



Modification to Consumer Protection Condition 1

Collection of qualifying consumer expenses of the
Consumer Advocacy Bodies

Statement

Publication date: 4 December 2015

About this document

This document modifies Consumer Protection Condition 1 (CP1) to rectify an error in the drafting of the condition with regard to the calculation of the contributions of postal operators to the qualifying consumer expenses of the Consumer Advocacy Bodies (“CABs”). It follows a consultation published on 29 October 2015.

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Section 1

Amendment to CP1 regarding collection of qualifying consumer expenses

Background

- 1.1 Under section 51 of the Postal Services Act 2011 (“PSA 2011”), Ofcom may set regulatory conditions which require postal operators to make payments relating to the expenses of specified consumer bodies in relation to postal services activities. Ofcom imposed a Consumer Protection Condition 1 (“CP1”) under that section on 27 March 2012.¹
- 1.2 On 28 March 2013, following the transfer of responsibilities for the consumer advice service from the Office of Fair Trading (OFT) to Citizens Advice and Citizens Advice Scotland, Ofcom amended CP1 to allow us to collect payments from regulated postal operators relating to the expenses of Citizens Advice and Citizens Advice Scotland.² On 1 April 2014, Ofcom revoked and replaced CP1 to reflect the abolition of the National Consumer Council and the transfer of its functions regarding consumer advocacy with regard to postal services to Citizens Advice, Citizens Advice Scotland and the General Consumer Council for Northern Ireland, collectively referred to as the Consumer Advocacy Bodies (the “CABs”). At this time we also modified the methodology for calculating the recovery from industry of the expenses of the consumer advocacy bodies.³
- 1.3 Section 51(4) of PSA2011 states that the “qualifying consumer expenses” are “such proportion of the expenses of Citizens Advice, Citizens Advice Scotland and GCCNI as the Secretary of State considers reasonable”. Two types of qualifying consumer expenses are identified in the Postal Services Act 2011 (PSA 2011) and CP1:
 - The qualifying consumer expenses of the CABs and the Secretary of State, likely to be incurred during the relevant year in respect of functions other than the CABs’ function of providing a public consumer advice scheme. These expenses are dealt with under CP1.2.1 to CP1.2.3, CP1.2.7 and CP1.2.9.
 - The qualifying consumer expenses of Citizens Advice and Citizens Advice Scotland in respect of their function of providing a public consumer advice scheme. These expenses are dealt with under CP1.2.4 to CP1.2.6, CP1.2.8 and CP1.2.9.

Ofcom’s proposal

- 1.4 With regard to the CAB expenses, CP1.2.1 applies a qualifying threshold, i.e. only regulated postal operators with turnover from regulated postal services in excess of £10 million are required to contribute to the CAB expenses (which are defined in CP1.2.2). This threshold was carried over from the Postcomm licensing regime.

¹ Available at: <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/annex8.pdf>

² Available at: <http://stakeholders.ofcom.org.uk/binaries/consultations/cpc1/statement/statement.pdf>

³ Available at <http://stakeholders.ofcom.org.uk/consultations/amendments-dusp-cp/statement/>

CP1.2.4 sets out how the CAB expenses should be shared between the regulated postal operators with relevant turnover exceeding £10 million.

- 1.5 It was drawn to our attention that there is an error in the drafting of the condition. CP1.2.3 defines the denominator in the calculation as all regulated postal services turnover from all regulated postal operators. Given that at least some regulated postal operators are excluded by the CP1.2.1 threshold, the calculation in CP1.2.3 would inevitably lead to an under-recovery of the qualifying consumer expenses.
- 1.6 This was clearly not Ofcom's intent in drafting CP1. As is clear from the PSA 2011 and Ofcom's various consultations and statements relating to this issue, CP1 is intended to recover the total sum of the qualifying consumer expenses of the consumer bodies. Therefore, on 29 October 2015 ("the October consultation") Ofcom consulted to correct this error in the drafting of CP1.2.3. We proposed to add, after the words "regulated postal operators", the phrase "to which this condition applies that generated relevant turnover in excess of £10 million in the assessment year" to CP1.2.3.

