For these reasons, it argued that parcel operators should pay a part of Ofcom’s administrative charges.<sup>45</sup>

3.46 Hermes, Citipost, UK Mail and TechUK all agreed with this aspect of our proposal citing Ofcom’s minimal work on parcels and the fact that the parcels sector is lightly regulated. These respondents argued that Ofcom’s regulatory activity in post is driven by Royal Mail’s dominance and that Royal Mail should therefore meet Ofcom’s costs of regulation.<sup>46</sup> DX and Secured Mail argued that excluding revenue from parcel services was consistent with our charging criteria. Secured Mail noted that Ofcom had chosen not to include parcel services in the mandate for access, and that parcel operators did not therefore benefit from Ofcom’s regulation and should not be liable to pay an administrative charge.<sup>47</sup>

## Our assessment

3.47 We note that the majority of stakeholders who responded to this issue agreed with our proposal not to include revenue from parcel services in calculating administrative charges. These respondents tended to agree that the proportion of Ofcom’s work relating to parcels was very small, and that the sector is very lightly regulated and for these reasons accepted that parcel operators should not be liable to pay a part of our administrative charges. The only stakeholder who disagreed with our proposal on a substantive basis was Royal Mail.

3.48 In particular, Royal Mail argued that we had not applied the same analytical framework to parcels as compared to letters in presenting our proposals. We accept that the starting point for our analysis of letters and parcels was different, and we consider there are good reasons for this approach. First, it is beyond doubt that regulation of the letters market contributes significantly to our regulatory costs. This is clear from the information we published in the July 2017 Consultation, which showed that 99% of our work programme was accounted for by projects relating to the universal postal service or wider letters market.

3.49 In particular, we impose a mandated access obligation on Royal Mail for the provision of certain letters services, and the majority of our regulatory conditions apply to letters

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<sup>44</sup> Royal Mail Consultation response, paragraphs 5.1-5.5.

<sup>45</sup> Royal Mail Consultation response, paragraphs 5.12-5.18, 5.24, 5.26.

<sup>46</sup> TechUK Consultation response, page 2; UK Mail Consultation response, paragraphs 3.26-3.29; Citipost Consultation response, page 2; Hermes Consultation response, page 3.

<sup>47</sup> DX Consultation response, page 3; Secured Mail Consultation response, page 3.

operators. We therefore started our assessment of letters by considering what types of letter services should be considered as relevant turnover for the purpose of setting administrative charges. In other words, there was no need to entertain the preliminary question of whether letters revenue should be in or out of scope of our calculation for setting administrative charges since it is clear that on the basis of cost-reflectivity, fairness and relevance, such services should be included.

- 3.50 By contrast, the parcels sector is very different. It is very lightly regulated. Our recent review of the regulation of Royal Mail set out our view that consumers' interests in the parcels sector are best served by competition rather than regulation, so the likelihood of us imposing additional regulation in the parcels sector in the near future is low.<sup>48</sup> We therefore began our consideration of parcels services by asking whether parcel services should be included as relevant revenue when calculating administrative charges. Having considered this question carefully, we set out our provisional view that such services should be excluded from the calculation.
- 3.51 Royal Mail also argued that Ofcom spends a considerable portion of its resources on postal monitoring in the parcels sector. As we set out in the July 2017 Consultation, we accept that we do engage with parcel operators from time to time. However, the purpose of this engagement is mainly to identify any emerging threats to the provision of the universal postal service and to inform our assessment of the financial sustainability of the universal postal service. This activity is therefore concerned with our duties to secure the provision of the universal postal service, rather than the wider parcels market itself. In our opinion, it therefore would not be appropriate to require parcel operators to meet the costs of such regulatory activity.
- 3.52 Finally, Royal Mail argued that parcel operators significantly influence Ofcom's activity and benefit from our regulation. We do not agree with this argument. Unlike in the letters market where competitors to Royal Mail benefit from Ofcom's mandated access regulation, and may bring disputes to Ofcom about the terms of such access, there is no equivalent mandated access regulation for parcels. It is therefore not the case that parcel operators are the subject of, or benefit from, our regulation.
- 3.53 For all of these reasons, we have decided to exclude revenue from parcel services as part of our relevant turnover calculation for the purposes of setting administrative charges.

## Minimum revenue threshold for paying administrative charges

- 3.54 In the July 2017 Consultation, we proposed to reduce the revenue threshold for paying administrative charges to Ofcom from a relevant turnover of £10 million to £5 million. As stated above, our primary reasons for this proposal were to ensure harmonisation with our approach to recovering our costs of regulation in the network and services sector, where the minimum threshold is £5m, and to ensure that the costs of regulation are borne more

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<sup>48</sup> Ofcom, Review of the Regulation of Royal Mail, Statement, 1 March 2017, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf), paragraphs 1.23-1.26.

widely by those who are subject to or benefit from our regulation. This is also consistent with our criteria of fairness and equity, and cost-reflectiveness.

## Stakeholder responses

- 3.55 The BBC License Fee Unit, Secured Mail and UK Mail agreed with our proposal.<sup>49</sup> However, other respondents said that Royal Mail's very strong market position drives most of Ofcom's work and that the threshold should be set at such a level that would require Royal Mail to pay all of Ofcom's regulatory costs.<sup>50</sup> Citipost argued that lowering the revenue threshold from annual turnover of £10 million to £5 million "threatened to discourage competition" because smaller operators would be more likely to be liable to pay an administrative charge, and OnePost and TechUK made similar arguments to this.<sup>51</sup>
- 3.56 Royal Mail disagreed with our proposal, stating Ofcom should reduce the threshold further to £1 million to spread the cost of regulation even more widely.<sup>52</sup> By contrast, the MCF and DX argued the threshold should be increased to £15 million to account for inflation in recent years, and said that it should continue to rise in future in line with inflation or Royal Mail's average price increases, whichever is the greater.<sup>53</sup>

## Our assessment

- 3.57 We recognise that, in applying a minimum threshold, there is a balance to be struck between ensuring smaller postal operators are not deterred from entering the market by the prospect of paying regulatory fees, and also ensuring that larger postal operators are not required to pay a disproportionately high share of our regulatory costs. We set out our reasons in the July 2017 Consultation as to why we considered a revenue threshold of £5 million would allow such a balance to be struck.
- 3.58 We note that stakeholders have different views about the level at which the threshold should be set, with some arguing that it should be increased above the current threshold of £10 million and others arguing that it should be reduced below our proposed level of £5 million. However, no respondent provided any evidence which suggested that a threshold either above or below £5 million would be more effective in striking a balance between deterring market entry and ensuring that regulatory costs are not disproportionately allocated to larger postal operators only.
- 3.59 In the absence of any compelling evidence from consultation respondents which supports the adoption of a minimum threshold at a level other than £5 million, and in order to reduce complexity for stakeholders, we remain of the view that £5 million is an

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<sup>49</sup> UK Mail Consultation response, paragraphs 3.32-3.34; BBC License Fee Consultation response, page 6; Secured Mail Consultation response, page 3.

<sup>50</sup> OnePost Consultation response, page 3.

<sup>51</sup> OnePost Consultation response, page 3; TechUK Consultation response, page 2; Citipost Consultation response, page 2.

<sup>52</sup> Royal Mail Consultation response, paragraph 6.1.

<sup>53</sup> MCF Consultation response, page 3; DX Consultation response, page 4.



appropriate threshold. Such a threshold ensures in particular that any administrative charges for the recovery of Ofcom's costs are harmonised, as well as fair and equitable.

- 3.60 Therefore, having considered all of the relevant arguments, we have decided to amend the SoCP to reduce the minimum relevant turnover threshold for relevant postal operators from £10 million to £5 million of relevant turnover.

## Use of alternative funding mechanisms

- 3.61 Some stakeholders suggested that we should consider implementing an alternative funding mechanism for the recovery of our regulatory costs where administrative charges are not calculated on the basis of a share of relevant turnover but by some other means. OnePost, the MCF and Whistl suggested Ofcom should consider the viability of funding its regulatory activity through fines imposed on postal operators for regulatory breaches.<sup>54</sup>
- 3.62 We have considered this suggestion and have concluded that such a proposal is not possible under the current legislative framework. Ofcom cannot use the proceeds of penalties to fund its activities. We are required to pass the proceeds from any financial penalties that Ofcom imposes directly to HM Government.<sup>55</sup> Therefore, it would require a change to primary legislation for Ofcom to be able to use the proceeds of penalties to fund its activities.

## Relevant legal tests for changing the SoCP

- 3.63 Under the 2011 Act, Ofcom may fix the administrative charge for a charging year only if, at the time the charge is fixed, there is in force a statement by Ofcom of the principles that they are proposing to apply in fixing charges under this paragraph for that year, and the charge is fixed in accordance with those principles.
- 3.64 It also requires that Ofcom must be of the view that these principles are likely to secure the cost of carrying out our postal service functions is met by the imposition of charges that are objectively justifiable and proportionate to the matters in respect of which they are imposed.
- 3.65 We consider that the charging principles are objectively justifiable and proportionate because, in particular, they ensure that Ofcom's costs of postal regulation are recovered from those postal operators that are either the subject of or benefit from Ofcom's work. This ensures that the cost of postal regulation is recovered in a manner that reflects the work that Ofcom does, and is therefore cost-reflective. We also believe that the imposition

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<sup>54</sup> Whistl Consultation response, paragraphs 1.09-1.10; OnePost Consultation response, page 2; MCF Consultation response, page 2.

<sup>55</sup> Section 400(2) of the Communications Act 2003 provides that, where Ofcom receives an amount to which section 400 applies, it must be paid into the appropriate Consolidated Fund. Section 400(1) of that Act sets out the amounts to which section 400 applies, including "(i) an amount paid to OFCOM in respect of a penalty imposed by them under Part 3 of the Postal Services Act 2011."

of our administrative charges on ‘relevant postal operators’ meet other criteria discussed above.

- 3.66 Accordingly, for all the reasons discussed in this Section 3, we have decided to revise the 2012 SoCP and we publish in Annex 5 our new SoCP to bring it to the attention of all persons who are likely to be affected by it; namely those postal operators which are ‘relevant postal operators’ within the meaning set out in that new SoCP. Each relevant postal operator will therefore be required to pay us administrative charges if (and only if) the relevant postal operator in question 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 new SoCP takes effect, so that it 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).

## **Operators’ duty to provide information under the General Demand**

- 3.67 As a consequence of our decision as set out above, we will require data from single piece end-to-end letter operators and bulk mail and access operators with revenues exceeding £5 million, so that we can verify their relevant turnover, calculate each operator’s share of relevant revenue and therefore determine the level of any administrative charge that a particular postal operator is liable to pay.
- 3.68 Schedule 8 to the 2011 Act empowers Ofcom to issue a General Demand for Information for the purpose of ascertaining who is liable to pay charges towards Ofcom’s administrative costs. A person required by Ofcom to provide such information is under a statutory duty to provide it in such manner and within such reasonable period as may be specified by Ofcom.<sup>56</sup> It is important for those to whom the General Demand is addressed to ensure that their response is on time, complete and accurate, because otherwise potential serious consequences could follow. In particular, we note that any failure to comply with our General Demand may result in enforcement action being taken by us to impose (among other things) a penalty of up to £50,000. Such action could also, in certain circumstances, result in Ofcom restricting or suspending operators’ entitlement to provide postal services. Any offences under Part 2 of Schedule 8 of failing to provide the requested information or of providing false information may also be prosecuted.
- 3.69 To date, we have not issued such a demand since all of our administrative costs for postal regulation have been met by one operator – Royal Mail – who we already gather relevant information from. In telecoms, where a variety of different communications providers are liable to pay a part of our administrative charges, Ofcom has issued a General Demand for Information, whereby the request to supply information (i.e. revenue details) is addressed to each and every person who is liable to pay administrative charges.<sup>57</sup> Such a request for information effectively takes the form of an information request for the required data, but

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<sup>56</sup> Paragraph 4(1) of Schedule 8 to the 2011 Act.

<sup>57</sup> <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/general-demand-for-information>

places the obligation to supply information (to Ofcom) on the relevant stakeholders. The request takes effect by Ofcom publishing a notice on our website, without sending it directly to the person in question.

- 3.70 Given that it is likely in future that more than one postal operator will be required to pay a part of our administrative charges, we have issued a General Demand for Information to ‘relevant postal operators’ (we have published it in Annex 6). We consider that issuing a General Demand for Information is an efficient and administratively simple means of ensuring that postal operators annually provide Ofcom with the necessary information that we require to calculate the administrative charges. The General Demand for Information will apply to all single piece end-to-end letter operators and bulk (including access) mail operators with annual relevant revenues of £5 million or more.

## 4. Consultation: recovering consumer advocacy costs relating to postal services

### Introduction

- 4.1 In this Section 4, we firstly explain how the costs the CABs incur in performing their role in relation to postal services (which we have explained in Section 2) are recovered at present. We then set out our assessment of the responses we received to our proposals in the July 2017 Consultation to change the basis on which we recover those costs. Finally, we set out our revised proposal on how (and from whom) we propose to recover these costs. In short, we have decided not to proceed with our initial proposal set out in the July 2017 Consultation. We set out in this Section 4 an alternative proposal on which we invite comments from stakeholders.
- 4.2 Our proposed new detailed amendments to CP1, which would be required to bring this proposal into effect, are set out in our statutory notification which is published in Annex 7.
- 4.3 Subject to views from consultation respondents, we expect any amendments we make to CP1 to take effect from the 2019/20 financial year. Therefore, the current funding mechanism for the recovery of consumer advocacy costs will remain in place for the financial year 2018/19.

### How the CABs' costs are currently recovered

- 4.4 The CABs are funded through a grant from the Department for Business, Energy and Industrial Strategy (BEIS). In order to secure this funding, each year the CABs submit a proposed annual work plan, following public consultation, to the Secretary of State or the Scottish Government as appropriate. The Secretary of State determines whether the proposed work plan and budget are reasonable and then either BEIS or the Scottish Government (as appropriate) issues a grant letter to each CAB setting out the approved funding for the year, and any associated conditions. BEIS then instructs Ofcom to recover the qualifying costs from industry, which we do by imposing regulatory obligations on certain postal operators to pay to Ofcom such amounts under CP1. The amounts that Ofcom has recovered on behalf of the Secretary of State in each of the last four years under CP1 are shown in Figure 1 below. This shows budgeted costs, charges levied on regulated postal operators adjusted for prior year variances from budget and actual costs incurred by the CABs.
- 4.5 Under CP1, only so-called 'regulated postal operators' are currently liable to meet the relevant costs incurred by the CABs in relation to postal services, subject to them generating relevant annual turnover in excess of £10 million. For those purposes, a 'regulated postal operator' means a postal operator which provides services in relation to which, had those services been carried out prior to 1 October 2011, the postal operator

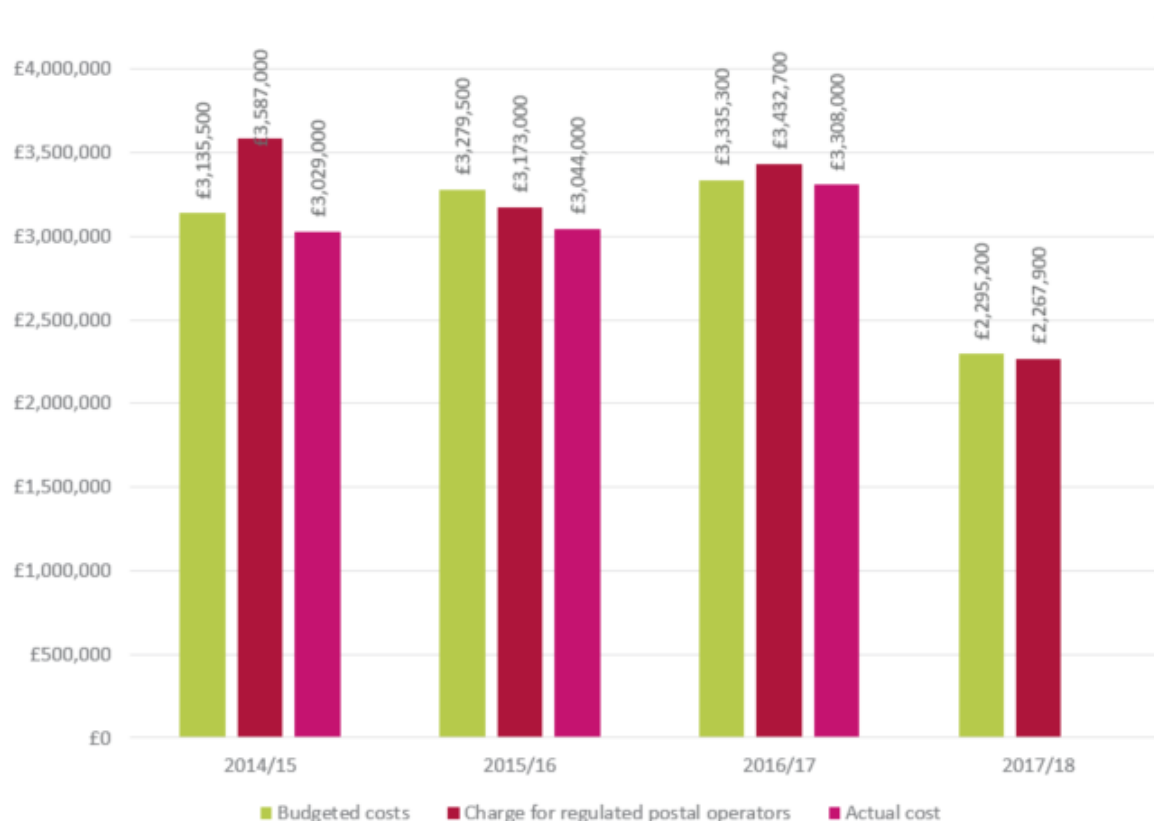
would have been required to hold a licence under the Postal Services Act 2000 (the “**2000 Act**”).

- 4.6 The scope of the licensing regime under the 2000 Act was defined in relation to price and weight thresholds. Licences to provide postal services were required only for postal operators delivering postal items that: (i) cost less than £1 to deliver; and (ii) weighed less than 350g. As such, CP1 currently has the effect of restricting contributions to few operators. As a result, in practice, Royal Mail has met all of the relevant costs incurred by the CABs in relation to postal services to date.
- 4.7 We believe that this aspect of CP1 is outdated and no longer appropriate, especially as it relies on an obsolete licensing regime to define which operators are liable to pay. We consider it is necessary to amend this aspect of CP1, so that the basis on which the CABs’ consumer advocacy costs are recovered in future is more appropriate to reflect current circumstances, including that such recovery aligns with Ofcom’s guiding criteria (see Section 2 of this document) for recovering fees and charges in the sectors we regulate, as we consider are appropriate in the present context. As already explained in Section 2, we consider that the criteria of cost-reflectiveness has primary importance, and that as a result of achieving cost-reflectiveness, the criteria of adaptability and fairness and equity (which we attach similar importance to) are also met.<sup>58</sup>

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<sup>58</sup> Our criteria for recovering fees and charges in the sectors we regulate are specifically relevant to the way in which we recover our own costs. However, we are of the opinion that these criteria serve as a useful guide for the recovery of the costs of consumer advocacy, because we believe these criteria are fair and reasonable in assessing potential options for the recovery of consumer advocacy costs, whilst also maintaining consistency (and therefore certainty for stakeholders) with the criteria Ofcom use for recovering fees and charges across the sectors it regulates.

Figure 1 - CAB costs and charges relating to consumer advocacy on post, 2014/15 to 2017/18



Source: Ofcom analysis, BEIS letters to Ofcom on recovering of costs on consumer advocacy on post (dated 2014 to 2017).

4.8 The relevant costs of the CABs broadly fall into two categories:

- the costs incurred by the CABs in respect of their function of providing a public consumer advice scheme via a caller helpline, where those calls relate to postal services (we refer to them as "**calls costs**"); and
- expenses of the CABs and the Secretary of State, likely to be incurred during the relevant year in relation to postal services in respect of functions other than providing public consumer advice scheme (we refer to them as "**non-calls costs**").

4.9 The aim of CP1 is to enable Ofcom to recover both calls and non-calls costs on behalf of the Secretary of State. As we have explained in Sections 1 and 2 of this document, Ofcom has no role in assessing or setting the level of the costs that the CABs incur in relation to their work in the postal sector; our role is limited to determining the basis on which consumer advocacy costs should be recovered and recovering (including apportioning) those costs that the Secretary of State considers meet the relevant expenses set out in section 51 of the 2011 Act.

4.10 We briefly set out below the basis on which calls costs and non-calls costs are currently recovered.

## Recovery of calls costs

- 4.11 The CABs offer access to consumer helplines, which allow the general public to make complaints and seek advice in relation to specific consumer rights issues. We call these “consumer advice services”. Some of the calls made to consumer helplines relate to postal operators. The CABs incur costs in responding to these enquiries. We call these costs “calls costs”. As shown in Figure 2 below, these costs account for a small minority of the overall costs incurred by the CABs (0.4% in 2016/17).
- 4.12 These costs are currently recovered from so-called ‘regulated postal operators’ on the basis set out in CP1. In short, in order to work out which operators are liable to pay a part of these costs, we multiply the projected calls costs by a ‘regulated postal operator’s’ share of calls related to the ‘regulated postal operator’ expressed as a percentage of the total calls relating to ‘regulated postal operators’.
- 4.13 If this calculation gives a result of greater than £100, the ‘regulated postal operator’ will be required to contribute to meeting the consumer advice service. Ofcom then multiplies the projected calls costs by the share of the regulated postal operator’s share of calls expressed as a percentage of the total calls relating to ‘regulated postal operators’. This then results in the charge that the ‘regulated postal operator’ must pay in relation to the consumer advice service.

## Recovery of non-call costs

- 4.14 As already explained in Section 2 of this document, the CABs also undertake a number of other pieces of work in relation to postal services, such as advocacy and research on behalf of consumers. The cost of conducting this work are allocated to postal services. We call these costs “non-calls costs”. The cost of this work is also recovered from so-called ‘regulated postal operators’ on the basis set out in CP1. In summary, a ‘regulated postal operator’ is currently required to pay part of these costs in proportion to their relevant turnover subject to a minimum threshold of £10 million annual relevant turnover. As shown in Figure 2 below, these costs make up the significant majority of the costs incurred by the CABs (99.6% in 2016/17).

**Figure 2: CAB costs, for call and non-calls costs, 2014/15 to 2017/18**

CAB costs	Call costs	Non calls costs
2014/15	£13,200	£3,015,800
2015/16	£12,800	£3,031,200
2016/17	£12,000	£3,296,000
2017/18 (budgeted)	£12,000	£2,283,200

Source: Ofcom analysis; BEIS letters to Ofcom on recovering of costs on consumer advocacy on post (dated 2014 to 2017).

## Our reconsideration of our initial proposal on operators liable to contribute towards the CAB's consumer advocacy costs in post

### Consultation proposals

- 4.15 In our July 2017 Consultation, we set out our proposal to recover all non-calls costs incurred by the CABs in the same way as we recover our own costs of regulation (i.e. the administrative charges). We proposed to retain the same fundamental approach to recovering calls costs as is in place now. However, for both the recovery of non-calls costs and calls costs, we proposed broadening the definition of postal operators who are liable to pay a part of these costs by replacing the definition of 'regulated postal operators' with 'relevant postal operators' (see Annex 6 of the July 2017 Consultation).
- 4.16 In summary, we proposed to amend CP1 so that non-calls costs would be recovered from postal operators who have annual relevant revenues of at least £5m or above and who:
- provide single-piece end-to-end letter services; and/or
  - provide bulk mail or access services.
- 4.17 In addition, calls costs would also be recovered from the same group of postal operators as non-calls costs, subject to a relevant postal operator generating at least £100 worth of calls costs.
- 4.18 Under these proposals, postal operators providing parcel services (and hence associated revenues) were excluded from the liability to pay for calls costs and non-calls costs. We made clear that taking this approach would mean that those operators who are liable to pay Ofcom's administrative charges would also be liable to pay the qualifying consumer expenses of the CABs.
- 4.19 We said that we believed that using the same approach to recover the non-calls costs of the CABs for the recovery of our own costs was supported by the fact that it will be simpler and clearer for both industry and Ofcom if there is a shared mechanism for recovering Ofcom's own administrative costs and the CABs' non-calls costs. We said it would also be administratively more efficient for Ofcom to use a single process rather than two, because Ofcom would only have to gather and assess one set of information and engage with the same stakeholders when recovering costs. We said that this would result in resource savings, which in turn creates costs savings for stakeholders.
- 4.20 We also said that a single approach would require a single set of verification requirements to ensure compliance from the same set of stakeholders on the same dataset, which would improve consistency and predictability over time.<sup>59</sup>

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<sup>59</sup> See paragraphs 3.70-3.75 of the July 2017 Consultation.



## Stakeholder Responses

- 4.21 A number of stakeholders responded to our proposals, including a range of postal operators as well as Citizens Advice, CAS and the CCNI. We summarise below the responses received and we then set out our assessment of the issues raised.

### Single piece end-to-end letter services

- 4.22 Stakeholders broadly agreed that revenue from single piece end-to-end letter services should be included in the recovery of consumer advocacy costs on the basis that such services are used by consumers.<sup>60</sup> As Royal Mail provides the vast majority of these services in the UK, some respondents such as UK Mail and Secured Mail argued that Royal Mail should continue to pay all of the consumer advocacy costs incurred by the CABs. They argued that, as the universal service provider, Royal Mail is likely to drive the majority, if not all, of the CABs' work in the letters market since consumers tend to be the predominant users of universal postal services. They also noted that the CABs incur costs in advocating on behalf of users of the Post Office, and that Royal Mail has an exclusivity agreement in place with the Post Office which means that other postal operators cannot offer their products via the Post Office. These respondents therefore argued that all Post Office related costs should be borne by Royal Mail.<sup>61</sup>
- 4.23 However, Royal Mail said that the CABs are consumer advocates for all users of postal services and not only for customers of Royal Mail. It said that, in the interests of fairness and equity, all postal operators should be required to pay a share of the relevant CAB costs.<sup>62</sup> In relation to the Post Office, Royal Mail said it was not appropriate to recover all the costs of CAB activity that relates to the Post Office from Royal Mail, noting that some of the CABs' work in relation to the Post Office was carried out on behalf of Government.<sup>63</sup>
- 4.24 Citizens Advice, Citizens Advice Scotland ("**CAS**") and the General Consumer Council for Northern Ireland ("**CCNI**") all confirmed that they undertake work in relation to single piece end-to-end letter services given the importance of these services for consumers. Notwithstanding their comments on particular aspects of our proposals, each of the CABs also said that it recognised the administrative efficiency to Ofcom in adopting a shared funding mechanism.<sup>64</sup>

### Bulk mail and access services

- 4.25 A number of stakeholders, such as UK Mail, Whistl, Secured Mail, Citipost, OnePost and the MCF, disagreed with our proposal that revenue from bulk mail including access services

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<sup>60</sup> Citipost Consultation response, page 1; Secured Mail Consultation response, page 4; UK Mail Consultation response, paragraphs 3.42-3.43.

<sup>61</sup> Secured Mail Consultation response, pages 3-4; UK Mail Consultation response, paragraphs 3.40-3.41.

<sup>62</sup> Royal Mail Consultation response, paragraphs 7.2, 7.6, 7.9.

<sup>63</sup> Royal Mail Consultation response, paragraph 7.8.

