



Amendments to regulatory conditions DUSP 1.8 and CP 1 and minor amendments to other regulatory conditions

Proposed amendments to post box reporting and relevant turnover for the calculation of qualifying consumer expenses

Consultation

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Section 1

Introduction

- 1.1 In October 2011, the Postal Services Act 2011 (“the Act”) came into force and Ofcom gained the responsibility and powers to regulate postal services. Under the Act, Ofcom has powers to impose regulatory conditions¹ on operators providing postal services, including those which secure the provision of the universal service.
- 1.2 This consultation proposes to make the following minor amendments to those regulatory conditions:
- Amend Designated Universal Service Provider (“DUSP”) condition 1.8 to require Royal Mail to report annually to Ofcom in relation to its provision of post boxes, and to remove the reference to “805 metres” in DUSP 1.8.2(a) and 1.8.2(b);
 - Remove all references to the National Consumer Council in the regulatory conditions and replace it with a reference to ‘Consumer Advocacy Bodies’ i.e. Citizens Advice, Citizens Advice Scotland or General Consumer Council for Northern Ireland, and amend DUSP condition 1.10.6(b)(i) to replace the word “collection” with “delivery”; and
 - Amend Consumer Protection condition 1 (“CP 1”) to improve the methodology for calculating the recovery from industry of the expenses of the consumer advocacy bodies.

Next steps

- 1.3 We invite views on all the proposals made in this consultation document by **5pm on 3 March 2014**. Following consideration of responses, we will issue a statement setting out our decisions.

Outline of this document

- 1.4 The remainder of this document is structured as follows:
- Section 2 – sets out the legal framework;
 - Section 3 – outlines the proposed amendments to DUSP 1.8 to require annual reporting by Royal Mail in relation to the provision of post boxes;
 - Section 4 – explains minor amendments made to various regulatory conditions currently referring to the National Consumer Council; and to DUSP 1.10 to correct an obvious error;
 - Section 5 – explains how the amount payable by RPOs for the cost of qualifying consumer expenses is currently calculated and proposes to

¹ A full list of regulatory conditions can be found here: <http://stakeholders.ofcom.org.uk/post/conditions/>

amend CP 1 so that costs are calculated based on the last but one 12 month period;

- Annexes 1-4 – outline Ofcom's consultation principles and how you can respond to this consultation; and
- Annexes 5-9 – include the statutory notifications for the proposed changes to DUSP 1, CP 1, CP 2, CP 3 and Essential condition 1.

Section 2

Legal framework

Introduction

- 2.1 Under the Act Ofcom has regulatory responsibility for postal services.²
- 2.2 This section summarises the key features of the regulatory framework relevant to the matters considered in this consultation document.

Duty to secure provision of a universal postal service

- 2.3 Section 29(1) of the Act provides that Ofcom must carry out its functions in relation to postal services in a way that it considers will secure the provision of a universal postal service. Section 29(2) of the Act provides that Ofcom's power to impose regulatory conditions is subject to the duty imposed by section 29(1) of the Act.

General duties

- 2.4 Section 3 of the Communications Act 2003 (the "2003 Act") provides that it shall be our principal duty, in carrying out our functions,
- to further the interests of citizens in relation to communications matters, and
 - to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 2.5 This principal duty applies also to functions carried out by us in relation to postal services.³ Section 3(6A) of the 2003 Act provides that the duty in section 29(1) of the Act (to secure the provision of a universal service) takes priority over our general duties in the 2003 Act in the case of conflict between the two where we are carrying out our functions in relation to postal services.
- 2.6 Pursuant to section 3(3) of the 2003 Act, in performing our general duties, we must have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles appearing to us to represent the best regulatory practice.

² The expression 'postal services' is defined in section 27(1) as meaning the service of conveying postal packets from one place to another by post, the incidental services of receiving, collecting, sorting and delivering postal packets, and any other service which relates to, and is provided in conjunction with, any of those services. 'Postal packets' is defined in section 27(2) as meaning a letter, parcel, packet or other article transmissible by post.

³ Section 1(1) refers to such functions as may be conferred on Ofcom by or under any enactment. The reference to 'communications matters' in section 3(1) also refers generally to matters in relation to which we have functions, and similarly the reference to 'relevant markets' means markets for any of the services, facilities, apparatus or directories in relation to which we have functions: section 3(14) of the 2003 Act.

- 2.7 In this regard, we note Ofcom's general regulatory principles⁴ including in particular the following in the present context:
- ensuring that our interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome;
 - seeking the least intrusive regulatory mechanisms to achieve our policy objectives; and
 - consulting widely with all relevant stakeholders and assessing the impact of regulatory action before imposing regulation upon a market.
- 2.8 Finally, we have an ongoing duty under section 6 of the 2003 Act to keep the carrying out of our functions under review with a view to ensuring that regulation by Ofcom does not involve the imposition of burdens which are unnecessary or the maintenance of burdens which have become unnecessary.

The duty to secure the provision of sufficient access points

- 2.9 Section 29(6) of the Act provides that Ofcom's duty under section 29(1) includes a duty to carry out its functions in relation to postal services in a way that Ofcom considers will secure the provision of sufficient access points to meet the reasonable needs of users of the universal postal service.
- 2.10 The term 'access point' is defined at section 29(11) of the Act as meaning any box, receptacle or other facility provided for the purpose of receiving postal packets, or any class of postal packets, for onwards transmission by post.
- 2.11 Ofcom has imposed a regulatory condition, (Designated USP Condition 1.8), on Royal Mail to provide or procure the provision of access points for the purposes of providing universal postal services.⁵

Other conditions relevant to this consultation

- 2.12 On 5 December 2013, the Government laid a statutory instrument before Parliament the effect of which would be to transfer the consumer advocacy functions of the National Consumer Council (commonly referred to as Consumer Focus), to the Citizens Advice Bureaux, Citizens Advice Scotland and the General Consumer Council for Northern Ireland. If made, the relevant changes will be implemented on 1 April 2014.
- 2.13 Under s.51 of the Act, Ofcom has a power to require postal operators to make payments relating to the expenses of certain consumer bodies with functions in relation to postal services, including the National Consumer Council. Ofcom has used that power to impose CP 1.
- 2.14 Various other regulatory conditions made by Ofcom contain references to the National Consumer Council, and will therefore also need amending.

⁴ See our website: <http://www.ofcom.org.uk/about/what-is-ofcom/statutory-duties-and-regulatory-principles/>

⁵ <http://stakeholders.ofcom.org.uk/consultations/provision-post-boxes/statement/>

Regulatory tests for imposing or modifying regulatory conditions

General test for imposing or modifying regulatory conditions

- 2.15 Schedule 6 to the Act provides that we may impose or modify a regulatory condition only if we are satisfied that the condition or modification:
- is objectively justifiable;
 - does not discriminate unduly against particular persons or a particular description of persons;
 - is proportionate to what it is intended to achieve; and
 - is transparent in relation to what it is intended to achieve.

Impact assessments

- 2.16 Under section 7 of the Communications Act 2003, we are required to publish an impact assessment where a proposal in connection with the carrying out of our functions is “important”. A proposal is “important” if its implementation is likely to involve a major change in the activities carried on by Ofcom or have a significant impact on persons carrying on business in the markets we regulate, or the general public. As a matter of policy Ofcom is committed to carrying out impact assessments in relation to the great majority of its policy decisions.⁶
- 2.17 In carrying out our functions, we are also under a general duty under the Equality Act 2010 to have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation;
 - advance equality of opportunity between different groups; and
 - foster good relations between different groups,
 - in relation to the following protected characteristics: age; disability; gender re-assignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.
- 2.18 We have therefore considered what (if any) impact the proposals made in this consultation document could have on equality. We do not consider the practical impact of these proposals to affect any group within society in particular, including any having protected characteristics under the Equality Act 2010 or section 75 of the Northern Ireland Act 1998. We have therefore not carried out separate Equality Impact Assessments (“EIAs”) in relation to race or gender equality, or equality schemes under the Northern Ireland and Disability Equality Schemes.

