



Ofcom's Postal Common Operational Procedures Consultation: Royal Mail response

3rd April 2017

Public Version

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Question 1: Do you agree with our proposal to retain the PCOP Code of Practice and the PCOP Agreement and the proposed drafting of the revised condition, as set out at Annex 10? Please provide a written response to Ofcom by 3 April 2017 setting out your reasons.

Royal Mail does not agree with Ofcom's proposal to retain the PCOP Code of Practice and the PCOP Agreement

1. Royal Mail first highlighted how **an industry managed framework would 'increase flexibility, promote innovation and improve efficiency'** in April 2013.¹
2. As a result **we welcomed Ofcom's May 2016 proposal** to revoke the current CP 2 (including the removal the Postal Common Operational Procedures (PCOP) code and agreement) and replace it with a more 'principle-based' CP 2.² We shared Ofcom's belief that a *'more streamlined form of regulation may be equally effective and more proportionate'*.³
3. **We believe it is vitally important that the regulatory framework is fit for purpose for the coming years and equally that there is proportionate regulation. The decision to retain the existing PCOP arrangements misses an opportunity to reduce prescriptive regulation, and fails to create a framework that is flexible and responsive to market developments.** After four years of consultation, the limited reforms proposed in March 2017 illustrate that reform is unlikely to come quickly enough if it is needed in future. We would urge Ofcom to reconsider.

An industry code would encourage flexibility and future proof PCOP arrangements

4. Royal Mail has previously provided a number of examples illustrating why **the current one size fits all PCOP obligations are overly prescriptive, inflexible and restrictive**.⁴ For example, despite significant disparity in the amount of PCOP traffic found at different sites, the existing arrangements do not incentivise the development of regional solutions.
5. **We believe the current regulation is too rigid to promote innovation, it has actually reduced the incentive to develop better solutions to repatriate mail and is inflexible to market developments.** For example, Royal Mail is restricted to offering only two repatriation options to carriers, within a specified timeframe. But, some customers do not want or need their mail repatriated immediately, as currently required. A more flexible approach would allow

¹Royal Mail, Response to Ofcom's Review of: Mail Integrity and Postal Common Operational Procedures, 25th April 2013, paragraph 16.

https://www.ofcom.org.uk/data/assets/pdf_file/0026/58850/royal_mail_pcop.pdf

² Ofcom, Review of the Regulation of Royal Mail: Consultation, 25th May 2016, paragraph 7.53.

https://www.ofcom.org.uk/data/assets/pdf_file/0028/78184/review-of-royal-mail-regulation.pdf

³ Ofcom, Review of the Regulation of Royal Mail: Consultation, 25th May 2016, paragraph 7.52.

https://www.ofcom.org.uk/data/assets/pdf_file/0028/78184/review-of-royal-mail-regulation.pdf

⁴ Royal Mail, Response to Ofcom's Review of: Mail Integrity and Postal Common Operational Procedures, 25th April 2013, paragraph 1-4.

https://www.ofcom.org.uk/data/assets/pdf_file/0026/58850/royal_mail_pcop.pdf & Royal Mail, letter to Ofcom, 2nd December 2016, RE: Postal Common Operating Procedures, Code of Practice.

Royal Mail to agree and develop solutions to repatriate mail that fit with an operator's size and requirements.

6. ✂
7. In the Review of Regulation of Royal Mail Statement, Ofcom state that the volume of PCOP mail has reduced by around 95% since Whistl has stopped its letter delivery operations, and that they consider it unlikely that a significant end to end letter delivery operator will enter the UK market. As a result Ofcom believe the benefits of a more flexible PCOP arrangement are likely to be lower than was the case in 2013.⁵
8. **We believe that Ofcom's original May 2016 proposals would future-proof PCOP, allowing the industry to ensure the process continues effectively, however the market develops in future.** After four years of consultation, limited PCOP reform demonstrates the difficulty of getting regulatory change. Should market developments require reform in future, it is unlikely to be delivered quickly enough through current mechanisms.

The revised proposals are disproportionate regulation given the scale of the issue

9. In May 2016 Ofcom stated that "*we consider that the current procedures set out in CP 2 may be unduly prescriptive and burdensome. We therefore consider that a more streamlined form of regulation may be equally effective and more proportionate in addressing our objectives.*"⁶
10. Given the relatively low volumes of PCOP items that currently enter our network, we welcomed Ofcom's May 2016 proposal. **Detailed, prescriptive regulations are unnecessary to repatriate such small volumes of mail.**
11. We note that other postal operators expressed the belief that it was disproportionate to change CP 2, given their belief that it currently works well.
12. **We understand that Ofcom must consider the potential benefits that are likely to come from a more flexible condition, against the cost of implementing new arrangements to Royal Mail and other postal operators.** However we believe Ofcom have reached the wrong decision when concluding that "*given the cost to other operators of renegotiating contracts with Royal Mail and any uncertainty this might create for smaller end-to-end operators, we consider that the benefits that this additional flexibility would bring are likely to be outweighed by the costs to all market participants of moving to a new system.*"⁷
13. **Implementation costs would be a one-off transition cost, while the benefits from a more flexible condition would be realised on an ongoing basis.** Further, although PCOP arrangements may be working well currently, we have already highlighted their limitations when market conditions change.⁸ **Failing to pursue reform now is short-sighted. If reform**