<sup>64</sup> CCNI Consultation response, paragraphs 3.1.3-3.1.4; CAS Consultation response, page 2; Citizens Advice Consultation response, pages 3-4.

should be included in the recovery of consumer advocacy costs for either calls costs or non-calls costs. These respondents tended to argue that access operators do not contribute to costs incurred by the CABs, and that the work of the CABs has little, or nothing, to do with access operators.<sup>65</sup> Secured Mail and UK Mail said that it was inappropriate for Ofcom to seek to justify its proposals on the grounds of administrative efficiency, arguing that a shared mechanism is not justified when the costs concerned do not relate to the same activities.<sup>66</sup>

- 4.26 Royal Mail argued that access and bulk mail services should contribute, noting that the CABs “*are consumer advocates for all users of all postal services*”.<sup>67</sup> However, Whistl argued that access operators are business-to-business suppliers, while the CABs undertake work on behalf of consumers. It argued that access operators do not contract with consumers, and do not provide services to them. Whistl further noted that consumers do not have access to the services provided by access operators, and access operators themselves have no contact with consumers. It said that, to the extent that the CABs’ work touches postal services at all, it relates to consumer mail, the Post Office and services which fall outside mandated access services (e.g. parcel services). Whistl said that none of these services have any applicability for access operators.<sup>68</sup>
- 4.27 Citizens Advice, CAS and the CCNI said they recognised the administrative efficiency of our proposal, and noted that bulk letters account for a significant majority of letter volumes.<sup>69</sup> However, there were mixed responses from the CABs about the extent to which their work is relevant to access operators with Citizens Advice stating that “*our work rarely looks directly at the operations of these firms*”,<sup>70</sup> while CAS said that “*some [...] work may include areas like bulk mail and access services*”.<sup>71</sup>

## Parcels services

- 4.28 Stakeholders generally disagreed with our proposal that revenue from parcel services should be excluded from the recovery of consumer advocacy costs. Citizens Advice, CAS and CCNI each noted that their remit extends to consumers of parcel services as well as letters services, and each confirmed that they therefore carry out work in relation to parcels.<sup>72</sup>

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<sup>65</sup> Whistl Consultation response, paragraphs 4.4.2, 4.3.1.2, 4.5.1-4.5.4; Citipost Consultation response, page 2; OnePost Consultation response, pages 3-4; Secured Mail Consultation response, pages 3-4; UK Mail Consultation response, paragraphs 3.35-3.37, 3.46; MCF Consultation response, page 2.

<sup>66</sup> Secured Mail Consultation response, pages 3-4; UK Mail Consultation response, paragraph 3.36.

<sup>67</sup> Royal Mail Consultation response, paragraphs 7.3, 7.6, 7.9, Annex 3.

<sup>68</sup> Whistl Consultation response, paragraph 4.5.3.

<sup>69</sup> Citizens Advice Consultation response, page 3; CAS Consultation response, page 3.

<sup>70</sup> Ibid.

<sup>71</sup> CAS Consultation response, page 3. The CCNI also commented it gives advice and guidance on making complaints and raising awareness for how business postal consumers can save (CCNI Consultation response, paragraphs 3.1.5-3.1.6).

<sup>72</sup> CCNI Consultation response, paragraphs 3.2.2, 3.2.4; Citizens Advice Consultation response, pages 3-6; CAS Consultation response, pages 4-5.

- 4.29 In addition, each CAB said that it expects to do more work on parcels in the future given the growth in the popularity of online shopping and consumers’ increasing use of parcel services. Both CAS and CCNI indicated that they undertake a significant amount of work on parcels, with a particular focus on exploring the issue of parcel surcharging, which primarily affects consumers in the Highlands & Islands of Scotland and Northern Ireland. Citizens Advice said that parcels services were increasingly important to consumers and that its work on parcels had therefore increased in recent years. It said that, in 2016/17, its externally commissioned research primarily concerned with the parcels market accounted for approximately 30% of its overall external research spend compared to just 3% in the prior year.<sup>73</sup>
- 4.30 On this basis, each of the CABs argued there was a case for Ofcom to include parcel revenue in the mechanism for recovering the costs of consumer advocacy. Citizens Advice said that *“in principle there is a case for recovering consumer advocacy costs from parcel operators as well as mail operators”* as *“parcels form an increasingly central part of how consumers use postal services and therefore an important part of the work of the CABs.”*<sup>74</sup>
- 4.31 CAS said that *“as consumer advocates, we would support further expanding the definition of relevant postal operators to include those providing parcel services”* on the basis that requiring parcel operators to contribute to funding the CABs work *“is an appropriate way to contribute to the sustainability of this work and improve the options for consumers”*. The CCNI said that further consideration should be given to the inclusion of operators who provide parcel services to the recovery of CAB administrative costs.<sup>75</sup>
- 4.32 Royal Mail disagreed with our proposal to exclude parcel revenue. It said that the activities of the CABs are increasingly driven by parcel operators, and estimated that around a third of the CABs’ research over the last three years related to parcels. Royal Mail highlighted in particular the work of the CABs on parcel surcharging, noting that this work is driven by other parcel operators because Royal Mail is obliged to charge the same price to send universal service items anywhere in the UK. It argued that the CABs’ work *“is not dominated by issues relating to the universal service in the way that Ofcom’s work is”*. In addition, Royal Mail said that it would be administratively straightforward for Ofcom to include parcel revenue in the recovery of consumer advocacy costs because Ofcom already has access to all the verified information it needs to widen the recovery of charges to parcel operators.<sup>76</sup>
- 4.33 Secured Mail, Citipost and UK Mail also objected to this element of our proposals. These operators suggested that, as CAB costs other than in relation to the Post Office network are predominately concerned with the parcels market, not the letters market, Ofcom may

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<sup>73</sup> CCNI Consultation response, paragraphs 3.2.1-3.2.3; Citizens Advice Consultation response, pages 4-7, CAS Consultation response, page 4.

<sup>74</sup> Citizens Advice Consultation response, pages 2, 5; CAS Consultation response, pages 4-5.

<sup>75</sup> CCNI Consultation response, paragraph 3.3.1.

<sup>76</sup> Royal Mail Consultation response, paragraphs 7.9-7.15, Figures 2-3.

wish to consider recovery of an appropriate proportion of CAB costs from Royal Mail and other parcel operators, but not from letter operators such as access operators.<sup>77</sup>

- 4.34 Hermes was the only stakeholder which agreed that parcel revenue should be excluded from the recovery of consumer advocacy costs. It argued that Royal Mail is a “*super dominant privatised operator in the postal market*” and it is the risk that this presents for consumers which requires the activity of a regulator and a consumer advocate in the form of the Citizens Advice Bureau. Hermes also said that it invests significantly to improve customer experience and that the risk presented to consumers by Hermes, and the number of complaints made to the CABs in particular, will decline over time as a result of this.<sup>78</sup>

### Other issues

- 4.35 A small number of respondents raised issues in relation to other aspects of our proposals. Royal Mail agreed with our proposal to continue recovering calls costs incurred by the CABs on the basis that we do now (but to expand the number of operators liable to pay), stating that such an approach “*appears to be cost reflective*” and that it would therefore be appropriate to retain this methodology.<sup>79</sup> In addition, some stakeholders made general observations about the level of costs incurred by the CABs, with some raising questions about how these costs are verified.<sup>80</sup> Finally, some stakeholders said that Ofcom had not provided sufficient information in its initial proposals about the level of the CABs’ costs to allow operators to meaningfully engage on this point. In particular, they said there was a lack of information about the costs that the CABs incur in their work on postal services and the types of postal services that the CABs’ work relates to.<sup>81</sup>

### Our assessment

- 4.36 We have carefully considered the points raised by stakeholders. We note that there was widespread disagreement among stakeholders – including from the CABs themselves – with our initial proposal to adopt a shared funding mechanism for the recovery of Ofcom’s own administrative charges and the CABs’ costs.
- 4.37 We note that many respondents disagreed with our proposal to include revenues from access services in the recovery of consumer advocacy costs, primarily on the basis that such services are business-to-business services which are not available to consumers and are therefore very unlikely to significantly influence the work of the CABs. We recognise that there is therefore an argument that it would be neither cost-reflective, nor fair and equitable, to require postal operators providing business-to-business letter services to contribute to consumer advocacy costs.

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<sup>77</sup> Citipost Consultation response, page 2; UK Mail Consultation response, paragraph 3.44; Secured Mail Consultation response, pages 3-4.

<sup>78</sup> Hermes Consultation response, pages 3-4.

<sup>79</sup> Royal Mail Consultation response, paragraph 7.14.

<sup>80</sup> Whistl Consultation response, paragraph 4.1.2; UK Mail Consultation response, paragraph 3.45.

<sup>81</sup> Whistl Consultation response, paragraphs 1.8.1, 4.1.1, 4.1.5-4.1.6.

- 4.38 In addition, we note there was considerable disagreement among stakeholders to our proposal to exclude parcel revenue from the recovery of consumer advocacy costs. Each of the CABs argued that there is a case for including parcel revenue in the cost recovery mechanism, on the basis that a significant, and increasing proportion, of their work relates to parcel services. There is therefore an argument that it would not appropriately reflect our guiding criteria of cost-reflectiveness, and fairness and equity if we were to exclude revenue from parcel services.
- 4.39 Taking these points into account, we consider that they are sufficient to cause us to reconsider our proposals. In particular, we now consider that the benefits of our initial proposal as set out in the July 2017 Consultation – including administrative efficiency for Ofcom and simplicity for postal operators of a single funding mechanism – are outweighed by the concerns raised about the lack of cost-reflectivity, and fairness and equity. We have therefore decided not to proceed with our initial proposal for the recovery of consumer advocacy costs and instead set out below an alternative proposal.
- 4.40 In regard to comments made by some stakeholders regarding the amount the CABs spend on consumer advocacy costs on post,<sup>82</sup> or the justification of what constitutes a qualifying consumer expense,<sup>83</sup> we are unable to determine or influence this as it is a matter for the Secretary of State to approve the qualifying expenses of the CABs. However, we do provide more detail on the level of these costs in this Section 4 (see Figures 1 and 2), so that it is easier for stakeholders to understand the quantum of these costs and how they have changed over time.
- 4.41 We note that some respondents argued that the CABs undertake work in relation to the Post Office, and these stakeholders stated that it would not be appropriate for Ofcom to recover the costs of this work from the broader postal sector. We recognise that the CABs have a remit in respect of the Post Office network. However, the 2011 Act only allows Ofcom to recover the costs of consumer advocacy from postal operators. Royal Mail and Post Office Limited became separate companies on 1 April 2012, and Post Office Limited is not a postal operator within the meaning of section 27(3) of the 2011 Act. As such the costs incurred by the CABs regarding the Post Office network must be recovered from postal operators and not from Post Office Limited.
- 4.42 However, in setting out our proposals in the following sub-section, we take into account the commercial relationship between the Post Office and Royal Mail, which includes a mutual exclusivity arrangement for the delivery of Royal Mail services through Post Offices until at least 2022. We consider that there are two broad options for recovering the costs of consumer advocacy related to the Post Office and discuss these in more detail in the following sub-section.

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<sup>82</sup> Secured Mail Consultation response, page 4; Whistl Consultation response, paragraph 4.1.2.

<sup>83</sup> Whistl Consultation response, paragraphs 1.8.2 and 4.1.5; UK Mail Consultation response, paragraph 3.45.

## From whom do we now propose that the CABs' costs should in principle be recovered?

- 4.43 In order to inform our revised assessment of what types of postal services should in principle<sup>84</sup> be considered as relevant turnover in recovering the CABs' consumer advocacy costs, we have gathered further information from the CABs regarding the expenditure they incur in relation to consumer advocacy in postal services and the types of postal services such expenditure relates to. We consider that this evidence is relevant to our consideration of the types of postal operators we should consider requiring to contribute towards such costs.
- 4.44 We asked the CABs to provide a breakdown of the total relevant costs they incurred over the period 2014/15 to 2017/18. We also asked the CABs to categorise these costs into broad areas of work that they undertake in relation to postal services. The CABs provided us with data showing their expenditure on external research broken down into four broad areas.<sup>85</sup> Having analysed this data, we set out in Figure 3 how the costs incurred in undertaking external research break down by broad work area as identified by the CABs. This data is aggregated over a four-year period and accounts for the sum of expenditure incurred by each of the three CABs.
- 4.45 The four broad areas identified are as follows:
- Consumer needs and future developments: this activity relates to both letters and parcels and is undertaken by the CABs with a view to identifying how consumer needs in relation to postal services are changing and how they may develop in future (e.g. *Future policy and economic scenarios for postal services, Postal market trends and insights*)
  - USO and letters: this activity relates to consumer advocacy in relation to universal postal services and consumer use of letters services (e.g. *Consumer impact of competition in the mail market, Market research on consumer understanding of stamp pricing structures*)
  - Parcels: this activity relates to consumer advocacy in relation to parcels services including both where the consumer is the recipient of a business-to-consumer (B2C) parcels service and where the consumer is the sender of a consumer-to-anywhere (C2X) service (e.g. *Understanding whether consumer rights in the parcels market are sufficient, Consumer experience of receiving parcels ordered through online marketplaces*)

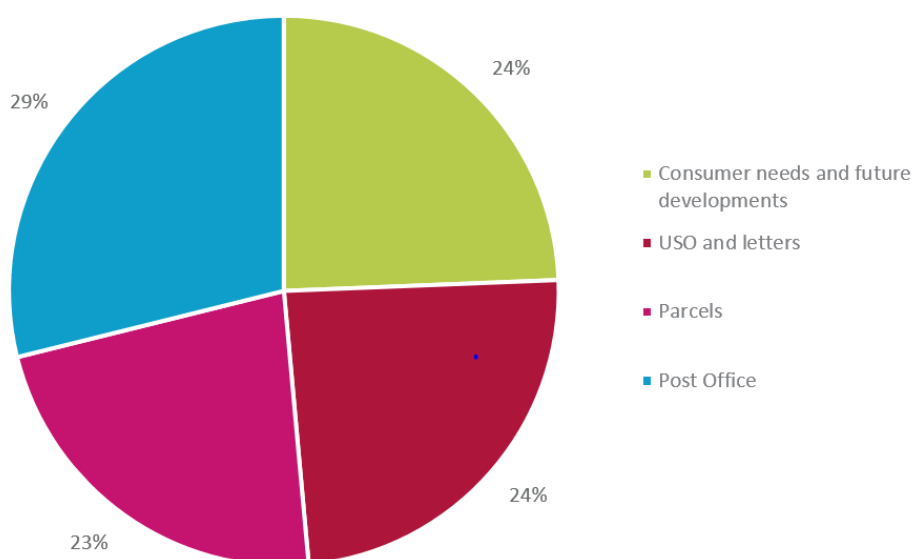
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<sup>84</sup> We say "in principle" because we are further proposing to set below minimum revenue thresholds for relevant services, before liabilities to contribute towards the CABs' costs would arise.

<sup>85</sup> The CABs told us they are not able to allocate administrative costs, such as salaries or other management overheads, to particular projects as staff time is not recorded in such a way that would facilitate this. Therefore, only expenditure on external research was made available to us on a project-by-project basis.

- Post Office: this activity relates to consumer advocacy work undertaken on behalf of users of services offered by the Post Office (e.g. *Monitoring the impact of the network transformation programme, Mapping post office access criteria*)

**Figure 3: Consumer advocacy postal costs by external research spend, 2014/15 to 2017/18**



Source: Ofcom analysis, formal information requests to Citizens Advice, Citizens Advice Scotland and Consumer Council for Northern Ireland.

4.46 As shown in Figure 3, the costs incurred by the CABs are relatively evenly attributed across each of the four broad work areas identified. The data shows that around a quarter (23%) of the costs incurred by the CABs in relation to research is accounted for by parcel services. In addition, the category entitled “consumer needs and future developments” relates to postal services overall, and parcel services therefore also account for a proportion of this expenditure. Citizens Advice referred to this in its consultation response, stating that “consumer advocacy projects often span different parts of the sector. For example, this year we are undertaking a project which will assess how well postal services are meeting the needs of disabled consumers. This project spans both parcels and mail services”.<sup>86</sup> The data illustrated in Figure 3 appears to support the view expressed by many respondents to the July 2017 Consultation that a significant proportion of the costs incurred by the CABs relate to parcel services, as well as letter services.

<sup>86</sup> Citizens Advice Consultation response, page 7.

- 4.47 In light of this evidence, we set out below our reassessment of the postal services we now propose should be considered in scope, and liable to contribute, towards the recovery of consumer advocacy costs on post. In doing so, we consider how the inclusion of revenue from different types of postal services would satisfy our guiding criteria,<sup>87</sup> with particular weight attached to the criteria of cost-reflectiveness, adaptability and fairness and equity.

### Single piece end-to-end letter services

- 4.48 As discussed in paragraph 3.10, single piece end-to-end letter delivery services are provided by Royal Mail (primarily through its First Class and Second Class universal service products) and some smaller postal operators who typically operate in defined geographic areas. These services are primarily used by consumers, and it is clear from the information gathered from the CABs, as illustrated in Figure 3, that a significant proportion of the CABs' external research costs (24%) in recent years relate to universal postal services and consumer's use of letters services.
- 4.49 In addition, it is clear from each of the CABs' proposed annual work plans for 2018-19 that letters services used by consumers remain relevant to the work of the CABs. For example, Citizens Advice intends to look at regulations and protections in postal markets in 2018-19, including any potential changes to the Universal Service Obligation arising from Brexit, routes to redress when things go wrong and how take up of freepost by low-income consumers can be improved.<sup>88</sup> CAS states that it is shifting the focus of its postal work to factors affecting those people who are more reliant on services via their local Post Offices (which is how many people access the universal postal service),<sup>89</sup> while CCNI intends to investigate the impact and value of the universal postal service provision in Northern Ireland.<sup>90</sup>
- 4.50 It appears to us that universal postal services, including single piece end-to-end letters services, continue to be relevant to the work carried out by the CABs. Accordingly, in our opinion, it is appropriate that those postal operators providing such services should, in principle, be liable to contribute towards the CABs' costs.<sup>91</sup> In reaching this view, we have also had particular regard to our guiding criteria concerning cost-reflectiveness, adaptability, and fairness and equity in satisfying ourselves that any liability to pay imposed

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<sup>87</sup> Although Figure 1 shows that a significant proportion of the CABs consumer advocacy costs relate to the Post Office, as set in paragraph 2.9 above, the Post Office is not a postal operator within the meaning of the 2011 Act, and therefore we cannot recover costs from the Post Office.

<sup>88</sup> Citizens Advice, *Citizens Advice consumer work plan 2018/19 – Annex A (Post)*, Consultation, 19 December 2017, [https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Work%20plan%2018-19/Annex%20A\\_%20Post%20themes%20-%20Google%20Docs.pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Work%20plan%2018-19/Annex%20A_%20Post%20themes%20-%20Google%20Docs.pdf)

<sup>89</sup> Citizens Advice Scotland, *Consumer Futures Unit Draft Work Plan 2018-19*, [https://www.cas.org.uk/system/files/publications/cfu\\_2018-19\\_draft\\_work\\_plan\\_final\\_revised\\_12th\\_feb\\_2018\\_0.pdf](https://www.cas.org.uk/system/files/publications/cfu_2018-19_draft_work_plan_final_revised_12th_feb_2018_0.pdf), pages 19-24.

<sup>90</sup> Consumer Council for Northern Ireland, *Draft Forward Work Programme 2018/2019*, [http://www.consumercouncil.org.uk/filestore/documents/dFWP\\_Final\\_211217.pdf](http://www.consumercouncil.org.uk/filestore/documents/dFWP_Final_211217.pdf)

<sup>91</sup> Our proposed CP1 (see Annex 7) defines a 'relevant letters postal service' as "a service of conveying relevant letters from one place to another by post and the incidental services of receiving, collecting, sorting and delivering relevant letters, excluding [certain specified services]". We consider that it is appropriate to exclude those specified services, because such services are unlikely to be used by consumers on a regular basis and are therefore unlikely to influence the work of the CABs.



on such operators under CP1 satisfies the relevant legal tests discussed at the end of this Section 4. We also consider that this outcome would be consistent with Ofcom’s principal duty in section 29 of the 2011 Act and our general duties in section 3 of the Communications Act 2003.

- 4.51 As a consequence, we consider that it remains appropriate for revenue from ‘relevant letters postal services’ to be considered as part of relevant turnover for the purposes of recovering consumer advocacy costs.

Question 1: ... Do you agree that revenues from single piece end-to-end letter delivery services should be taken into account for the purposes of recovering consumer advocacy costs on post? Please give your reasons

### Bulk mail and access services

- 4.52 Bulk letter services include Royal Mail’s retail bulk services and D+2 and later than D+2 letters and large letter services (i.e. access services provided under the USP Access Condition, i.e. the “USPA Condition”). Royal Mail’s retail bulk services are provided on an end-to-end basis, where Royal Mail collects or receives mail from the sender (usually a business) and then processes, transports and delivers this mail to the addressee. In doing so, Royal Mail is responsible for ensuring the delivery of such mail to consumers.
- 4.53 However, other postal operators providing bulk mail (including access) services are generally active only in the upstream part of the supply chain. For example, postal operators providing services under a mandated access agreement typically collect mail from business customers and then access Royal Mail’s delivery network for the mail to be delivered to the final recipient. Operators who provide access services therefore provide business-to-business services by acting as an intermediary between a large sender of mail and Royal Mail. These operators do not therefore have any role in the delivery of such mail to consumers, and they do not interact with consumers.
- 4.54 Our understanding is that bulk mail is only relevant to the work of the CABs insofar as it is necessary for them to advocate on behalf of consumers who are users of such mail. As consumers are recipients of bulk mail rather than senders, this means that in practice the driver for any work undertaken by the CABs in relation to bulk mail is likely to relate to the consumer’s experience in delivery. As access operators are not involved in the delivery of letters, we understand that the CABs do not interact directly with access operators or bulk mailers. This is consistent with Citizens Advice’s response to our July 2017 Consultation, in which it stated that *“unlike Ofcom, as bulk mailers and access operators do not tend to interact with the end consumer directly, our work rarely looks directly at the operations of these firms.”*<sup>92</sup>
- 4.55 Having particular regard to our guiding criteria concerning cost-reflectiveness, adaptability and fairness and equity in satisfying ourselves that the relevant legal tests and our

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<sup>92</sup> Citizens Advice Consultation response, page 4.

statutory duties are met, we therefore consider that only revenue from bulk mail which is provided on an end-to-end basis should be considered as part of relevant turnover for the purposes of recovering the costs of consumer advocacy. This is because only operators who provide such mail on an end-to-end basis have any interaction with consumers, and it is therefore only these operators who are likely to influence the work of the CABs in respect of bulk mail.

- 4.56 We therefore propose to exclude revenue from services provided under a mandated access agreement for the purposes of recovering the costs of consumer advocacy. Our proposed definition of ‘relevant letters postal services’ (see Annex 7 for details) seeks to ensure bulk mail provided on an end-to-end basis falls within the proposed scope of the liability to pay part of the CABs’ costs, and also seeks to exclude certain services including postal services provided under a mandated access agreements, to reflect this.

Question 2... Do you agree that revenues from end-to-end bulk mail services should be taken into account for the purposes of recovering consumer advocacy costs on post, and that revenues from services provided under an access agreement should not be taken into account for the purposes of recovering consumer advocacy costs on post? Please give your reasons.

### Parcel services

- 4.57 Consumers’ use of parcel services has grown in recent years as the popularity of online shopping has increased. As consumer demand for more flexible and cost effective parcel delivery options has increased, so competition has grown. There are now a number of parcel operators in the UK who provide end-to-end delivery services in each of the consumer-to-anywhere (“C2X”), business-to-consumer (“B2C”) and business-to-business (“B2B”) sectors.
- 4.58 As shown in Figure 3, around a quarter (23%) of the costs incurred by the CABs in undertaking external research over the last four years has related to work on parcels. In addition, at least some of their work on the universal postal service and consumer needs and future developments is also likely to relate to parcels. It is clear therefore that work on parcels services has been of relevance to the work of the CABs in recent years.
- 4.59 The 2018-19 draft annual work plans for each of the CABs suggests that parcels services will continue to be relevant to their work in future. For example, Citizens Advice says it intends to look at a number of different aspects of the parcels sector in 2018-19. Citizens Advice states that, as the parcel delivery market continues to develop, it will review where services and consumer protections can be improved, and what can be done for consumers who are excluded.<sup>93</sup> CAS’ draft annual plan for 2018-19 says that its “*postal advocacy work*

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<sup>93</sup> Citizens Advice, *Citizens Advice consumer work plan 2018/19 – Annex A (Post)*, Consultation, 19 December 2017, [https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Work%20plan%2018-19/Annex%20A\\_%20Post%20themes%20-%20Google%20Docs.pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Work%20plan%2018-19/Annex%20A_%20Post%20themes%20-%20Google%20Docs.pdf)

*has shifted in recent years to look more at the parcel related aspects of postal services, and consider postal operators other than Royal Mail, reflecting the way consumers increasingly access and use postal services”.*<sup>94</sup> Its draft plan also says that it intends to continue its work on parcel surcharging in the coming year. CCNI says in its draft annual plan that concerns have been raised about the level and fairness of parcel delivery surcharging and that the Consumer Council will continue its work in this area in 2018-19.<sup>95</sup>

- 4.60 In addition, the parcels sector is expected to grow further as the popularity of online shopping continues to increase. Ofcom’s most recent annual update on the postal sector found a 7% increase in parcels volumes in 2016-17 from the previous year,<sup>96</sup> whilst recent industry research has predicted a 20% increase in parcels volume every year from 2017 to 2021.<sup>97</sup> The same research also found that the B2C market is expected to grow at a faster rate in future than the B2B market. Therefore, it is reasonable to assume that parcel services will remain important to the work of the CABs.
- 4.61 For similar reasons to those discussed above for single piece end-to-end letters services (and bulk mail provided on an end-to-end basis), we consider it is appropriate that postal operators providing parcel services should, in principle, be liable to contribute towards the CABs’ costs.<sup>98</sup> In reaching this view, we have again had particular regard to our guiding criteria concerning cost-reflectiveness, adaptability and fairness and equity in satisfying ourselves that any liability to pay imposed on such operators under CP1 satisfies the relevant legal tests discussed at the end of this Section 4. We also consider that this outcome would be consistent with Ofcom’s principal duty in section 29 of the 2011 Act and our general duties in section 3 of the Communications Act 2003. In that regard, we also note (as the evidence shows) that parcel operators already contribute to the work of the CABs and are likely to continue to do so in future, which is relevant to our consideration of the guiding criterion concerning adaptability.
- 4.62 As a consequence, we now propose to include revenue from ‘relevant parcels postal services’ as part of relevant turnover for the purposes of recovering consumer advocacy costs.
- 4.63 As set out in our proposed amendments to CP1, we propose to define a ‘relevant parcels postal service’ as a service of conveying relevant parcels from one place to another by post and the incidental services of receiving, collecting, sorting and delivering relevant parcels,

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<sup>94</sup> Citizens Advice Scotland, *Consumer Futures Unit Draft Work Plan 2018-19*, [https://www.cas.org.uk/system/files/publications/cfu\\_2018-19\\_draft\\_work\\_plan\\_final\\_revised\\_12th\\_feb\\_2018\\_0.pdf](https://www.cas.org.uk/system/files/publications/cfu_2018-19_draft_work_plan_final_revised_12th_feb_2018_0.pdf)

<sup>95</sup> Consumer Council for Northern Ireland, *Draft Forward Work Programme 2018/2019*, [http://www.consumercouncil.org.uk/filestore/documents/dFWP\\_Final\\_211217.pdf](http://www.consumercouncil.org.uk/filestore/documents/dFWP_Final_211217.pdf)

<sup>96</sup> See Figure 6.1 of our *Annual monitoring update on the postal market - Financial year 2016-17*.

<sup>97</sup> Pitney Bowes, *UK parcel market set for “huge shake-up” in new trends and technologies*, 31 August 2017, <https://postandparcel.info/82570/news/parcel/pitney-bowes-uk-parcel-market-set-for-huge-shake-up/>

<sup>98</sup> Our proposed CP1 (see Annex 7) defines a ‘relevant letters postal service’ as “a service of conveying relevant letters from one place to another by post and the incidental services of receiving, collecting, sorting and delivering relevant letters, excluding [certain specified services]”. We consider that it is appropriate to exclude those specified services, because such services are unlikely to be used by consumers on a regular basis and are therefore unlikely to influence the work of the CABs

whereby a ‘relevant parcel’ is defined as a postal packet that is larger in dimensions than a relevant letter, and weighs no more than 31.5kg. We have selected this definition for a relevant parcel as Ofcom generally considers deliveries of items above 31.5kg to be ‘freight’ rather than ‘parcels’ as they require more than one operative to deliver in the absence of specialist equipment<sup>99</sup>. This is also consistent with the way in which we have defined a parcel for other purposes, such as our monitoring programme.