⁶ For further information about Ofcom’s approach to impact assessments, see our guidelines, *Better policy-making: Ofcom’s approach to impact assessment*, http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better_Policy_Making.pdf

Section 3

Proposed changes to DUSP 1.8

Background

- 3.1 Under DUSP condition 1.8.1, Royal Mail is required to provide sufficient access points to meet the reasonable needs of users of the universal postal service.⁷
- 3.2 On 13 June 2013, Ofcom issued a decision modifying DUSP 1.8 so that:
 - Under DUSP 1.8.2(a) – there should be a post box within 0.5 miles by straight line distance of at least 98% of delivery points nationally (“the 98% criterion”); and
 - Under DUSP 1.8.2 (b) – for the remaining 2% of delivery points, Royal Mail must provide sufficient access points or other means of access to the universal service (e.g. collection on delivery from very remote or isolated locations such as farmhouses) to meet the reasonable needs of users.
- 3.3 Royal Mail is considered to have met its general obligation in DUSP 1.8.1 in relation to post boxes if it meets the new access point criteria set out in DUSP 1.8.2(a) and 1.8.2(b).
- 3.4 In our decision document we noted that although we had not identified any issues with the current provision of post boxes, we would monitor Royal Mail’s compliance with the new obligations, its ongoing provision of post boxes and related customer complaints data.
- 3.5 Following consultation in autumn 2013, on 18 December 2013 Ofcom published its decision to amend DUSP 1.8 further in order to clarify when an access point counts towards the access point density calculation.⁸
- 3.6 The purpose of this consultation is to modify DUSP 1.8 by putting in place a monitoring obligation which requires Royal Mail to report annually to Ofcom in relation to its provision of post boxes.
- 3.7 We are also proposing to amend DUSP 1.8.2(a) and 1.8.2(b), by removing the reference to “805 metres”. We consider it is unnecessary and potentially confusing to refer to distance criterion using both the metric and imperial systems. Therefore, we propose to refer solely to 0.5 miles in DUSP 1.8.2(a) and 1.8.2(b).

⁷ “Access points” are any box or other facility provided for the purpose of accepting postal items into Royal Mail’s network. In practice, this means post boxes and post offices although for the purpose of this exercise we are only considering post boxes.

⁸ Ofcom, *Direction relating to exceptions to the postal collections Universal Service Obligation and minor amendment to Designated Universal Service Provider Condition 1*, <http://stakeholders.ofcom.org.uk/consultations/post-collection-uso/statement>

Proposed monitoring requirement

3.8 We are proposing to require Royal Mail to report annually to Ofcom in relation to its provision of post boxes in relation to DUSP 1.8.2(a) and 1.8.2(b). We propose that this report should include:

- the percentage of delivery points across the UK with a post box within 0.5 miles by straight line distance of their premises, including details of any system used and steps taken to produce this calculation by Royal Mail;
- the total number of post boxes UK-wide and per nation, including a comparison with the previous year where relevant; and
- the number of customer complaints received by Royal Mail that year in relation to the provision / location of post boxes.⁹

3.9 This information will enable Ofcom to monitor Royal Mail's compliance with the 98% criterion as well as its obligation to provide, or procure the provision of, access to the universal service in a manner which sufficiently meets the reasonable needs of users (up to 2%) whose premises are not within 0.5 miles of a post box or other access point. For example, it will tell us about reductions, including in areas where we would expect lower density such as Northern Ireland, and may therefore alert us to potentially adverse impacts on the 2% of premises not within 0.5 miles of a post box. Similarly, marked increases in complaints may raise concerns that Royal Mail is not meeting the reasonable needs of users.

Regulatory tests to make the modification and impact assessment

3.10 We believe that imposing a condition requiring Royal Mail to report annually to Ofcom in relation to the provision of its post boxes is:

- **objectively justifiable** because the annual report produced by Royal Mail will enable Ofcom to monitor both Royal Mail's compliance with the 98% criterion and its obligation to provide, or procure provision of, access to the universal service in a manner which sufficiently meets the reasonable needs of users at delivery points not within 0.5 miles of a post box (up to 2%).
- **not unduly discriminatory** because the modification necessarily applies to the universal service provider, and there is only one such universal service provider (Royal Mail) in the UK. In addition, the proposed new DUSP condition will ensure that Ofcom is able to monitor the provision of post boxes in remote areas, affording increased regulatory protection to all users and not just those living within 0.5 miles, by straight line distance, of a post box.
- **proportionate** because Royal Mail already has monitoring systems and processes in place which generate the data required for inclusion in the report. Additionally, the report is only required to be produced on an annual basis.

⁹ This should not include complaints in relation to collection times.

- **transparent** because it is clear what the new condition requires Royal Mail to do in relation to reporting on the provision of post boxes across the UK and the proposed changes to DUSP are clearly set out in this consultation
- 3.11 Our proposed amendments should have no significant impact on Royal Mail since it can already generate the data required that will be included in the report.¹⁰
- 3.12 On the other hand, the monitoring requirement that is being proposed in this consultation ensures that Ofcom can monitor Royal Mail's compliance with DUSP 1.8 effectively.

Question 1: *Do you agree with the proposed modifications to DUSP 1.8? If not, please explain your reasoning.*

¹⁰ In advance of and during the consultation period for a proposed modification to the regulatory obligations on Royal Mail for the provision of post boxes, Royal Mail was able to provide relevant data to Ofcom, including the number of post boxes nationwide and per nation.

Section 4

Removal of references to the National Consumer Council

Our Proposals

Removal of References to the National Consumer Council

- 4.1 The Postal Services Act 2000 established both the Postal Services Commission (Postcomm) and the Consumer Council for Postal Services (Postwatch). As a result of the Consumer, Estate Agents and Redress Act 2007 the consumer advocacy functions of Postwatch were transferred to the National Consumer Council (“the Council”). As a result there are various regulatory conditions that include references to the Council, e.g. CP 1 relates to the recovery of the consumer advocacy costs of the Council and DUSP 1 requires Royal Mail to provide the Council with information on the composition and performance of the universal postal service.
- 4.2 On 5 December 2013, a draft statutory instrument under the Public Bodies Act 2011, the Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014 (the ‘Order’) was laid before Parliament. The Order abolishes the Council and amends section 51 of the Act. References to the Council are replaced with references to the consumer advocacy bodies; they are Citizens Advice, Citizens Advice Scotland or the General Consumer Council for Northern Ireland (“GCCNI”).¹¹
- 4.3 Assuming the Public Bodies Order 2014 comes into force as planned, the change to the Act will have effect from 1 April 2014.
- 4.4 This consultation therefore proposes to amend all relevant post regulatory conditions to remove references to the Council and replace them with “Consumer Advocacy Bodies”, meaning Citizens Advice, Citizens Advice Scotland or the General Consumer Council for Northern Ireland (GCCNI). This affects DUSP 1, CP 1, CP 2, CP 3 and Essential condition 1.

Minor amendment to DUSP 1.10.6

- 4.5 We also propose to correct an obvious error in DUSP 1.10.6(b)(i), which involves replacing the word “collection” with “delivery”. DUSP 1.10.6 exempts Royal Mail from reporting on its performance in delivering and collecting mail before the last delivery and collection times during the Christmas period. Our proposed change will make clear that this Christmas period reporting exemption applies to delivery times for deliveries made every day a delivery is required (rather than every day a collection is required).

¹¹ The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014, Schedule 1, 7 (4).

The statutory tests

4.6 We consider that these changes are:

- **objectively justifiable** because they make changes that are obviously needed. The consumer advocacy function for postal services is transferred from the Council to Citizens Advice, Citizens Advice Scotland and the GCCNI. The proposed changes to the post regulatory conditions are necessary to ensure they are aligned with the Act;
- **not unduly discriminatory**, because the changes ensure that the regulatory conditions reflect the change in the bodies which will carry out the consumer advocacy function under the Act;
- **proportionate** because the changes are the minimum that can be altered to ensure the conditions are aligned with the amended Act; and
- **transparent** because the proposed changes to the conditions are set out clearly in this consultation.

4.7 We do not consider it necessary to carry out a detailed impact assessment of the modifications because the changes to the consumer advocacy institutions reflect a change to the Act and are necessary to ensure the regulatory conditions are consistent with it.

Question 2: *Do you agree with the proposed modifications to the post regulatory conditions as outlined in Annexes 5, 7, 8 and 9?*

Section 5

Proposed modifications to Consumer Protection condition 1

Background

- 5.1 Under section 51 of the Act, Ofcom may set regulatory conditions which require postal operators to make payments relating to the expenses of specified consumer bodies. CP 1 sets out how specified consumer bodies' expenses are allocated and recovered from regulated postal operators ("RPOs"). RPOs with a turnover from regulated postal services of at least £10 million in the preceding year beginning 1 April contribute towards the qualifying consumer expenses of the Council. As set out above, as of 1 April 2014 the Council will be abolished.
- 5.2 An RPO that generates turnover exceeding £10 million will pay a proportion of qualifying consumer expenses incurred during that year by the Council. The proportion a RPO pays is calculated by multiplying the sum of the total qualifying consumer expenses by the RPO's share of turnover, expressed as a percentage of the total turnover generated by all RPOs.