⁵ Ofcom, Review of the Regulation of Royal Mail: Statement, 1st March 2017, paragraph 6.44.

https://www.ofcom.org.uk/data/assets/pdf_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf

⁶ Ofcom, Review of the Regulation of Royal Mail: Consultation, 25th May 2016, paragraph 7.52.

https://www.ofcom.org.uk/data/assets/pdf_file/0028/78184/review-of-royal-mail-regulation.pdf

⁷ Ofcom, Review of the Regulation of Royal Mail: Statement, 1st March 2017, paragraph 6.45.

https://www.ofcom.org.uk/data/assets/pdf_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf

⁸ Royal Mail, Response to Ofcom's Review of: Mail Integrity and Postal Common Operational Procedures, 25th April 2013. https://www.ofcom.org.uk/data/assets/pdf_file/0026/58850/royal_mail_pcop.pdf

is needed in future, implementation costs will be delayed, not avoided. Further, it is reasonable to assume that implementation costs during a time of market stress are likely to be larger than those incurred now.

14. We believe it is vitally important that the regulatory framework is fit for purpose and that there is proportionate regulation. We believed that Ofcom's May 2016 proposals were broadly positive for the industry and consistent with their regulatory principles of always seeking the least intrusive regulatory mechanism to achieve their policy objectives.⁹ **Ofcom's decision to retain existing PCOP arrangements misses an opportunity to reduce prescriptive regulation and future-proof PCOP.**

If Ofcom proceeds with its March 2017 proposals it must consider the following

15. We welcome the proposal to remove the requirement on operators to submit annual reports, although we believe the requirement to keep records for three years could also be reduced.
16. We note that under CP 2.1.2 (y) "working day" is defined as '*any day which is not a Saturday, a Sunday or a public holiday.*' This is inconsistent with the definition used in Designated USP Condition 1 and the USP Access Condition. We suggest you align the CP 2 definition with that used in DUSP 1 and the Access condition.
17. We also wished to clarify if definition CP 2.1.2 (v) vi. is drafted as intended. "Out of the United Kingdom" appears to repeat the previous "outside of the United Kingdom" and so it not needed.
18. We note that the current proposal removes the requirement that postal operators must take all reasonable steps to ensure they have 'sufficient personnel properly trained in order to handle complaints or other enquiries'. Royal Mail believe that all industry participants should have the requirement to perform to the same standards as the regulatory regime requires of Royal Mail.
19. We also note that under Ofcom's latest proposal the requirement for the costs of the postal operator who acts as the Secretary to the PCOP Agreement to be reimbursed by Ofcom will be removed (CP 2.2.4). As Royal Mail currently acts as the Secretary to the PCOP Agreement we disagree with this proposal. We have recently highlighted to Ofcom a number of cases where Royal Mail alone incurs costs which should be recovered from all industry participants. This is another example. The Secretary's ability to recover costs incurred when fulfilling functions on behalf of the whole industry should be retained. Alternatively the role of Secretary could rotate between postal operators, this would share the financial burden more fairly between postal operators.
20. In response to the May 2016 proposal, Royal Mail suggested that operators should be required to display a clearly identifiable logo, or similar on their letters. We note that under Ofcom's revised proposal they intend to retain the current requirements in relation to code identifiers. We would encourage Ofcom to consider if they could aid Royal Mail in ensuring that relevant postal operators who have entered the market sign up to the agreement and display a clearly identifiable logo, or similar on their letters.

⁹ <https://www.ofcom.org.uk/about-ofcom/what-is-ofcom>

21. We note that Ofcom's proposed changes will exempt access mail from CP 2, as Ofcom believe *'contractual arrangements between access operators and Royal Mail already provide for the repatriation of such mail.'*¹⁰ Royal Mail seeks clarification from Ofcom on their expectations for the treatment of mis-directed access mail under the new PCOP proposals. In the interests of transparency and certainty, Royal Mail would suggest the condition is left as originally drafted, and for us to continue to apply it consistently across the whole sector as is our current practice.

¹⁰ Ofcom, Review of the Regulation of Royal Mail: Statement, 1st March 2017, paragraph 6.48.
https://www.ofcom.org.uk/_data/assets/pdf_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf