

26 February 2015

## **CWU SUBMISSION TO OFCOM: DRAFT ANNUAL PLAN 2015/16**

### **Introduction**

The Communication Workers Union (CWU) is the largest union in the communications sector in the UK, representing over 200,000 employees in the postal, telecommunications and financial services industries.

We welcome the opportunity to respond to Ofcom's consultation on its Draft Annual Plan 2015/16. Our response covers the telecoms and broadcast sector followed by the postal sector.

### **Telecoms and broadcast sector**

#### **Summary**

1. We note the priorities set out in Ofcom's draft annual plan for 2015-16 and recognise their importance for the smooth functioning of the telecoms sector in the UK.
2. In particular, we recognise Ofcom's role in promoting effective competition and protecting consumers in the telecoms sector. However, it is the view of CWU that competition and quality of service requirements need to be applied consistently across all telecommunication providers. Moreover, regulation to promote competition needs to be balanced by measures to encourage investment in order to address gaps in infrastructure and maintain high service standards.
3. This requires a framework that incentivises sufficient investment to ensure universal access to fast, reliable broadband, and to also address mobile network not-spots. In addition, a framework that enables and encourages telecoms providers to invest in a well-trained, skilled and properly rewarded workforce is essential.
4. In relation to the priorities identified in the draft annual plan, the CWU would make the following key points:
  - Ofcom should make it a priority to incentivise continued investment in network infrastructure, including by ensuring providers have sufficient regulatory scope and certainty to secure a reasonable return on their investment.
  - In promoting competition, Ofcom should seek to ensure that regulatory requirements are applied proportionately and consistently to all providers.
  - BT will need to invest in increased staffing and resourcing levels in order to meet the quality of service standards set by Ofcom<sup>1</sup>. Regulatory pricing structures must therefore take into account the full costs and challenges of maintaining a national network, and recognise the importance of investment in a skilled and properly rewarded workforce.
  - Service quality standards should apply across all operators. Ofcom should also put in place minimum health and safety and maintenance standards for all operators using the Openreach network.

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<sup>1</sup> In the 2014 Fixed Access Market Review, Ofcom set new minimum standards on BT for provisioning and repair of copper access lines

- Barriers to switching process for consumers should be investigated and addressed. Ofcom should ensure that the same processes for switching apply across all individual and bundled services.
- Customer complaints handling across the industry should be standardised and more resources dedicated to ensuring they are properly addressed. More should be done to publicise alternative dispute resolution schemes.
- Ofcom should introduce a major e-literacy campaign to inform those currently not online - particularly older and vulnerable groups - about the benefits of internet use.
- Participation by low-income groups in communication services should also be addressed and affordable deals promoted.
- Ofcom should take a lead in calling on government to adopt a statutory universal obligation (USO) for broadband, and in making the case for public intervention and investment to address continuing shortfalls in the availability of fixed and mobile voice and broadband services.
- Ofcom should work to ensure that a diversity of views are heard and represented in the media, with reference to the protected characteristics under the Equality Act, but also diverse viewpoints within society, including those of trade unions.

### **Promoting effective competition in the provision of communication services**

5. The CWU supports efforts to improve connectivity for UK businesses. This is particularly needed given the lower superfast broadband coverage (56%) for small and medium enterprises (SMEs) than for UK premises as whole.
6. We note that one of the objectives of the business connectivity market review is to create conditions to allow the market to deliver sustainable investment and innovation in infrastructure. The CWU believes that in order to achieve these objectives, providers should be given sufficient scope to see a reasonable return on their investment. BT has committed significant risk investment in upgrading its national network, and other communication providers rely on BT's network to provide their own broadband services. Thus in promoting effective competition, Ofcom should be mindful of the importance of maintaining BT's infrastructure investment incentives through appropriate access pricing flexibility.
7. We note that Ofcom will commence work on the fixed access market review (FAMR) and narrowband market reviews in 2015-16, looking at competition in these markets. The CWU would urge Ofcom to err on the side of caution when considering possible competition remedies in these markets. We believe that previous reviews into competition have led to unnecessary interventions. For example, we believe the decision to set a minimum VULA margin for BT in setting prices for access to its NGA networks – published in January 2015 - was unnecessary as there was no sign of competition problems in this market.
8. Nevertheless, the CWU believes that in promoting competition, Ofcom should seek to ensure that regulatory requirements are applied consistently to all providers. As stated in previous submissions, it is the view of CWU that Ofcom needs to examine market dominance and consider measures to open up access to wholesale services not only in the case of BT, but also in the case of other companies where significant market power exists in particular areas. This includes Virgin media providing access to its cable networks in areas where it is concentrated, and Sky providing access to its TV sports channels to other retailers on a wholesale basis.
9. As we have stated in previous submissions, the CWU believes it is incumbent on Ofcom to develop a more proactive agenda to fulfill its duty to ensure fair and effective competition in the pay TV sector. This should include the introduction of a regulatory remedy to ensure that dominant operators such as Sky do not unreasonably withhold commercial agreements for the wholesale supply of premium film and sport content.
10. We note that Ofcom will be undertaking further work in the next year to implement changes relating to its review of BT's regulatory reporting requirements. It is the view of CWU that similar reporting

requirements should also apply to other telecommunication providers, allowing key performance indicators and financial information to be compared across all providers, and also providing for transparency as to how all providers are benefitting or otherwise from the current market configuration.

#### **Improving the switching process for customers**

11. We welcome steps being taken by Ofcom to improve the process of switching providers for consumers, with simpler procedures to be led by the gaining provider.
12. The CWU would also strongly favour Ofcom investigating other improvements to switching processes for bundled voice, broadband and subscription pay TV services, as well as mobile services. We would urge an approach whereby the same switching processes apply across each of these services or for bundled packages, building on existing best practice.
13. We would welcome steps to explore non-process barriers to switching, and would urge Ofcom to investigate possible improvements to information available to consumers to enable them to access clear and relevant information about the performance of different providers. This should include information regarding customer complaints and satisfaction, broadband download and upload speeds, as well as transparency of pricing for individual and bundled services.
14. It is essential that consumers are properly informed of their choices and can make meaningful comparisons and we would welcome further initiatives from Ofcom in this priority area. We would also endorse stronger obligations on operators to prompt consumers about the end of contracts, so that customers can make a considered and informed choice about the merits of switching to another provider.
15. As stated in previous submissions, the CWU believes that automatically renewable contracts (ARCs or 'rollovers') to residential consumers act as a barrier to switching, as do additional charges such as early termination charges (ETCs). We welcome Ofcom's intention to continue monitoring complaints about unfair contract terms including ETCs and to take action where appropriate to ensure contract terms are fair.

#### **Clearer pricing for numbers**

16. The CWU welcomes plans by Ofcom to introduce clearer pricing for non-geographic numbers and to make "freephone" calls free from mobiles as well as landlines. There is a particular need for action on this matter given the high proportion of consumers that indicate they are unclear about the cost of calls to such numbers.
17. The move to unbundle calls to 084, 087, 09 and 118 numbers so that consumers know exactly how much of their money is paid to their phone company and what is passed to the organisation being called is also a welcome step towards maximizing transparency for consumers. Whether the overall cost of such calls is excessive should also be kept under review.

#### **Monitoring quality of service and customer service performance**

18. The CWU recognises the importance of quality of service and the need to address complaints by customers about poor service quality. We believe that quality of service standards should apply to all operators. As stated above, we believe the requirement to publish key performance indicators should apply not just to BT but to all operators.
19. We note the tighter requirements Ofcom has introduced regarding the quality of service BT delivers in the initial provision and repair of fixed line services, and Ofcom's commitment to monitoring and ensuring this service quality.

20. The CWU agrees that a high level of importance should be attached to ensuring a high quality of fixed line service and complaint handling. However, in order to make this possible, Ofcom must ensure that the pursuit of competition does not place undue pressure on BT to drive down costs, as this will undermine service quality.
21. The CWU believes that for Openreach to be able to meet quality of service expectations, Ofcom must take into account the full costs and challenges of maintaining a robust national network upon which other communications providers can fully rely to deliver their own high quality services. This also includes the numerous factors driving an increase in fault volumes which are out of Openreach's control, including extreme weather and greater broadband usage.
22. Furthermore, there is a need to reflect on the correlation between service quality and the training and terms of conditions of workers delivering that service. Reducing the potential for BT and other operators to make returns on their investments and forcing them to drive down costs in order to increase competition makes it harder for operators to invest in and maintain a skilled and fully trained workforce.
23. Market access price structures should therefore take into account the costs of maintaining a highly skilled workforce. This includes, for example, the costs of maintaining BT's Transition Centre (BTTC) which allows BT to retain skilled staff for redeployment to new roles.
24. Quality of service is important to the CWU and our members take pride in their work. However, the Openreach workforce is thinly stretched and subject to increased workloads, unsociable hours and regular weekend working. For Openreach to continue to meet the quality of service standards set by Ofcom will require investment in increased staffing and resourcing levels. Regulatory pricing structures must therefore take into account the full costs and challenges of maintaining a national network to a high standard, recognising the importance of investment in a skilled and properly rewarded workforce. Without these measures, the need for cost efficiencies will put pressure on jobs and employment standards, leading to lower quality of service.
25. A framework that ensures that high quality service standards can be delivered by a skilled and fully trained workforce needs to be prioritised over measures that force BT and other operators to drive down costs and sacrifice service standards in order to guarantee more competition.
26. We would stress that service quality standards should apply across all operators (not just BT) – and these need to be transparent – allowing consumers to make informed choices. But, as we have stated in previous submissions, there also need to be minimum health and safety standards for the workforce involved in maintaining the network.
27. The CWU believes that transparency of maintenance standards, extending to minimum health and safety standards, should form part of Ofcom's proposals on Openreach quality of service. This should also include a requirement for providers with access to Openreach's network to comply with a set of standards for maintenance and health and safety when working on the Openreach network. Such an intervention from Ofcom will play an important role in ensuring the network is consistently maintained to a high standard so that Openreach can deliver a high quality service to all of its customers. As a result, this measure would directly benefit those providers for whom compliance is required. The CWU remains disappointed this is not something being actively considered by Ofcom, and we would urge Ofcom to address this issue at an early stage.

#### **Handling of Customer Complaints and Alternative Dispute Resolution**

28. CWU recognises the importance of ongoing work by Ofcom to publish provider-specific data on consumer complaints, and to publish customer satisfaction surveys and other research, in the interests of providing as much information as possible to inform consumer choice and highlight poor performance.

29. While also welcoming steps to improve providers' handling of customer complaints, we would reiterate our calls for Ofcom to standardise complaint handling procedures across the industry and to ensure that more resources are dedicated to handling of complaints. It is disappointing that Ofcom's plans still appear to fall short of this.
30. We also welcome Ofcom's stated intention to continue to ensure that communication providers and alternative dispute resolution (ADR) schemes meet the complaint handling and ADR requirements it has set out. However, as we have stated in previous submissions, the CWU believes Ofcom should do more to promote awareness among consumers of ADR schemes for dealing with such things as disputed charges and refund claims.

### **Protecting Consumers from Harm**

31. The CWU welcomes the further work planned by Ofcom to protect consumers from harm, including in relation to nuisance calls, miss-selling in the sector, and work on a liability cap for unauthorised use of mobile phones.
32. We would urge Ofcom to increase efforts to identify and tackle organisations responsible for nuisance calls. We welcome Ofcom's work with international organisations on technical approaches to addressing this, given that many of these calls are now being generated overseas and disguising caller-origin.
33. We would also urge Ofcom to make the case strongly with industry and government for the introduction of a liability cap for lost and stolen mobile phones.
34. The CWU also supports Ofcom's work to better inform consumers as to the safe use of smartphones and apps, and would endorse further work on safe internet use and data-related consumer protection matters. We would stress the need to ensure network security and resilience and to better inform consumers in safeguarding their own data.
35. Given the rapid changes in sector, the CWU agrees on the need to be vigilant with regard to new forms of harm that can emerge.

### **Promoting participation**

36. The CWU recognises Ofcom's important work in ensuring that disabled and older people have access to communication services.
37. We note that UK landline and mobile providers were obliged to provide customers with access to improved "next generation" text relay service for people with hearing and speech impairments by 2014, and that Ofcom is monitoring the operation of this. The CWU would urge Ofcom to monitor implementation of this closely, and continue to seek improvements in modern digital services for people with hearing, speech, visual and other impairments.
38. The CWU would also urge Ofcom to closely monitor access to communication services for low income households, and investigate ways of addressing barriers to take-up among these households. We welcome work by Ofcom to improve links between debt charities and communication providers, and to raise awareness of what to do in case of telecom debt.
39. We also welcome work to raise greater awareness of the most affordable deals and urge Ofcom to encourage providers to make such deals available and ensure that customers are aware of them.
40. While noting Ofcom's efforts to promote digital inclusion by using and disseminating research into digital participation, skills and attitudes across the UK, CWU would re-emphasise the need for Ofcom to introduce a major e-literacy campaign to educate those currently not online – particularly older and

vulnerable groups - about the benefits of the internet and to encourage them to take up broadband access.

### **Promoting universal broadband coverage**

41. We note the continuing persistence in shortfalls in the availability of fixed and mobile voice and broadband services as highlighted in Ofcom's infrastructure report in 2014.
42. In terms of broadband government, this shows that despite the government's Universal Service Commitment (USC) to availability of at least 2Mbit/s broadband, 3% of UK premises still fall below this availability threshold. Moreover, around 15% of UK households are not able to receive a download speed of around 10Mbit/s, which is what a typical household now requires to support their use of online services.
43. The deployment of superfast broadband since 2009 has delivered download speeds of 30Mbit/s and this is now available to 75% of premises in the UK. We also note that the government has indicated that the UK is on course to meet its target of 95% of premises being covered by 2017. However, it is of concern that there are still sizeable not-spots, particularly in rural premises where superfast broadband coverage is only at 22%, and also in some urban areas including in inner London. The relatively low coverage for SMEs of 56%, as noted above, is also a major concern.
44. While we remain sceptical regarding the likelihood that the 95% target will be met by 2017, reaching the final 5% not covered by the target presents even greater challenges.
45. It is the view of CWU that securing the necessary public and private investment and appropriate regulatory framework in order to ensure universal broadband coverage remains a top priority. The CWU also remains convinced that a statutory universal service obligation (USO) to provide broadband for all households and businesses is necessary, and we repeat our call for Ofcom to take a lead in supporting this objective and promoting it within government.
46. We recognise the importance of Ofcom's work in monitoring the availability of broadband, and of coverage by different speeds, and the technical support it is providing to Broadband Delivery UK (BDUK) and government in promoting availability of superfast broadband. We also support Ofcom's ongoing work to enforce and monitor the Broadband Speeds Code of Practice, in order to ensure that consumers get the information on broadband speeds that they need at the point of sale in order to make informed purchasing decisions.
47. However, as stated in previous submissions, it is the view of CWU that the superfast broadband public funding gap needs to be addressed through regulatory mechanisms to incentivise and encourage further private investment. This will also require additional investment by government to address the remaining gaps in coverage, recognizing the intrinsic difficulties of delivering broadband to rural areas and prioritising solutions to overcoming this.
48. As we stated in our submissions to the DCMS Digital Communications Infrastructure Strategy consultation in October 2014, it is the view of CWU that the government should set up an infrastructure commission with a remit to recommending schemes to deliver digital infrastructure, including superfast broadband, and working closely with Ofcom, BDUK and other bodies. This will help to develop and deliver the mix of technologies including fixed, mobile and satellite, which will be required to extend fast, reliable broadband services to certain parts of the country.
49. Government investment in broadband has been small by comparison to other leading economies, and the UK has fallen behind sixteen other EU nations, including Germany and Spain in respect of superfast broadband coverage as Ofcom's research has shown. A comparison on FTTP (Fibre to the Premises) growth in 2013 showed that by the end of the year the UK had passed 234,000 homes but Spain passed

had 2.4 million homes, France 710,000 and Portugal and Sweden both had passed 550,000. We believe Ofcom should make the case to government for more government action and investment, drawing attention to such comparisons.

50. This will also require updating current targets for minimum universal speeds, bearing in mind that while the government's current USC for broadband is that every household should have access to broadband speeds of at least 2Mbit/s, the European Commission's target is for the entire EU to have access to broadband speeds of at least 30Mbit/s by 2020.
51. Minimum universal broadband speeds in the UK will therefore need to rise with average speeds and reflect the growing demand for faster download and upload connections. Whereas the current USC applies only to download speeds, users are increasingly uploading and sharing more data. This requires a more ambitious commitment to deliver more symmetrical networks with minimum download and upload speeds on a universal basis.

### **Mobile network coverage**

52. We note that there are also continuing gaps in mobile network coverage, with no 2G coverage available in 11% of the UK's geographic area, and no 3G coverage in 16% of the UK, with partial not-spots extending over greater areas. While mobile network operators (MNOs) have committed to increase mobile voice coverage to 90% of UK geographic area by 2017, following government measures to improve voice coverage, we note this will only increase coverage by a further one percentage point.
53. The CWU supports Ofcom's work with government in seeking improvements to extend the coverage of mobile networks, and we note the importance of mobile networks in also addressing gaps in broadband coverage. As with fixed broadband, we would urge Ofcom to ensure that the regulatory environment encourages investment by MNOs to address gaps in coverage. We note that the Ofcom infrastructure report 2014 stated that continued public policy intervention might be needed to extend mobile coverage beyond current levels, and we would urge Ofcom to continue to make the case robustly to government for investment and intervention to ensure universal coverage where the market is unable to deliver. The government infrastructure commission proposed by CWU would also work towards this objective (see paragraph 48 above).
54. As with fixed broadband, we are supportive of Ofcom's work in publishing mobile broadband speeds, enabling consumers to make an informed choice between operators.

### **Securing optimal use of spectrum**

55. The CWU recognises the need to secure the optimal use of spectrum for a range of services in the interests of citizens and consumers, particularly the release of spectrum for mobile use.
56. We welcome Ofcom's plans to work towards the release of spectrum to this end, including the 2.3GHz, 3.4GHz and 700MHz bands, provided that there is a clear understanding that other services previously using the spectrum are not impacted in a detrimental fashion. We note, in this regard, Ofcom's assurances that digital terrestrial television (DTT) and audio programme- making and special events (PMSE) services will be safeguarded and trust that this will be the case.
57. While recognizing that fees should be set at a reasonable level to encourage investment, we would urge Ofcom to work to ensure that funds generated from auctioning off of mobile spectrum are reinvested in the network.

### **Maintaining audience confidence in broadcast content**

58. The CWU recognises the importance of Ofcom's work in monitoring broadcast content, particularly given the emergence of new channels and the increasing diversification of the way in which content is viewed. We note the challenges this brings, and Ofcom's work in dealing with inappropriate content, for example

content inciting crime and hatred. CWU would also stress the importance of ensuring that even the longer established terrestrial broadcasters refrain from indulging in content that exploits and denigrates vulnerable groups.

59. The CWU also believes that Ofcom should consider undertaking work to analyse the representation of diversity in broadcast content, in terms of persons covered by the protected characteristics of the equality act, but also diverse viewpoints in society, including those of trade unions.
60. The CWU welcomes Ofcom's work to maintain and update the framework for protecting children from unsuitable audio-visual content and inform the debate on how to protect children in the digital environment. We also support government steps to ensure that all internet-enabled devices are supplied with child safety tools as a standard feature and urge Ofcom to work closely with government to enforce and monitor compliance with this.

### **Media plurality and media standards**

61. We note that Ofcom has been asked by the Secretary of State, DCMS, to develop a framework for measuring media plurality. The view of CWU is that this should also involve a measure of the extent to which a diversity of views within society are heard in the media, including protected characteristics under the equality act, but also diverse viewpoints in society, including those of trade unions, as discussed above.
62. We note the government's intention to establish a more consistent approach to media standards, and are supportive of Ofcom's role in developing a common framework for this.

### **Postal sector**

#### **Summary**

63. The CWU welcomes Ofcom's proposed review of factors that could potentially affect the sustainability of the universal postal service as one of its priorities for the forthcoming 2015/16 year. However, we remain concerned by Ofcom's failure to respond to the threat that 'cherry-picking' end-to-end competition poses to the universal service. We believe Ofcom should undertake an immediate review of the threat end-to-end competition poses to the universal service; and consider setting a limit for end-to-end competition consistent with the universal service being financially sustainable. By encouraging greater end-to-end competition rather than addressing this threat, we believe Ofcom is ultimately failing in its primary duty to secure future provision of the universal postal service.
64. In relation to the priorities identified in the draft annual plan, CWU would also make the following key points:
  - Regarding plans to consider Royal Mail's efficiency as part of the broad review of factors that could potentially affect the sustainability of the universal service, we have serious concerns about Ofcom's narrow approach to efficiency, which we believe is setting the scene for a race to the bottom on pay and terms and conditions in the postal sector. We call on Ofcom to facilitate a fair and transparent debate with stakeholders about efficiency at Royal Mail and to gather detailed evidence about the effect of efficiency measures on both the functions performed by staff and the delivery of the universal service.
  - We disagree with Ofcom's view that there is an immediate need for the regulator to intervene on zonal access pricing in order to protect end-to-end competition. We contend that Ofcom's case to do so is based on assumptions rather than evidence, particularly regarding concerns about the rate of efficiency improvement at Royal Mail. We believe the proposals in Ofcom's access pricing review are premature and that the regulator should wait for the outcome of the broad review into factors that



may affect the sustainability of the universal service, which will specifically look at whether or not the rate of efficiency at Royal Mail is 'reasonable', before making any intervention.

- We welcome plans to review the Mail Integrity Code of Practice and the Postal Common Operational Procedures, especially given recent quality of service failures by Whistl, and believe the former should be extended to the parcels market in order to help drive up standards in the postal sector. We also call on Ofcom to introduce a requirement for all direct delivery providers to record and report on performance targets, to ensure that customers are properly informed when choosing a mail provider.

#### **Review of the factors that may affect the sustainability of the universal service**

65. Under 'Strategic Purpose 3: promote opportunities to participate', Ofcom proposes to review the factors that potentially affect the sustainability of the universal postal service. Ofcom says the review that informed its December 2014 document *Review of end-to-end competition in the postal sector* highlighted a number of factors that it believes could potentially have a more significant impact on the sustainability of the universal postal service in the future. These factors include Royal Mail's progress on improving its efficiency and the development of the parcels market. Ofcom intends to substantively complete this broader review by the end of 2015/16.
66. The CWU disagrees with Ofcom's decision in its December 2014 document *Review of end-to-end competition in the postal sector*, in which it states the universal service is not currently under threat from end-to-end competition. We maintain that Whistl's end-to-end delivery operations represent "cherry-picking" and threaten the future financial sustainability of the universal service. Furthermore we believe Ofcom's December 2014 proposals to weaken Royal Mail's flexibilities in regard to zonal access pricing<sup>2</sup> will exacerbate this problem.<sup>3</sup> Nevertheless we welcome a broader review of factors that potentially affect the universal postal service; given it is Ofcom's primary duty to ensure its provision, although at the moment we believe the regulator is failing in its duty to secure the universal postal service through its approach to end-to-end competition.
67. In its statement following the review of end-to-end competition in the postal sector in December 2014, Ofcom said it was concerned about the uncertainty surrounding Royal Mail's future parcel revenues, highlighting in particular; high levels of competition in the parcel market, technology and service challenges for Royal Mail, and an against-trend 1.2% decline in inland parcel volumes in the Reported Business for 2013/14. Given the quick pace of change in the parcels market and its importance for Royal Mail's future growth, we welcome this focus on the parcels market as part of the broader review into the universal service.
68. We have serious concerns about Ofcom's proposal to consider Royal Mail's progress on efficiency as part of the broader review. For some years now the CWU has been calling for an independent assessment of the way in which Royal Mail's efficiency is defined and measured, in consultation with relevant stakeholders. It is only under such circumstances that a proper discussion about Royal Mail's performance and efficiency can take place. However it is not clear from the Draft Annual Plan 2015/16 whether stakeholders such as the CWU will be able contribute to Ofcom's review on Royal Mail's efficiency. It is vital we are given the opportunity to inform Ofcom's work on efficiency, given there are strong views as to how efficiency at Royal Mail should be defined and measured.
69. We are concerned about Ofcom's use of PVEO (Price, Volume, Efficiency, Other) in its 2013/14 annual monitoring report on the postal market, which means that any pay rise that outweighs the Consumer

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<sup>2</sup> Ofcom, Royal Mail Access Pricing Review, 2 December 2014.

<sup>3</sup> Royal Mail estimated last year that competition from Whistl could reduce its revenue by over £200 million in 2017-18 and there is no doubt that Ofcom's access pricing proposals, which would encourage greater end-to-end competition, would increase this loss, making it even more difficult for Royal Mail to reach the profit margin on its Reported Business that Ofcom says is consistent with a financially sustainable universal postal service.

Price Index (CPI) will be classified as an inefficiency.<sup>4</sup> RPI, consistently higher than CPI, remains the standard uprating measure used in pay settlements across the UK and is the best reflection of the actual rising cost of living for workers given that, unlike CPI, it includes owner-occupier mortgage payments and council tax.<sup>5</sup> RPI also excludes households at the extremes of the income scale (such as the top 4% of households by income and pensioner households where 75% of income comes from the state pension and benefits) and is therefore more focused on the costs working people face. We therefore believe it is inappropriate for Ofcom to use any efficiency measure which automatically considers inefficient any pay rise given to a workforce to reflect, at minimum, the increase in their basic cost of living. We contend that a better, fairer measure of efficiency would show an improvement above the 0.2% Ofcom says was achieved at Royal Mail for 2013/14 using the existing PVEO measure.<sup>6</sup>

