

# Decision finding Royal Mail contravened its Quality of Service performance targets in 2022/23 and imposing a financial penalty

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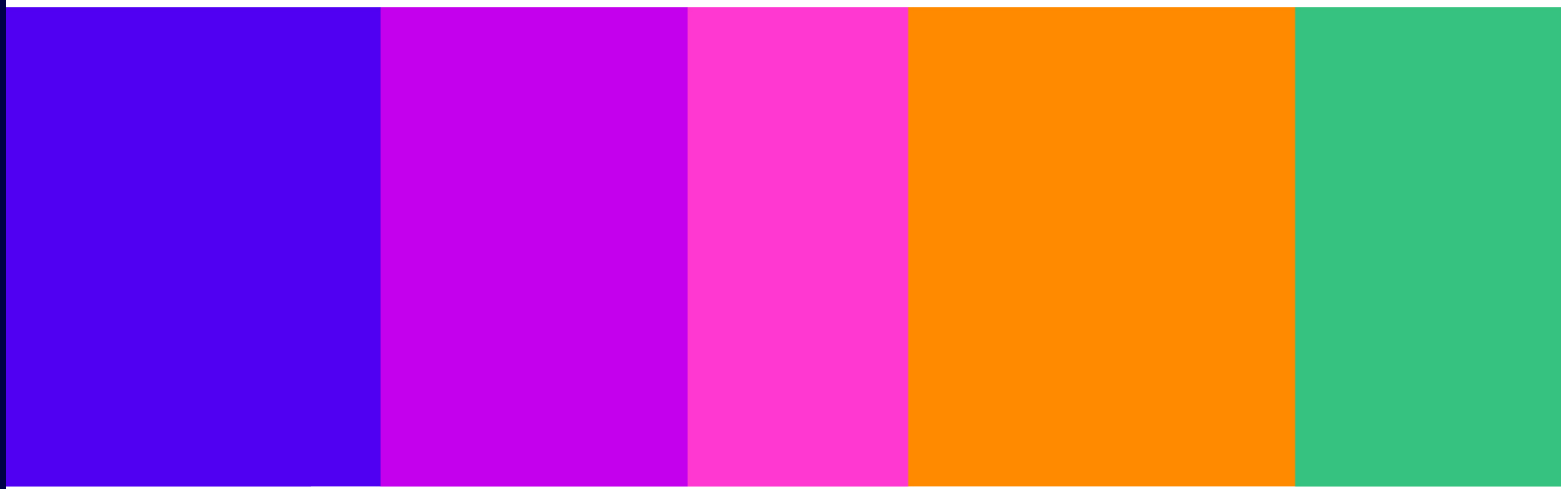
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## Final Decision

Case reference: CW/01271/04/23

Issue date: 13 November 2023

Publication date: 9 January 2024



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# 1. Overview

- 1.1 Royal Mail is required by regulation imposed by Ofcom to achieve certain performance targets (“Quality of Service” (QoS) targets) in the delivery of universal service products. This document sets out our decision that Royal Mail failed to achieve three of these targets in 2022/23 (the First and Second Class national performance targets and the delivery routes completed target). In addition, it sets out that we are imposing a financial penalty on Royal Mail for the First and Second Class failures.

## The QoS targets and Royal Mail’s performance in 2022/23

The First and Second Class national performance targets are intended to ensure that people get their post on time.

- The First Class target requires at least 93% of First Class mail to be delivered within one working day of collection. In 2022/23 Royal Mail achieved 73.7%.
- The Second Class target requires at least 98.5% of Second Class mail to be delivered within three working days of collection. In 2022/23 Royal Mail achieved 90.7%.
- The daily routes completed target requires that in 99.90% of cases, deliveries are made every day on which they are required for universal service products: Monday to Saturday for letters and Monday to Friday for parcels. In 2022/23 Royal Mail achieved 89.35%.

## Royal Mail contravened its obligations

Royal Mail submitted that its QoS results in 2022/23 were most significantly impacted by its industrial climate. Ofcom has discretion to adjust Royal Mail’s performance to take into account the impact of events which Ofcom considers to be exceptional and which we think an allowance should be granted for. Taking into account the specific and unique combination of inter-related circumstances of the 2022/23 period, Ofcom has decided to adjust Royal Mail’s First and Second Class performance to take into account the impact of industrial action in 2022/23.

However, even with this adjustment and some further adjustments to account for an extreme heat weather event and runway closure at Stansted airport, this still leaves a significant gap to both the First and Second Class QoS targets which is not explained by the other mitigating circumstances put forward by Royal Mail.

Our decision is that even with these adjustments, Royal Mail has failed to achieve its First Class national performance target by 11 percentage points and its Second Class national performance target by 3 percentage points. There were no adjustments to the delivery routes completed performance, so this remains at 89.35%, also below target.

We have therefore concluded that Royal Mail has contravened its obligations.

## Other concerns

In addition to the contravention finding, we have noted a particular concern about the operation of delivery offices, which we view as fundamental to Royal Mail meeting its QoS obligations. Issues include the need to return delivery offices to pre-Covid practices, with mail being cleared each day, and providing appropriate training and support for delivery office managers (known as “COMs”) who play a key role in decision-making in local offices.

We are particularly concerned about these issues in light of the high absence and vacancies in 2022/23 which meant it may have often been necessary to make “on the day” decisions about what to deliver, in circumstances where Royal Mail appears to have insufficient control, visibility and oversight over this local decision-making.

### **Ofcom has imposed a penalty of £5.6 million on Royal Mail**

We acknowledge that this has been a difficult year for Royal Mail. However, the contravention of the QoS targets was by a significant and unexplained margin. This will have caused considerable harm to customers. In addition, the steps Royal Mail took to prevent or mitigate the impact on its QoS in 2022/23 were insufficient or ineffective in terms of their scope, timing or implementation to the extent that they failed to prevent a significant contravention.

We have therefore concluded that a penalty is warranted in this case.

In light of the specific circumstances and having considered all of the relevant factors in the round, including Royal Mail’s financial position, we have decided to impose a penalty of £5.6 million on Royal Mail for its failure to meet its First and Second Class national performance targets. This includes a 30% discount from the penalty Ofcom would otherwise have imposed. The discount reflects Royal Mail’s admissions of liability and its agreement to settle which has allowed Ofcom to bring this matter to a close more swiftly. We consider that this penalty is appropriate and proportionate to the seriousness of the contravention. It is also important to incentivise Royal Mail to improve its QoS performance in order to provide customers with the service they have paid for and that they can rely on.

The overview section in this document is a simplified high-level summary only. The decision we have taken and our reasoning are set out in the full document.

## 2. Introduction

2.1 This decision (the “Decision”) is addressed to Royal Mail Group Limited (“Royal Mail”), whose registered company number is 04138203. Royal Mail’s registered office is 185 Farringdon Road, London, United Kingdom, EC1A 1AA.

### Our investigation

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2.2 On 15 May 2023, Royal Mail announced<sup>1</sup> and published<sup>2</sup> its performance against its QoS targets. On the same day, Ofcom opened an investigation<sup>3</sup> to examine the failure of the three targets set out below:

- First Class national performance target;
- Second Class national performance target; and
- Daily delivery routes completed target.

2.3 We issued a formal notice on 17 May 2023 requiring the provision of specified information under Section 55 of, and Schedule 8 to, the Postal Services Act 2011 (the “Act”).<sup>4</sup> Royal Mail provided the information and documents (“Notice Response”) requested on 10 July 2023. On the same date, Royal Mail provided a written submission (“Submission”).<sup>5</sup>

2.4 The evidence set out in this document draws on both Royal Mail’s Submission and Notice Response.

### Structure of this document

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2.5 The rest of this document is structured as follows:

- a) In **Section 3**, we set out the legislation, regulation and European Standard relevant to this investigation. We also explain how Royal Mail monitors its QoS performance.
- b) In **Section 4**, we consider Royal Mail’s QoS performance in 2022/23 and our reasons for determining that it contravened its obligations.
- c) In **Section 5**, we set out our decision regarding a financial penalty for this contravention.

2.6 Annex A1 sets out relevant parts of Designated Universal Service Provider (DUSP) Condition 1 which contains the QoS requirements. Annex A2 provides details of the First Class Standard, referred to in paragraph 3.11. Annex A3 details the Notifications issued as part of this investigation.

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<sup>1</sup> Royal Mail, 15 May 2023, [Royal Mail full year Quality of Service 2022/23](#)

<sup>2</sup> Royal Mail, 15 May 2023, [Designated Universal Service Provider Condition 1.10, Annual Adjusted Quality of Service Report, 2022/23](#). This was in accordance with its obligations under DUSP 1.10.4.

<sup>3</sup> Ofcom, 15 May 2023, [Investigation into Royal Mail’s quality-of-service performance in 2022/23](#)

<sup>4</sup> It is a legal requirement to provide complete and accurate information in response to a formal information request and a failure to do so can result in Ofcom taking enforcement action.

<sup>5</sup> Royal Mail confirmed, in response to a formal information request sent on 5 October 2023, that the information provided in its Submission could be treated as information provided in response to an information request issued under section 55 of, and Schedule 8 to, the Act.

# 3. Regulatory framework in relation to Royal Mail's Quality of Service obligations

3.1 In this section, we explain the regulatory rules, legislation, and European Standard relevant to this investigation. We also explain how Royal Mail monitors its performance against the QoS targets.

## Regulatory framework

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3.2 Royal Mail is required by regulation imposed by Ofcom to achieve certain QoS targets in the delivery of particular universal service products. It is also required to monitor, and publish, for each quarter and for each financial year, its performance against the targets. If Royal Mail fails to meet the targets, Ofcom has powers to take enforcement action against Royal Mail.

## Overview of the QoS regulation

3.3 On 27 March 2012, we published a statement entitled "Securing the Universal Postal Service: Decision on the new regulatory framework" (the "2012 Statement").<sup>6</sup> In the 2012 Statement, we, amongst other things, nominated Royal Mail as the DUSP and imposed DUSP conditions in accordance with section 36 of, and paragraph 3 of Schedule 6 to, the Act.<sup>7</sup>

3.4 Relevant parts of DUSP Condition 1 that set out the Universal Service products that Royal Mail is required to provide and some of the key standards to be met can be found in Annex A1.<sup>8</sup>

## Ofcom's investigatory and enforcement powers

3.5 Ofcom's powers to take enforcement action against Royal Mail in relation to its compliance with the QoS performance targets imposed on it are set out in Schedule 7 to the Act.

3.6 Under section 54 of, and paragraph 2 of Schedule 7 to, the Act, if Ofcom determines that there are reasonable grounds for believing that Royal Mail is contravening or has contravened a regulatory requirement, Ofcom may give Royal Mail a notification. The notification must:

- a) set out the determination made by Ofcom;
- b) specify the requirement and contravention in respect of which that determination has been made; and

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<sup>6</sup> Ofcom, 27 March 2012, [Securing the Universal Postal Service: Decision on the new regulatory framework](#)

<sup>7</sup> The DUSP conditions can be viewed on [Ofcom's website](#).

<sup>8</sup> Ofcom, 1 March 2017, [DUSP Condition 1 – Services, access points, performance targets, notification and publication and contingency planning](#)

- c) specify the period during which Royal Mail has an opportunity to make representations about the notified determination.
- 3.7 Following the issue of such a notification, there are a number of further enforcement actions that Ofcom may consider taking. However, as this case relates to Royal Mail’s performance during 2022/23, some actions, including the imposition of an enforcement notification together with an Ofcom direction setting out steps to be taken to remedy the breach (provided for under paragraph 5 of Schedule 7 to the Act), are not applicable since it would not be possible for Royal Mail to remedy any breach on a retrospective basis.
- 3.8 If following a notification under paragraph 2 of Schedule 7 to the Act, Ofcom is satisfied that Royal Mail has, in one or more of the notified respects, been in contravention of the notified regulatory requirement, Ofcom may impose a financial penalty on Royal Mail in accordance with paragraph 6 of Schedule 7 to the Act. The amount of any penalty should be appropriate and proportionate to the contravention(s) for which it is imposed and may not exceed 10% of the turnover of Royal Mail’s postal services business for the relevant period. In determining the amount of any financial penalty, Ofcom is also required to have regard to its guidelines on financial penalties.<sup>9</sup>

## Ofcom’s approach to the enforcement of Royal Mail’s QoS targets

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- 3.9 In this section, we set out Ofcom’s approach to the enforcement of Royal Mail’s QoS targets. In carrying out such enforcement action, we have had regard to the European Standard which sets out how QoS should be measured. It also identifies circumstances, known as *force majeure* events, the impact of which may be removed from the results of that monitoring, which has the effect of uplifting overall performance.

### Measuring QoS

- 3.10 The European Committee for Standardization (CEN), is one of the European Standardization Organisations that has official recognition as being responsible for developing and defining voluntary standards at a European level.
- 3.11 CEN has approved the “First Class standard”<sup>10</sup> – which measures the QoS of single piece priority or First Class mail – and the “Second Class standard”<sup>11</sup> – which measures the QoS of single piece non-priority Second Class mail. These were implemented in the UK by the British Standards Institute.<sup>12</sup> The standards guide postal operators in measuring the QoS of mail falling within the scope of the universal service obligations (USO). It does this by providing a detailed methodology for estimating the QoS – in relation to journey times – of these mail services.
- 3.12 As noted in A1.6, DUSP condition 1.9.2 requires Royal Mail to monitor, or to procure the monitoring of, its performance in relation to the applicable QoS targets using an appropriate

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<sup>9</sup> Ofcom, 14 September 2017, [Penalty Guidelines: Section 392 Communications Act 2003](#). See also Section 392 of the [Communications Act 2003](#).

<sup>10</sup> European Standard EN 13850:2020

<sup>11</sup> European Standard EN 14508:2016

<sup>12</sup> This is the UK’s national standards body.

testing methodology. Royal Mail complies with this requirement by way of a series of surveys involving test mail items.

- 3.13 These are designed by Royal Mail in compliance with the First Class and Second Class standards and are carried out by a market research agency. For the purpose of the 2022/23 QoS survey, the market research agency was Kantar. To carry out the survey, Kantar recruited a panel of private individuals and businesses across the UK who were directed by Kantar to post items of test mail to each other. Panellists recorded the dates on which test items were posted and the dates on which test items were delivered. The test items were not identifiable to Royal Mail and the participants in the survey were anonymous. This means that where there is an event that impacts QoS, the affected samples can typically be identified and removed, leaving a statistically robust result.
- 3.14 The delivery performance of the test items can then be used to estimate the performance across all mailed items. In particular, the standards provide a statistical methodology which enables Royal Mail to calculate a margin of error (known as the “*confidence interval*”) around the performance of the sample items within which there can be confidence Royal Mail’s overall performance lies.<sup>13</sup>
- 3.15 This results in a range within which there is a 95% probability that the true performance falls, although it is not possible to determine where in that range Royal Mail’s actual performance lies. The performance figures reported by Royal Mail are the middle of the confidence interval. The range or degree of the confidence interval is determined by (i) the measured QoS achieved for the sample; and (ii) the sample size.
- 3.16 Since imposing the DUSP condition in 2012, Ofcom has acknowledged the confidence interval associated with Royal Mail’s QoS performance figures. This means that where Royal Mail’s performance – adjusted to the high point of the confidence interval – meets the relevant target, Ofcom has not intervened or investigated further. This is because, in these circumstances, “*it could not be ascertained whether Royal Mail had missed the target or not.*”<sup>14</sup>
- 3.17 To further ensure the robustness of the QoS performance results reported by Royal Mail these are subject to review by an independent auditor.<sup>15</sup> In the case of the First Class and Second Class national performance targets, the auditor is appointed by Ofcom.

## Exceptional events for which an additional allowance may be granted

- 3.18 In this section we explain the analytical framework we have applied in this investigation in determining whether Royal Mail failed to comply with its obligations to meet QoS performance targets.

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<sup>13</sup> See European Standard EN 13850:2020, section A.5 & EN 14508:2016 at 7.2

<sup>14</sup> See: Ofcom, 27 November 2015, [Annual monitoring update on the postal market – Financial year 2014-15](#), para. 3.35; Ofcom, 2 December 2014, [Annual monitoring update on the postal market – Financial year 2013-14](#), para. 5.40; Ofcom, 19 October 2016, [Decision to conclude investigation of Royal Mail Group Limited in relation to a contravention of Designated Universal Service Provider Condition 1.9.1, CW/01183/05/16](#), Table 2.

<sup>15</sup> Section 37 of the Act establishes that the USP conditions should include a requirement for the publication by the USP of “an independently audited performance report”. This requirement is set out in DUSP 1.9.3.



- 3.19 The objective of Royal Mail's QoS performance targets is to ensure that customers receive an adequate level of service. These targets are made meaningful and achievable by being set below 100%, in recognition of the fact that certain events will invariably affect delivery performance, and may be beyond Royal Mail's reasonable control.<sup>16</sup> In effect, this means there is a built-in allowance for the type of disruption and operational difficulties Royal Mail faces in a typical year.
- 3.20 The allowance cannot, and is not intended to, account for all types of events that may affect Royal Mail's delivery performance. For this reason, Ofcom has further discretion to determine that a particular event should be considered exceptional and beyond the scope which this allowance is intended to cover. Should Ofcom determine that an event is exceptional, it will then consider whether to grant an additional allowance for that event, on top of the allowance already built onto the targets. The assessment of whether an event is exceptional is carried out on a case-by-case basis.
- 3.21 In exercising our discretion in this investigation, we have had regard to the First Class standard (see Annex A2), which sets out certain criteria for an event to be regarded as *force majeure*.<sup>17</sup> We have also considered factors such as the extent to which an event was caused by Royal Mail; whether the event was rare, unprecedented, unforeseeable, unavoidable; and whether it is the type of event or level of impact which we consider the allowance built into Royal Mail's targets is intended to cover.
- 3.22 Where we have determined that an event is exceptional, we have then considered whether and how we should take that into account in our assessment of Royal Mail's performance. In doing so, we have considered whether the event had a quantifiable impact on Royal Mail's QoS and any steps taken by Royal Mail to mitigate the impact of the event on its QoS.
- 3.23 Where we decide to grant an additional allowance for what we have determined is an exceptional event, we typically adjust Royal Mail's performance to account for the impact of the event in question. Previous decisions to make quantitative adjustments for an event we deemed to be exceptional have been because the QoS data associated with the event could be identified and, where possible, Royal Mail took steps to mitigate the impact of the event on its QoS.
- 3.24 The QoS data associated with these events can generally be identified because the impact is narrowly time-bound (e.g. a storm which occurred during a particular weekend) and/or sufficiently geographically precise (e.g. particular motorway closures). This can then be extracted from the overall sample, enabling quantification of the impact of that particular event on Royal Mail's performance. However, where it is not possible to fully quantify the impact on QoS, we may nevertheless seek to take account of the exceptional event in our findings.
- 3.25 It is important to emphasise that this exercise is intended to enable Ofcom to identify and confirm the extent to which any underperformance by Royal Mail cannot be explained by

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<sup>16</sup> See: Ofcom, 22 November 2013, [Annual monitoring update on the postal market: Financial year 2012-13](#), page 37, para. 5.33; Ofcom, 2 December 2014, [Annual monitoring update on the postal market: Financial year 2013-14](#), page 45, para. 5.36; Ofcom, 27 November 2015, [Annual monitoring update on the postal market: Financial year 2014-15](#), page 17, para. 3.32; Ofcom, 19 October 2016, [Decision to conclude investigation of Royal Mail Group Limited in relation to a contravention of Designated Universal Service Provider Condition 1.9.1](#), page 9, para. 3.22; Ofcom, 31 May 2019, [Decision to conclude investigation into Royal Mail's compliance with its QoS performance standards in 2017/18](#), page 8, para. 3.5.

<sup>17</sup> Although, it should be noted that the First Class standard is not considered by itself to be determinative.

mitigating factors. Accordingly, where we have found that Royal Mail has still not met its QoS targets notwithstanding any allowances for exceptional events, we may proceed to find that Royal Mail has not complied with its regulatory obligations.

# 4. Our assessment of Royal Mail's performance and finding of contraventions of DUSP 1.9.1

4.1 In this section, we assess Royal Mail's performance in light of its Submission about events which impacted its performance in 2022/23. We also consider the evidence provided as part of Royal Mail's Notice Response and set out our findings, based on the Submission and Notice Response.

## Royal Mail's QoS performance in 2022/23

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4.2 As noted above, on 15 May 2023, Royal Mail published its performance against its QoS targets.<sup>18</sup> On the same day, Ofcom opened an investigation<sup>19</sup> to examine possible contraventions of three targets in the 2022/23 regulatory period, where Royal Mail achieved:

- 73.7% against a target requiring at least 93% of First Class mail to be delivered within one working day of collection;
- 90.7% against a target requiring at least 98.5% of Second Class mail to be delivered within three working days of collection; and
- 89.35% against a standard requiring at least 99.90% of delivery routes to be completed each day on which a delivery is required i.e. on Monday to Saturday for letters and Monday to Friday for parcels (the "delivery routes completed" target).

4.3 We issued a formal notice on 17 May 2023, requiring the provision of specified information under Section 55 of, and Schedule 8 to, the Act. This included copies of Board papers where QoS was discussed and all versions of Royal Mail's policies and procedures which discuss prioritisation of different types of parcels and letters. Royal Mail provided the Notice Response and documents requested on 10 July 2023.

4.4 On the same date, Royal Mail provided a Submission<sup>20</sup> setting out its view on its performance. In its Submission, Royal Mail stated that its significant downturn in revenues accelerated the urgent need for transformation and modernisation of its labour model, network and ways of working in order to drive cost reform and operational efficiencies, to give customers products they want<sup>21</sup> and restore QoS.<sup>22</sup> It further said that if it failed to

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<sup>18</sup> Royal Mail, 15 May 2023, [Designated Universal Service Provider Condition 1.10, Annual Adjusted Quality of Service Report, 2022/23](#). This was in accordance with its obligations under DUSP 1.10.4.

<sup>19</sup> Ofcom, 15 May 2023, [Investigation into Royal Mail's quality-of-service performance in 2022/23](#)

<sup>20</sup> Royal Mail, 10 July 2023, Written Representation from Royal Mail to Ofcom investigation into Compliance with Royal Mail Quality of Service Performance Targets 2022/23 (Royal Mail's Submission). As noted above, Royal Mail confirmed, in response to a formal information request sent on 5 October 2023, that the information provided in its Submission could be treated as information provided in response to an information request issued under section 55 of, and Schedule 8 to, the Act.

<sup>21</sup> Royal Mail's Submission, page 4, para. 7

<sup>22</sup> Royal Mail's Submission, page 4, para. 3

modernise its business, the long-term sustainability of the UK's sole Universal Service Provider would be at serious risk.<sup>23</sup>

4.5 With that context in mind, Royal Mail submitted that the following events impacted its QoS performance in 2022/23 and should be taken into account:<sup>24</sup>

- a) **The significant impact of the industrial climate:** This is to account for the industrial action and the difficult industrial relations culture that Royal Mail said was pervasive throughout the year. For the purposes of this decision, we refer to industrial action<sup>25</sup> and the industrial relations culture<sup>26</sup> collectively as the "industrial climate". Royal Mail was only partly able to quantify the impact of the industrial climate, where it related to industrial action, which it said had an impact of 7.8% on its First Class national performance and 4.5% on its Second Class national performance.<sup>27</sup>
- b) **High levels of absence and attrition:** Royal Mail was unable to quantify the impact of this, but noted that it experienced significantly higher-than-normal levels of absence and attrition, which it said were correlated to worse QoS performance.
- c) **A number of other events it said were beyond its control** and impacted on its performance:
  - i) **Highways England road investment programme:**<sup>28</sup> with an estimated impact of 0.1% on First Class national performance.
  - ii) **Stansted runway closure:** also with an estimated impact of 0.1% on First Class national performance.
  - iii) **Extreme heat in July 2022:**<sup>29</sup> with an estimated impact of 0.2% on First Class national performance.
  - iv) **Adverse weather in March 2023:**<sup>30</sup> with an estimated impact of 0.1% on First Class national performance.

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<sup>23</sup> Royal Mail's Submission, page 11, para. 45

<sup>24</sup> Royal Mail did not quantify the impact on its Second Class and delivery routes completed performance for the following events: (i) Highways England road investment programme; (ii) Stansted runway closure; (iii) extreme heat in July 2022; and (iv) adverse weather in March 2023. Additionally, the impact of the industrial climate was not quantified for the delivery routes completed target.

<sup>25</sup> Royal Mail's calculation of the impact of 'industrial action' includes national industrial action (days directly affected by national strikes and the recovery days associated with those strikes) and localised industrial action, which includes local impacts on the strike day and the next working day (as a recovery period).

<sup>26</sup> The industrial relations culture refers to the relationship between Royal Mail's management and staff.

<sup>27</sup> This impact was calculated by removing all survey items posted on or due to be delivered on a strike day and survey items posted during the [3<] recovery days afterwards (parcels) or the [3<] recovery days afterwards (letters). Only strike days outside of the Christmas exemption period were included in the calculation. No impact on the delivery routes completed target was provided.

<sup>28</sup> Note that Highways England was renamed National Highways in 2021. See National Highways, 19 August 2021, [Nick Harris appointed Chief Executive at new-look 'National Highways'](#)

<sup>29</sup> This relates to a red weather warning issued by the Met Office. The Met Office state that a red warning means: *Dangerous weather is expected and, if you haven't already done so, you should take action now to keep yourself and others safe from the impact of the severe weather. It is very likely that there will be a risk to life, with substantial disruption to travel, energy supplies and possibly widespread damage to property and infrastructure. You should avoid travelling, where possible, and follow the advice of the emergency services and local authorities.* See Met Office, [Weather warnings guide](#).

<sup>30</sup> Several amber warnings were in place. The Met Office state that an amber warning means: *There is an increased likelihood of impacts from severe weather, which could potentially disrupt your plans. This means there is the possibility of travel delays, road and rail closures, power cuts and the potential risk to life and property. You should think about changing your plans and taking action to protect yourself and your property.*

- 4.6 We look at these events, along with Royal Mail’s Submission and Notice Response in more detail below.

## Royal Mail’s Submission on its performance and our decision

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- 4.7 Below we explain in more detail what Royal Mail said in its Submission about why it did not achieve the national First Class, Second Class and delivery routes completed QoS targets and our decision based on the evidence provided as part of that Submission and in Royal Mail’s Notice Response.

### Industrial climate

- 4.8 Royal Mail submitted that the failure to meet its QoS targets in 2022/23 was “*primarily caused by the most significant national industrial action in decades, including 18 days of national strikes*”<sup>31</sup> and the associated difficult industrial relations culture.<sup>32</sup> According to Royal Mail, the industrial climate impacted its performance throughout the 2022/23 regulatory period.<sup>33</sup>
- 4.9 In Royal Mail’s view, the development of a difficult industrial climate was an unavoidable consequence of the need to respond to a significant downturn in revenue.<sup>34</sup> Royal Mail said that the deterioration in its financial position meant that it had no option but to seek “*fundamental transformation and modernisation of [Royal Mail’s] labour model, network and ways of working*”<sup>35</sup> to create “*a network that can handle its current and future letters and parcels effectively and efficiently to deliver...high quality*”.<sup>36</sup> Royal Mail did not consider incremental change to be sufficient [§<].<sup>37</sup>
- 4.10 Royal Mail’s view was that if it failed to modernise its business, including seeking changes to existing terms and conditions and ways of working, the long-term sustainability of the business would be at risk.<sup>38</sup> It did acknowledge that the changes it was seeking were “*long-overdue*”<sup>39</sup> but said that they had become imperative in this particular regulatory year.<sup>40</sup> Whilst new terms and conditions were being negotiated, there were 18 days of national strike action. Royal Mail approximated that around 115,000 (88%) of its frontline staff were

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You may want to consider the impact of the weather on your family and your community and whether there is anything you need to do ahead of the severe weather to minimise the impact. See Met Office, [Weather warnings guide](#).

<sup>31</sup> Royal Mail’s Submission, page 5, para. 10

<sup>32</sup> Royal Mail’s Submission, page 5, para. 11

<sup>33</sup> Royal Mail’s Submission, page 5, para. 11

<sup>34</sup> Royal Mail said that this downturn in revenue was “*driven by further post-Covid unwind and an acute cost of living crisis that rapidly drove down consumer spending (both external factors that were outside Royal Mail’s control)*”. See Royal Mail’s Submission, Foreword, page 3

<sup>35</sup> Royal Mail’s Submission, page 4, para. 7. Royal Mail said that some of the key changes it needed to make to its terms and conditions and ways of working were later start times, Sunday working, annualised hours and frontline performance management. See Royal Mail’s Submission, pages 11/12, para. 47

<sup>36</sup> Royal Mail’s Submission, page 6, para. 17

<sup>37</sup> Royal Mail’s Submission, page 4, para. 8

<sup>38</sup> Royal Mail’s Submission, page 11, para. 45

<sup>39</sup> Royal Mail’s Submission, page 44, para. 143

<sup>40</sup> Royal Mail’s Submission, page 4, para. 8

likely to be impacted on these days.<sup>41</sup> To mitigate these impacts, Royal Mail said that it deployed “[X] non-operational managers, [X] operational managers...and on average [X] agency staff”.<sup>42</sup> In addition, [X] extra vans were hired to support delivery operations.<sup>43</sup>

- 4.11 It also said that it adopted a delivery protocol for days of industrial action that diverged from its business-as-usual approach, including:
- a) Suspending letter deliveries (other than Special Delivery);
  - b) Delivering as many Special Delivery and Tracked 24 parcels as possible;
  - c) Prioritising the delivery of Covid test kits and medical prescriptions; and
  - d) Immediately following strike action, lifting the suspension of letter deliveries and prioritising the delivery of critical Government mailings and health letters.<sup>44</sup>
- 4.12 Following strike action, Royal Mail said that the recovery period back to full service was [X] working days for parcels and [X] for letters.<sup>45</sup>
- 4.13 Royal Mail stated that a “bespoke crisis and resilience management infrastructure”<sup>46</sup> was put in place, including a command hierarchy to provide a “consistent and high-quality response to incidents”.<sup>47</sup>
- 4.14 It also told us that it had a “comprehensive communications campaign”<sup>48</sup> throughout the period “with a view to being as transparent as possible as to the possible effects of industrial action on services”.<sup>49</sup> This included publishing regular updates on its website, including news, advice and detailed FAQs. It also briefed its Customer Experience teams with the same information for customers without access to the internet. Additionally, customers were advised to post items as early as possible in advance of strike dates.<sup>50</sup>
- 4.15 Despite having these mitigations in place, Royal Mail said that it was unable to fully mitigate the impact of national industrial action, which “materially adversely affected [its] collection, sorting, logistics and delivery services for letters and parcels”.<sup>51</sup> Particular challenges were noted on consecutive days of industrial action, where its operations could not fully recover between strike days, leading to more backlogs.<sup>52</sup> During the 18 days of national strike action Royal Mail said that “the pipeline largely ceased normal operation and there were huge numbers of failed items. Furthermore, the impact on timely delivery was felt beyond the actual strike dates because of the time taken to recover”.<sup>53</sup>
- 4.16 Royal Mail calculated that removing the impact of industrial action on QoS would increase Royal Mail’s QoS performance by 7.8% for the national First Class mail target and 4.5% for the national Second Class mail target. These impacts were calculated by removing all samples posted in the UK on the days directly affected by national strike action and during

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<sup>41</sup> Royal Mail’s Submission, page 7, para. 24

<sup>42</sup> Royal Mail’s Submission, page 7, para. 24

<sup>43</sup> Royal Mail Submission, page 40, para. 132

<sup>44</sup> Royal Mail Submission, page 40, para. 132

<sup>45</sup> Royal Mail’s Submission, page 17, para. 59

<sup>46</sup> Royal Mail’s Submission, page 7, para. 25

<sup>47</sup> Royal Mail’s Submission, page 7, para. 25

<sup>48</sup> Royal Mail’s Submission, page 7, para. 26

<sup>49</sup> Royal Mail’s Submission, page 40, para. 134

<sup>50</sup> Royal Mail’s Submission, page 40, para. 134

<sup>51</sup> Royal Mail’s Submission, page 17, para. 57

<sup>52</sup> Royal Mail’s Submission, page 17, para. 58

<sup>53</sup> Royal Mail’s Submission, page 17, para. 57

Royal Mail's stated recovery period.<sup>54</sup> A component is included for the impact of localised industrial action.<sup>55</sup> Strike days falling within the Christmas exemption period were not included.<sup>56</sup> No estimate was provided for the impact of the industrial action on the delivery routes completed target.

- 4.17 In addition to the direct effects of industrial action, Royal Mail pointed to a further impact that was also part of the industrial climate - the difficult "*industrial relations culture that...lasted all year*".<sup>57</sup> It said this included, for example, [redacted], higher-than-normal levels of sick absence and unofficial industrial action.<sup>58</sup> Royal Mail said that this had an impact on its ability to achieve its QoS targets because [redacted].<sup>59</sup> Royal Mail was not able to quantify the impact of the industrial relations culture in statistical terms but said that "*we believe it was substantial and had a material impact on USO QoS throughout 2022/23.*"<sup>60</sup>
- 4.18 While Royal Mail said that the industrial climate, including direct strike action and the industrial relations culture, had a significant impact on First and Second Class mail QoS in 2022/23, it did acknowledge that it "*does not fully account for our USO QoS performance*"<sup>61</sup> but that it was a "[redacted] to [Royal Mail's] essential transformation plans".<sup>62</sup> It further stated that "*even once we have resolved the industrial relations dispute and reduced levels of absence and attrition, we still need to improve how we deliver parcels in order to improve USO QoS performance*".<sup>63</sup>

### Ofcom's decision

- 4.19 We recognise that industrial relations matters are complex and of the utmost importance to all parties affected by them. It is not Ofcom's role to take a view on the merits of such matters. Ofcom's function here is to determine whether it is appropriate and proportionate to find Royal Mail at fault for the specific impact on QoS resulting from the industrial climate.
- 4.20 We acknowledge that Royal Mail faced 18 days of national industrial action in 2022/23 that directly affected its QoS performance. We also acknowledge that industrial action is likely to be associated with a more difficult industrial relations culture that may also affect QoS performance. It may not always be possible to entirely isolate the impact of industrial action from the impact of the associated industrial relations culture. For the purposes of this

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<sup>54</sup> Royal Mail's Submission, page 17, para. 59. Royal Mail defines the recovery period required for a national strike as [redacted] working days for parcels and [redacted] working days for letters. For First Class USO letters, the exclusion period begins one working day before the strike and ends [redacted] working days after the strike and for First Class USO parcels the exclusion period begins one working day before the strike and ends [redacted] working days after the strike. For Second Class USO items (both letters and parcels) the exclusion period is adjusted to reflect the different target and movement of this mail and begins and ends two days earlier than the First Class letter exclusion period.

<sup>55</sup> Royal Mail's Submission, page 18, para. 60. Royal Mail said that the impact from localised industrial action was quantified in the same way as MBORC events: survey samples linked to the localised industrial action on the strike date and a recovery day were identified and only items failing as a result of the localised action were excluded from the data.

<sup>56</sup> Royal Mail's Submission, page 18, para. 61

<sup>57</sup> Royal Mail's Submission, page 5, para. 11

<sup>58</sup> Royal Mail's Submission, page 21, para. 67

<sup>59</sup> Royal Mail's Submission, page 21, para. 68

<sup>60</sup> Royal Mail's Submission, page 5, para. 15

<sup>61</sup> Royal Mail's Submission, page 16, para. 56

<sup>62</sup> Royal Mail's Submission, page 16, para. 56

<sup>63</sup> Royal Mail's Submission, page 6, para. 17

investigation, we consider them to be inextricably linked and have therefore assessed them as a single event, which we refer to as the “industrial climate”.

- 4.21 Applying the framework set out in Section 3 above, we have first assessed whether the industrial climate in 2022/23 could be considered an exceptional event. We have then assessed whether and how to grant an allowance taking into account the impact of the industrial climate on Royal Mail’s performance in 2022/23.
- 4.22 In considering whether to treat the industrial climate experienced by Royal Mail in 2022/23 as an exceptional event, we have taken into account a number of factors, as set out below:
- a) *There was a long-standing need for business transformation to meet customer needs:* Royal Mail said that it needed to fundamentally transform and modernise its business, which included in its view, the need to make changes to its labour model and ways of working, to meet the changing needs of customers; adapt to changes in traffic mix; and drive structural cost reform and efficiencies to ensure financial sustainability.<sup>64</sup> We note that we have previously acknowledged Royal Mail’s need to make efficiency improvements and modernise its network as being critical to the longer-term sustainability of the USO and have raised our concern about the slow pace of such improvements.<sup>65</sup>
  - b) *Royal Mail experienced a significant decline in revenues in 2022/23:* Royal Mail said that it [§<] downgraded its revenue forecast for 2022/23, with the [§<] downgrade taking “account of macro-economic headwinds such as high inflation and the cost of living crisis changing customer behaviours”.<sup>66</sup> In Royal Mail’s view, its financial position “created an urgent and unavoidable need for a radical structural transformation”.<sup>67</sup>
  - c) *This regulatory period coincided with a spike in strike action across the UK:* Looking at the period from June 2022 to February 2023, the Office for National Statistics (ONS) reported an increase in the number of working days lost across the UK because of labour disputes, noting that these had occurred in the context of the UK’s rising cost of living. The ONS reported that December 2022 saw the highest recorded monthly total of working days lost since November 2011.<sup>68</sup>
- 4.23 Typically, we have acknowledged exceptional events as circumstances which have been wholly outside of Royal Mail’s control, such as the impact of Covid-19 and certain transport route closures and weather events. In these cases, there has been no question of Royal Mail having any ability to prevent the event from occurring.
- 4.24 While the business transformation activities (including changes to ways of working) that were the subject of the difficult industrial climate were ultimately within Royal Mail’s control, we acknowledge that a unique combination of inter-related circumstances, as set out above, arose in 2022/23. We acknowledge that this specific combination of circumstances precipitated the decision, made by Royal Mail in good faith, that it needed to pursue business transformation (including changes to ways of working) and meant that it came at the same time as a rise in the cost of living and increased industrial unrest across

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<sup>64</sup> Royal Mail’s Submission, page 4, para. 7 and Royal Mail’s Submission, page 11, para. 45

<sup>65</sup> Ofcom, 18 July 2022, [2022 Review of Postal Regulation: Statement](#), page 46, para 4.11

<sup>66</sup> Royal Mail’s Submission, page 9, para. 40

<sup>67</sup> Royal Mail’s Submission, page 11, para. 45

<sup>68</sup> Office for National Statistics (ONS), 8 March 2023, [The impact of strikes in the UK: June 2022 to February 2023](#)



the UK. Taking the above factors into account, and in the specific circumstances of this investigation, we have decided that Royal Mail's industrial climate in 2022/23 was an exceptional event.

- 4.25 We have then considered whether and how to grant an allowance, taking into account the impact of the industrial climate on Royal Mail's performance in 2022/23. In relation to industrial action, we note that Royal Mail was not able to fully mitigate its impact on the QoS experienced by its customers. However, we acknowledge that Royal Mail did put in place a number of contingency measures, as set out above in paragraphs 4.10 to 4.14, that are likely to have reduced the impact on QoS. We also note that Royal Mail has quantified the impact of industrial action on its QoS.
- 4.26 Our decision is that, in the specific circumstances of this investigation and for the reasons outlined above, it would be appropriate to grant Royal Mail an allowance for the impact of the industrial action on its QoS performance. We note again that we are not taking a view on the merits of such matters, but rather determining whether it is appropriate and proportionate to find Royal Mail at fault for the specific impact on QoS resulting from the industrial climate.
- 4.27 Given our conclusions above, we have uplifted Royal Mail's First Class performance by 7.8% and its Second Class performance by 4.5% to take into account the impact of the industrial action in 2022/23.<sup>69</sup>
- 4.28 We note that no estimate was provided in relation to the impact on the delivery routes completed target.
- 4.29 We also acknowledge Royal Mail's claim that there was likely to have been an additional impact on its QoS performance related to the industrial relations culture associated with the strike action. However, we have not granted an allowance for it. In particular, we note that this element of the industrial climate was not quantified and we consider that even if the impact on QoS from this element of the industrial climate could be quantified, it is unlikely to fully explain the remaining gap between Royal Mail's QoS performance and its targets.<sup>70</sup>
- 4.30 In coming to this decision, we have also taken into account Royal Mail's own acknowledgement that the industrial climate does not fully account for its QoS under-performance in this period.<sup>71</sup> Further, we note that Royal Mail was already under-performing in the first four months of the regulatory period, prior to the industrial action.<sup>72</sup>
- 4.31 In line with previous Ofcom decisions, while the industrial relations culture is not being included as part of any additional allowance, we have taken this into account as part of the penalty decision (see Section 5). We note that Royal Mail has previously acknowledged "*that where an event has had an impact on [its] quality of service performance but the impact is*

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<sup>69</sup> We note that these figures are based on Royal Mail's methodology for removing applicable data from its survey results.

<sup>70</sup> We note that in our decision last year we said that even though the impacts of Covid-19 were unquantifiable we considered that it was possible that Royal Mail could have achieved its targets had it not been for Covid-19. This was because, in that year, Covid-19 impacted on Royal Mail's performance in a way that was not time-bound or geographically precise and was persistent and pervasive across Royal Mail's network. See Ofcom, 2 December 2022, [Decision on Royal Mail's quality of service performance, 2021-22](#)

<sup>71</sup> Royal Mail's Submission, page 16, para. 56

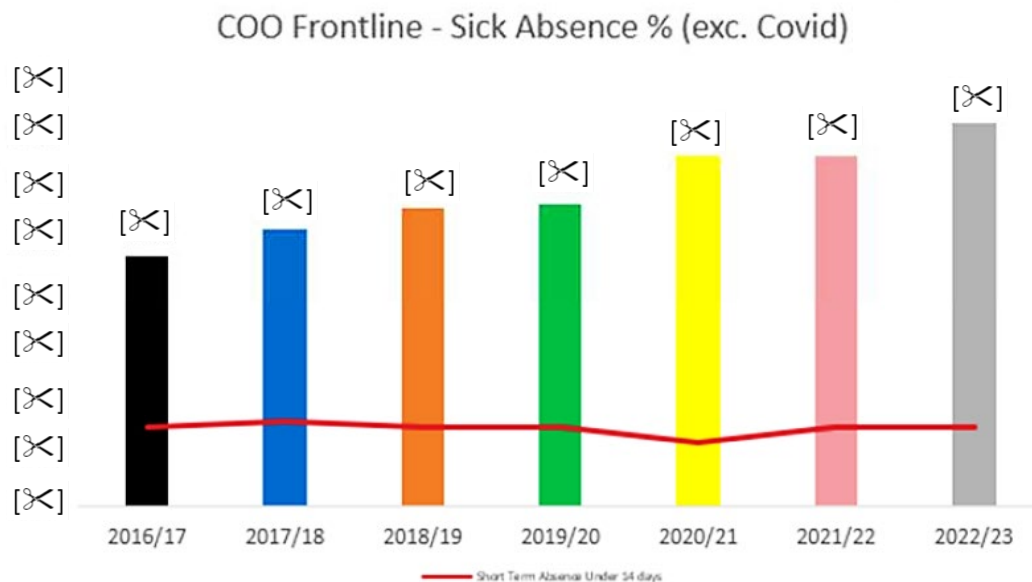
<sup>72</sup> Over this period, First Class performance averaged 84.3% and Second Class 95.8%, so still significantly below target.

difficult to accurately quantify, Ofcom’s approach of taking this into account when considering whether to impose a fine (and if so, at what level) is appropriate”.<sup>73</sup>

## Absence and Attrition

- 4.32 In addition to the industrial climate, Royal Mail said that its ability to meet the QoS targets was significantly impacted by levels of absence that were above the average for the UK.<sup>74</sup> In its Submission, Royal Mail described experiencing “[s]ignificantly higher-than-normal levels of sick absence”.<sup>75</sup>
- 4.33 Royal Mail said that the “levels of sick absence (excluding Covid) among frontline staff [were] now even higher than during the Covid 19 pandemic”.<sup>76</sup> To illustrate its point, Royal Mail included Figure 1 below showing frontline sick absence between 2016 and 2023, as a percentage of operational staff. The figure shows that in 2022/23, [%] of operational staff were on sick leave, which Royal Mail said should be compared to a UK average absence rate of 2.2%.<sup>77</sup>

**Figure 1: Frontline sick absence (%), 2016-2023**<sup>78</sup>



- 4.34 As evidence of the impact of high absence levels, Royal Mail said that, on the ground, this was equivalent to “[%] postmen and postwomen ...absent every day” and a cost to Royal Mail of £[%] million in 2022/23.<sup>79</sup> Royal Mail further noted that “more than 75% of sickness absence is long-term (i.e. over 14 days), with more than [%] people absent for longer than 6 months”.<sup>80</sup>

<sup>73</sup> Ofcom, 31 May 2019, [Decision to conclude investigation into Royal mail’s compliance with its quality of service performance standards in 2017/18](#), page 22, para. 3.60

<sup>74</sup> Royal Mail’s Submission, pages 24-25, para. 76

<sup>75</sup> Royal Mail’s Submission page 21, para. 67

<sup>76</sup> Royal Mail’s Submission, page 25, para. 76

<sup>77</sup> Royal Mail’s Submission, page 25, para. 76

<sup>78</sup> Royal Mail’s Submission, page 25, figure 12

<sup>79</sup> Royal Mail’s Submission, page 25, para. 76

<sup>80</sup> Royal Mail’s Submission, page 25, para. 76

- 4.35 Royal Mail also provided further evidence on the types of issues experienced at the local level as a result of high absence levels. In particular, it said that *“Whilst national drivers of absence do correlate to local factors, national absence data is not truly representative of the potential impact on individual delivery offices, which may have been experiencing significantly higher levels, fluctuations in absence and last-minute absences, making resourcing on a daily basis particularly challenging.”*<sup>81</sup>
- 4.36 Royal Mail looked in more detail at some example postal units which had a high number of USO failures and said that *“a common theme across...these is the very high (above-Royal Mail national average) sick absence levels”*.<sup>82</sup> However, it also said that the review pointed to a number of other issues, such as managerial capability in delivery offices, [§<], low use of resource planning tools, the revisions programme<sup>83</sup> and [§<]not being tackled.<sup>84</sup>
- 4.37 Royal Mail acknowledged that high levels of absence were a UK-wide trend, however, it said that Royal Mail was disproportionately affected because of the labour-intensive nature of its operations.<sup>85</sup>
- 4.38 In addition to high absence, Royal Mail pointed to high levels of attrition as impacting on its performance. Royal Mail said that total frontline headcount had been in consistent decline throughout the period.<sup>86</sup> In addition, in January 2022, a management restructure was announced that affected over 3,000 managerial level employees. This was followed by a further voluntary redundancy exercise in October 2022. Royal Mail said that *“[a]s part of managing our headcount reduction, natural attrition rates are currently [§<] higher than recruitment levels, which in practical terms equates to our losing [§<] people a week.”*<sup>87</sup> Royal Mail noted that ‘rightsizing’ the organisation was a part of the business transformation plan but that the industrial climate had limited its ability to reap the benefits and presented an additional challenge in the context of the 2022/23 period.<sup>88</sup>
- 4.39 In order to mitigate the impact of the high levels of absence and attrition, Royal Mail said it deployed a number of agency staff. Its evidence showed that the cost of agency hours in its delivery operation went from £[§<] million in 2021/22 to £[§<] million in 2022/23<sup>89</sup>. However, it said that this came with significant downsides as agency staff were not as familiar with routes and were likely to take longer to deliver and might also bring more mail back at the end of a shift.<sup>90</sup>
- 4.40 In relation to QoS, Royal Mail said that, according to its categorisation of workplan failures, in January 2023, [§<]% of workplan failures were a result of absence and vacancies,

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<sup>81</sup> Royal Mail’s Submission, page 26, para. 81

<sup>82</sup> Royal Mail’s Submission, page 27, para 83. We note that Royal Mail has stated that the data used in these examples is from May 2023 but that it is illustrative of the issues impacting QoS at the delivery office level, see Royal Mail’s Submission, page 27, footnote 23.

<sup>83</sup> The revisions programme involves changes to delivery routes for all delivery offices in the UK. It is intended to rebalance the delivery operation so that the workload is better distributed, with resourcing more closely matched to the volume of letters and parcels in each area.

<sup>84</sup> Royal Mail’s Submission, page 28, para. 86

<sup>85</sup> Royal Mail’s Submission, page 29, paras. 89-90

<sup>86</sup> Royal Mail’s Submission page 32, para. 97

<sup>87</sup> Royal Mail’s Submission, page 32, para. 100

<sup>88</sup> Royal Mail’s Submission, page 32, para. 102

<sup>89</sup> Royal Mail’s Submission, page 31, para. 95

<sup>90</sup> Royal Mail’s Submission, page 31, para. 95

compared to only [3<] % for the same period in 2019/20.<sup>91</sup> Royal Mail noted the importance of staff in the operational pipeline and said that the high absence levels had a “*tremendous impact*” on their operations and ability to meet QoS targets.<sup>92</sup>

- 4.41 Royal Mail provided data to show a negative correlation between absence levels and First Class QoS i.e. that QoS levels fall as absence levels rise.<sup>93</sup> Similarly, Royal Mail said its data showed a positive relationship between vacancies and reported failure (loss) i.e. higher vacancy levels are related to a higher level of reported loss.<sup>94</sup> Royal Mail did not provide an estimate of the impact of absence and attrition on QoS for any of the three QoS targets being considered in this investigation.

### Ofcom’s decision

- 4.42 We considered whether the absence and attrition experienced by Royal Mail in the 2022/23 period should be considered an exceptional event for this specific investigation and our decision is that it should not.
- 4.43 We acknowledge that absence levels were high in the 2022/23 period, however, we believe that staff absence and attrition is generally the type of event that the allowance built into the targets is intended to cover. In other words, Royal Mail is generally expected to manage absence and attrition in any given year to deliver a service in line with its QoS targets.
- 4.44 We note that in our assessment of the 2021/22 regulatory period, we did take account of absence. At that time, Covid-19 was continuing to produce unpredictable spikes in absence levels which were difficult to mitigate against. However, we made it clear that our approach related particularly to the circumstances of the Covid-19 pandemic and we were unlikely to take a similar approach in future years. We also clearly stated that where absence levels became more stable and predictable, we would expect Royal Mail to have a plan in place for dealing with such absences.<sup>95</sup>
- 4.45 While it can be seen that absence levels for Royal Mail have risen in the post-pandemic period, this appears to be a general upward trend across the UK, and not the result of unpredictable spikes. For example, Royal Mail’s frontline sick absence rose from [3<] % in 2019/20 to [3<] % in 2022/23. Similarly, the sickness absence rate in the UK rose from 1.9% in 2019 to 2.6% in 2022.<sup>96</sup>
- 4.46 Additionally, while some evidence was provided of a correlation between high levels of absence and attrition and QoS failures, the deep dive of poor performing delivery units and other evidence provided by Royal Mail also indicated that other factors, such as a low use of resource planning tools and capability gaps for some COMs in managing delivery offices, may have been at play.<sup>97</sup>

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<sup>91</sup> Royal Mail’s Submission, page 26, para 80

<sup>92</sup> Royal Mail’s Submission, page 25, para. 78

<sup>93</sup> Royal Mail’s Submission, page 25, para. 78

<sup>94</sup> Royal Mail’s Submission page 30, para. 92

<sup>95</sup> Ofcom, 2 December 2022, [Decision on Royal Mail’s quality of service performance, 2021/22](#), page 5, para. 2.15

<sup>96</sup> Office for National Statistics (ONS), 26 April 2023, [Sickness absence in the UK labour market: 2022](#)

<sup>97</sup> Royal Mail’s Submission, page 28, paras. 86-87

## Other events which Royal Mail submitted were beyond its reasonable control

- 4.47 In its Submission, Royal Mail identified several other events which, in its view, were beyond its reasonable control and impacted on its QoS performance in 2022/23.
- 4.48 Table 1 sets out Royal Mail’s estimates of the impact of these events on First Class (1C) QoS.<sup>98</sup> No estimate was provided of the purported impact on Second Class QoS or on the delivery routes completed target.

**Table 1: Summary of Royal Mail’s estimated impact of other events beyond its reasonable control on First Class (1C) QoS<sup>99</sup>**

Summary of the event	Impact and mitigations (where possible)	Impact on 1C QoS
<p><b>Highways England road investment programme:</b> Royal Mail said the programme undertakes the vast majority of roadworks overnight to minimise disruption on individual consumer travel. However, this coincides with the critical time for transporting First Class mail.</p>	Royal Mail said it continued to work closely with Highways England to minimise the impact on Royal Mail’s road operations. Despite this, it said that Highways England closures continued to cause disruption during 2022/23.	0.1
<p><b>Stansted runway closure:</b> Stansted underwent a major investment programme to resurface the runway. It was closed from 8 January 2023 until 25 March 2023 from 00:00-06:00, Sunday to Thursday. Royal Mail said this was a key airport to transport mail to and from Northern Ireland and Scotland. Approximately [X]% of national First Class mail was transported via Stansted Airport each evening.</p>	Royal Mail said it put in place major contingency plans at significant cost to mitigate some of the risks of disruption to mail. This included diverting road and air mail via East Midlands airport, amending existing road services and providing additional road services to connect mail with amended Stansted flights.	0.1
<p><b>Extreme heat in July 2022:</b> Many parts of the country experienced extreme heat in July 2022, with the Met Office issuing its first heat-related red warning. Royal Mail rail services were suspended by third parties and mail centre and delivery office operations were severely impacted.</p>	Royal Mail complied with its Severe Weather Risk assessment process, with outdoor operational activity suspended in some areas and other adjustments made to rounds and workload.	0.2

<sup>98</sup> Royal Mail’s Submission, pages 34-36, paras. 107-114

<sup>99</sup> The information in this table is a summary of Royal Mail’s Submission, pages 34-36, paras. 107-114

Summary of the event	Impact and mitigations (where possible)	Impact on 1C QoS
<b>Adverse weather in March 2023:</b> The Met Office issued several severe amber warnings for snow and ice from 9 to 10 March 2023.	Some units were unable to open and others were significantly impacted due to road conditions preventing items being delivered from the mail centres, or poor conditions meaning that delivery routes could not be completed.	0.1

4.49 If we were to give an allowance for all of the above, based on Royal Mail’s Submission, it would increase its First Class national performance by 0.5%. As noted above, Royal Mail was unable to quantify the impact of these events on its Second Class and delivery routes completed QoS performance.

### Ofcom’s decision

4.50 We have considered whether the events discussed above should be considered exceptional events for the purpose of this assessment and if so, whether to grant an additional allowance for any of them.

4.51 Taking into account the nature and level of impact of the Highways England road investment programme and the adverse weather in March 2023, our decision is that they should not be considered exceptional events. While we agree that the events as described were beyond Royal Mail’s control, some degree of disruption from events such as weather (e.g. snow and ice) and road closures (e.g. Highways England issues) can be expected. These kinds of events, with this level of impact, are what the allowance built into the QoS targets is intended to cover. In particular:

- a) While we have previously considered the Highways England road investment programme to be an exceptional event in 2018/19,<sup>100</sup> it is now likely to have at least some impact on Royal Mail’s operations for the foreseeable future. The 2018/19 period fell within the first Road Investment Strategy, which was in place from 2015 to 2020. National Highways is now implementing the second Road Investment Strategy, which covers 2020 to 2025, and a third Road Investment Strategy is being developed for the period beyond 2025.<sup>101</sup> Further, the particular impact in 2022/23 was at a level we consider Royal Mail should be able to manage within its built-in allowance.
- b) While we accept there may have been limited mitigations Royal Mail could put in place in response to the adverse weather in March 2023, amber weather warnings have become a relatively common occurrence in the UK and the impact in this case is at a level we consider Royal Mail should be able to manage within its built-in allowance.

4.52 However, with regards to the Stansted Runway Closure and extreme heat in July 2022 our decision is that these should both be considered exceptional events for which Royal Mail

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<sup>100</sup> See Ofcom, 10 July 2020, [Decision finding Royal Mail contravened its quality of service performance targets in 2018/19 and imposing a financial penalty under paragraph 6 of Schedule 7 to the Postal Services Act 2011](#), page 15, paras. 4.18-4.19

<sup>101</sup> Department for Transport, December 2021, [Planning ahead for the Strategic Road Network: Developing the third Road Investment Strategy](#), page 5

should receive an allowance. In exercising our discretion and reaching this decision, we have taken into account the factors set out below.

a) Stansted runway closure:

- i) Stansted Airport is a key airport for transporting mail to and from Northern Ireland and Scotland.
- ii) This type of event is rare – the runway is nearing the end of its design life and requires resurfacing.<sup>102</sup> It was last resurfaced in 2006.<sup>103</sup>
- iii) A runway closure of this scale is not the type of event for which we consider the allowance built into Royal Mail’s targets is intended to cover.
- iv) The closure had a provable and unavoidable impact on Royal Mail’s operations.
- v) Royal Mail took extensive steps to mitigate the impact of the Stansted Airport runway closure (as explained in Table 1).

b) Extreme heat in July 2022:

- i) This was an unprecedented event, with the UK Health Security Agency and Met Office issuing a level 4 alert for the first time since the heatwave plan was introduced for England in 2004, resulting in the government declaring a national emergency.<sup>104</sup> This was also the first red warning for extreme heat since the Extreme Heat National Weather Warning Service was introduced in June 2021.<sup>105</sup>
- ii) It had a provable and unavoidable impact on several consecutive days of operation.
- iii) Such severe weather is not the type of event for which we consider the allowance built into Royal Mail’s targets is intended to cover.

4.53 In conclusion, in relation to the other events set out by Royal Mail, our decision is that an additional allowance of 0.3%, comprising 0.1% for the Stansted Runway closure and 0.2% for the extreme heat in July 2022 should be added to the First Class QoS result.

## Finding of contraventions of DUSP 1.9.1

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4.54 In light of the discussion above, we have concluded the following:

- a) For First Class Mail, Royal Mail achieved 82% against a target of 93%, after adjusting for the industrial climate (7.8%), Stansted runway closure (0.1%), the extreme heat in July 2022 (0.2%), and including the confidence interval.<sup>106</sup> Royal Mail’s performance was therefore 11 percentage points below the First Class target.
- b) For Second Class Mail, Royal Mail achieved 95.5% against a target of 98.5%, after adjusting for the industrial climate (4.5%), and including the confidence interval.<sup>107</sup> Royal Mail’s performance was therefore 3 percentage points below the Second Class target.

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<sup>102</sup> ACL, July 2022, [London Stansted Airport \(STN\) Runway Rehabilitation Guidance Document Winter 2022](#), page 1

<sup>103</sup> MAG London Stansted Airport, 6 January 2023, [Runway resurfacing project gets underway](#)

<sup>104</sup> Met Office, July 2022, [Unprecedented extreme heatwave](#)

<sup>105</sup> Met Office, July 2022, [Unprecedented extreme heatwave](#)

<sup>106</sup> The confidence interval for the First Class mail performance was +/-0.2, as set out on page 2, [Designated Universal Service Provider Condition 1.10 Annual Adjusted Quality of Service Report 2022/23](#)

<sup>107</sup> The confidence interval for the Second Class mail performance was +/-0.3, as set out on page 2, [Designated Universal Service Provider Condition 1.10 Annual Adjusted Quality of Service Report 2022/23](#)

- c) For the percentage of delivery routes completed daily, Royal Mail achieved 89.35% against a target of 99.90%. Royal Mail's performance was therefore 10.55 percentage points below the delivery routes completed target.
- 4.55 Even with the allowances granted for the industrial climate, Stansted runway closure and extreme heat, Royal Mail has failed to meet the targets by a significant margin.
- 4.56 We acknowledge Royal Mail's argument that the difficult industrial relations culture is likely to have had an (unquantified) impact on its QoS performance, however, in our view, and as set out above, the gap between Royal Mail's adjusted performance and the QoS targets is unlikely to be fully explained by the impact of the broader industrial climate. In relation to this issue, we have also taken into account:
- a) Royal Mail's acknowledgement that the industrial climate does not fully explain its QoS under-performance in this period;<sup>108</sup> and
- b) Royal Mail's under-performance in the first four months of the regulatory period, prior to the industrial action. Over this period, First Class performance averaged 84.3% and Second Class 95.8%, so still significantly below target.<sup>109</sup>
- 4.57 For the reasons set out above, our decision is that there has been a breach of the national First Class, Second Class and delivery routes completed targets and, as a result, Ofcom has determined that Royal Mail has contravened DUSP condition 1.9.1 in the financial year 2022/23.

## Further observations on Royal Mail's performance

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- 4.58 While it is not necessary for Ofcom to identify the specific reasons for why a failure has occurred, we note our concern that some issues in the operation of delivery offices, identified by Royal Mail in its Submission and Notice Response, and which we view as fundamental to meeting the QoS obligations, remained outstanding in 2022/23. Further detail on these issues and our concerns are set out below.

### Issues in the operation of delivery offices

- 4.59 In its Submission, Royal Mail stated that delivery office operations, developed as part of emergency practices to deal with the Covid-19 pandemic, had not been 'reset' to a business-as-usual approach. In particular, Royal Mail said there was a need for a "[c]ultural reset....to move from a Covid-era of "crisis management" back to a pre-pandemic mindset of clearing all mail from each delivery office every day".<sup>110</sup> It further noted that "[s]ome Customer Operations Managers (COMs) have never seen a clear office, which is a legacy operational issue attributable largely to Covid".<sup>111</sup>

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<sup>108</sup> Royal Mail's Submission, page 16, para. 56

<sup>109</sup> We also note that this finding is consistent with Royal Mail's performance in the months following the end of the 2022/23 regulatory period where it appears to have continued materially to underperform even after the formal resolution of the industrial dispute.

<sup>110</sup> Royal Mail's Submission, page 13, para. 51

<sup>111</sup> Royal Mail's Submission, page 13, para. 51



- 4.60 We note that Royal Mail stated that initiating change in delivery offices was difficult because of the [redacted], with an example being given of unofficial industrial action at one office where route revisions were being implemented.<sup>112</sup>
- 4.61 In our view the issues in delivery offices noted above are compounded by Royal Mail's submission that there are capability gaps for some staff who manage delivery offices. In particular, Royal Mail stated that the recruitment of new managers who were not previously delivery managers resulted in a *"capability gap in some units...which requires further upskilling in using the relevant tools"*.<sup>113</sup> In July 2022, in discussing difficulties in improving QoS, it was noted at an Executive Board meeting that *"the crux of the matter is that many units are not sufficiently controlled and there is a lack of management grip"*.<sup>114</sup> It was explained that there were [redacted] COMs who required middle level training in order to *"have sufficient grip on their units"*<sup>115</sup>, [redacted] COMs who required full training and [redacted] COMs who needed partial training.<sup>116</sup>
- 4.62 We note that some efforts were made to deal with these issues in 2022/23, for example:
- a) A 'Back to Basics' programme was introduced, as mentioned in February and April 2022, which focused on c.600 delivery units, and which was described as coaching reviews to restore basic standards post-Covid.<sup>117</sup>
  - b) In July 2022, a Board update noted that [redacted]% of COMs had completed the Discovery Development Tool, with [redacted]% of these COMs achieving a passing mark on quality and [redacted]% achieved a passing mark for resourcing to workload.<sup>118</sup>
  - c) An 'operations update' presented to the Executive Board in October 2022 introduced a timeline for improving *"operating grip"* including activities related to *"motivation and upskilling of workforce"*, such as *"intensive OPL and COM skills and leadership training"*.<sup>119</sup> This was due to take place from October 2022 to February 2023.<sup>120</sup>
- 4.63 We also note that steps continued to be taken after the regulatory period. For example, Royal Mail launched a leadership training academy in July 2022 and in July 2023 there was a performance improvement forum session for 150 COMs from low performing units *"to provide further support for COMs and their teams...aimed at providing knowledge and the confidence to take action to improve performance and relationships"*.<sup>121</sup>
- 4.64 However, for the 2022/23 regulatory period, the need for a 'cultural reset' to clear all mail every day and further training for COMs to equip them with the right skills to manage delivery offices remained as outstanding issues and form part of Royal Mail's current QoS Recovery Strategy.<sup>122</sup>

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<sup>112</sup> Royal Mail's Submission, page 13, para. 51

<sup>113</sup> Royal Mail's Submission, page 28, para. 87

<sup>114</sup> Royal Mail's Notice Response, July 4<sup>th</sup> Morning Session, Meeting 8 July 2022, page 3

<sup>115</sup> Royal Mail's Notice Response, July 4<sup>th</sup> Morning Session, Meeting 8 July 2022, page 3

<sup>116</sup> Royal Mail's Notice Response, July 4<sup>th</sup> Morning Session, Meeting 8 July 2022, page 3

<sup>117</sup> Royal Mail's Notice Response, February Performance EB Meeting, Meeting 28 February 2022, p.11 and Royal Mail Notice Response, EB Tickets to Play – April Papers, Meeting 25 April 2022, pages 14-15

<sup>118</sup> Royal Mail's Notice Response, July 18<sup>th</sup> Morning Session, Meeting 18 July 2022, page 5

<sup>119</sup> Royal Mail's Notice Response, EB Performance – 24<sup>th</sup> October 2022, Meeting 24 October 2022, pages 7-8

<sup>120</sup> Royal Mail's Notice Response, EB Performance – 24<sup>th</sup> October 2022, Meeting 24 October 2022, pages 7

<sup>121</sup> Royal Mail's Submission, Annex 1, page 52, para. 7.2

<sup>122</sup> Royal Mail's Submission, page 28, para 87; Royal Mail's Submission, Annex 1, page 46, para. 1 and Royal Mail's Submission, Annex 1, page 51, para. 7.

## Prioritisation

- 4.65 As a result of public concerns raised with the BEIS Select Committee (which were also reflected in a number of complaints made to us), we had some concerns about how parcels and letters might be prioritised for delivery, and whether this may have affected customers of USO services. The BEIS Select Committee, as part of its report on Royal Mail, also asked Ofcom to examine this issue.<sup>123</sup> In order to examine this issue as part of our investigation, we asked Royal Mail for all organisation-wide policies and procedures relating to prioritisation and any Board papers where changes to such policies and procedures were considered.
- 4.66 In response to our request, Royal Mail clearly stated that the business-as-usual approach was to deliver all letters and parcels six days a week, as per Royal Mail's obligations. However, Royal Mail acknowledged that in specific circumstances where its operations are affected, contingency plans are deployed e.g. during the Covid pandemic and during the industrial action in 2022/23.<sup>124</sup> It is our understanding that in these cases, certain mail may be prioritised over other mail, for example following the prioritisation set out for days of industrial action in paragraph 4.11. In the evidence we assessed, we did not identify any suggestion that Royal Mail's senior management had directed the prioritisation of parcels over letters outside of these recognised contingency plans.
- 4.67 While we would expect there to be circumstances in which contingency plans are needed, Royal Mail also told us that "*[i]ssues may arise at specific delivery offices "on the day" where it is not possible to deliver letters and parcels six days a week"*.<sup>125</sup> An example of the type of issue that might lead to this "on the day" decision making is "*[h]igh sick absence and difficulty recruiting leading to a high number of vacancies"*.<sup>126</sup> In these circumstances, Royal Mail said that "*local decisions are made...typically agreed between the local COM and the OPL [Operations Performance Leader]"*.<sup>127</sup>
- 4.68 Again, we would expect some degree of local-decision making, but given ongoing high absence and vacancies, the need for further training for COMs and the delays in reinstating business-as-usual practices in delivery offices, we are concerned about the extent to which COMs were equipped to make such decisions, as well as the extent to which Royal Mail had control over local decision-making. More specifically, we are concerned about whether Royal Mail provided sufficient guidance for COMs, particularly where there was no agreement with an OPL, and whether it had sufficient visibility of such decisions, or adequately monitored them.
- 4.69 We find these observations particularly concerning given our view that the decisions made in delivery offices are fundamental to whether USO letters and parcels may be delivered on a particular day and therefore to meeting Royal Mail's QoS obligations.

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<sup>123</sup> Business, Energy and Industrial Strategy Committee, 17 March 2023, [Royal Mail, Seventh Report of Session 2022-23](#), page 4

<sup>124</sup> Royal Mail's Notice Response, Page 6

<sup>125</sup> Royal Mail's Notice Response, page 9

<sup>126</sup> Royal Mail's Notice Response, page 9

<sup>127</sup> Royal Mail's Notice Response, page 9

# 5. Consideration of financial penalty

- 5.1 In this section, we set out our consideration of whether it would be appropriate to impose a financial penalty on Royal Mail and, if so, what level of penalty would be appropriate and proportionate. In doing so, we have taken into account the seriousness of Royal Mail's failure to meet the targets mentioned above, relevant factors identified in our Penalty Guidelines and, overall, the need to impose a penalty which fulfils Ofcom's central objective of deterring poor performance.
- 5.2 In making our decision we have also taken into account Royal Mail's Submission and the information we received in the Notice Response.

## Legal framework

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- 5.3 In Section 4 above, we set out our reasons for determining that Royal Mail has contravened DUSP 1.9.1 in 2022/23 by failing to achieve the First Class, Second Class and delivery routes completed targets.
- 5.4 As explained in Section 3 above, under paragraph 6 of Schedule 7 to the Act, Ofcom may impose a financial penalty on a person who has, in one or more of the respects notified by Ofcom, been in contravention of a regulatory requirement.
- 5.5 In determining whether to impose a penalty for a contravention, and the size of that penalty, we must have regard to Ofcom's Penalty Guidelines,<sup>128</sup> which state that the central objective of imposing a penalty is deterrence. In addition, and in accordance with the Act,<sup>129</sup> any penalty we impose must be appropriate and proportionate to the contravention in respect of which it is imposed.
- 5.6 In line with our Regulatory enforcement guidelines for investigations, we will also have regard to our statutory duties. This includes our duty under section 29 of the Act to secure the provision of a universal postal service having regard to the need for that service to be financially sustainable and efficient, and our more general duty under section 3 of the Communications Act 2003 to further the interests of citizens and consumers, where relevant by promoting competition.<sup>130</sup>
- 5.7 When determining the level of a penalty, Ofcom must have regard to any submission and representations made by Royal Mail and any steps taken by Royal Mail to comply with the relevant regulatory requirements.

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<sup>128</sup> Ofcom, 14 September 2017, [Penalty Guidelines: Section 392 Communications Act 2003](#), see also Section 392 of the [Communications Act 2003](#)

<sup>129</sup> Paragraph 7(1) of Schedule 7 to the Act

<sup>130</sup> Ofcom, 12 December 2022, Regulatory Enforcement Guidelines for investigations: Guidelines; [Postal Services Act 2011](#) and [Communications Act 2003](#)

## Decision to impose a financial penalty

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- 5.8 Ofcom takes compliance with QoS targets very seriously and we would expect to impose a financial penalty in any circumstances where there has been a non-trivial failure to meet the required targets, and which cannot be justified by some mitigating factor. In this case, we believe such a failure has occurred.
- 5.9 As set out above, Royal Mail argued that the QoS failure in 2022/23 was primarily caused by the industrial action in 2022/23 and the associated difficult industrial relations culture. We acknowledge that the industrial climate had a considerable impact on Royal Mail's performance in 2022/23. However, even after uplifting the First and Second Class performance to account for industrial action, there is still a sizeable gap between Royal Mail's adjusted performance and the QoS targets which is unlikely to be fully explained by the impact of the broader industrial climate.
- 5.10 As such, our decision is that Royal Mail breached its QoS obligations by a significant margin. We have estimated that, as a result, there was considerable harm to customers. In addition, the steps Royal Mail took to prevent or mitigate the impact on its quality of service in 2022/23 were insufficient or ineffective in preventing a significant contravention.
- 5.11 Taking account of the above, we have therefore concluded that a penalty is appropriate and proportionate in this case.
- 5.12 In reaching this decision we have considered the relevance, if any, of Ofcom's decision to explore how the universal service might need to evolve to better reflect the changing needs of postal users.<sup>131</sup> Amongst other things, it is currently Ofcom's intention to look at the role played by QoS targets as part of this work.
- 5.13 It is important to emphasise that any future proposals to change the universal service will be subject to further extensive public consultation and, until such time as they are implemented, the current rules remain in force and our starting expectation is that Royal Mail should be taking the right steps to comply with them. In particular, during the period that is the subject of this investigation, customers could reasonably have expected Royal Mail to deliver in line with its regulatory requirements. It is important that this decision takes into account the real consumer harm that was caused by Royal Mail's failure to provide an adequate service level.
- 5.14 In addition, even if Ofcom were in future to propose a material change in the nature or level of the relevant QoS targets, our view is that it is appropriate that we incentivise, through this decision, improvements in Royal Mail's performance.

## Penalty amount

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- 5.15 In considering the level of penalty which we have decided to impose, Ofcom has had regard to its published Penalty Guidelines. We have set out below the factors which we consider to be relevant to this case.

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<sup>131</sup> Ofcom, 5 September 2023, [Ofcom to produce potential options for the future of the universal postal service](#)

## Seriousness, financial gain and degree of harm

- 5.16 The national performance targets are a minimum service level that Royal Mail is required and expected to achieve. For this reason, DUSP condition 1.9.1 imposes on Royal Mail a clear and unambiguous regulatory requirement.
- 5.17 The purpose of the requirement is to ensure that customers receive an adequate level of service and we consider that any failure to meet this standard is inherently serious. This is because of the actual effect that it has on customers who purchase a service and do not receive what they have paid for. In this case, we consider that Royal Mail's failure to meet its QoS targets by a material degree is a serious contravention that resulted in significant consumer harm which cannot be directly remedied.
- 5.18 We consider that customers were harmed as a result of the poor service that was provided. This level of service is likely to have been unexpected by customers, given statements such as the one on Royal Mail's website stating that it has "*demanding quality of service standards*" that are "*among the highest*" in Europe.<sup>132</sup>
- 5.19 Royal Mail noted that the business "*takes USO QoS seriously*"<sup>133</sup> and that it was disappointed not to have achieved its QoS targets in 2022/23.<sup>134</sup> However, it also emphasised that rather than making profits throughout the regulatory period, it faced a [£<]<sup>135</sup> and it ended "*the year with an adjusted operating loss of £419 million*".<sup>136</sup>
- 5.20 While we acknowledge that Royal Mail did not make a profit during the 2022/23 period we do not accept that this means it did not gain financially from the breach. In effect, it sold a considerable number of first class and second class services and yet provided a lower quality of service.
- 5.21 In terms of quantifying the harm of the First Class under-performance, our conclusion that Royal Mail missed the First Class target by 11 percentage points equates to around [£<] million First Class letters which took more than one working day to be delivered.<sup>137</sup> This is a substantial number of items which were delivered to a service level lower than that expected by customers.
- 5.22 We consider that some indication of the level of consumer harm and Royal Mail's financial gain can be given by estimations of the additional revenue associated with the premium charged for First Class items over Second Class items. In the case of First Class letter services, this kind of estimation suggests that Royal Mail received additional revenue of approximately £[£<] million from customers that paid for the service and whose items were not delivered on time.<sup>138</sup>

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<sup>132</sup> Royal Mail, [Quality of Service](#)

<sup>133</sup> Royal Mail's Submission, page 37, para. 118

<sup>134</sup> Royal Mail's Submission, page 37, para. 118

<sup>135</sup> Royal Mail's Submission, page 37, para. 120

<sup>136</sup> Royal Mail's Submission, page 37, para. 120

<sup>137</sup> This is based on the following calculation: the total number of First Class letters in 2022/23 (c. [£<] million) multiplied by the scale of the miss (11%) and multiplied by an adjustment factor to account for items during the Christmas Exemption Period (11/12).

<sup>138</sup> This is based on the average price differential between First and Second Class letter services (including stamped, metered and PPI mail), and presuming that those individuals that purchased a first class service but did not receive one may have instead purchased a second class service. This is a high-level estimate based on

- 5.23 We acknowledge the evidence provided by Royal Mail explaining that of those First Class items that were not delivered on time, and after accounting for certain events, the 93% threshold was met if items could be delivered within one extra day.<sup>139</sup> This would mean that some failed First Class items were delivered to a higher standard than Second Class items. However, customers purchasing a First Class service are nonetheless entitled to expect a higher quality of service than Second Class and were, accordingly, effectively charged a premium by Royal Mail.
- 5.24 We also note that according to Royal Mail's Submission, and on the basis of its Customer Satisfaction Tracker, while customer confidence in Royal Mail was higher than all other postal providers for the majority of the year, there was a short period where customer confidence levels dropped below another provider for the first time.<sup>140</sup>
- 5.25 While we cannot make the same kind of premium calculation for Second Class mail, we note that harm was also suffered by customers who purchased Second Class mail items that were delivered late. Given our conclusion that Royal Mail missed the Second Class national performance target by 3 percentage points, this equates to around [X] million Second Class letters not having been delivered on time.<sup>141</sup> Had they known of the delay at the time of purchasing the service, some customers may have chosen not to go ahead with their purchase.
- 5.26 We also note that Royal Mail's failure to meet its First and Second Class national performance targets would have had a greater effect on some customers than others and that some customers may have been harmed as a result of knock-on effects of mail arriving later than scheduled.
- 5.27 We have not separately considered the harm from the failure to meet the delivery routes completed target. This is because the low First Class and Second Class national performance is likely to be closely associated with the failure of this target and therefore where each of these targets is failed there is likely to be an overlap in consumer harm. In the circumstances of 2022/23, we consider that any harm associated with the delivery routes completed target can be addressed by taking action in relation to the First Class and Second Class national performance.

## Whether appropriate steps were taken to prevent or mitigate the impact of the contravention and senior management awareness

### Steps taken to prevent the contravention

- 5.28 In this section, we consider the steps Royal Mail took to prevent contravention of its national performance targets for First Class and Second Class mail. We note that it is not possible to retrospectively remedy the contravention in this case; the contravention is

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various assumptions and we accept that many customers may have still opted to pay for a First Class service even if they knew it was going to be delayed (because, for example, it may still have arrived before a Second Class service).

<sup>139</sup> Royal Mail's Submission, page 40, para. 133

<sup>140</sup> Royal Mail's submission, page 41, para. 136

<sup>141</sup> Similar to the First Class measure, this is based on the following calculation: the total number of Second Class letters in 2022/23 (c. [X] million) multiplied by the scale of the miss (3%) and multiplied by an adjustment factor to account for items during the Christmas Exemption Period (11/12).

established at the end of the regulatory reporting period and there is no way for Royal Mail to know which customers were harmed.

- 5.29 Royal Mail's Submission focuses on the steps it took to mitigate the impact of industrial action on QoS. However, we have given an allowance for this event and so the focus of this section is on the steps Royal Mail took to prevent a contravention more broadly in 2022/23 as well as senior management awareness.
- 5.30 Royal Mail's Notice Response indicated that a number of steps were taken during the year with the aim of improving QoS. Some examples are set out below and at paragraph 4.62 above:
- a) Stabilising resourcing in delivery.
  - b) Setting up a Delivery Task Force, with targeted support for the worst performing units.
  - c) Employing a Back to Basics approach, with coaching reviews to restore basic standards in each unit post-Covid.
  - d) Delivering a Joint Statement on Quality with the Communication Workers Union (CWU).<sup>142</sup>
  - e) Setting up a Nerve Centre with a focus on quality including integrating the bottom [3<] delivery offices impacting on the USO targets into the Nerve Centre daily drumbeat.<sup>143</sup>
- 5.31 Nevertheless, even with different measures in place and with QoS often being discussed and considered at the executive level, we note that Royal Mail's First and Second Class QoS results for April to July 2022, before the period of industrial action, remained significantly below target (averaging 84.3% for First Class and 95.8% for Second Class).
- 5.32 Similarly, following industrial action, the Notice Response and Submission indicate that management was "*firmly committed to restoring USO QoS as quickly as possible*".<sup>144</sup> This was to be achieved, for example, through "*clear and defined, measured and maintained standards*" and "*improved disciplines in managing the above with engaged, capable & visible leadership in all Plants, Hubs and Delivery Units*".<sup>145</sup> To support the improvement in quality, in January 2023 it was noted that each region had presented plans to restore quality, with the focus being on upskilling, and with support being provided from the Nerve Centre.<sup>146</sup> However, as in the period before industrial action, we note that QoS results for the final months of the 2022/23 regulatory period for both First and Second Class mail remained below target (averaging 78.9% for First Class mail and 94.5% for Second Class mail).
- 5.33 As evidence of the steps being taken to improve QoS, Royal Mail also pointed to its USO QoS Recovery Strategy and the nine-point action plan which is currently being executed. However, while we note that the actions set out in the strategy are intended to improve QoS, many of those actions are likely to have impacts after the 2022/23 period.
- 5.34 While it is not our role to identify the specific reasons for the failure, we have noted, at paragraphs 4.59 to 4.64, our concern that some issues, identified by Royal Mail, and which

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<sup>142</sup> Actions a) to d) were included in: Royal Mail Notice Response, EB Tickets to Play – April Papers, Meeting 25 April 2022, page 14

<sup>143</sup> Royal Mail's Notice Response, EB Performance – 24<sup>th</sup> October 2022, Meeting 24 October 2022, page 12

<sup>144</sup> Royal Mail's Submission, page 8, para. 32

<sup>145</sup> Royal Mail's Notice Response, EB Tickets to Play 23<sup>rd</sup> January 2023, 23 January 2023, page 6

<sup>146</sup> Royal Mail's Notice Response, EB Tickets to Play 23<sup>rd</sup> January 2023, 23 January 2023, page 6

absence we view as fundamental to meeting the QoS obligations, remained outstanding in 2022/23. These included the need to return delivery offices to pre-Covid practices, with mail being cleared each day, and providing appropriate training and support for COMs who play a key role in decision-making in local offices. We are particularly concerned about these issues in light of the high absence and vacancies in 2022/23 which meant it may have often been necessary to make “on the day” decisions about what to deliver, in circumstances where Royal Mail appears to have insufficient control (especially where there was no agreement with an OPL), visibility, or oversight over this local decision-making.

### Senior management awareness

- 5.35 Royal Mail said that the internal documents provided to Ofcom<sup>147</sup> demonstrated a high level of senior management engagement with QoS.<sup>148</sup> For example, Royal Mail said that senior executives were very involved in developing the USO QoS Recovery strategy.<sup>149</sup> In addition, Royal Mail said that all managers were incentivised to comply with the USO QoS targets, because meeting these targets is built into the [X] and the Short Term Incentive Plan (STIP) management bonuses.<sup>150</sup>
- 5.36 However, we note that Royal Mail’s Notice Response indicates that senior management were aware by the end of April 2022 that the business was unlikely to meet, at least, the First Class QoS target for the 2022/23 period.<sup>151</sup> This suggests that by that time senior management would have been aware that they were unlikely to unlock the element of their management bonus related to QoS. We are unaware of any other incentives senior management may have had in relation to QoS for the remainder of the year.
- 5.37 Our decision, in summary, is that the steps Royal Mail took to prevent or mitigate any impact on its quality of service in 2022/23 were insufficient or ineffective in terms of their scope, timing or implementation to the extent they failed to prevent a significant contravention of Royal Mail’s national First Class and Second Class performance targets.
- 5.38 Royal Mail has not provided a satisfactory explanation for why it missed the targets by such a significant amount, as set out in our findings at paragraph 4.54. Accordingly, this is a serious matter.

### History of contraventions

- 5.39 Since 2012/13, Royal Mail has reported a performance level that fell below:
- a) The First Class national performance target on 7 prior occasions; and
  - b) The Second Class national performance target on 3 prior occasions.<sup>152</sup>
- 5.40 Figure 2 shows Royal Mail’s reported performance against the First Class and Second Class national performance targets since 2012/13.

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<sup>147</sup> Documents provided as part of Royal Mail’s Notice Response.

<sup>148</sup> Royal Mail’s Submission, page 38, para. 127

<sup>149</sup> Royal Mail’s Submission, page 39, para. 130

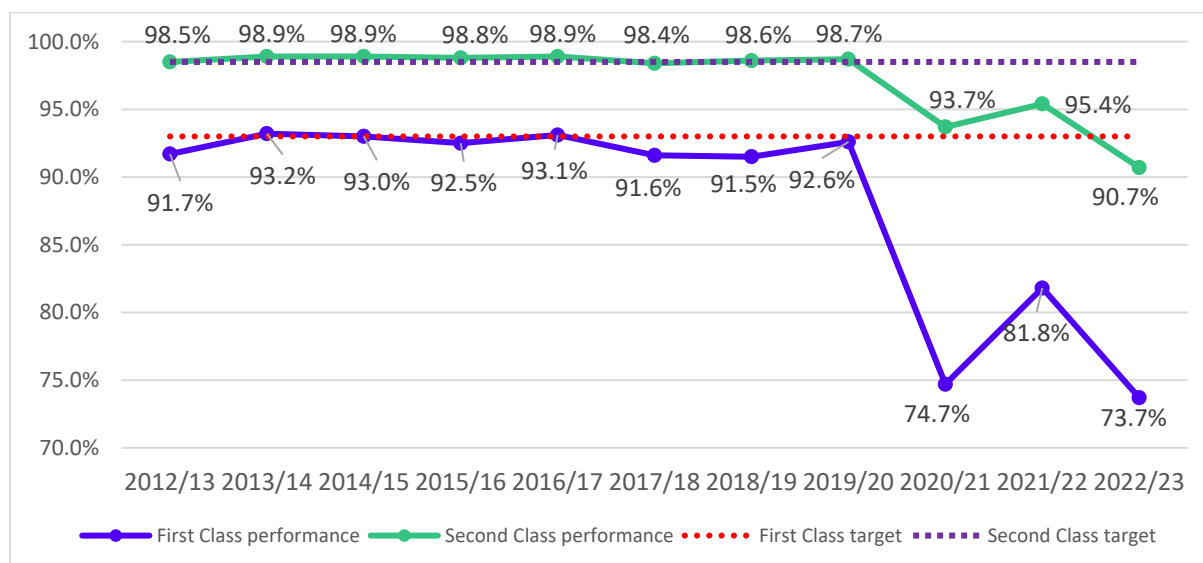
<sup>150</sup> Royal Mail’s Submission page 39, para. 129

<sup>151</sup> See Royal Mail’s Notice Response, EB Performance – April papers, 25 April 2022, page 9

<sup>152</sup> Royal Mail’s reported performance in 2017/18 was below its target, however, after adjusting Royal Mail’s performance to account for mitigating factors and taking into account the confidence interval, we concluded that Royal Mail had achieved the Second Class national target.



**Figure 2: Royal Mail’s First and Second Class reported performance, 2012/13 to 2022/23**



Source: Ofcom, using data from Royal Mail

5.41 In all of the cases where Royal Mail’s reported performance has fallen below the targets, we considered whether enforcement action would be appropriate, as set out below.

- a) 2012/13: We decided that enforcement action would not be a proportionate response on this occasion, with a relevant factor in this decision being the impact on quality of service of Royal Mail’s ongoing modernisation programme.
- b) 2015/16: We issued a contravention decision for failing to meet the First Class national (and Post Code Area (PCA) target) but decided not to impose a financial penalty because the miss was relatively narrow after adjusting Royal Mail’s performance to take into account mitigating circumstances. However, we did warn Royal Mail that a significant financial penalty may be imposed in the future.
- c) 2017/18: We issued a contravention decision for failing to meet the First Class national performance target but imposed no penalty because the miss was relatively narrow and Royal Mail took steps to improve performance. Again, we warned Royal Mail that a future contravention without satisfactory mitigation may result in a significant financial penalty.<sup>153</sup>
- d) 2018/19: We fined Royal Mail £1.5m for failing to meet the First Class national target. It was also found in breach of the PCA target but the financial penalty was not imposed for this. We found that even after adjusting Royal Mail’s performance to take into account the impact of Highways England’s road investment programme, Royal Mail still failed to meet the performance targets by a significant margin.
- e) 2019/20: Royal Mail was on track to meet the First Class national target during March 2020 before the Covid-19 outbreak. Accordingly, in July 2020, we announced that, taking into account the impact of Covid-19 on Royal Mail’s operations, we were satisfied that Royal Mail had met its obligations.
- f) 2020/21: We did not investigate Royal Mail in light of the uniquely difficult circumstances of Covid-19 which had a substantial impact on Royal Mail’s QoS performance.

<sup>153</sup> After adjusting Royal Mail’s performance to account for mitigating factors and taking into account the confidence interval, we decided that Royal Mail had achieved the Second Class national target.

- g) 2021/22: We decided that it would not be appropriate to find Royal Mail in breach of its QoS targets given the continued persistent and unpredictable effects of Covid-19. However, we warned Royal Mail that its QoS performance needed to improve.
- 5.42 In 2022/23, we have seen a deterioration in Royal Mail’s performance against the First and Second Class national targets, with the scale of the failure being considerable. In addition, the mitigating factors put forward by Royal Mail do not account for the full extent of the miss.
- 5.43 We have also taken into account our clear warning to Royal Mail in 2021/22 that its performance needed to improve.

## Deterrence

- 5.44 The primary objective of imposing a financial penalty would be generally to incentivise Royal Mail to comply with its national performance targets in future years, including planning and implementing effective processes to ensure QoS is a focus for the entire organisation. We would expect Royal Mail to have policies in place that support decision makers at all levels to make decisions in line with the organisation’s priorities, including meeting QoS targets.
- 5.45 Royal Mail has made its position clear by stating that a financial penalty in this case would not be appropriate or proportionate.<sup>154</sup> Royal Mail said that it was aware of its regulatory obligations and takes these very seriously and that the contraventions in this case were *“in large part attributable to the hugely challenging and unavoidable industrial relations environment”*.<sup>155</sup> Given the financial loss in 2022/23, Royal Mail says that a further penalty would *“effectively amount to double jeopardy”*.<sup>156</sup>
- 5.46 However, we note that our decision that a contravention has occurred was made after uplifting Royal Mail’s results to account for industrial action. We have also separately taken account of the likely (unquantified) impact of the industrial culture on Royal Mail’s performance as part of our penalty decision. Given those adjustments, we do not agree with Royal Mail’s position, as set out.
- 5.47 In our view, some element of deterrence is necessary because of the harm caused to customers and the need for improvement so that customers can continue to rely on mail services.

## Cooperation

- 5.48 Royal Mail has co-operated fully with Ofcom’s investigation, in addition to providing Ofcom with regular updates on its USO QoS performance throughout 2022/23.
- 5.49 We acknowledge and have taken into account Royal Mail’s helpful and constructive engagement in respect of Ofcom’s ongoing monitoring of QoS and its full cooperation with this investigation.

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<sup>154</sup> Royal Mail’s Submission, page 38, para. 125

<sup>155</sup> Royal Mail’s Submission, page 38, para. 125

<sup>156</sup> Royal Mail’s Submission, page 37, para.121

## Turnover and financial position

- 5.50 The maximum penalty that Ofcom can impose, in accordance with paragraph 7(2) of Schedule 7 to the Act is 10% of Royal Mail's turnover from its postal services business.<sup>157</sup> We do not consider that this statutory limit is engaged in this context.
- 5.51 In making our assessment as to the appropriate and proportionate level of penalty, we have also carefully considered Royal Mail's overall financial position, including its profitability and cash flow position. This is based both on public statements and confidential regulatory financial information.

## Conclusion on penalty

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- 5.52 In the specific circumstances of this case and having considered all of the relevant factors discussed above, we have decided that it is appropriate to impose a penalty on Royal Mail for its failure to meet its national performance target for First and Second Class mail.
- 5.53 As noted above, we are not imposing a separate penalty for the failure to meet the delivery routes completed target because there is likely to be an overlap in consumer harm between the targets and we consider that any harm associated with the delivery routes completed target can be addressed by taking action in relation to the First Class and Second Class national performance.
- 5.54 Having regard to the factors set out above, we have decided that a penalty of £5.6 million is appropriate and proportionate to the contravention. This penalty includes a 30% discount from the penalty Ofcom would otherwise have imposed. The discount reflects Royal Mail's admissions of liability and its agreement to settle which has allowed Ofcom to bring this matter to a close more swiftly. Our view is that this penalty is important to incentivise Royal Mail to improve its QoS performance in order to provide customers with the service they have paid for and that they can rely on.

## Interpretation

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- 5.55 Words or expressions used in this Notification have the same meaning as in the Act except as otherwise stated in this Notification.

**Ian Strawhorne**

**Director of Enforcement**

**13 November 2023**

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<sup>157</sup>The regulatory financial statements set out the turnover for Royal Mail and International Distribution Services PLC (of whom Royal Mail Group Limited is a wholly owned subsidiary). See Royal Mail, [Regulatory Financial Statements for the 52 week period ended 26<sup>th</sup> March 2023](#).

# A1. Excerpts from DUSP Condition 1

- A1.1 DUSP condition 1.6.1(a) requires Royal Mail to provide a 'USO priority service' with a target routing time of one working day for conveying postal packets from the deemed date of collection to the date of delivery (also known as "D+1").
- A1.2 DUSP condition 1.6.1(b) requires Royal Mail to provide a 'USO standard service' with a target routing time of three working days for conveying postal packets from the deemed date of collection to the date of delivery (also known as "D+3").
- A1.3 Royal Mail refers to D+1 and D+3 products as First Class and Second Class products respectively. For ease of reference, we have also adopted these terms in this document.
- A1.4 DUSP condition 1.9.1 requires Royal Mail to meet certain QoS performance standards, including:
- a) a First Class national performance standard, which requires at least 93% of First Class mail to be deemed to have been delivered with an actual routing time of no more than one working day i.e. within one working day of collection;
  - b) a Second Class national performance standard, which requires at least 98.5% of Second Class mail to be deemed to have been delivered with an actual routing time of no more than three working days i.e. within three working days of collection; and
  - c) a delivery route performance target, which requires 99.9% of delivery routes to be completed each day upon which a delivery is required.
- A1.5 DUSP condition 1.9.1 requires Royal Mail to meet these standards in respect of each annual period ending on 31 March, with the exception of the 'Christmas period', which is defined as the period beginning on the first Monday in December and ending on the New Year public holiday in the following January.<sup>158</sup>
- A1.6 DUSP condition 1.9.2 requires Royal Mail to monitor, or to procure the monitoring of, its performance in relation to the specified QoS standards using an appropriate testing methodology. The approach used by Royal Mail to do so is explained below.
- A1.7 Royal Mail has been subject to equivalent regulatory obligations since 2001, including the above mentioned standards.<sup>159</sup> The levels of the standards were initially based on Royal Mail's then internal QoS targets.<sup>160</sup> Royal Mail subsequently agreed to an increase in the standards and by 2005/06 the present levels applied.<sup>161</sup> In establishing a new regulatory framework in 2012 we decided to maintain QoS regulation at these levels. We noted that "[h]istorical performance suggests that all of the targets are achievable."<sup>162</sup>

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<sup>158</sup> In Scotland, the Christmas period extends to the Scottish New Year public holiday.

<sup>159</sup> Condition 4 of [Royal Mail's licence](#) granted on 23 March 2001.

<sup>160</sup> See Postcomm, January 2001, [Licence for Consignia plc – A consultation document and notice](#), page 13, para. 2.12.

<sup>161</sup> See Postcomm, October 2002, [Review of Consignia plc's Price and Service Quality Regulation: Proposal for a Second Price Control](#), page 82, para. 7.5. Royal Mail's licence was amended on 31 March 2003 to reflect the revised standards.

<sup>162</sup> Ofcom, 13 December 2011, [Review of Regulatory Conditions - Postal Regulation](#), page 33, para. 5.43.

## A2. First Class standard

A2.1 Section 5.2 of the First Class standard, entitled “Transit time calculation”, discusses force majeure events. It reads as follows:

### *“5.2.2 Continuity of measurement*

*The measurement system shall be continuous. Posting shall cover all months and weeks of the year and at least all collection days of the week in accordance with the definition of the measurement unit and the transit-time calculation rule. All periods of the year shall be included as well as Christmas, Easter and summer holiday periods.*

*Non-functioning of the postal operator and days of strikes or industrial disputes shall not be discounted. However, in case of “force majeure” events, deduction of corresponding periods may be considered [by the regulatory authority<sup>163</sup>]. Any deduction shall be indicated in the reporting and be subject to audit.*

*[...]*

- For an event to qualify as force majeure, the incident shall fulfil the following minimum requirements. It shall not be caused by the operators involved in the distribution and / or their subcontractors,*
- be unforeseeable and,*
- be unavoidable by them.*

*It shall;*

- be a rare event,*
- have a provable impact on several consecutive days of distribution.*

*Thus in case of, for example, natural disaster or terror attacks it should be allowed to consider the deduction of the corresponding period during which operation is affected in such a way that transit times cannot be guaranteed by “normal” postal operation.”*

A2.2 Section H.3.5, entitled “Force majeure”, covers a number of topics related to force majeure events. Within this section is the following sub-section:

### *“H.3.5.4 Examples of force majeure*

*natural disasters; earthquake, flooding or other extreme weather conditions (which are unlikely in that region or country) causing damage to e.g. goods, infrastructure, people and making the postal operator unable to perform its obligations,*

*war or terrorist activity causing physical damage to e.g. goods, infrastructure, people or creating a psychological distress that results in non-performance,*

*general strike; an external strike outside the operators influence and where all major transportation systems are blocked on a nation-wide level.*

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<sup>163</sup> See European Standard EN 13850:2020, section F.2.2.

*The following events may not qualify as force majeure:*

*strike within the operators influence,*

*periods of the year or days with an unusually large volume of mail and / or parcels,  
independent of the induction point.”*

## **A3. Notifications issued during the investigation**

- A3.1 On 6 November 2023, we issued a Notification under paragraph 2 of schedule 7 to the Act to Royal Mail. This Notification explained that we had reasonable grounds for believing that Royal Mail had contravened DUSP Condition 1.9.1 in the 2022/23 period. Royal Mail also had the option to settle the investigation.
- A3.2 On 7 November 2023, Royal Mail confirmed that it wanted to settle and stated that it understood that by doing so it was waiving its procedural rights to make written representations or have an oral hearing on the substance of the provisional findings. It also confirmed that it would not challenge or appeal against the final decision.