Our proposal

- 5.3 Each year, Ofcom is informed by the Department of Business, Innovation and Skills of the total amount we must collect on behalf of the consumer bodies listed in CP 1. However, in order to apportion the costs of the Council we need to calculate what percentage the share of turnover for RPOs is in relation to the total turnover generated by all RPOs. To do this we require a full year of accounts from regulated businesses.
- 5.4 To date, because Royal Mail has been the only RPO likely to exceed the £10 million turnover threshold in a single year it has borne the total costs of qualifying consumer expenses. However, Ofcom acknowledges that in the future other RPOs may exceed the turnover threshold and we therefore require a robust way of apportioning costs equitably, which requires knowing the relevant turnover of each RPO to calculate how much each RPO should be charged in accordance with CP 1.
- 5.5 Currently, Royal Mail does not publish its full year accounts for its regulated postal services until the end of July in a given year, which means that the last available audited financial data for calculating relevant turnover and overall proportion of share is from the last but one 12 month period (i.e. for 2014/15, the last set of financial data available would be from 2012/13.) We also expect that full year financial data would be available from other RPOs at a similar time.
- 5.6 In the condition as currently drafted, the calculation would need to be done on the basis of turnover data which was unaudited and therefore liable to change.

- 5.7 We therefore considered what alternatives may exist. The statement of charging principles for postal services (“SOCP”¹²) is the basis upon which Ofcom recovers costs for the fulfilment of Ofcom’s regulatory obligations in relation to postal services. Under the SOCP, the payable charge is based on the last but one 12 month period commencing on 1 April prior to the Charging Year¹³ in question. For example, the charge issued by Ofcom for the financial year 2014/2015 will be based on the 2012/2013 financial year because at the time the charge is issued that would be the complete year for which reliable data is available.
- 5.8 Our proposal is to align condition CP 1 with the post SOCP and add a definition of “assessment year” to make clear that it means “the relevant year minus two years, beginning on 1 April”.
- 5.9 The proposal will ensure that the most reliable and robust data for a completed year is used to calculate charges.
- 5.10 In practice, the proposal would mean that the total qualifying consumer expenses would be calculated using the last but one 12 month period commencing on 1 April. For example, in 2014/15 the relevant turnover and calculation on what percentage of the total turnover generated by all RPOs will be based upon the financial year 2012/13.
- 5.11 The proportion and calculation of relevant costs and the date charges on which charges should be payable set out in CP 1.2.9 would remain unaffected by the proposals. The proposal will only affect the relevant year in which turnover is used to apportion costs.
- 5.12 We also propose to take the opportunity to amend the drafting of the condition to make it easier to read. This is not intended to have any substantive effect on its meaning.
- 5.13 We consider that the proposed change is:
- **objectively justifiable** because it means that charges to RPOs for qualifying consumer expenses would be based on the most relevant, robust, set of financial data, ensuring their accuracy;
 - **not unduly discriminatory** because it would apply equally to all RPOs;
 - **proportionate** because the proposals will mean Ofcom is able to calculate the proportion of costs borne by an RPO based on reliable and relevant data which will ensure charges are proportionate to the total relevant turnover of RPOs; and
 - **transparent** because this consultation clearly outlines the proposed change and its implications.

¹² <http://stakeholders.ofcom.org.uk/consultations/post-socp/statement>

¹³ Paragraph 1.6.2 of the SOCP defines ‘Charging Year’ as a twelve month period commencing on 1 April in a calendar year and ending 31 March in the immediately following calendar year.

- 5.14 If we go ahead with the current proposed approach then we anticipate that we would amend CP 1 in future in line with the post SOCP.

Impact assessment

- 5.15 The proposed amendment does not substantially alter the charging regime, the amount payable by an RPO or when payment is due, it only alters the financial year Ofcom uses to calculate those charges. The proposed methodology is consistent with the way in which Ofcom collects money from RPOs to cover the cost of its regulatory activity. We therefore do not consider the proposal is likely to have a significant impact on businesses or consumers.

Question 3: *Do you agree with the proposed modifications to CP 1? If not, please explain your reasoning.*

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 3 March 2014**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <https://stakeholders.ofcom.org.uk/consultations/provision-post-boxes/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses – particularly those with supporting charts, tables or other data – please email access.points@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation.
- Hayley Fletcher
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Hayley Fletcher on 020 7783 4491.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please

specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement before the end of the financial year 2013.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email: Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing Name/contact details/job title

Whole response Organisation

Part of the response If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

Question 1: *Do you agree with the proposed modifications to DUSP 1.8? If not, please explain your reasoning.*

Question 2: *Do you agree with the proposed modifications to the post regulatory conditions as outlined in Annexes 5, 7, 8 and 9?*

Question 3: *Do you agree to the proposed modification to CP 1? If not, please explain your reasoning.*

Statutory notification: proposed modification of DUSP condition 1

NOTIFICATION OF PROPOSALS TO MODIFY REGULATORY CONDITIONS IN ACCORDANCE WITH SECTION 36 OF, AND PARAGRAPH 3 OF SCHEDULE 6 TO, THE POSTAL SERVICES ACT 2011

BACKGROUND

- (A) On 27 March 2012, following a consultation, Ofcom published a statement entitled '*Securing the Universal Postal Service - Decision on the new regulatory framework*'¹⁴ setting out various decisions, including the imposition of regulatory conditions under section 36 of the Postal Services Act 2011 (the "**Act**").
- (B) The Designated Universal Service Provider ("**DUSP**") conditions took effect on 1 April 2012. DUSP condition 1 ("**DUSP 1**") relates to requirements on the universal service provider, including obligations as to daily collections and the provision of access points. The requirements as to the provision of access points were amended on 13 June 2013 and 18 December 2013. Various minor and technical amendments were also made to DUSP 1 on 10 December 2013.
- (C) On 5 December 2013, a draft statutory instrument under the Public Bodies Act 2011, the Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (the "**Order**"), was laid before Parliament. The Order would abolish the National Consumer Council and transfer relevant functions to the National Association of Citizens Advice Bureaux, the Scottish Association of Citizens Advice Bureaux, and the General Consumer Council for Northern Ireland.
- (D) The relevant part of the Order, if made, will come into effect on 1 April 2014.

PROPOSAL

1. OFCOM hereby proposes, in accordance with section 36 of, and paragraph 3 of Schedule 6 to, the Act and pursuant to powers and duties in section 36 of the Act, to modify DUSP 1, to make provision for matters set out in that section 36.
2. The proposed modifications to DUSP 1 are specified in the Schedule hereto.
3. The effect of, and OFCOM's reasons for making, this proposal are set out in the accompanying consultation document.

¹⁴ <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/statement.pdf>

OFCOM'S DUTIES AND LEGAL TESTS

4. OFCOM is satisfied that this proposal satisfies the general test in paragraph 1 of Schedule 6 to the Act.
5. In making this proposal, 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.

MAKING REPRESENTATIONS

6. Representations may be made to OFCOM about the proposal set out in this Notification by no later than **3 March 2014**.
7. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.
8. By virtue of paragraph 3(5) of Schedule 6 to the Act, OFCOM may give effect, with or without modifications, to a proposal with respect to which it has published a notification only if OFCOM has—
 - (a) considered every representation about the proposal that is made to OFCOM within the period specified in this Notification; and
 - (b) had regard to every international obligation of the United Kingdom (if any) which has been notified to OFCOM for this purpose by the Secretary of State.

INTERPRETATION

9. 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.
10. In this Notification—
 - (a) “**Act**” means the Postal Services Act 2011 (c.5).
11. 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.
12. The Schedule to this Notification shall form part of this Notification.

Signed by **Chris Rowsell**

A handwritten signature in black ink that reads "Chris Rowsell". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Competition Policy Director

