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## **Recovering consumer advocacy costs**

Supplementary statement on excluding international letters and parcels from Consumer Protection Condition 1

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**STATEMENT:**

Publication date: 26 July 2019

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# 1. Overview

In January 2019, we published our statement on the cost recovery mechanism for the consumer advocacy bodies' (CABs) work on post. Following on from this statement, it came to our attention that our policy intention to exclude postal operators' turnover from providing international mail, for the purposes of that mechanism, had not been properly reflected in the regulatory condition implementing our policy in the statement. Accordingly, we published a brief consultation document in June 2019, proposing minor modifications to exclude revenues associated with international mail from the above-mentioned mechanism. This statement sets out our decision, following consultation, to implement our proposal.

## What we have decided – in brief

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

## Next steps

- 1.1 The changes to Consumer Protection Condition 1 take effect immediately. We will therefore now proceed with the recovery of costs from postal operators providing relevant postal services, for the purpose of the CABs' work on post.
- 1.2 Therefore, shortly after publication of this statement, we will issue all relevant postal operators with an information request to determine which relevant postal operators are liable to contribute towards the consumer advocacy fees, and the level of their contributions.
- 1.3 Subject to the information gathering process, we intend to issue invoices to liable relevant postal operators by early September.

## 2. Our decision

### Introduction

- 2.1 On 16 January 2019, we published our statement (“**January 2019 statement**”)<sup>1</sup> changing the way the cost of the work by the consumer advocacy bodies (“**CABs**”)<sup>2</sup> is recovered from operators in the postal sector.<sup>3</sup> Our decision changed the description of postal operators who are now liable to contribute towards consumer advocacy costs. The broad implication of our decision was that, in practice, some additional postal operators, other than Royal Mail, have now become liable to contribute to those costs.
- 2.2 Operators now liable to contribute broadly correspond to:
- End-to-end (“**E2E**”) letter operators with relevant turnover in excess of £10 million per annum; and/or
  - Parcel operators with relevant turnover in excess of £350 million per annum.
- 2.3 ‘Relevant turnover’ is a defined concept which we have used to determine which operators are liable to contribute to the new cost recovery mechanism, as well as the proportion of each operator’s contribution. Specifically, ‘relevant turnover’ is defined as turnover from ‘relevant letters postal services’ and ‘relevant parcels postal services’, respectively. Those respective services have been defined broadly subject to certain size and weight restrictions and, to limit the scope of the cost recovery mechanism, we also excluded some specific categories of postal services.
- 2.4 Our decision in the January 2019 statement was implemented by our modifications to Consumer Protection Condition 1 (“**CP1**”), which was published in Annex 1 to that statement. Those modifications took effect on 1 April 2019.
- 2.5 Prior to publishing our January 2019 statement, we conducted two consultations. Firstly, in July 2017, we published our initial consultation proposing changes to how the costs of the CABs were recovered (“**July 2017 consultation**”).<sup>4</sup> We proposed, in essence, that E2E letter services, bulk letter services and access mail services should be the postal services liable to contribute (with parcel operators excluded from that proposal), and proposed a threshold of £5 million relevant turnover for letters services. Having considered stakeholders responses received to that consultation, we decided to amend some of our proposals and re-consulted accordingly.

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<sup>1</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0019/133543/Statement-recovering-consumer-advocacy-costs.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0019/133543/Statement-recovering-consumer-advocacy-costs.pdf)

<sup>2</sup> The CABs are made up of Citizens Advice, Consumer Advice Scotland (CAS) and the General Consumer Council for Northern Ireland (CCNI).