Responses to the consultation

- 1.7 We received two responses to the October consultation.
- 1.8 The BBC Licence Fee Unit agreed with Ofcom's proposed modification to ensure consumer protection bodies receive the correct funding. It noted that the change would have a minimal impact on postal operators and is fair, proportionate and transparent.
- 1.9 Royal Mail did not have any comments on the proposed modification to CP 1 and welcomed the fact that Ofcom is revising the drafting to correct an error.
- 1.10 However, Royal Mail expressed concerns about the general approach to charging for the qualifying consumer expenses and Ofcom's administrative fees. Royal Mail observed that Ofcom and the CABs undertake work on consumer experiences of postal services that involve all postal operators regardless of their size or the nature of what they do. It also noted that the definition of "Regulated Postal Service" and "Regulated Postal Operator" were outdated and related to Postcomm's licensing regime. Royal Mail considers that:
- the turnover threshold of £10 million inherited from Postcomm is too high, and should be lowered;
 - the basis for the charging calculation should be broadened to include other non-letters turnover; and
 - access services should also be brought into the charging calculation.

Ofcom's decision

- 1.11 Having taken into account the responses we have decided to modify CP 1 as set out in the October consultation.
- 1.12 We consider that this decision is:
- objectively justifiable;

- not unduly discriminatory;
- proportionate; and
- transparent.

1.13 Royal Mail's comments with regard to the general approach to the recovery of expenses raise issues which are too broad to consider within the scope of the current consultation and decision. We consider it appropriate to rectify the drafting error without delay. However, we are planning to review and update the definition of Regulated Postal Operator in the current review of the regulation of Royal Mail.

Impact assessment

1.14 The modification does not alter the intent of the charging regime or how it has been implemented since 2012. It only corrects a drafting error in the condition. We therefore do not consider the modification is likely to have a significant impact on businesses or consumers, or any particular impact on any groups with protected characteristics.

Annex 1

Statutory notification: modification of Consumer Protection Condition 1

NOTIFICATION OF MODIFICATION OF REGULATORY CONDITIONS IN ACCORDANCE WITH SECTION 51 OF, AND PARAGRAPH 3 OF SCHEDULE 6 TO, THE POSTAL SERVICES ACT 2011

BACKGROUND

- A. On 1 April 2014, following a consultation, Ofcom published a statement entitled '*Amendments to regulatory conditions DUSP 1.8 and CP 1 and minor amendments to other regulatory conditions*⁴ setting out various decisions, including the imposition of Consumer Protection Condition 1 ("CP 1").
- B. On 29 October 2015, OFCOM published a notification in accordance with section 51 of, and paragraph 3 of Schedule 6 to, the Postal Services Act 2011 (the "**Act**") setting out their proposals to modify Consumer Protection Condition 1 to make provision for matters set out in that section 51 to be in force from the day after the day on which the Order is made (the "**First Notification**").
- D. A copy of the First Notification was sent to the Secretary of State in accordance with Schedule 6 paragraph 5(1)(a) of the Act.
- E. In the First Notification (and the accompanying consultation document), OFCOM invited representations about any of the proposals set out therein by 30 November 2015.

DECISION

1. In accordance with section 51 of, and paragraph 3 of Schedule 6 to, the Act and pursuant to powers in section 51 of the Act, OFCOM hereby modifies consumer protection condition 1 to make provision for matters set out in that section 51, to be in force from the date of this Notification.
2. The modification to consumer protection condition 1 is the addition of the text highlighted in yellow in the Schedule hereto. For the avoidance of doubt, the highlighting itself is not a part of the modification.
3. The effect of, and Ofcom's reasons for making, this decision are set out in the accompanying statement.

OFCOM'S DUTIES AND LEGAL TESTS

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

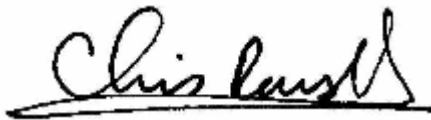
⁴ <http://stakeholders.ofcom.org.uk/binaries/consultations/amendments-dusp-cp/statement/Statement.pdf>

5. In making this decision, Ofcom has considered and acted in accordance with its principal duty in section 29 of the Act and its general duties in section 3 of the Communications Act 2003.

