

26th February 2016

CWU Response to Ofcom's Proposed Annual Plan 2016/17

Introduction

The Communication Workers Union (CWU) is the largest union in the communications sector in the UK, representing approximately 192,000 members in the postal, telecoms, financial services and related industries.

We welcome the opportunity to respond to Ofcom's consultation on its Proposed Annual Plan 2016/17. We support Ofcom's goals of ensuring markets work effectively for consumers; securing standards and improving quality; and protecting consumers from harm. However, we are concerned that regulation in post and telecoms has focused too heavily on promoting competition in the pursuit of lower prices and cost cutting and we believe this constrains investment, limits service quality and undermines universal service provision. We call on Ofcom to introduce a shift in emphasis towards incentivising investment to deliver high quality communications services for all.

As in previous years, Ofcom's proposed Annual Plan focuses primarily on the telecoms and broadcast sector, whilst briefly outlining its responsibilities and plans in the postal sector. The CWU's response is divided into two parts, covering the telecoms and broadcast sector followed by the postal sector.

Summary of key points

Telecoms and broadcast sector

- The CWU believes that Ofcom should prioritise incentivising continued investment in network infrastructure so that commercial rollouts achieve their maximum potential coverage, quality and resilience.
- Whilst it is important that prices remain affordable for all users, they must also reflect the real cost of providing services and improving networks.
- We support the proposal to monitor BT Openreach's quality of service and to consider options to enhance quality of service through the Strategic Review of Digital Communications. We will continue to engage with this review as it progresses.
- Openreach's capacity to deliver quality of service improvements will depend on having sufficient resource to meet these objectives, and this must be properly accounted for in regulation to secure adequate network investment.

- The existence of decent labour standards plays an important part in maintaining and improving quality of service, and so investment considerations must take account of the interests of those who work in the industry.
- Ofcom should require all providers with access to Openreach's network to comply with a set of standards for maintenance and health and safety, which will assist in improving service quality.
- The CWU welcomes Ofcom's commitment to support the Government as it pursues the implementation of a 10 Mbit/s broadband Universal Service Obligation (USO).
- We urge Ofcom to closely monitor the text relay service and to seek ongoing improvements in modern digital services for people with hearing, speech, visual and other impairments.
- The CWU supports Ofcom's work on child internet safety and we believe the protection of children from the dangers of the internet should be a regulatory priority.
- We call on Ofcom to focus on encouraging broadband take-up and participation in communications through an e-literacy campaign.

Postal sector

The CWU calls on Ofcom to:

- Focus on its primary statutory duty to secure the provision of the universal postal service;
- Allow Royal Mail to sustain and grow revenues through sufficient pricing freedom, balanced against the requirements for affordability for consumers;
- Provide a regulatory framework that supports Royal Mail's ability to invest in new products and services in order to meet the changing needs of customers, capture revenues in growth areas such as parcels and secure the future of the universal service;
- Accept that end-to-end competition is not compatible with a financially sustainable universal postal service in the UK;
- Recognise that Royal Mail already faces sufficient market challenges that will spur efficiency and that the decent pay and terms and conditions of its front-line workers contribute to its good quality of service record;
- Prioritise strengthening regulation in the growing parcels market to improve standards;
- Consider what steps it could take to ensure a better parcels delivery service for people living in rural and difficult-to-reach locations; and
- Drive up standards across the postal sector and require all delivery providers, including parcel firms, to record and report on performance targets both to incentivise firms to improve their quality of service and to ensure that customers are properly informed.

Telecoms and broadcast sector

The CWU's response on telecoms and broadcast issues is set out below under the headings for each of the high level goals and work areas in Ofcom's proposed Annual Plan.