<sup>3</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0017/112454/statement-consultation-recovering-postal-regulation-costs.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0017/112454/statement-consultation-recovering-postal-regulation-costs.pdf)

<sup>4</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)

- 2.6 In March 2018, we published our amended proposals (“**March 2018 consultation**”)<sup>5</sup>, which proposed that E2E letters services, bulk letters services and parcel services should be the postal services liable to contribute (with access mail services excluded from that proposal), and proposed a threshold of £10 million relevant turnover for letters services and £350 million relevant turnover for parcel services.
- 2.7 We then published our January 2019 statement after careful consideration of the consultation responses, adopting our proposals set out in the March 2018 consultation.
- 2.8 Following the publication of our January 2019 statement, it came to our attention that our policy intention to exclude turnover related to international mail (letters and parcels) from postal operators’ relevant turnover had not been properly reflected in the regulatory condition implementing our policy in the January 2019 statement, namely in Consumer Protection Condition 1. Therefore, we proposed minor modifications to provide clarity and certainty in Consumer Protection Condition 1 about the exclusion of international letters and parcels in our June 2019 further consultation (“**June 2019 consultation**”).

## Our consultation proposals

- 2.9 In our June 2019 consultation, we proposed to exclude international mail from the definitions of a ‘relevant letters postal services’ and ‘relevant parcels postal services’.
- 2.10 We proposed this so to align the legal instrument with our original policy intention in our March 2018 consultation and January 2019 statement, which was to focus the geographical scope of CP1 on domestic services only. This meant that turnover associated with providing international mail should be excluded by postal operators when reporting to Ofcom their respective relevant turnover figures.
- 2.11 Our policy intention was to focus on domestic mail because we did not believe that issues relating to international mail services materially drove the work of the CABs, and therefore capturing domestic services only would be consistent with our main principle of cost reflectivity.<sup>6</sup>

## Stakeholder comments

- 2.12 We received seven formal responses to our June 2019 consultation (Royal Mail, the Mail Competition Forum (MCF), the Association of International Courier and Express Services (AICES), Hermes, UPS, the General Consumer Council for Northern Ireland (CCNI) and

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<sup>5</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0017/112454/statement-consultation-recovering-postal-regulation-costs.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0017/112454/statement-consultation-recovering-postal-regulation-costs.pdf)

<sup>6</sup> As stated in our March 2018 consultation and January 2019 statement, the three criteria we attached particular importance to in determining our decision throughout our re-consultation and statement were cost reflectivity, fairness and equity and adaptability, and of these, we attached paramount importance to cost reflectivity. See paragraph 2.11 of our January 2019 statement.

Citizens Advice Scotland (CAS)),<sup>7</sup> whilst another stakeholder (DHL) did not submit a formal written responses but stated they agreed with the response submitted by AICES.

## The scope of the cost recovery mechanism

- 2.13 All stakeholders agreed with our proposal and our reasoning, whilst the CCNI commented that it was not appropriate for them to comment on who funds consumer advocacy bodies.
- 2.14 Royal Mail stated Ofcom should implement its proposals as soon as possible.

## Remit of the CABs

- 2.15 CAS and the CCNI sought clarification that our proposal does not affect any future work on international mail.
- 2.16 CAS stated that, whilst they agreed with our proposal, they would appreciate confirmation that our decision would not prevent them from working on international mail in the future, should the need arise.
- 2.17 Similarly, the CCNI stated that it had done work on international mail previously, that it has already committed to investigating the cross-border parcels issue in light of a possible no-deal Brexit in 2019-20, and that it may continue to do more work on international mail. The CCNI therefore sought reassurance that the framework for the recovery of fees “does not hinder our important work in international mail and parcels”.

## Comments on the January 2019 statement

- 2.18 Several stakeholders made a number of other comments on our decisions, published in our statement on the cost recovery mechanism for CABs’ work on post in January 2019.
- a) Hermes and the MCF stated that the cost recovery model is not proportionate, citing that companies are being asked to fund advocacy work for areas (i.e. Post Office, letters) they are not active in.
  - b) The MCF expressed concern at the CABs being unable to allocate their staff costs, and stated Ofcom should press for the CABs to establish ways of allocating their costs appropriately.
  - c) AICES and UPS argued that express, or business to business, services should not be in scope of consumer advocacy costs, as it is a highly competitive marketplace and are services which are mainly used by businesses.
  - d) Royal Mail commented that CAB fees on postal activity remain high, and that it encouraged restraint and further annual reductions in the CABs’ total spend.

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<sup>7</sup> These responses can be found at <https://www.ofcom.org.uk/consultations-and-statements/category-2/recovering-postal-regulation-costs>

- e) Royal Mail also commented that it was disappointed Ofcom did not reduce the minimum revenue threshold for relevant parcels postal services below £350 million.

## Our decision

### The scope of the cost recovery mechanism

- 2.19 As stated in our June 2019 consultation, our proposals focused on the geographical scope of CP1 being domestic services only, as we intended in the March 2018 consultation and January 2019 statement,<sup>8 9</sup> and for turnover associated with providing international mail to be excluded from the definition of a ‘relevant letters postal service’ and ‘relevant parcels postal service’. As such, we proposed to exclude international mail from those respective definitions, so that our regulation properly reflected our previous intentions.
- 2.20 Moreover, our internal analysis to determine the relevant threshold for operators to contribute to the cost recovery mechanism was based on domestic revenues.<sup>10</sup>
- 2.21 Our main reasoning for focusing on excluding international mail was that we did not believe issues relating to international mail services materially drove the work of the CABs. In that regard, we note that no respondent to our June 2019 consultation disagreed with our reasoning.
- 2.22 Therefore, we consider it appropriate that international mail should be excluded from the scope of CP1, and we have decided to amend the definition of a ‘relevant letters postal service’ and ‘relevant parcels postal service’ in CP1 to reflect that position.

### Remit of the CABs

- 2.23 We note the comments made by the CCNI in regard to work it has done previously, is currently doing and potentially might do in the future on international mail. It is important to note that we are focused on what materially drives the work of the CABs. We acknowledge this does not mean that CABs will not on occasion deal with queries or issues relating to international mail. As explained in our June 2019 consultation, our view about what materially drives the work of the CABs was derived from our analysis of the projects undertaken by the CABs.<sup>11</sup>
- 2.24 Moreover, our views in this statement regarding CABs’ costs recoverable from the relevant postal operators should not be taken as any suggestion by Ofcom about the CABs’ proper remit. This is not a matter for Ofcom to decide. As already explained in our January 2019 statement, Ofcom has no role in deciding the CABs’ work remit, their priorities, or the way they carry out their work, in relation to the postal sector. Rather, under our statutory

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<sup>8</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0017/112454/statement-consultation-recovering-postal-regulation-costs.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0017/112454/statement-consultation-recovering-postal-regulation-costs.pdf)

<sup>9</sup> Furthermore, see paragraph 1.10 of our March 2018 consultation.

<sup>10</sup> Though we did not state this explicitly in our January 2019 statement (paragraphs 4.29 to 4.47).

<sup>11</sup> June 2019 consultation, paragraph 2.11.

powers under section 51 of the Postal Services Act 2011, we are solely focused on assessing on whom we believe it is appropriate to impose regulatory obligations to contribute towards the CABs' costs, and in line with our guiding criteria of fairness and equity, adaptability and above all, cost reflectivity.<sup>12</sup>

## Comments on the January 2019 statement

- 2.25 We also note that a number of stakeholders raised points which were outside of the scope of the June 2019 consultation and which we have already addressed in our January 2019 statement. As these issues have been addressed before, we have not responded in full again. For ease of reference:
- a) as regards the arguments raised by the MCF and Hermes (paragraph 2.18a above), see paragraphs 3.103-3.105 and 3.107-3.117 in our January 2019 statement;
  - b) as regards the arguments raised by the MCF (paragraph 2.18b above), see paragraph 3.102 in our January 2019 statement;
  - c) as regards the arguments raised by AICES and UPS (paragraph 2.18c above), see paragraphs 4.31-4.33 in our January 2019 statement;
  - d) in response to Royal Mail's point (paragraph 2.18d above), see paragraph 2.14 in our January 2019 statement; and
  - e) in response to Royal Mail's comment on the revenue threshold (paragraph 2.18e above), see paragraphs 4.34-4.38 and 4.42-4.47 in our January 2019 statement.

## Legal tests and impact assessment

### Relevant legal tests for changing CP1

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

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<sup>12</sup> January 2019 statement, paragraph 2.11.



services do not do), and therefore they aim to ensure that the cost recovery mechanism is fair and equitable, and cost-reflective.

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

2.28 In addition, in making these modifications to CP1 and having had regard to their potential impact, we have overall considered and acted in accordance with our duty in section 29 of the 2011 Act and our general duties in section 3 of the Communications Act 2003.

## Impact assessment

2.29 The analysis presented in this statement represents an impact assessment, as defined in section 7 of the Communications Act 2003.

2.30 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policymaking. This is reflected in section 7 of the Communications Act 2003, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see our guidelines entitled 'Better Policy Making: Ofcom's approach to Impact Assessment', which are available on our website.<sup>13</sup>

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<sup>13</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)

## Equality Impact Assessment (EIA)

- 2.31 Ofcom is separately required by statute to assess the potential impact of all our functions, policies, projects and practices on equality.<sup>14</sup> Equality Impact Assessments (“EIAs”) also 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.
- 2.32 We have considered whether our modifications to CP1 (as discussed above) would have an adverse impact on promoting equality. We have looked at whether that decision 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.
- 2.33 We do not expect any of the equality groups to be negatively affected by our decision, 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 will not have a differential impact in Northern Ireland compared to consumers in general.

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<sup>14</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.

# A1. Statutory notification: Modified Consumer Protection Condition 1

## NOTIFICATION OF MODIFICATIONS TO CONSUMER PROTECTION CONDITION 1 PURSUANT TO SECTION 51 OF, AND IN ACCORDANCE WITH SECTION 53 OF, AND PARAGRAPH 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>15</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>16</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>17</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>18</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.
- (E) On 27 July 2017, Ofcom published a consultation entitled *‘Recovering postal regulation and consumer advocacy costs - A review’*<sup>19</sup> setting out its proposals for modifying CP1 to change the way in which costs of consumer advocacy bodies should be recovered. Having considered responses received to that consultation, Ofcom decided to re-consult on some changes to its

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<sup>15</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>16</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>17</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/amendments-dusp-cp/statement/Statement.pdf>

<sup>18</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)

<sup>19</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)

proposals for modifying CP1, as set out in its notification contained in Annex 7 to its consultation document entitled *‘Recovering postal regulation and consumer advocacy costs: Statement and consultation’*<sup>20</sup>, which was published on 29 March 2018 (the “**March 2018 Notification**”).

- (F) On 16 January 2019, following that re-consultation, Ofcom published a statement entitled *‘Recovering consumer advocacy costs’*<sup>21</sup> setting out its decision to modify CP1 by giving effect, with some modifications, to its proposals set out in the March 2018 Notification, with Annex 1 to that statement containing Ofcom’s notification of the modified CP1 in its entirety (the “**January 2019 Notification**”).
- (G) On 5 June 2019, Ofcom published a further consultation entitled *‘Recovering consumer advocacy costs’*<sup>22</sup> (the “**June 2019 Notification**”) setting out its proposals to modify the definitions of ‘relevant letters postal service’ and ‘relevant parcels postal service’, respectively, in CP1 as set out in the January 2019 Notification. This was because it had come to Ofcom’s attention that those definitions did not reflect Ofcom’s intended policy with respect to the treatment of international mail and therefore proposed to exclude international mail from the scope of those definitions to provide clarity and certainty.
- (H) A copy of the June 2019 Notification was sent to the Secretary of State on 5 June 2019 in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.
- (I) Ofcom invited representations about the proposals set out in the June 2019 Notification by 8 July 2019. Ofcom received responses from seven stakeholders to the June 2019 Notification. Ofcom has considered every such representation. In accordance with paragraph 3(5) of Schedule 6 to the Act, Ofcom has made the decision set out below to give effect to its proposals set out in the June 2019 Notification. The Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for the purpose of Ofcom giving effect to those proposals.

## DECISION

1. Ofcom hereby—in accordance with section 53 of, and paragraph 3 of Schedule 6 to, the Act and pursuant to its powers under section 51 of the Act—modifies the definitions of ‘relevant letters postal service’ and ‘relevant parcels postal service’, respectively, in CP1 as proposed in the June 2019 Notification.
2. Those modifications, which take immediate effect, have been included in the revised full version of CP1 set out in the Schedule to this Notification, which replaces the version of CP1 set out in the January 2019 Notification with effect on the publication of this Notification.
3. The effect of, and Ofcom’s reasons for making, this decision are set out in the accompanying statement.

## OFCOM’S DUTIES AND LEGAL TESTS

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<sup>20</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/recovering-postal-regulation-costs>

<sup>21</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/recovering-postal-regulation-costs>

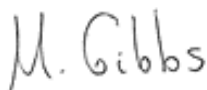
<sup>22</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/recovering-postal-regulation-costs>

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

#### INTERPRETATION

6. 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).
7. In this Notification—
  - (a) “**Act**” means the Postal Services Act 2011 (c.5);
  - (b) “**CP1**” means Consumer Protection Condition 1 (as modified) as referred to in recital (F) to this Notification;
  - (c) “**January 2019 Notification**” has the meaning given to it in recital (F) to this Notification;
  - (d) “**June 2019 Notification**” has the meaning given to it in recital (G) to this Notification; and
  - (e) “**Ofcom**” means the Office of Communications.
8. 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.
9. The Schedule to this Notification shall form part of this Notification.

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*

**26 July 2019**

## SCHEDULE

### CONSUMER PROTECTION CONDITION 1

#### PAYMENTS RELATING TO QUALIFYING EXPENSES

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

CP 1.1.1 <i>Application</i>	This consumer protection condition (“ <b>CP Condition</b> ”) shall apply to every <u>relevant postal operator</u> to whom any of the obligations to make payments to <u>OFCOM</u> prescribed in CP 1.2.1 apply.
CP 1.1.2 <i>Definitions</i>	<p>In this CP Condition—</p> <p>(a) “<b>Act</b>” means the Postal Services Act 2011 (c.5);</p> <p>(b) “<b>appointed day</b>” means 1 October 2011;</p> <p>(c) “<b>assessment year</b>” means the <u>relevant year</u> minus two years, beginning on 1 April;</p> <p>(d) “<b>calls relating to a relevant postal operator</b>” means calls to a <u>consumer advocacy body</u> recorded by such a body as relating to a specific <u>relevant postal operator</u> save that where a call is recorded by a <u>consumer advocacy body</u> as relating to more than one specific <u>relevant postal operator</u> <u>OFCOM</u> will consider the call as relating to no <u>relevant postal operator</u>;</p> <p>(e) “<b>closed user group network</b>” means 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> <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 <u>postal packets</u> have entered into specific arrangements with the <u>postal operator</u> for the conveyance of <u>postal packets</u> to or from other members of that system, which, for the avoidance of doubt, includes a document exchange;</p> <p>(f) “<b>consumer advocacy body (or bodies)</b>” means each of the following—</p> <ol style="list-style-type: none"> <li>(1) <u>Citizens Advice</u>;</li> <li>(2) <u>Citizens Advice Scotland</u> 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; and</li> <li>(3) the General Consumer Council for Northern Ireland;</li> </ol> <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</p>

	<p>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</u> network, including confirmation of delivery;</p> <p>(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> which have been sent from one location within the United Kingdom to another location within the United Kingdom by post and the incidental services of receiving, collecting, sorting and delivering such <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>; and</p> <p>(6) services provided by a party to a <u>USP Access Agreement</u> with the <u>universal service provider</u> 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>; for the avoidance of doubt, services provided by the <u>universal service provider</u> itself to a party to a <u>USP Access Agreement</u> do not fall under this exclusion;</p>
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	<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> which have been sent from one location within the United Kingdom to another location within the United Kingdom by post and the incidental services of receiving, collecting, sorting and delivering such <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 the conveyance of <u>relevant parcels</u> provided by the <u>postal operator</u> only as part of a sales contract between the <u>postal operator</u> and a user under which the <u>postal operator</u> conveys and delivers such <u>relevant parcels</u> that are subject of that contract directly to the user without any arrangements with another <u>postal operator</u>; in this exclusion “a sales contract” refers to a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration;</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>(q) “<b>relevant turnover</b>” means 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>(r) “<b>relevant year</b>” means any year beginning on 1 April, the first year of which begins on 1 April 2019;</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 <u>users</u> of <u>postal services</u>; and</p>
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	(t) <b>“USP Access Agreement”</b> 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.
<b>CP 1.1.3</b> <i>Interpretation</i>	For the purpose of interpreting this CP Condition— <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>23</sup>;</p> <p>(b) headings and titles shall be disregarded;</p> <p>(c) expressions cognate with those referred to in this CP Condition shall be construed accordingly;</p> <p>(d) the Interpretation Act 1978 (c. 30) shall apply as if this CP Condition were an Act of Parliament;</p> <p>(e) references to a <b>“day”</b> are references to a period of twenty-four hours beginning with one midnight and ending with the next, which period shall be treated to include a Saturday, a Sunday and public holidays.</p>

## 1.2. Payments relating to qualifying expenses

CP 1.2.1 <i>Obligations to make payments to OFCOM</i>	A <u>relevant postal operator</u> is liable to make payments to <u>OFCOM</u> in one or more (as applicable to that operator) of the following three circumstances— <p>(a) where a <u>postal operator</u> that provides <u>relevant letters postal services</u> that generated <u>relevant turnover</u> exceeding £10 million in the <u>assessment year</u>, that operator shall pay to <u>OFCOM</u> in any <u>relevant year</u> such proportion (calculated in accordance with CP 1.2.3) as <u>OFCOM</u> may specify of the <u>qualifying expenses</u>;</p> <p>(b) where a <u>postal operator</u> that provides <u>relevant parcels postal services</u> that generated <u>relevant turnover</u> exceeding £350 million in the <u>assessment year</u>, that operator shall pay to <u>OFCOM</u> in any <u>relevant year</u> such proportion (calculated in accordance with CP 1.2.3) as <u>OFCOM</u> may specify of the <u>qualifying expenses</u>;</p> <p>(c) where a <u>relevant postal operator</u> has reached the <u>qualifying calls threshold</u> in the <u>relevant year</u>, that operator shall pay to <u>OFCOM</u> in any <u>relevant year</u> such proportion (calculated in accordance with CP 1.2.5) as <u>OFCOM</u> may specify of <u>qualifying calls expenses</u>.</p>
CP 1.2.2	The <b>“qualifying expenses”</b> are— <p>(a) the <u>qualifying consumer expenses of Citizens Advice</u>;</p>

<sup>23</sup> A table for information identifying such defined terms is provided at the end of this CP Condition. This table is intended only as a guide and does not form a part of this CP Condition. We make no representations as to its accuracy or completeness.

Meaning of “qualifying expenses”	<p>(b) the <u>qualifying consumer expenses</u> of the General Consumer Council for <u>Northern Ireland</u>;</p> <p>(c) the <u>Scottish consumer advice amounts</u>; and</p> <p>(d) the <u>qualifying consumer expenses</u> of the Secretary of State, likely to be incurred during the <u>relevant year</u> in respect of functions other than the <u>consumer advocacy bodies’ functions</u> in dealing with <u>calls relating to relevant postal operators</u>.</p>
CP 1.2.3 <i>Calculation of proportion for the purposes of CP 1.2.1(a) and (b)</i>	<p>The proportion referred to in CP 1.2.1(a) and (b) will be calculated by multiplying the sum of the total <u>qualifying expenses</u> referred to in CP 1.2.2 by that <u>relevant postal operator’s share of relevant turnover</u> expressed as a percentage of the total <u>relevant turnover</u> generated by all <u>relevant postal operators</u> to which CP 1.2.1(a) and (b) refer in the <u>assessment year</u> in question.</p>
CP 1.2.4 <i>Meanings of “qualifying calls threshold” and of “qualifying calls expenses”</i>	<p>A <u>relevant postal operator</u> 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 “<b>qualifying calls threshold</b>”)—</p> <p>(a) take the total <u>qualifying calls expenses</u> in the <u>relevant year</u>,</p> <p>(b) multiply it by that <u>relevant postal operator’s share of calls relating to relevant postal operators</u> in the <u>relevant year</u> expressed as a percentage of the total <u>calls relating to relevant postal operators</u>.</p> <p>The “<b>qualifying calls expenses</b>” are—</p> <p>(a) the <u>qualifying consumer expenses</u> of Citizens Advice;</p> <p>(b) the <u>qualifying consumer expenses</u> of the General Consumer Council for <u>Northern Ireland</u>; and</p> <p>(c) the <u>Scottish consumer advice amounts</u>,</p> <p>likely to be incurred during the <u>relevant year</u> in respect of the <u>consumer advocacy bodies’ functions</u> in dealing with <u>calls relating to relevant postal operators</u>.</p>
CP 1.2.5 <i>Calculation of proportion for the purposes of CP 1.2.1(c)</i>	<p>The proportion referred to in CP 1.2.1(c) to be paid by a <u>relevant postal operator</u> reaching the <u>qualifying calls threshold</u> will be calculated by multiplying the total <u>qualifying calls expenses</u> in the <u>relevant year</u> by that <u>relevant postal operator’s share of calls relating to relevant postal operators</u> falling within CP1.2.4 expressed as a percentage of the total <u>calls relating to relevant postal operators</u> falling within CP1.2.4.</p>
CP 1.2.6 <i>Adjusted amounts</i>	<p>The amounts payable under CP 1.2.1(a) and (b) in a <u>relevant year</u> shall include the amount of the difference, if any, between the costs actually incurred during the previous <u>relevant year</u> and the estimate of the costs in question upon which charges</p>

<i>payable under CP 1.2.1(a) and (b)</i>	in the previous <u>relevant year</u> were based, where the latter exceeds the former the amount of the difference being treated as a negative amount.
<i>CP.1.2.7 Adjusted amounts payable under CP 1.2.1(c)</i>	The amounts payable under CP 1.2.1(c) in a <u>relevant year</u> shall include the amount of the difference, if any, between the amounts charged to the <u>relevant postal operator</u> in the previous <u>relevant year</u> , based on estimates; and the amounts which would have been charged had the calculation been based on actual numbers of <u>calls relating to relevant postal operators</u> (including to calls relating to that specific <u>relevant postal operator</u> ) and actual <u>qualifying calls expenses</u> . Where the latter exceeds the former, the amount of the difference shall be treated as a negative amount.
<i>CP 1.2.8 Payments due dates</i>	The amount due under each of the three circumstances specified in CP 1.2.1 shall be payable on 30 June in the <u>relevant year</u> or, if later, on the expiry of one month from the day on which <u>OFCOM</u> serve notice on the <u>relevant postal operator</u> of such amount.

### **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.*

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

Recovering consumer advocacy costs – supplementary statement

<i>User</i>	<i>65(1)</i>
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