Question 3... Do you agree that turnover from parcel services should be taken into account for the purposes of recovering consumer advocacy costs on post? Please provide your reasons.

## Post Offices

- 4.64 We understand that part of the CABs’ work in relation to postal services relates specifically to the Post Office network. Citizens Advice told us that its remit permits it to investigate any matter relating to the number and location of public post offices. Citizens Advice noted that currently this work is funded by Royal Mail, and that the costs of this work cannot legally be charged to Post Office Ltd because it is not a postal operator within the meaning of section 27(3) of the 2011 Act.
- 4.65 We have considered how such costs could best be recovered from postal operators in future, having regard to our guiding criteria. We note that the exclusive nature of the commercial relationship between Royal Mail and the Post Office – which applies until at least 2022 – means that other postal operators cannot provide services via the Post Office network. We accept therefore that on the basis of cost-reflectiveness and fairness and equity in particular, there is an argument that postal operators who cannot access the Post Office network should not be required to contribute to costs incurred by the CABs in relation to the Post Office.
- 4.66 We consider there are two broad options for recovering Post Office related costs. The first option would be to identify those costs incurred by the CABs which specifically relate to the Post Office and to recover these directly from Royal Mail. Other costs incurred by the CABs in relation to postal services would be recovered from relevant postal operators on a share of relevant turnover basis.
- 4.67 The advantage of such a mechanism would be its cost-reflectivity, fairness and equity. However, such an approach is arguably less able to satisfy other aspects of our guiding criteria. First, the CABs told us they are not able to allocate administrative costs incurred in relation to postal services to particular areas of work as staff time is not recorded in such a way that would facilitate this. They can only allocate external research expenditure on a project by project basis. It is therefore not clear that requiring the CABs to identify costs incurred specifically in relation to the Post Office and recovering these from Royal Mail would satisfy our reliability and verifiability criteria. In addition, such an arrangement

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<sup>99</sup> Footnote 1, page 206, Ofcom, *Communications Market Report 2017 – United Kingdom*, August 2017, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/105439/uk-post.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/105439/uk-post.pdf)

would add complexity to the basis on which costs are recovered, which would be unlikely to satisfy our simplicity and transparency criterion.

- 4.68 An alternative option would be to recover Post Office related costs incurred by the CABs from all relevant postal operators who qualify to make contributions on a share of relevant revenue basis. We consider that there are significant advantages to such an approach. First, such an approach is more likely to meet our guiding criteria of simplicity and transparency, reliability and verifiability since it does not seek to introduce a level of cost apportionment which may not be accurate. In addition, we note that Royal Mail is a near monopolist in the end-to-end letters sector (where it accounts for 99.8% of revenues), and that it also has a strong position in the parcels sector. We also note that its competitive position in each of these sectors has remained relatively stable in recent years.
- 4.69 On this basis, it is likely that Royal Mail's share of relevant revenue will ensure that it continues to pay the majority of the costs incurred by the CABs in relation to postal services. As such, any costs incurred by the CABs in relation to the Post Office would effectively be recovered from Royal Mail, despite the absence of any arrangement to identify and specifically recover such costs from Royal Mail. We consider that this approach is more appropriate overall in satisfying our criteria of cost-reflectiveness, fairness and equity, whilst avoiding some of the disadvantages of seeking to identify and recover specific Post Office related costs from Royal Mail as described above.
- 4.70 For these reasons, we propose to recover Post Office related costs incurred by the CABs from all relevant postal operators on a share of relevant revenue basis.

Question 4... Do you agree that consumer advocacy costs on post, in regard to work completed by the CABs on the Post Office, should be recovered from all relevant postal operators? Please explain why.

### Calls costs

- 4.71 As described in paragraph 4.11, the CABs incur costs in dealing with calls to its consumer helpline. These costs are recovered on a different basis from non-calls costs, as set out in CP1, and are displayed in Figure 2 above.
- 4.72 We note that no stakeholder disagreed with our proposal to recover calls costs on the same basis that we do now but to broaden the scope of operators who are liable to meet such costs to any postal operator providing a relevant service. We consider that restricting the liability to make contributions to 'regulated postal operators' only (as under the current CP1) is no longer appropriate as it creates an arbitrary restriction on how such costs can be recovered by reference to a now obsolete licensing regime. We consider that any postal operator providing a service which is used by consumers has the potential to generate a consumer complaint via a call to the CABs' consumer helpline. It is therefore appropriate to ensure that calls costs may be recovered from any postal operator providing a relevant service (as defined in our proposed amendments to CP1). As a result of this, postal operators providing relevant letters and parcels services will be liable to contribute

to caller helpline costs if they exceed the minimum threshold. We therefore intend to proceed with this element of our initial proposal set out in the July 2017 Consultation.

## **Establishing a minimum revenue threshold for ‘relevant letters postal services’ and ‘relevant parcels postal services’**

- 4.73 Having set out above the different types of postal services that we now propose should be considered, in principle, as those liable to contribute towards (together with associated relevant revenues) the recovery of consumer advocacy costs, we consider in this sub-section that it is appropriate to establish certain minimum revenue thresholds before postal operators providing such services would actually be liable to pay a part of these costs.
- 4.74 By setting minimum relevant turnover thresholds, those postal operators whose relevant turnover figures are below the relevant minimum would not be required to contribute to the recovery of consumer advocacy costs. Applying such thresholds therefore reduces the risk of a cost contribution acting as a barrier to entry, and thus the charging structure potentially impacting on the operation of the market. However, we appreciate that there is a balance to be struck with ensuring that larger operators, through the exclusion of smaller operators, do not have to contribute disproportionately to the costs of consumer advocacy.
- 4.75 We consider below what minimum thresholds we consider should apply firstly to ‘relevant letters postal services’ and then to ‘relevant parcels postal services’. Overall, by introducing such thresholds, we are ultimately seeking to ensure that the regulatory outcome (and any apportionment) is appropriate to furthering the interests of citizens and consumers, where appropriate by promoting competition, in accordance with our general duties under section 3 of the Communications Act 2003. In so doing, we have had overall regard to, in particular, the extent to which such furthering is reasonably practicable and proportionate in these circumstances, while reflecting such of our guiding criteria that we consider are appropriate in this context as discussed below.

### **‘Relevant letters postal services’**

- 4.76 As set out in Ofcom’s annual monitoring update on the postal market for 2016-17, total addressed letter revenues in 2016-17 were £4,182m of which £4,020m was accounted for by Royal Mail. This means that Royal Mail’s share of the total addressed letters market by revenue is 96%, with a number of smaller letters operators making up the remaining 4%. When only end-to-end letter revenues are considered (i.e. those letter revenues we propose should be considered as relevant turnover for the recovery of consumer advocacy costs), Royal Mail’s market position is stronger still accounting for £2,473m of £2,479m revenues.<sup>100</sup> Royal Mail therefore accounts for 99.8% of end-to-end addressed letter revenues in the UK.

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<sup>100</sup> See Figure 1.2 of our *Annual monitoring update on the postal market - Financial year 2016-17*.

- 4.77 Given that alternative end-to-end letters operators generated combined total revenues of only £6m between them in 2016-17, we consider it highly unlikely that any of these operators are operating on a scale that would be likely to impact the work of the CABs. End-to-end letters operators other than Royal Mail tend to operate in specific geographic areas only and therefore have limited reach. On this basis, we consider it is reasonable to conclude that such operators are unlikely to have significant contact with consumers.
- 4.78 In order to ensure that the mechanism for recovering the costs of consumer advocacy is (among other things) cost-reflective as well as fair and equitable, we consider that those smaller end-to-end letter operators who generate a very small proportion of total market revenues should not be liable to contribute to the costs of consumer advocacy.
- 4.79 We have therefore carefully considered the level at which the minimum threshold should be set to ensure, insofar as possible, that only those end-to-end letters operators who are likely to influence the work of the CABs are liable to contribute to the costs of consumer advocacy. Data from our annual monitoring programme shows that total revenue generated by end-to-end operators other than Royal Mail over the period 2011-12 to 2016-17 has only exceeded £10m per annum twice (in 2013-14 when revenues were £15m and 2014-15 when revenues were £36m).<sup>101</sup> In each of these years, Whistl was actively rolling out its end-to-end delivery operations and it is likely therefore that Whistl accounted for a significant proportion of this revenue.
- 4.80 Whistl exited the end-to-end letter sector in June 2015. At the point that it exited the market, Whistl was delivering to around 7% of addresses and had a maximum share by volume in total addressed letters of 1.3%.<sup>102</sup> On average, this represented around 20% of the total letter volumes in the areas that Whistl was operating in. We consider that an operator who is active on this scale has the potential to have sufficient contact with consumers such that it might begin to generate work for the CABs. We note that, following Whistl's exit from the market, total (non-Royal Mail) letter revenues returned to below £10m and have remained at that level since then. We consider that an operator with less than £10m annual revenues is unlikely to be operating on a scale that would impact the work of the CABs.
- 4.81 Taking this into account, we therefore propose to establish a minimum revenue threshold of £10m annual relevant turnover before a letters operator providing relevant services is liable to contribute. Should an end-to-end letter operator generate revenues in excess of £10m, under our proposal it would only be required to pay a proportion of the costs of consumer advocacy in proportion to its share of relevant turnover. We therefore believe that a threshold of £10m appropriately balances one of our objectives of ensuring that the requirement to contribute to consumer advocacy costs does not act as a barrier to entry, and that larger operators do not pay a disproportionately high share, as well as appropriately reflecting our guiding criteria concerning cost-reflectiveness, fairness and equity and adaptability, alongside furthering our general duties as explained above.

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<sup>101</sup> See Figure 5.2 of our *Annual monitoring update on the postal market - Financial year 2016-17*.

<sup>102</sup> Ofcom, *Review of the Regulation of Royal Mail*, Statement, paragraphs 2.13-2.14.

Question 5... Do you agree that the minimum revenue threshold for relevant letters postal services, for the purposes of recovering consumer advocacy costs on post, should be set at £10 million? Please explain why.

### **‘Relevant parcels postal services’**

- 4.82 The UK parcels market is very different to the letters market. Ofcom’s latest annual monitoring update on the postal sector for 2016-17 shows that total measured national parcels revenue was £8.7bn with volumes of 2.1bn. The average unit revenue of a parcel was £4.07 in 2016-17, compared to average unit revenue of 36p for an addressed letter. The total parcels market is therefore worth considerably more than the letters market, and the average unit revenue generated by a parcel is more than ten times greater than that generated by a letter.
- 4.83 In addition, as competition is more developed in the parcels market compared to the letters market, there are a greater number of parcel operators who are active in the market. Ofcom already collects volume and revenue data from some of the largest UK parcel operators in order to monitor the level of competition in the market and to ensure we have visibility of any market developments that may impact the sustainability of the universal postal service. This data shows that many parcel operators account for only a small proportion of the market (both by revenue and volume) and are therefore unlikely to have significant interaction with consumers, and hence unlikely to significantly affect the work programme of the CABs. There are also a significant number of parcel operators who are active in the market but from whom we do not collect volume and revenue data. The market share of these operators is likely to be smaller still.
- 4.84 We consider that it would be administratively difficult for Ofcom to recover fees from a very large number of parcel operators, many of whom would only be liable to pay a relatively small fee on the basis that they would account for a small share of relevant turnover. Collecting fees from such operators would neither be cost-reflective of the costs incurred by the CABs, nor simple, transparent and reasonably practicable for Ofcom to administer. We therefore consider it is appropriate to adopt a higher minimum threshold for parcels revenues than for letters revenues before operators are liable to contribute to the costs of consumer advocacy.
- 4.85 In considering the level at which a minimum revenue threshold should be set, we have analysed the data we collect via our monitoring programme. Whilst this data is commercially confidential and cannot be disclosed publicly, we have disclosed elsewhere that, based on the information we have collected, Royal Mail (including Parcelforce) had the largest share of revenues (and volume) by a substantial margin in 2014-15, with three



other firms each having a share above 10% (based on total revenues of those firms from which we received data).<sup>103</sup> [X].

- 4.86 On the basis that the largest UK parcel operators are likely to have the greatest interaction with consumers, and therefore impact the work of the CABs most significantly, we consider that it is reasonable to establish a minimum threshold for relevant parcel revenues which ensures that only the largest parcel operators are liable to contribute. We consider that such an approach is also fair and equitable, and cost-reflective.
- 4.87 It is our judgement that those operators with a share of the market by revenue which is greater than 5% are most likely to influence the work of the CABs on the basis that, in order to generate such revenue, an operator is likely to be delivering sufficient volume to come into contact with a significant number of consumers. This, in turn, means that the relevant postal operator is likely to have the potential to impact the work of the CABs.
- 4.88 We note that data from our residential consumer tracker survey shows that consumers use a range of parcel operators for sending and receiving parcels. Our tracker data shows a reasonably strong correlation between the parcel operators whose services consumers told us they use most frequently, both as senders and receivers, and those operators with a revenue share of [X] or more.<sup>104</sup>
- 4.89 In addition, we note that many of the operators with a revenue share of less than 5% provide business-to-business parcel services, which are of little or no relevance to consumers or the work of the CABs. Establishing a revenue threshold which, based on current market data, would exclude parcel operators with a share of relevant revenues of less than 5% would, in our view, therefore reflect our guiding criteria of fairness and equity and cost-reflectiveness by ensuring that operators with a large business-to-business parcel offering are not required to pay.
- 4.90 We have again carefully considered the level at which the minimum threshold should be set to ensure, insofar as possible, that only those parcel operators who are likely to influence the work of the CABs are liable to contribute to the costs of consumer advocacy. Data from our monitoring programme shows that no operator with a revenue share of [X] or less has annual revenues in excess of £350m.
- 4.91 Therefore, on the basis of the above, we propose to establish a minimum revenue threshold for relevant parcels revenue of £350 million per annum. Establishing such a threshold would ensure that the largest operators, [X], would be required to contribute to the costs of consumer advocacy, which we believe is fair, equitable and cost-reflective.