Promote competition and ensure that markets work effectively for customers and businesses

1. The CWU supports efforts to ensure markets function effectively for consumers and businesses. We recognise that competition has brought benefits, including the development of choice and innovation. However, we are concerned that many citizens, consumers and businesses are not experiencing the benefits of competition, especially those with less market power. This is because commercial operators naturally focus on the most profitable customers and locations to provide their services. Furthermore, we believe that a regulatory emphasis on encouraging competition in the pursuit of lower prices has the effect of curbing revenues and restricting investment potential.
2. Research published by Ofcom last year shows that there are still around 2 million UK premises that fall below the 10Mbit/s broadband speed threshold needed to support the most popular online services, and around 500k premises cannot access the most basic 2Mbit/s services. Small and Medium Size Enterprises (SMEs) are particularly affected, with Ofcom's most recent figures estimating that SME superfast broadband coverage stood at 56% in June 2014, compared to 75% of all premises.¹ Although coverage continues to improve, superfast broadband access for SMEs is expected to remain behind that of all premises in 2017.²
3. We believe the shortfalls in connectivity demonstrate the need for a greater commitment to both public and private investment. The Government and local authorities together are investing around £1.7bn in improving broadband³, but match funding from the private sector will be heavily relied upon to make this programme a success. That is why it is crucial that the regulatory framework maximises commercial investment potential. As the CWU said in our response to Ofcom's Strategic Review of Digital Communications consultation, we believe there should be a shift in Ofcom's focus away from encouraging competitive entry in the pursuit of price and cost cutting and towards incentivising long term investment⁴.
4. The CWU supports Ofcom's work on monitoring prices and ensuring all consumers receive value from their communications providers. Whilst it is important that prices remain affordable for all users, they must also reflect the real cost of providing services

¹ Broadband services for SMEs: assessment and action plan, Ofcom, 25th June 2015, accessed at: <http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/sme/bb-for-smes.pdf>

² Ofcom, *ibid*, 25th June 2015

³ 2010 – 2015 Government policy: broadband investment, DCMS, 8th May 2015, accessed at: <https://www.gov.uk/government/publications/2010-to-2015-government-policy-broadband-investment/2010-to-2015-government-policy-broadband-investment#appendix-2-superfast-broadband-programme>

⁴ CWU response to Ofcom's Strategic Review of Digital Communications, CWU, 8th October 2015, available at: <http://www.cwu.org/departments-services/research/documents-and-consultation-responses/telecoms/>

and improving network reliability and resilience. We think customers recognise the connection between price and quality and that they are likely to be willing to pay more for faster, more reliable broadband access. We believe Ofcom should place more consideration on the effect of low prices on long-term investment when setting charge controls. Low prices do consumers and businesses no favours if they stifle investment and constrain improvements in digital networks.

5. We welcome Ofcom's efforts to improve information provision for consumers. Effective markets rely on the ability of consumers and businesses to make well informed decisions based on detailed information on mobile broadband coverage, fixed broadband speeds and quality of service. We also support Ofcom's work to improve consumers' ability to switch their supplier or tariff in order to receive value for money from their communications provider. We support an approach whereby the same switching processes apply across all services, including broadband, pay-TV and mobile services.

Secure standards and improve quality

6. The CWU shares Ofcom's desire to secure widespread availability, affordability and accessibility of good quality communications services for consumers. We agree that competition alone cannot deliver the full range of desirable outcomes, and we support Ofcom's targeted interventions to help ensure that everyone in the UK can access high quality communications services.
7. In particular, we agree with the plan to ensure quality of service from BT Openreach through continued monitoring of its service and enforcement of minimum standards. CWU members in Openreach take pride in their work and they are committed to delivering a high quality of service to customers. Openreach is now meeting all 60 of the targets set by Ofcom following the Fixed Access Market Review and can now offer new customers an appointment within 12 days in 98.5% of cases, versus 67% two years ago.⁵ However, we know that there is still room for improvement and we support Ofcom's work to consider options to enhance quality of service through the Strategic Review of Digital Communications. The CWU will continue to follow and engage with this review process.
8. In order to deliver continued improvements in service quality, it is important that the workforce is properly resourced, trained and rewarded. As we said in our response to Ofcom's Strategic Review last year⁶, there is a connection between pay and conditions and quality of service, with numerous studies showing that workers who are properly valued and earning decent rates of pay are more motivated and committed to their role. Ofcom must ensure that the regulatory framework allows communications providers to justify sufficient investment in a well trained, properly rewarded workforce to achieve customer expectations.

⁵ Openreach, Our Charter, Building Britain's Connected Future, BT Openreach, 22nd September 2015

⁶ CWU, *ibid*, 8th October 2015

9. The CWU is also encouraged by Ofcom's commitment to support the Government as it pursues the implementation of a broadband Universal Service Obligation (USO). The CWU has campaigned over many years for the introduction of a USO for broadband to ensure that all citizens and consumers have access to high quality communications and can engage fully in society and the digital economy. We therefore welcome and support the Government's plans for a USO to give people the legal right to request a connection to broadband with speeds of 10 Mbps, no matter where they live.⁷
10. We made clear in our response to last year's Strategic Review consultation that we are opposed to the structural separation of BT Openreach from BT Group because we believe it would jeopardise essential network investment and quality of service improvements. We also believe that the impact of structural separation on commercial investment would seriously harm prospects for the Government's broadband USO plans, and that greater public funding would be required to make up any shortfall.

Protect consumers from harm

11. As we said in our submission to last year's Annual Plan (2015/16), we urge Ofcom to increase efforts to identify and tackle the organisations responsible for nuisance calls. We welcome Ofcom's commitment to a continued focus in this area, including by taking enforcement action against those generating silent and abandoned calls.
12. We believe child internet safety should be a priority for Ofcom. The internet is now an integral and fundamental part of children's lives, bringing a wide range of benefits through access to educational resources, entertainment and social networking. However the down side is a risk of exposure to online dangers such as cyber bullying, hackers, viruses, sexual predators and harmful web content.
13. Ofcom should therefore prioritise protecting children and informing adults about these dangers. We are encouraged by Ofcom's active role in supporting the Government's UK Council for Child Internet Safety, including its work to promote best practice by social media companies.
14. In our submission to Ofcom's 2015/16 Annual Plan, we noted that UK landline and mobile providers were obliged to provide customers with access to the improved 'next generation' text relay service introduced in 2014, to assist communication for people with hearing and speech impairments. We are pleased to see this policy is continuing and Ofcom is monitoring communications providers to ensure the service meets the needs of users. We urge Ofcom to seek ongoing improvements in the text relay service as modern digital networks develop. Furthermore, in carrying out its duty to promote equality of opportunity for disabled people, we call on Ofcom to continue to improve communications services more generally for people with hearing, speech, visual and other impairments.

⁷ Government Press Release, Government plans to make sure no-one is left behind on broadband access, 7th November 2015, accessed at: <https://www.gov.uk/government/news/government-plans-to-make-sure-no-one-is-left-behind-on-broadband-access>

15. As we have argued in previous responses to Ofcom's Annual Plan, we believe Ofcom should do more to encourage and promote participation in communications and the take up of broadband services. This should include initiating a major e-literacy campaign to help promote inclusivity, particularly for older and vulnerable groups. A London School of Economics report published in 2015 found almost five million Britons aged over 64 do not have any internet skills, with many older people believing digital technology is "too difficult to use" and a luxury rather than a tool for improving life quality.⁸ A broadband USO will not achieve its potential if large portions of the public lack the knowledge of how to use and make the most of technological developments.
16. We also urge Ofcom to continue its work, outlined in its previous Annual Plan (2015/16) to ensure that affordable deals are available to and promoted amongst low income groups.⁹ This is vital for helping to ensure that no one is excluded from participation in the digital economy.

Delivering Ofcom's goals across the UK's nations

17. We welcome Ofcom's commitment to deliver on its goals for consumers and businesses across the UK's nations, and its recognition of the challenges presented by the provision of services to rural areas, given their economic geography. We are pleased to see that Ofcom's work plan includes supporting the Government on the implementation of the broadband USO as a means of achieving good quality connectivity for rural users and SMEs across the nations.
18. As Ofcom identifies in the consultation document and in its wider research, there are problems with network access and quality in all four nations of the UK. England has the most extensive coverage of superfast broadband services, with access for 84% of premises, but there are still issues with connectivity in rural areas and challenges in high density urban areas. There are also comparative shortfalls in high speed connectivity in Scotland, Wales and Northern Ireland. Scotland is the most disadvantaged of the UK, with 73% superfast broadband coverage compared with 83% for the UK.¹⁰ Wales¹¹ and Northern Ireland¹² also fall below the UK average with 79% and 77% superfast broadband coverage respectively.
19. It is clear that a certain level of public investment will continue to be required to help fund the rollout of digital networks in hard to reach areas. However, there is a limit to what the Government is prepared to commit and without greater private investment

⁸ LSE, Internet is both harming and helping older people in social interactions, posted 13th August 2015, accessed at: <http://www.lse.ac.uk/newsAndMedia/news/archives/2015/08/Internet-older-adults.aspx>

⁹ Ofcom Annual Plan 2015/16, 26th March 2015, accessed at: http://www.ofcom.org.uk/content/about/annual-reports-plans/ann-plans/Annual_Plan_Statement.pdf

¹⁰ Ofcom, The Communications Market 2015, http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr15/Scotland_4.pdf, p71.

¹¹ Ofcom, The Communications Market 2015, http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr15/Wales_4.pdf p59.

¹² Ofcom, The Communications Market 2015, <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr15/northern-ireland/>

there is a danger that many communities will continue to remain the wrong side of a growing digital divide. As we have indicated, we believe Ofcom should set a regulatory framework that maximises the potential for network infrastructure investment to ensure the Government's plan to introduce a broadband USO is financially viable and sustainable. This should reflect the need for investment in more advanced, affordable technological solutions to reach the most remote and rural communities.

Ongoing work to fulfil Ofcom's duties

20. The CWU supports Ofcom's work to ensure radio spectrum is used in the most efficient way, including planning for future spectrum requirements. Given the forthcoming merger between BT and EE, and the potential merger between Telefónica and Hutchison 3G, we support Ofcom's decision to delay the auction of the spectrum in the 2.3 and 3.4 GHz bands following the release of these bands to Ofcom by the Ministry of Defence¹³. This will bring greater clarity for operators at the time of the auction, helping to ensure optimum allocation of spectrum.
21. We also support Ofcom's work on technical studies for 5G networks, and we believe it is important that Ofcom plans for the future spectrum requirements of 5G given its potential to serve citizens and consumers in future. 5G mobile services could be part of the solution to bring faster broadband services to users in remote areas, with predictions of data speeds of between 10 to 50Gbit/s, compared with today's 4G average of 15 Mbit/s.¹⁴
22. The CWU welcomes Ofcom's work to ensure that network operators design and operate networks in line with good security practice. However, as we have said in previous regulatory submissions, we believe Ofcom's work on network security and resilience should extend to minimum maintenance and health and safety standards for those working on the network. This should include a set of required standards for all operators with access to Openreach's network. The workforce needs to be adequately resourced and skilled to ensure these high standards are in place, and to support this objective we believe there should be a guarantee of qualification standards for engineering occupations. This would play an important role in ensuring the network is consistently maintained to a high standard, which would in turn help to deliver a good quality service for customers.
23. We note that Ofcom is currently investigating a complaint against Sky for abuse of a dominant position in the wholesale supply of Sky sports 1 and 2. As we said in our response to the Strategic Review last year, we believe Ofcom must ensure there is fair and effective competition in the pay-TV sector so that network operators including BT and Virgin Media have wholesale access to Sky's premium film and sport content at a

¹³ Ofcom, Public Sector Spectrum Release, accessed at: <http://stakeholders.ofcom.org.uk/spectrum/public-sector-spectrum-release/>

¹⁴ Ofcom, Laying the foundations for '5G' mobile, accessed at: <http://consumers.ofcom.org.uk/news/laying-the-foundations-for-5G/>

reasonable commercial rate. This will help drive new investment in infrastructure by increasing demand for fibre based broadband.