INTERPRETATION

6. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Act.
7. For the purpose of interpreting this Notification—
 - (a) headings and titles shall be disregarded;
 - (b) expressions cognate with those referred to in this Notification shall be construed accordingly;
 - (c) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.
8. The Schedule to this Notification shall form part of this Notification.

Signed by **Chris Rowsell**

A handwritten signature in black ink, appearing to read 'Chris Rowsell', written over a horizontal line.

Competition Policy Director

A person duly authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

4 December 2015

Schedule 1 to Annex 1

Modification of Consumer Protection Condition 1

CONSUMER PROTECTION CONDITION 1

PAYMENTS RELATING TO QUALIFYING CONSUMER EXPENSES

1.1. Application, Definitions and Interpretation

CP 1.1.1	This consumer protection condition (“ CP Condition ”) shall apply to <u>regulated postal operators</u> .
CP 1.1.2	<p>In this CP Condition—</p> <p>(a) “Act” means the Postal Services Act 2011 (c.5);</p> <p>(b) “appointed day” means 1 October 2011;</p> <p>(c) “assessment year” means the <u>relevant year</u> minus two years, beginning on 1 April;</p> <p>(d) “calls relating to a regulated postal operator” means calls to <u>Citizens Advice</u> or <u>Citizens Advice Scotland</u> recorded by <u>Citizens Advice</u> or <u>Citizens Advice Scotland</u> as relating to a specific <u>regulated postal operator</u> save that where a call is recorded by <u>Citizens Advice</u> or <u>Citizens Advice Scotland</u> as relating to more than one specific <u>regulated postal operator</u> <u>OFCOM</u> will consider the call as relating to no <u>regulated postal operator</u>;</p> <p>(e) “consumer advocacy bodies” means <u>Citizens Advice</u>, <u>Citizens Advice Scotland</u>, and the General Consumer Council for Northern Ireland;</p> <p>(f) “public holiday” means a Christmas Day, Good Friday and a day which is a bank holiday under the Banking and Financial Dealings Act 1971;</p> <p>(g) “relevant year” means any year beginning on 1 April;</p> <p>(h) “relevant turnover” means turnover from <u>regulated postal services</u>;</p> <p>(i) “regulated postal operator” means a <u>postal operator</u> which provides services in relation to which, had those services been carried out prior to the <u>appointed day</u>, it would have been required to hold a licence under the Postal Services Act 2000;</p> <p>(j) “regulated postal service” means a <u>postal service</u> the provision of which, had it been carried out prior to the <u>Appointed Day</u>, would have required the provider to hold a licence under the Postal Services Act</p>

	2000.
CP 1.1.3	<p>For the purpose of interpreting this CP Condition—</p> <p>(a) except in so far as the context otherwise requires, any word or expression shall have the same meaning as it has been ascribed for the purpose of Part 3 of the Act⁵;</p> <p>(b) headings and titles shall be disregarded;</p> <p>(c) expressions cognate with those referred to in this CP Condition shall be construed accordingly;</p> <p>(d) the Interpretation Act 1978 (c. 30) shall apply as if this CP Condition were an Act of Parliament;</p> <p>(e) references to a day are references to a period of twenty-four hours beginning with one midnight and ending with the next, which period shall be treated to include a Saturday, a Sunday and public holidays</p>

1.2. Payments relating to qualifying consumer expenses

CP 1.2.1	A <u>regulated postal operator</u> that generated <u>relevant turnover</u> exceeding £10 million in the <u>assessment year</u> , shall pay to <u>OFCOM</u> in any <u>relevant year</u> such proportion as <u>OFCOM</u> may specify of the expenses described in CP 1.2.2.
CP 1.2.2	The expenses are the <u>qualifying consumer expenses</u> of the <u>consumer advocacy bodies and the Secretary of State</u> , likely to be incurred during the <u>relevant year</u> in respect of functions other than the consumer advocacy bodies' function of providing a <u>public consumer advice scheme</u> .
CP 1.2.3	The proportion will be calculated by multiplying the sum of the total expenses in <u>CP 1.2.2</u> by that <u>regulated postal operator's</u> share of <u>relevant turnover</u> expressed as a percentage of the total <u>relevant turnover</u> generated by all <u>regulated postal operators to which this condition applies that generated relevant turnover in excess of £10 million in the assessment year</u> .