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<sup>103</sup> See paragraph A8.18, Ofcom, *Review of the Regulation of Royal Mail - Annexes 5 to 11*, Consultation, 25 May 2016, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/57954/annexes-5-11.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/57954/annexes-5-11.pdf)

<sup>104</sup> Ofcom, *Ofcom Residential Postal Tracker* (January 2017 – December 2017), 28 February 2018, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/111692/Residential-Postal-Tracker-Q1-Q4-2017-tables.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/111692/Residential-Postal-Tracker-Q1-Q4-2017-tables.pdf), Q12\_1: Which, if any, of these companies have you encountered to send a packet, parcel or letter? and Q12\_2: Which, if any, of these companies have you encountered because they delivered a packet, parcel or letter to you?

Question 6... Do you agree that the minimum revenue threshold for relevant parcels postal services, for the purposes of recovering consumer advocacy costs on post, should be set at £350 million? Please explain why.

## How would Ofcom's proposed cost recovery mechanism for the CABs' costs work in practice?

- 4.92 To demonstrate how our proposal would work in practice, we set out below a hypothetical example of how consumer advocacy costs might be recovered for illustrative purposes.
- 4.93 There are two types of postal services which we propose to include in the recovery of consumer advocacy costs. They are relevant letters postal services and relevant parcel postal services. Say that total revenues from relevant letters postal services in a given year were £2bn, and that only one postal operator generated letter revenues in excess of £10m and therefore met the threshold to contribute. In addition, say also that total revenues from relevant parcels postal services were £4bn in a given year, but that several postal operators generated parcel revenues in excess of £350m and therefore met the threshold to contribute. Total relevant revenues are the sum of total letters revenues and total parcels revenues; £6bn in this example.<sup>105</sup>
- 4.94 Say also that in the relevant charging year, the CABs' consumer advocacy budget for postal services was £2m. Under the proposals set out in this document, a postal operator with relevant turnover of £600m would account for 10% of total relevant revenues (i.e. 10% of £6bn). A postal operator with relevant revenue of £600m would therefore pay £200,000 towards the costs of consumer advocacy – 10% of the costs incurred by the CABs in relation to postal services with other operators bearing the remaining costs in proportion to their relevant turnover. As such, all relevant postal operators would be liable to pay a fee in proportion to their share of relevant revenue.

Question 7... Do you have any other comments on our proposals as set out above or our proposed amendments to our legal instrument (CP1)? Please provide your reasons.

## Relevant legal tests for changing CP1

- 4.95 We consider that our proposals above (as reflected in our proposed amendments of CP1 as set out in Annex 7) 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:
- are objectively justifiable;

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<sup>105</sup> For the avoidance of doubt, total relevant revenues only include those revenues from relevant postal operators which we have revenues in excess of the relevant thresholds.

- do not unduly discriminate against a particular person of a particular description of persons;
- are proportionate; and
- are transparent in relation to what they are intended to achieve.

4.96 We summarise below from our considerations in this Section 4 the way in which we consider that our proposed amendments of CP1 satisfy those tests.

- **Objectively justifiable** - we believe that our proposed changes to the scope of CP1 are objectively justifiable because they recover the costs of the CABs in a way that is reasonably practicable, simple and efficient for us to administer, using data we already hold and will continue to capture for purposes of our monitoring regime on post, and so immediately verifiable, whilst also balancing the need between ensuring the mechanism is in particular fair and equitable, adaptable and cost-reflective. We believe that they would result in resource savings for Ofcom, which in turn would result in savings for those that we regulate.
- **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.
- **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.
- **Transparent** - we consider that our proposed changes to the scope of CP1 are transparent because our proposed CP1 would clearly establish 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.

4.97 For reasons already discussed in this Section 4, 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.

# A1. Responding to this consultation

## How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on Thursday 24 May 2018.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/XXX>. You can return this by email or post to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to [postal.regulation@ofcom.org.uk](mailto:postal.regulation@ofcom.org.uk), as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>). This email address is for this consultation only, and will not be valid after 24 May 2018.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Postal consumer advocacy fees consultation  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A1.5 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.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.7 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.
- A1.8 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.
- A1.9 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 A4. 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.

- A1.10 If you want to discuss the issues and questions raised in this consultation, please contact Richard Orpin on 0207 981 3243 , or by email to [postal.regulation@ofcom.org.uk](mailto:postal.regulation@ofcom.org.uk).

## Confidentiality

- A1.11 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 our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), as soon as we receive them.
- A1.12 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.
- A1.13 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.
- A1.14 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 at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

## Next steps

- A1.15 Following this consultation period, Ofcom plans to publish a statement before the end of the 2018/19 financial year.
- A1.16 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

## Ofcom's consultation processes

- A1.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex x.
- A1.18 If you have any comments or suggestions on how we manage our consultations, please email us at [consult@ofcom.org.uk](mailto: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.
- A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact Steve Gettings, Ofcom's consultation champion:

Steve Gettings  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA  
Email: [corporationsecretary@ofcom.org.uk](mailto:corporationsecretary@ofcom.org.uk)

## A2. Ofcom’s consultation principles

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

#### Before the consultation

- A2.1 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

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 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.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 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.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

#### After the consultation

- A2.7 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.

## A3. 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? \_\_\_\_\_

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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)



## A4. Consultation questions

Question 1: ... Do you agree that revenues from single piece end-to-end letter delivery services should be taken into account for the purposes of recovering consumer advocacy costs on post? Please give your reasons.

Question 2... Do you agree that revenues from end-to-end bulk mail services should be taken into account for the purposes of recovering consumer advocacy costs on post, and that revenues from services provided under an access agreement should not be taken into account for the purposes of recovering consumer advocacy costs on post? Please give your reasons.

Question 3... Do you agree that turnover from parcel services should be taken into account for the purposes of recovering consumer advocacy costs on post? Please provide your reasons.

Question 4... Do you agree that consumer advocacy costs on post, in regard to work completed by the CABs on the Post Office, should be recovered from all relevant postal operators? Please explain why.

Question 5... Do you agree that the minimum revenue threshold for relevant letters postal services, for the purposes of recovering consumer advocacy costs on post, should be set at £10 million? Please explain why.

Question 6... Do you agree that the minimum revenue threshold for relevant parcels postal services, for the purposes of recovering consumer advocacy costs on post, should be set at £350 million? Please explain why.

Question 7... Do you have any other comments on our proposals as set out above or our proposed amendments to our legal instrument (CP1)? Please provide your reasons.

## A5. Ofcom’s Statement of Charging Principles for carrying out its postal services functions

### Statement of charging principles

- A5.1 This Statement follows a consultation<sup>106</sup> published on 27 July 2017 by Ofcom on the principles that Ofcom would apply in order to set its annual administrative charges for carrying out its postal services functions pursuant to the Postal Services Act 2011 (the “Act”).
- A5.2 This Statement was initially prepared under paragraph 7 of Schedule 9 to the Act and a revised statement was published on 28 March 2012 to apply in relation to the 2012/13 charging year and subsequent charging years. That statement has now been revised in accordance with paragraphs 3(6) and 3(7) of Schedule 4 to the Act. This statement 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).

### Administrative charges

- A5.3 Administrative charges will be set at a level to ensure that Ofcom will recover the estimated annual cost incurred in carrying out its postal services functions referred to in paragraph 2 of Schedule 4 to the Act.

### Postal operators required to pay administrative charges

- A5.4 Paragraph 1(1) of Schedule 4 to the Act imposes a statutory duty on a postal operator, who provides a service within the scope of the universal postal service, to pay to Ofcom, in respect of the service, the administrative charge (if any) that is fixed by Ofcom as applicable to the operator.
- A5.5 Accordingly, Ofcom hereby fixes that administrative charges will be payable by each of those postal operators which is a relevant postal operator (within the meaning set out below), if (and only if) the relevant postal operator in question generated relevant turnover (within the meaning set out below) exceeding £5 million, in the last but one 12 month period commencing on 1 April prior to the charging year (within the meaning set out below) in question.<sup>107</sup>

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<sup>106</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0019/105238/consultation-postal-regulation-review.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0019/105238/consultation-postal-regulation-review.pdf)

<sup>107</sup> For example, if the charging year commences on 1 April 2018, the last but one 12 month period commencing on 1 April will be 1 April 2016 until 31 March 2017.

## Definitions

A5.6 For the purposes of interpreting this Statement, the following definitions shall apply:

- a) “**charging year**” means a twelve month period commencing on 1 April in a calendar year and ending 31 March in the immediately following calendar year;
- b) “**postal network**” has the meaning given to it in section 38(3) of the Act;
- c) “**postal operator**” has the meaning given to it in section 27(3) of the Act;
- d) “**postal packet**” has the meaning given to it in section 27(2) of the Act;
- e) “**postal services**” has the meaning given to it in section 27(1) of the Act;
- f) “**relevant letter**” means a postal packet that is up to no more than 353mm in length, up to no more than 250mm in width, up to no more than 25mm thick and which weighs up to no more than 750g;
- g) “**relevant letters postal service**” means a service of conveying relevant letters from one place to another by post and the incidental services of receiving, collecting, sorting and delivering 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, that is to say a service involving the conveyance of postal packets and any incidental services of collecting, sorting and delivering those postal packets which have at least one of the following features—
    - (i) a guarantee for delivery by a certain time or date;
    - (ii) a facility enabling the sender and the recipient to monitor the progress of a postal packet through the postal operator’s postal network, including confirmation of delivery;
  - (4) services consisting of the conveyance of relevant letters within a closed user group network, that is to say a system providing for the conveyance of postal packets (and the incidental services of receiving, collecting, sorting and delivering postal packets) between—
    - (i) the premises of one firm and another firm;
    - (ii) a government department and a third party firm;
    - (iii) branches and/or units in the same firm; or
    - (iv) government departments,

where both the sender and the recipient of the postal packets have entered into specific arrangements with the postal operator for the conveyance of postal packets

to or from other members of that system, which, for the avoidance of doubt, includes a document exchange;

(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 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;

h) “**relevant postal operator**” means each of the following—

(1) a postal operator that is a party to a USP Access Agreement with the universal service provider, including the universal service provider itself; and

(2) a postal operator that provides a relevant letters postal service;

i) “**relevant turnover**” 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;

j) “**universal service provider**” has the meaning given to it in section 65(1) of, and paragraph 3(3) of Schedule 9 to, the Act;

k) “**user**” has the meaning given to it in section 65(1) of the Act; and

l) “**USP Access Agreement**” means 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.

## Calculation of the payable administrative charge

A5.7 The administrative charge payable by a liable relevant postal operator identified above will be calculated by multiplying the total estimated cost of Ofcom carrying out its postal services functions referred to in paragraph 2 of Schedule 4 to the Act by that operator’s share of relevant turnover expressed as a percentage of the total relevant turnover

generated by all liable relevant postal operators identified above for the charging year in question.

- A5.8 If the annual administrative charge as calculated above is more than £75,000, Ofcom will allow monthly payment of the fee. Payment is due on receipt of the notice of the amount due, served on the liable relevant postal operator by Ofcom.
- A5.9 The tariff applicable to the postal services sector will be set out in the tariff tables which will be published by Ofcom on or before 31st March for the following charging year.

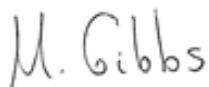
## Attribution of costs

- A5.10 Each item of cost recorded in Ofcom’s accounts is attributed to the activities within a sector that Ofcom regulates.
- A5.11 Direct costs of activities are recorded directly against a sector and indirect costs are added by apportionment. Indirect apportioned costs represent common costs which are spread over each of the direct activities on a fair, consistent and equitable basis using standard cost apportionment methods.

## Over- or under- recovery of spend

- A5.12 The amounts due from liable relevant postal operators will be collected annually in advance and any over- or under- recovery of expenditure arising in the charging year will be adjusted in the administrative charge for the following charging year.

Signed by



**Marina Gibbs**

**Competition Policy Director**

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

**29 March 2018**

## A6. General Demand for Information – Ofcom’s postal administrative fees



Marina Gibbs

Competition Policy Director

Direct line: 020 7981 3580

Email: [marina.gibbs@ofcom.org.uk](mailto:marina.gibbs@ofcom.org.uk)

To:

All postal operators whom are relevant postal operators (within the meaning set out below) liable to pay administrative charges to Ofcom under paragraph 1(1) of Schedule 4 to the Postal Services Act 2011

29 March 2018

Dear Sirs,

General Demand for annual information required by Ofcom under paragraph 1 of Schedule 8 to the Postal Services Act 2011 and published in accordance with paragraph 4(6) of that Schedule for the purposes of ascertaining or verifying administrative charges payable for each charging year in carrying out postal services functions

This is a formal demand ("**General Demand**") for the required annual information under paragraph 1 of Schedule 8 to the Postal Services Act 2011 (the "**Act**").

This General Demand is addressed to each and every relevant postal operator who is liable to pay to Ofcom its administrative charges under paragraph 1(1) of Schedule 4 to the Act, as determined in accordance with Ofcom’s Statement of Charging Principles dated 29 March 2018 (the "**Statement**") for carrying out its postal services functions referred to in paragraph 2 of that Schedule 4.

This General Demand is hereby published on Ofcom's website for the purpose of bringing it to the attention of such liable relevant postal operators from whom the information is required in the manner and form specified below for the purpose of ascertaining or verifying the administrative charges payable by a person under paragraph 1(1) of Schedule 4 to the Act. The specific information which must be provided annually by such liable relevant postal operators is set out below.

#### Liable ‘relevant postal operators’ to whom this General Demand is addressed

Ofcom is funded by (among other things) administrative charges payable by each and every postal operator who provides a service within the scope<sup>108</sup> of the universal postal service, whose liability is

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<sup>108</sup> Section 40 of the Act provides that: "(1) A postal service is within the scope of the universal postal service if—(a) the service falls within the description of a service set out in the universal postal service order, or (b) the service would fall within the description of a service set out in that order but for the fact that—(i) in the case of a service consisting of the delivery or collection of letters or other postal packets, the delivery or collection is not made on each of the days required by section 31 (see requirements 1 and 2), (ii) the service is not provided throughout the United Kingdom, or (iii) the service is not provided at an affordable price in accordance with a public tariff which is uniform throughout the United Kingdom, or (c) in the opinion of OFCOM the service is of a kind that, from the point of view of users of postal services, could reasonably be said to be interchangeable with a service of a description set out in that order. (2) In this section any reference to a service includes a part of a service."

fixed in accordance with the Statement pursuant to paragraph 1 of Schedule 4 to the Act, as made by Ofcom from time to time.

The Statement determines that the following postal operators are liable to pay such charges—

*“Accordingly, Ofcom hereby fixes that administrative charges will be payable by each of those postal operators which are relevant postal operators (within the meaning set out below), if (and only if) the relevant postal operator in question generated relevant turnover (within the meaning set out below) exceeding £5 million, in the last but one 12 month period commencing on 1 April prior to the charging year (within the meaning set out below) in question.<sup>109</sup>”*

For the avoidance of doubt, if you are a relevant postal operator (as defined, see below), you are only required to respond to this General Demand by providing the specific information set out below if (and only if) you generated relevant turnover (as defined, see below) exceeding £5 million, in the last but one 12 month period commencing on 1 April prior to the charging year (as defined, see below) in question. In other words, if your relevant turnover is below that threshold, this General Demand is not addressed to you.

Ofcom's principles that apply in fixing and calculating administrative charges are set out in the Statement as published from time to time. The Statement explains, in particular, that—

- the administrative charge payable by a liable relevant postal operator will be calculated by multiplying the total estimated cost of Ofcom carrying out its postal services functions referred to in paragraph 2 of Schedule 4 to the Act by that operator’s share of relevant turnover expressed as a percentage of the total relevant turnover generated by all liable relevant postal operators for the charging year in question;
- if the annual administrative charge as calculated above is more than £75,000, Ofcom will allow monthly payment of the fee. Payment is due on receipt of the notice of the amount due, served on the liable relevant postal operator by Ofcom;
- the tariff applicable to the postal services sector will be set out in the tariff tables which will be published by Ofcom on or before 31<sup>st</sup> March for the following charging year.

### Interpretation

Except insofar as the context otherwise requires, words or expressions used in this General Demand shall have the same meaning assigned to them in the Statement (see underlined words or expressions) 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.

For ease of reference, the Statement assigns the following meaning (definitions) of words or expressions—

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<sup>109</sup> For example, if the charging year commences on 1 April 2018, the last but one 12 month period commencing on 1 April will be 1 April 2016 until 31 March 2017.



<b>“charging year”</b>	means a twelve month period commencing on 1 April in a calendar year and ending 31 March in the immediately following calendar year;
<b>“postal network”</b>	has the meaning given to it in section 38(3) of the Act;
<b>“postal operator”</b>	has the meaning given to it in section 27(3) of the Act;
<b>“postal packet”</b>	has the meaning given to it in section 27(2) of the Act;
<b>“postal services”</b>	has the meaning given to it in section 27(1) of the Act;
<b>“relevant letter”</b>	means a <u>postal packet</u> that is up to no more than 353mm in length, up to no more than 250mm in width, up to no more than 25mm thick and which weighs up to no more than 750g;
<b>“relevant letters postal service”</b>	<p>means a service of conveying <u>relevant letters</u> from one place to another by post and the incidental services of receiving, collecting, sorting and delivering <u>relevant letters</u>, excluding—</p> <p>(1) services for which the <u>postal operator</u> has not received any payment, reward, profit or advantage with respect to the conveyance of the <u>relevant letters</u>;</p> <p>(2) services provided by a charity which comprise solely the collection, conveyance and delivery of Christmas cards;</p> <p>(3) express and secured services, that is to say a service involving the conveyance of <u>postal packets</u> and any incidental services of collecting, sorting and delivering those <u>postal packets</u> which have at least one of the following features—</p> <p>(i) a guarantee for delivery by a certain time or date;</p> <p>(ii) a facility enabling the sender and the recipient to monitor the progress of a <u>postal packet</u> through the <u>postal operator’s postal network</u>, including confirmation of delivery;</p> <p>(4) services consisting of the conveyance of <u>relevant letters</u> within a closed user group network, that is to say a system providing for the conveyance of <u>postal packets</u> (and the incidental services of receiving, collecting, sorting and delivering <u>postal packets</u>) between—</p> <p>(i) the premises of one firm and another firm;</p> <p>(ii) a government department and a third party firm;</p> <p>(iii) branches and/or units in the same firm; or</p> <p>(iv) government departments,</p> <p>where both the sender and the recipient of the <u>postal packets</u> have entered into specific arrangements with the <u>postal operator</u> for the conveyance of</p>

postal packets to or from other members of that system, which, for the avoidance of doubt, includes a document exchange;

(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 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;

<b>“relevant operator”</b>	<b>postal</b>	<p>means each of the following—</p> <p>(1) a <u>postal operator</u> that is a party to a <u>USP Access Agreement</u> with the <u>universal service provider</u>, including the <u>universal service provider</u> itself; and</p> <p>(2) a <u>postal operator</u> that provides a <u>relevant letters postal service</u>;</p>
<b>“relevant turnover”</b>		<p>means each of the following—</p> <p>(1) turnover from <u>relevant letters postal services</u>;</p> <p>(2) in the case of the <u>universal service provider</u>, turnover from giving access to its <u>postal network</u> to other <u>postal operators</u> and <u>users</u> of <u>postal services</u> under, or as a result of, <u>USP Access Agreements</u>;</p> <p>(3) in the case of other parties to <u>USP Access Agreements</u> with the <u>universal service provider</u>, turnover from <u>postal services</u> provided to other <u>postal operators</u> and <u>users</u> of <u>postal services</u> by obtaining access to the <u>universal service provider’s postal network</u> under, or as a result of, the party’s <u>USP Access Agreement</u>, but deducting from that turnover all charges paid or payable to the <u>universal service provider</u> for access under the party’s <u>USP Access Agreement</u> for the period corresponding to the last but one 12 month period commencing on 1 April prior to the <u>charging year</u>;</p>
<b>“universal provider”</b>	<b>service</b>	<p>has the meaning given to it in section 65(1) of, and paragraph 3(3) of Schedule 9 to, the Act;</p>
<b>“user”</b>		<p>has the meaning given to it in section 65(1) of the Act; and</p>
<b>“USP Agreement”</b>	<b>Access</b>	<p>means an agreement under which the <u>universal service provider</u> provides access to its <u>postal network</u> in accordance with requirements set out in a condition imposed under section 38 of the Act.</p>

### Provision of required information

You are required to provide Ofcom with the information specified or described in the **Annex** hereto in the manner and form specified, 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). Any queries regarding this information should be directed to [mailmarketinfo@ofcom.org.uk](mailto:mailmarketinfo@ofcom.org.uk).

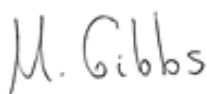
The information must so be provided to Ofcom by **no later than 5pm on the last working day of May every year**, until further notice by Ofcom.

### Offences

I draw your attention to Part 2 of Schedule 8 to the Act<sup>110</sup>, which sets out (among other things) the offences created by the Act in connection with a failure to comply with this General Demand to provide Ofcom with the required information or in connection with the provision of false information: see paragraph 13 of Schedule 8 to the Act.

You are therefore required to ensure that your response is complete and accurate. Given the seriousness of the potential penalties and offences involved, you may want to seek your own independent legal advice about the contents of this General Demand.

Yours faithfully,



**Marina Gibbs**

**Competition Policy Director**

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

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<sup>110</sup> The legislation is accessible at: [www.legislation.gov.uk](http://www.legislation.gov.uk)

## **Annex to the General Demand for Information** **(The required information)**

### **A. Definitions**

For the purposes of this Annex, except insofar as the context otherwise requires, words or expressions below shall have the same meaning assigned to them in Ofcom’s Statement of Charging Principles dated 29 March 2018 (the “**Statement of Charging Principles for Post**”) for carrying out its postal services functions referred to in paragraph 2 of that Schedule 4 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.

For ease of reference, we have copied out in this General Demand above the key definitions from that Statement.

### **B. Specified Information**

The liable relevant postal operator must for each charging year submit an annual certificate (see Section C below) of that operator’s relevant turnover to provide details and data in relation to the following categories of information (known as an “**Annual Revenue Return**”)—

1. **Company Name:** the full name of the relevant postal operator;
2. **Return Schedule:** the charging year for which the Annual Revenue Return covers;
3. **Registered Number:** the registered company number of the relevant postal operator;
4. **Relevant Turnover:** the relevant turnover generated by the relevant postal operator in the last but one 12 month period commencing on 1 April prior to the charging year in question. (Therefore, for the charging year commencing on 1 April 2018, the last but one 12 month period commencing on 1 April will be 1 April 2016 until 31 March 2017.)

That requirement to provide the Annual Revenue Return 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).

### **C. Manner and Form**

The information specified in **Section B** above must be provided to Ofcom by submitting the Annual Revenue Return in the format specified in **Section D** below and by emailing the Annual Revenue Return in that format to [mailmarketinfo@ofcom.org.uk](mailto:mailmarketinfo@ofcom.org.uk) in PDF format, by **no later than 5pm on the last working day of May every year**, until further notice by Ofcom.

The information specified in **Section B** above must be provided to Ofcom by certifying the Annual Revenue Return to the effect that the information has been accurately and properly prepared in accordance with Ofcom’s requirements in the Statement of Charging Principles for Post and to confirm that the Financial Reporting Standards and Generally Accepted Accounting Practice in the UK have been followed in the preparation of the Annual Revenue Return.

Certification should be provided by an authorised director if the relevant postal operator is a limited company or by an authorised partner if the relevant postal operator is a partnership.

Certification shall serve as notification that the named director or partner has certified the details of the relevant turnover of the relevant postal operator as true, accurate and complete.

Contact details (i.e. name, e-mail address, postal address, phone, position) of the following persons must be provided in the Annual Revenue Return—

- the individual person providing data for the Annual Revenue Return; and
- if different, the individual person submitting the Annual Revenue Return.

## D. Format

Annual Revenue Return	
<b>Company Name:</b>	
<b>Return Schedule:</b>	
<b>Registered Number:</b>	
<b>Relevant Turnover: (£ GBP)</b>	
<b>Certification</b>	
I certify, on behalf of the company named on this certificate, that the information given in this Annual Revenue Return has been accurately and properly prepared in accordance with Ofcom’s requirements in the Statement of Charging Principles for Post, and that it is true, accurate and complete. I also confirm, on behalf of the company named on this certificate, that the Accounting Standards and the Generally Accepted Accounting Practice in the United Kingdom have been followed in the preparation of this Annual Revenue Return.	
<b>Signed:</b>	
<b>Name and Title:</b>	
<b>Date:</b>	
<b>Contact details</b>	
<b>Person providing the data for this Annual Revenue Return:</b>	
<b>Person submitting this Annual Revenue Return (if different):</b>	

## A7. Statutory notification: proposed modification of 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 27 March 2012, following consultation, Ofcom published a statement *entitled ‘Securing the Universal Postal Service: Decision on the new regulatory framework’*<sup>111</sup> setting out various decisions, including the imposition of consumer protection conditions to make provision for matters set out in section 51 of the Act, such as Consumer Protection Condition 1 (the “**initial CPC1**”).
- (B) On 28 March 2013, following consultation, Ofcom published a statement entitled *‘Decision on modification to Consumer Protection Condition 1: Statement to modify Consumer Protection Condition 1 to reflect the change in the provision of consumer advice for postal services to Citizens Advice and Citizens Advice Scotland’*<sup>112</sup> setting out its decision to modify initial CPC1 in order to allow Ofcom to collect payments from regulated postal operators relating to the expenses of Citizens Advice and Citizens Advice Scotland.
- (C) On 1 April 2014, following consultation, Ofcom published a statement entitled *‘Amendments to regulatory conditions DUSP 1.8 and CP 1 and minor amendments to other regulatory conditions’*<sup>113</sup> setting out various decisions, including the revocation of the initial CPC1 (as modified in 2013) and the imposition of a new Consumer Protection Condition 1 (“**CP1**”).
- (D) On 4 December 2015, following consultation, Ofcom published a statement entitled *‘Modification to Consumer Protection Condition 1: Collection of qualifying consumer expenses of the Consumer Advocacy Bodies’*<sup>114</sup> setting out its decision to modify CP1 to correct an error in the drafting of CP1 with regard to the calculation of the contributions of postal operators to the qualifying consumer expenses of the Consumer Advocacy Bodies.

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<sup>111</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0029/74279/Securing-the-Universal-Postal-Service-statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0029/74279/Securing-the-Universal-Postal-Service-statement.pdf)

<sup>112</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0033/37689/statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0033/37689/statement.pdf)

<sup>113</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/amendments-dusp-cp/statement/Statement.pdf>

<sup>114</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/84165/cp1\\_statement\\_04dec2015.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/84165/cp1_statement_04dec2015.pdf)

- (E) On 27 July 2017, Ofcom published a consultation entitled '*Recovering postal regulation and consumer advocacy costs - A review*'<sup>115</sup> setting out its proposals to amend CP1. Having considered responses received to that consultation, Ofcom has decided to reconsult on its new proposals for amending CP1 set out in this Notification.

## 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 CP1 in order to make further provision for matters set out in that section 51 and to impose that CP1 on every postal operator of a description specified therein.
2. The proposed modifications to CP1 are—
  - (a) specified in the Schedule to this Notification, 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 highlightings, for the avoidance of doubt, do not form part of the proposed modifications);
  - (b) being 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 24 May 2018.
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.

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<sup>115</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/105238/consultation-postal-regulation-review.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/105238/consultation-postal-regulation-review.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 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 (C) to this Notification, as modified by the modification referred to in recital (D); 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.

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

Signed by [Name]



[Title]

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

[Date]

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## SCHEDULE

### CONSUMER PROTECTION CONDITION 1

#### PAYMENTS RELATING TO QUALIFYING EXPENSES

##### 1.1. Application, Definitions and Interpretation

<p>CP 1.1.1</p> <p><b>Application</b></p>	<p>This consumer protection condition (“<b>CP Condition</b>”) shall apply to <b>every regulated relevant postal operators to whom any of the obligations to make payments to OFCOM prescribed in CP 1.2.1 apply.</b></p>
<p>CP 1.1.2</p> <p><b>Definitions</b></p>	<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 <b>relevant year</b> minus two years, beginning on 1 April;</p> <p>(d) “<b>calls relating to a regulated relevant postal operator</b>” means calls to <b>Citizens Advice or Citizens Advice Scotland a consumer advocacy body</b> recorded by <b>Citizens Advice or Citizens Advice Scotland such a body</b> as relating to a specific <b>regulated relevant postal operator</b> save that where a call is recorded by <b>Citizens Advice or Citizens Advice Scotland a consumer advocacy body</b> as relating to more than one specific <b>regulated relevant postal operator OFCOM</b> will consider the call as relating to no <b>regulated relevant postal operator</b>;</p> <p>(e) “<b>closed user group network</b>” means a system providing for the conveyance of <b>postal packets</b> (and the incidental services of receiving, collecting, sorting and delivering <b>postal packets</b>) between—</p> <ol style="list-style-type: none"> <li>(1) the premises of one firm and another firm;</li> <li>(2) a government department and a third party firm;</li> <li>(3) branches and/or units in the same firm; or</li> <li>(4) government departments,</li> </ol> <p>where both the sender and the recipient of the <b>postal packets</b> have entered into specific arrangements with the <b>postal operator</b> for the conveyance of <b>postal packets</b> to or from other members of that system, which, for the avoidance of doubt, includes a document exchange;</p> <p><del>(e)</del> (f) “<b>consumer advocacy body (or bodies)</b>” means <b>each of the following—</b></p> <ol style="list-style-type: none"> <li>(1) <b>Citizens Advice;</b></li> <li>(2) <b>Citizens Advice Scotland or such other body that provides, in or as regards Scotland, consumer advocacy and advice to which section 51(2)(ca) of the Act refers;</b> and</li> </ol>

	<p>(3) the General Consumer Council for Northern Ireland;</p> <p>(g) “<b>express and secured service</b>” means a service involving the conveyance of <u>postal packets</u> and any incidental services of collecting, sorting and delivering those <u>postal packets</u> which have at least one of the following features—</p> <p>(1) a guarantee for delivery by a certain time or date;</p> <p>(2) a facility enabling the sender and the recipient to monitor the progress of a <u>postal packet</u> through the <u>postal operator’s network</u>, including confirmation of delivery;</p> <p>(f) (h) “<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>(i) “<b>qualifying calls expenses</b>” has the meaning given to it in CP 1.2.4;</p> <p>(j) “<b>qualifying calls threshold</b>” has the meaning given to it in CP 1.2.4;</p> <p>(k) “<b>qualifying expenses</b>” has the meaning given to it in CP 1.2.2;</p> <p>(l) “<b>relevant letter</b>” means a <u>postal packet</u> that is up to no more than 353mm in length, up to no more than 250mm in width, up to no more than 25mm thick and which weighs up to no more than 750g;</p> <p>(m) “<b>relevant letters postal service</b>” means a service of conveying <u>relevant letters</u> from one place to another by post and the incidental services of receiving, collecting, sorting and delivering <u>relevant letters</u>, excluding—</p> <p>(1) services for which the <u>postal operator</u> has not received any payment, reward, profit or advantage with respect to the conveyance of the <u>relevant letters</u>;</p> <p>(2) services provided by a charity which comprise solely the collection, conveyance and delivery of Christmas cards;</p> <p>(3) <u>express and secured services</u>;</p> <p>(4) services consisting of the conveyance of <u>relevant letters</u> within a <u>closed user group network</u>;</p> <p>(5) services provided while acting in the capacity of an intermediary postal operator, that is to say a <u>postal operator</u> that hands over <u>postal packets</u> to another <u>postal operator</u> (including but not limited to the <u>universal service provider</u>) for subsequent conveyance and delivery to the intended recipients of the <u>postal packets</u>;</p> <p>(6) services consisting of conveying <u>relevant letters</u>, 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</p>
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	<p>(7) services provided by a party to a <u>USP Access Agreement</u> with the <u>universal service provider</u>, including by the <u>universal service provider</u> itself, to other <u>postal operators</u> and <u>users of postal services</u> by obtaining access to the <u>universal service provider's postal network</u> under, or as a result of, the party's <u>USP Access Agreement</u>;</p> <p>(n) “<b>relevant parcel</b>” means a <u>postal packet</u> that is larger in dimensions than a <u>relevant letter</u>, and weighs no less than 750g but no more than 31.5kg;</p> <p>(o) “<b>relevant parcels postal service</b>” means a service of conveying <u>relevant parcels</u> from one place to another by post and the incidental services of receiving, collecting, sorting and delivering <u>relevant parcels</u>, excluding—</p> <p>(1) services for which the <u>postal operator</u> has not received any payment, reward, profit or advantage with respect to the conveyance of the <u>relevant parcels</u>;</p> <p>(2) services consisting of the conveyance of <u>relevant parcels</u> within a <u>closed user group network</u>;</p> <p>(3) services provided while acting in the capacity of an intermediary postal operator, that is to say a <u>postal operator</u> that hands over <u>relevant parcels</u> to another <u>postal operator</u> (including but not limited to the <u>universal service provider</u>) for subsequent conveyance and delivery to the intended recipients of the <u>relevant parcels</u>; and</p> <p>(4) services consisting of conveying <u>relevant parcels</u>, 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;</p> <p>(p) “<b>relevant postal operator</b>” means each of the following—</p> <p>(1) a <u>postal operator</u> that provides a <u>relevant letters postal service</u>;</p> <p>(2) a <u>postal operator</u> that provides a <u>relevant parcels postal service</u>;</p> <p><del>(h)</del> (q) “<b>relevant turnover</b>” means <u>turnover from regulated postal services</u> each of the following—;</p> <p>(1) turnover from <u>relevant letters postal services</u>;</p> <p>(2) turnover from <u>relevant parcels postal services</u>;</p> <p><del>(g)</del> (r) “<b>relevant year</b>” means any year beginning on 1 April;</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>
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	<p>(j) <b>“regulated postal service”</b> means a postal service the provision of which, had it been carried out prior to the Appointed Day, would have required the provider to hold a licence under the Postal Services Act 2000.</p> <p>(s) <b>“Scottish consumer advice amounts”</b> mean such amounts as the Secretary of State considers reasonable in respect of the provision, in or as regards Scotland, of consumer advocacy and advice by, or by agreement with, a public body or the holder of a public office, in relation to users of postal services; and</p> <p>(t) <b>“USP Access Agreement”</b> means 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.</p>
<p><b>CP 1.1.3</b></p> <p><b>Interpretation</b></p>	<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>116</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 “day” 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 expenses

<p><b>CP 1.2.1</b></p> <p><b>Obligations to make payments to OFCOM</b></p>	<p>A regulated postal operator that generated relevant turnover exceeding £10 million in the assessment year, shall pay to OFCOM in any relevant year such proportion as OFCOM may specify of the expenses described in CP 1.2.2.</p> <p>A relevant postal operator is liable to make payments to OFCOM in one or more (as applicable to that operator) of the following three circumstances—</p> <p>(a) where a postal operator that provides relevant letters postal services that generated relevant turnover exceeding £10 million in the assessment year, that operator shall pay to OFCOM in any relevant year such proportion (calculated in accordance with CP 1.2.3) as OFCOM may specify of the qualifying expenses;</p>
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<sup>116</sup> A table for information identifying such defined terms is provided at the end of this CP eC Condition. This table is intended only as a guide and does not form a part of this CP eC Condition. We make no representations as to its accuracy or completeness.

	<p>(b) where a postal operator that provides relevant parcels postal services that generated relevant turnover exceeding £350 million in the assessment year, that operator shall pay to OFCOM in any relevant year such proportion (calculated in accordance with CP 1.2.3) as OFCOM may specify of the qualifying expenses;</p> <p>(c) where a relevant postal operator has reached the qualifying calls threshold in the relevant year, that operator shall pay to OFCOM in any relevant year such proportion (calculated in accordance with CP 1.2.5) as OFCOM may specify of qualifying calls expenses.</p>
<p>CP 1.2.2</p> <p>Meaning of “qualifying expenses”</p>	<p>The expenses are the qualifying consumer expenses of the consumer advocacy bodies and the Secretary of State, likely to be incurred during the relevant year in respect of functions other than the consumer advocacy bodies’ function of providing a public consumer advice scheme.</p> <p>The “qualifying expenses” are—</p> <p>(a) the qualifying consumer expenses of Citizens Advice;</p> <p>(b) the qualifying consumer expenses of the General Consumer Council for Northern Ireland;</p> <p>(c) the Scottish consumer advice amounts; and</p> <p>(d) the qualifying consumer expenses of the Secretary of State, likely to be incurred during the relevant year in respect of functions other than the consumer advocacy bodies’ functions in dealing with calls relating to relevant postal operators.</p>
<p>CP 1.2.3</p> <p>Calculation of proportion for the purposes of CP 1.2.1(a) and (b)</p>	<p>The proportion referred to in CP 1.2.1(a) and (b) will be calculated by multiplying the sum of the total qualifying expenses referred to in CP 1.2.2 by that regulated relevant postal operator’s share of relevant turnover expressed as a percentage of the total relevant turnover generated by all regulated relevant postal operators to which this CP condition CP 1.2.1(a) and (b) refer applies that generated relevant turnover in excess of £10 million in the assessment year in question.</p>
<p>CP 1.2.4</p>	<p>A regulated postal operator shall pay to OFCOM in any relevant year such proportion as OFCOM may specify of the qualifying consumer expenses of Citizens Advice and Citizens Advice Scotland in respect of their function of providing a public consumer advice scheme.</p>
<p>CP 1.2.54</p> <p>Meanings of “qualifying calls threshold”</p>	<p>OFCOM shall require payments to be made by a A regulated relevant postal operator under CP 1.2.4 shall be liable to make payments to OFCOM for the purposes of CP 1.2.1(c) only where the following calculation gives an amount greater than £100 (the “qualifying calls threshold”) — ÷</p>

and of “qualifying calls expenses”	<p>(a) take the total qualifying consumer calls expenses of Citizens Advice and Citizens Advice Scotland in respect of their function of providing a public consumer advice scheme in the relevant year,</p> <p>(b) multiply it by that regulated relevant postal operator’s share of calls relating to regulated relevant postal operators in the relevant year expressed as a percentage of the total calls relating to regulated relevant postal operators.</p> <p>The “qualifying calls expenses” are—</p> <p>(a) the qualifying consumer expenses of Citizens Advice;</p> <p>(b) the qualifying consumer expenses of the General Consumer Council for Northern Ireland; and</p> <p>(c) the Scottish consumer advice amounts,</p> <p>likely to be incurred during the relevant year in respect of the consumer advocacy bodies’ functions in dealing with calls relating to relevant postal operators.</p>
CP 1.2.65 Calculation of proportion for the purposes of CP 1.2.1(c)	<p>The proportion referred to in CP 1.2.1(c) to be paid by a regulated relevant postal operator falling within CP1.2.5 reaching the qualifying calls threshold will be calculated by multiplying the total qualifying consumer calls expenses of Citizens Advice and Citizens Advice Scotland in respect of their function of providing a public consumer advice scheme in the relevant year by that regulated relevant postal operator’s share of calls relating to regulated relevant postal operators falling within CP1.2.54 expressed as a percentage of the total calls relating to regulated relevant postal operators falling within CP1.2.54.</p>
CP 1.2.76 Adjusted amounts payable under CP 1.2.1(a) and (b)	<p>The amounts payable under CP 1.2.1(a) and (b) in a relevant year shall include the amount of the difference, if any, between the costs actually incurred during the previous relevant year and the estimate of the costs in question upon which charges in the previous relevant year were based, where the latter exceeds the former the amount of the difference being treated as a negative amount.</p>
CP.1.2.87 Adjusted amounts payable under CP 1.2.1(c)	<p>The amounts payable under CP 1.2.41(c) in a relevant year shall include the amount of the difference, if any, between the amounts charged to the regulated relevant postal operator in the previous relevant year, based on estimates; and the amounts which would have been charged had the calculation been based on actual numbers of calls relating to that and other regulated relevant postal operators (including to calls relating to that specific relevant postal operator) and actual qualifying consumer calls expenses of Citizens Advice and Citizens Advice Scotland in respect of their function of providing a public consumer advice scheme. Where the latter exceeds the former, the amount of the difference shall be treated as a negative amount.</p>
CP 1.2.98	<p>The amount due under each of the three circumstances specified in either or both of CP 1.2.1 and CP 1.2.4 shall be payable on 30 June in the relevant year or, if</p>

<b>Payments due dates</b>	later, on the expiry of one month from the day on which OFCOM serve notice on the <b>regulated relevant</b> postal operator of such amount.
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### Table of terms defined in the Act

This table is provided for information and does not form a part of this CP Condition. We make no representations as to its accuracy or completeness. Please refer to the Act.

Defined term	Section
Citizens Advice	65(1)
Citizens Advice Scotland	65(1)
letter	65(1)
OFCOM	90
<b>postal network</b>	<b>38(3)</b>
postal operator	27(3)
postal packet	27(2)
<b>postal services</b>	<b>27(1)</b>
<b>qualifying consumer expenses of Citizens Advice</b>	<b>51(4)(a) to (c)</b>
<b>qualifying consumer expenses of the General Consumer Council for Northern Ireland</b>	<b>51(4)(g)</b>
<b>qualifying consumer expenses of the Secretary of State</b>	<b>51(4ZA)</b>
<del>qualifying consumer expenses</del>	<del>51(4)</del>
universal service provider	65(1) and Schedule 9 paragraph 3(3)
<b>user</b>	<b>65(1)</b>