24. We note and commend Ofcom's work to help promote diversity in broadcasting. It is essential that those from minority ethnic groups and others with protected characteristics under the Equality Act are properly represented in the media. We also support Ofcom's work to prohibit the broadcast of content that incites crime or disorder.

25. However, we believe Ofcom should do more to ensure that a diversity of views are represented in the media, with reference to the protected characteristics under the Equality Act, but also diverse viewpoints in society including those of trade unions. An article for the New Statesman looking at BBC Question Time appearances for the 2014-15 season found that trade unions were underrepresented. Of guests appearing in various categories, 38 were journalists, ten celebrities, three from businesses, and only one from a trade union.¹⁵ We call on Ofcom to work to ensure that the trade union movement - representing 6.75 million workers¹⁶ - is not excluded from public debate.

Postal Sector

Parcel market review

26. In 2016/17 Ofcom intends to continue its review of the Royal Mail, including the parcel market and parcel surcharging in the Highlands, Islands, and Northern Ireland.

27. The CWU agrees with Ofcom that the intensification of competition and innovation in the parcels market could have implications for the future financeability of the universal postal service and we therefore welcome this review of the parcels market. However we would like to see Ofcom prioritise strengthening regulation in the growing parcels market to improve standards as market forces aren't sufficient. We note that 21 percent of respondents in Ofcom's Communication Market Report 2015 stopped an online order because they had a previous poor experience with a retailer/deliverer¹⁷ and there continue to be reports of poor practice amongst certain operators in the parcels industry.¹⁸

28. As we argued in our September 2015 response to Ofcom's consultation on the review into the regulation of Royal Mail, we believe that all delivery providers, including parcel firms, should be required to record and report on performance targets both to incentivise firms to improve quality of service and to ensure that customers are properly

¹⁵ New Statesman, Is there left or right-wing bias on BBC Question Time?, 17th September 2015, accessed at: <http://www.newstatesman.com/politics/media/2015/09/there-left-or-right-wing-bias-bbc-question-time>

¹⁶ Trade union membership 2014, June 2015, BIS, accessed at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/431564/Trade_Union_Membership_Statistics_2014.pdf

¹⁷ Ofcom, Communications Market Report 2015, p.388.

¹⁸ <http://www.dailymail.co.uk/news/article-3426093/Staff-delivery-firm-Yodel-shown-hurling-parcels-6ft-warehouse-cages-shocking-TV-footage.html>

informed. Ofcom should also extend the Mails Integrity Code so that it applies to parcels as well as letters in order to ensure the same basic standards apply to the whole parcels industry. This is particularly important as firms such as Doddle are currently considering using sporting clubs and people's front rooms as drop off and pick up locations for parcels.

29. We welcome Ofcom's consideration of the high delivery surcharges experienced by many consumers in rural and difficult-to-reach locations. Consumers living in these areas are usually reliant on Royal Mail's universal service because many other parcel firms either charge high premiums for delivery or simply refuse to deliver to these locations at all (as it is not in their commercial interest).¹⁹ This demonstrates both the need to protect the universal service obligation that ensures that delivery of packages up to 20kg costs the same across the UK; as well as the importance of retailers offering Royal Mail as a delivery option. We note that Early Day Motion 942 "Internet Delivery Changes and Service"²⁰ which has cross-party support in the House of Commons, calls for a "People's Delivery Guarantee" which should include the right for consumers to specify delivery by Royal Mail or to arrange their own collection if this is the cheapest delivery option. We urge Ofcom to consider what additional steps it could take to ensure a better parcels delivery service for people living in rural and difficult-to-reach locations.