⁵ A table for information identifying such defined terms is provided at the end of this condition. This table is intended only as a guide and does not form a part of this condition. We make no representations as to its accuracy or completeness.

CP 1.2.4	A <u>regulated postal operator</u> shall pay to <u>OFCOM</u> in any <u>relevant year</u> such proportion as <u>OFCOM</u> may specify of the <u>qualifying consumer expenses</u> of <u>Citizens Advice</u> and <u>Citizens Advice Scotland</u> in respect of their function of providing a <u>public consumer advice scheme</u> .
CP 1.2.5	<p><u>OFCOM</u> shall require payments to be made by a <u>regulated postal operator</u> under CP 1.2.4 where the following calculation gives an amount greater than £100:</p> <ul style="list-style-type: none"> (a) take the total <u>qualifying consumer expenses</u> of <u>Citizens Advice</u> and <u>Citizens Advice Scotland</u> in respect of their function of providing a <u>public consumer advice scheme</u> in the <u>relevant year</u>, (b) multiply it by that <u>regulated postal operator's</u> share of <u>calls relating to regulated postal operators</u> expressed as a percentage of the total <u>calls relating to regulated postal operators</u>.
CP 1.2.6	The proportion to be paid by a <u>regulated postal operator</u> falling within CP1.2.5 will be calculated by multiplying the total <u>qualifying consumer expenses</u> of <u>Citizens Advice</u> and <u>Citizens Advice Scotland</u> in respect of their function of providing a <u>public consumer advice scheme</u> in the <u>relevant year</u> by that <u>regulated postal operator's</u> share of <u>calls relating to regulated postal operators</u> falling within CP1.2.5 expressed as a percentage of the total <u>calls relating to regulated postal operators</u> falling within CP1.2.5.
CP 1.2.7	The amounts payable under CP 1.2.1 in a <u>relevant year</u> shall include the amount of the difference, if any, between the costs actually incurred during the previous <u>relevant year</u> and the estimate of the costs in question upon which charges in the previous <u>relevant year</u> were based, where the latter exceeds the former the amount of the difference being treated as a negative amount.

CP.1.2.8	The amounts payable under CP 1.2.4 in a <u>relevant year</u> shall include the amount of the difference, if any, between the amounts charged to the <u>regulated postal operator</u> in the previous <u>relevant year</u> , based on estimates; and the amounts which would have been charged had the calculation been based on actual numbers of <u>calls relating to that and other regulated postal operators</u> and actual <u>qualifying consumer expenses of Citizens Advice and Citizens Advice Scotland</u> in respect of their function of providing a <u>public consumer advice scheme</u> . Where the latter exceeds the former the amount of the difference shall be treated as a negative amount.
CP 1.2.9	The amount due under either or both of CP 1.2.1 and CP 1.2.4 shall be payable on 30 June in the <u>relevant year</u> or, if later, on the expiry of one month from the day on which <u>OFCOM</u> serve notice on the <u>regulated postal operator</u> of such amount.

Table of terms defined in the Act

This table is provided for information and does not form a part of this condition. We make no representations as to its accuracy or completeness. Please refer to the Act.

Defined term	Section
<i>Citizens Advice</i>	65(1)
<i>Citizens Advice Scotland</i>	65(1)
<i>Letter</i>	65(1)
<i>OFCOM</i>	90
<i>postal operator</i>	27(3)
<i>postal packet</i>	27(2)
<i>qualifying consumer expenses</i>	51(4)
<i>universal service provider</i>	65(1) and Schedule 9 paragraph 3(3)