70. Modernisation at Royal Mail in pursuit of greater efficiency has seen front-line workers come under significant pressure in terms of their workload in recent years. We believe there are practical limits as to how much an individual postal worker can be expected to do in their role and we are concerned that Ofcom's current focus on headline efficiency targets fails to recognise this reality. The CWU believes that in order to be fully informed in its decision making with regards to the relative and potential efficiency of Royal Mail, Ofcom should build a more detailed picture of the impact of efficiency measures on front-line staff and operations. This would involve Ofcom gathering its own detailed evidence about the effect of efficiency measures on the functions performed by staff and what this means in practical terms for the delivery of the universal service.
71. In its recent written evidence to the recent Business, Innovation and Skills Committee inquiry into competition in the UK postal sector, Ofcom said it does not consider it appropriate to compare Royal Mail's costs as the universal service provider with the cost base of a low cost new entrant to the bulk mail or parcels sectors. The CWU has consistently argued that it would be fundamentally wrong for Ofcom to compare the efficiency of Royal Mail as the universal service provider with direct delivery competitors such as Whistl, who can pick and choose where and when to deliver to customers, and so in theory we could be expected to welcome this statement. If Ofcom is making comparisons on efficiency, we believe that this needs to be done with a postal provider of comparable scale, on a like-for-like basis with regards to such factors as geographical coverage and universal service requirements.
72. However we believe there are limits to the steps Royal Mail can take on efficiency whilst it holds the universal service obligation and without undermining quality of service. We also remain concerned that Ofcom's approach to efficiency will lead to a race to the bottom in pay and terms and conditions in the postal sector. Ofcom clearly views the 2014 Agenda for Growth, Stability and Long Term Success agreement<sup>7</sup> as a major constraint on the company's 'flexibility' with respect to efficiency. For instance, in its *Review of end-to-end competition in the postal sector*, Ofcom says the Agenda for Growth Agreement may restrict Royal Mail's ability to make its workforce more 'flexible' because it includes, among other things: a commitment to maintain a predominately full-time workforce; maintenance of existing employment terms and conditions; no additional outsourcing; and an objective to manage change without recourse to compulsory redundancy.
73. Therefore the very parts of the agreement designed to protect the workforce from the worst aspects of privatisation, and which we believe are also crucial to maintaining high service standards for postal users, are primarily viewed by the regulator as obstacles to greater efficiency. We maintain it is not in Ofcom's remit to place pressure on the employment conditions of workers at Royal Mail. Whilst Ofcom may say it would not compare the costs of Royal Mail as the universal service provider with a low-cost new entrant such as Whistl, its actions suggest it wishes to push Royal Mail towards exactly the type of

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<sup>4</sup> Ofcom Annual Monitoring Update on the Postal Market 2013/14, p.31.

<sup>5</sup> Courtney, M. *Consumer Prices in the UK*: <http://www.unison.org.uk/news/government-s-inflation-measure-hiding-scale-of-cost-of-living-crisis-says-new-report>

<sup>6</sup> Ofcom Annual Monitoring Update on the Postal Market 2013/14, p.2.

<sup>7</sup> [http://www.cwu.org/assets/\\_files/documents/jan\\_14/cwu\\_\\_1389094257\\_04273\\_Agenda\\_For\\_Growth\\_Stabil.pdf](http://www.cwu.org/assets/_files/documents/jan_14/cwu__1389094257_04273_Agenda_For_Growth_Stabil.pdf)

insecure 'zero hours' employment model Whistl operates,<sup>8</sup> one in which all the risk and flexibility lies on the side of its employees for insufficient reward.

74. Furthermore, we believe Ofcom does not pay enough regard to the fact that the agreement also commits the two parties to working jointly and constructively to explore ways in which Royal Mail can become more efficient without compromising quality or access to postal services. Ofcom should also recognise that it is focused on improving industrial relations through new measures, such as new dispute resolution procedures focused upon internal and external mediation, which leads to greater industrial stability. In light of this, we believe that taken as a whole, the agreement has a positive rather than a negative impact on efficiency.
75. The CWU believes decent pay and conditions at Royal Mail are in fact crucial for maintaining good quality of service standards in the universal postal service because they help Royal Mail to retain staff and afford them the time to develop the necessary skills and experience required to deliver the level of service the public has come to expect. We believe this should be reflected in the regulatory environment and support an increase in pay throughout the postal sector to the level of a living wage, which we believe would help raise quality of service standards across the sector. It is therefore important that the CWU, alongside other stakeholders, is given an opportunity to contribute to Ofcom's review on Royal Mail's efficiency if a fair and transparent discussion is to take place.

#### **Monitoring and end-to-end competition**

76. Ofcom plans to continue its monitoring regime, which includes internal reporting and an annual update to the market on the financial performance of the universal service, quality of service, the evolution of competition and Royal Mail's progress towards improving its efficiency. Ofcom says it may also conduct a review of competition near the end of 2015 if necessary.
77. Whist we support the continuation of Ofcom's monitoring regime for Royal Mail, we maintain that the regulator should prioritise and direct resources towards a full review of the impact of direct delivery competition on the future sustainability of the universal postal service *now* as we believe it is under threat. We remain of the view that the most effective way for Ofcom to address this threat would be to set a limit for competition that would be consistent with the universal service being financially sustainable.

#### **Access complaint and access pricing review**

78. The Draft Annual Plan 2015/16 states that Ofcom is currently considering, under its competition law powers, a complaint from Whistl UK Limited in relation to the prices, terms and conditions on which Royal Mail is offering to provide access to certain letter delivery services. We believe the investigation should be swiftly concluded and Royal Mail allowed to use the commercial flexibility it has been given on zonal access pricing in order to respond to the challenge of direct delivery.
79. Ofcom says it intends to complete its review of access pricing in the second quarter of 2015/16 and, if appropriate, to complete the proposed follow-up work on zonal cost reporting. As we have stated in our response to Ofcom's December 2014 consultation on its access pricing review, we disagree with Ofcom's conclusion that there is an immediate need to intervene in the regulation of zonal access pricing in order to protect end-to-end competition. We believe Ofcom's case for immediate intervention is based on assumptions rather than evidence, particularly regarding concerns about the rate of efficiency improvement at Royal Mail. We believe Ofcom should undertake its review of the factors that could materially affect Royal Mail's ability to deliver the universal service in the future - which will specifically

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<sup>8</sup> Supplementary evidence from Whistl (USO 49) to the Business, Innovation and Skills committee shows that 45% of Whistl's staff are employed on zero hours contracts:  
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/business-innovation-and-skills-committee/competition-in-the-uk-postal-sector-and-the-universal-service-obligation/written/16818.html>  
We believe this encompasses the vast majority of its delivery workers.

look at whether or not the rate of efficiency improvement at Royal Mail is 'reasonable' - before going well beyond generally applicable competition laws and intervening to protect end-to-end competition, which may ultimately be at the expense of the universal postal service.

#### **Margin squeeze test**

80. Ofcom intends to continue its work on reviewing the approach to protecting competitors from margin squeeze with respect to access services, including the appropriate cost base for any future measures. In carrying out this work, the CWU would urge Ofcom to ensure that the regulatory framework allows for the costs of delivering the universal postal service to be properly reflected in the pricing of services. Ofcom's primary focus, in line with its statutory duty, should be on setting a framework that secures the future provision of the universal postal service.

#### **Work in the nations**

81. In promoting the interests of all of the UK's nations, Ofcom says it will continue to have regard to the needs of rural postal users and to understanding the impact of changes to collection times on rural communities. We welcome plans for this work, as we do Ofcom's plans to run forums for postal services (as well as broadcasting and telecoms) in Northern Ireland in order for any consumer and competition issues to be raised.

#### **Mail code and complaint scheme reviews**

82. We note that due to a number of unplanned areas of work emerging for Ofcom on the postal side in 2014/15, some of the work outlined in the 2014/15 Annual Plan has not progressed and is therefore to be picked up again in 2015/16. This includes completing: a review of the postal common operating procedures in the second quarter of 2015/16, a review of complaint handling and redress schemes in the fourth quarter of 2015/16; as well as a consultation on mail integrity codes in the spring of 2015 with the aim to complete the review in the second quarter of 2015/16.
83. The CWU welcomes these overdue reviews. We believe a minimum standard for quality of service for all postal operators should be put in place in order to protect all consumers. Given recent examples of significant service failures by Whistl,<sup>9</sup> who are already subject to both the Mail Integrity Code of Practice and the Postal Common Operational Procedures, we believe it is an appropriate time for the application and enforcement of these codes to be reviewed. Furthermore, given there are also signs of poor standards amongst some parcel operators, we believe the Mails Integrity Code of Practice should be extended to the parcels market in order to protect all consumers and to help drive up standards in the postal industry as a whole.
84. Under section A2.15 of the Draft Annual Plan 2015/16, Ofcom states that, "consumer information plays a critical role in ensuring that competitive communications markets work for consumers," and that it will, "continue to publish information on a range of areas to ensure that consumers can access clear and relevant information about the performance of different providers." With this in mind we repeat the call in our October 2014 submission to Ofcom on the threat to the universal postal service from direct delivery competition, that Ofcom should introduce a requirement for all direct delivery providers to record and report on performance targets, to ensure that customers are properly informed when choosing a mail provider. We believe this will play an important role in incentivizing postal operators to improve quality of service and may reduce the significant and disproportionate quality of service failures by Whistl that have been highlighted in the media in recent years.

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<sup>9</sup> There have been numerous media reports of serious delivery failures by Whistl, and whilst it is true that all mail providers are responsible for a certain amount of lost, damaged or mis-delivered mail, current evidence indicates that Whistl has a far higher failure rate than other operators in this area. Cases of poor quality of service at Whistl include reports of thousands of letters being dumped or delivered late, resulting in missed hospital appointments, lost council tax bills and delayed medical test results.

85. The CWU acknowledges that Royal Mail is no longer required to report on quality of service in the bulk mail market where Whistl operates, but it remains the case that Royal Mail uses the same network for delivery of both regulated and unregulated products and must meet stringent quality of service targets for its universal services. All Royal Mail's products that depend on core universal service activities are geared towards delivering high service quality. However current evidence shows that competition itself is not enough to drive and maintain quality of service standards amongst Royal Mail's direct delivery competitors.

**For further information on the view of the CWU contact:**

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