Review of the regulation of Royal Mail

30. Following a period of consultation on its proposals, Royal Mail intends to publish the results of its fundamental review into the regulation of Royal Mail in 2016/17, with a statement expected in Q3/4. As we detailed in our response to Ofcom's consultation on its discussion paper, 'Review of the regulation of Royal Mail' in September 2015, we welcome the review as we are concerned that the current framework fails to adequately prioritise the universal postal service. We are concerned that the combined effects of competition and pressure for ever-greater cost-cutting are putting us on a path that threatens future provision of the universal service.
31. We do not accept Ofcom's analysis of the postal market, as outlined in the discussion paper, and disagree with its approach to competition, efficiency and its duty to safeguard the universal service. We are concerned that it risks repeating the mistakes of the Postcomm era in its consideration of price controls, which are clearly unsuitable in a declining market. Ofcom's approach to efficiency at Royal Mail also remains an ongoing concern for the CWU, particularly given it is based on assumption rather than evidence and is focused on driving down the pay and conditions of our members.
32. In order to ensure the future sustainability of the universal postal service and to drive up standards across the postal sector rather than engaging in a race to the bottom, we repeat our call for Ofcom to:

¹⁹ See [Free Delivery Survey](#), Citizens Advice Scotland, November 2011, and [The Postcode Penalty](#), Citizens Advice Scotland, December 2012.

²⁰ <http://www.parliament.uk/edm/2015-16/942>

- Focus on its primary statutory duty to maintain the universal postal service;
- Introduce a ban on cherry-picking end-to-end delivery competition which threatens the future of the universal postal service;
- Ensure regulation is focused on allowing Royal Mail to sustain and grow revenues through sufficient pricing freedom, balanced against the requirements for affordability for consumers;
- Ensure greater protection for consumers in the growing parcels market by making all parcels firms accountable to minimum standards; and to
- Recognise that Royal Mail already faces sufficient market challenges that will spur efficiency and that the decent pay and terms and conditions of its front-line workers contribute to its good quality of service record.

33. We would like to see greater innovation from Royal Mail, particularly in the growing parcels market where there is already well-developed competition, but this will not be possible if the regulatory framework prioritises short-term cost savings instead of long-term growth. The future financial sustainability of the universal service will depend on Royal Mail managing the decline in letters as effectively as possible; but above all it will depend on Royal Mail investing in, and capturing, new areas of growth. Therefore Royal Mail must be given the flexibility it needs to commit sufficient investment in its people and its network so that it can operate effectively and innovate in growing markets, without being stymied by an excessive focus on cost-cutting and competition from the regulator.

Ofcom's competition law powers

34. Ofcom is currently investigating, under its competition law powers, a complaint from Whistl UK Limited in relation to the prices, terms and conditions on which Royal Mail was offering to provide access to certain letter delivery services.

35. In June 2015 Ofcom issued a 'Statement of Objections' to Royal Mail, setting out its provisional view that Royal Mail acted anti-competitively in relation to wholesale access prices (by proposing higher access prices charges to access customers that competed with Royal Mail in end-to-end delivery than to those access customers that did not). We were concerned to see this provisional view used to support Ofcom's plan for an early review of the regulation of Royal Mail in July 2015, before Royal Mail had an opportunity to make representations to Ofcom. We note Royal Mail considers its proposals were fully compliant with competition law.

36. The CWU believes Royal Mail was right to attempt to implement an access pricing structure to mitigate the impact of cherry picking end-to-end competition on its business, given the threat it posed to the future financial sustainability of the universal postal service. We note that the changes Royal Mail proposed were withdrawn in March 2015 and that Whistl withdrew from the end-to-end delivery market in June 2015. We believe Ofcom should accept that end-to-end competition is not compatible with a financially sustainable universal postal service in the UK and bring the competition investigation to a swift close.

For further information on the view of the CWU contact:

Dave Ward
General Secretary
Communication Workers Union
150 The Broadway
London
SW19 1RX

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