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

30 January 2014

Schedule

PROPOSED MODIFICATIONS TO DUSP CONDITION 1

Modification			
1.	<p>In DUSP 1.1.2:</p> <p>(a) delete: ““Council” means the National Consumer Council established by s.1 of the Consumers, Estate Agents and Redress Act 2007”;</p> <p>(b) insert the following definition in its appropriate alphabetical place: “Consumer Advocacy Bodies” means Citizens Advice, Citizens Advice Scotland and the General Consumer Council for Northern Ireland”;</p> <p>(c) renumber the definitions accordingly.</p>		
2.	In DUSP 1.8.2(a) delete the words “(805 metres)”		
3.	In DUSP 1.8.2(b) delete the words “(805 metres)”		
4.	<p>After DUSP 1.8.2, insert new row:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%; vertical-align: top; padding: 5px;">DUSP 1.8.2AA</td> <td style="padding: 5px;"> <p>The <u>universal service provider</u> shall within 3 months from 31 March each year provide an annual report to <u>OFCOM</u> on its provision of <u>letter boxes</u> in the UK. The report shall include the following information:</p> <p>(a) the percentage of <u>users</u> of <u>postal services</u> across the UK with a <u>letter box</u> within half a mile, by straight line distance, of their premises as at 31 March that year, including details of any system used and steps taken to produce this calculation;</p> <p>(b) the total number of <u>letter boxes</u> nationwide and per nation as at 31 March that year, including a comparison with the previous year; and</p> <p>(c) the number of customer complaints received by the <u>universal service provider</u> as at 31 March that year in relation to the provision and / or location of <u>letter boxes</u> (not including complaints regarding <u>specified collection times</u>).</p> <p>The <u>universal service provider</u> shall publish the report on its website within 3 months from 31 March each year.</p> </td> </tr> </table>	DUSP 1.8.2AA	<p>The <u>universal service provider</u> shall within 3 months from 31 March each year provide an annual report to <u>OFCOM</u> on its provision of <u>letter boxes</u> in the UK. The report shall include the following information:</p> <p>(a) the percentage of <u>users</u> of <u>postal services</u> across the UK with a <u>letter box</u> within half a mile, by straight line distance, of their premises as at 31 March that year, including details of any system used and steps taken to produce this calculation;</p> <p>(b) the total number of <u>letter boxes</u> nationwide and per nation as at 31 March that year, including a comparison with the previous year; and</p> <p>(c) the number of customer complaints received by the <u>universal service provider</u> as at 31 March that year in relation to the provision and / or location of <u>letter boxes</u> (not including complaints regarding <u>specified collection times</u>).</p> <p>The <u>universal service provider</u> shall publish the report on its website within 3 months from 31 March each year.</p>
DUSP 1.8.2AA	<p>The <u>universal service provider</u> shall within 3 months from 31 March each year provide an annual report to <u>OFCOM</u> on its provision of <u>letter boxes</u> in the UK. The report shall include the following information:</p> <p>(a) the percentage of <u>users</u> of <u>postal services</u> across the UK with a <u>letter box</u> within half a mile, by straight line distance, of their premises as at 31 March that year, including details of any system used and steps taken to produce this calculation;</p> <p>(b) the total number of <u>letter boxes</u> nationwide and per nation as at 31 March that year, including a comparison with the previous year; and</p> <p>(c) the number of customer complaints received by the <u>universal service provider</u> as at 31 March that year in relation to the provision and / or location of <u>letter boxes</u> (not including complaints regarding <u>specified collection times</u>).</p> <p>The <u>universal service provider</u> shall publish the report on its website within 3 months from 31 March each year.</p>		
5.	In DUSP 1.10.6(b)(i), replace the word “collection” with “delivery”.		
6.	In DUSP 1.10.1 replace the word “ <u>Council</u> ” with “ <u>Consumer Advocacy Bodies</u> ”		
7.	In DUSP 1.10.2 replace the word “ <u>Council</u> ” with “ <u>Consumer Advocacy Bodies</u> ”		
8.	In DUSP 1.10.5 replace the word “ <u>Council</u> ” with “ <u>Consumer Advocacy Bodies</u> ”		
9.	In DUSP 1.10.6 replace the word “ <u>Council</u> ” with “ <u>Consumer Advocacy Bodies</u> ”		
10.	In DUSP 1.10.7 replace the word “ <u>Council</u> ” with “ <u>Consumer Advocacy Bodies</u> ”		
11.	In DUSP 1.10.8 replace the word “ <u>Council</u> ” with “ <u>Consumer Advocacy Bodies</u> ”		

Annex 6

Consolidated version of DUSP 1

MARKED-UP CONSOLIDATED VERSION OF DUSP CONDITION 1 IF MODIFIED AS PROPOSED, SHOWING ONLY DUSP 1.8 AND DUSP 1.10.

This consolidated version of parts 1.8 and 1.10 of DUSP Condition 1 as we propose to amend it is provided as an aid to understanding but is not the proposed legal instrument.

- Deletions are marked in red struck-through text.
- Additions are marked in red.

EXTRACTS OF DUSP CONDITION 1 SERVICES, ACCESS POINTS, PERFORMANCE TARGETS, NOTIFICATION AND PUBLICATION AND CONTINGENCY PLANNING

1.8 Obligation to provide access points for the universal service

DUSP 1.8.1	Except as <u>OFCOM</u> may have directed otherwise, the <u>universal service provider</u> shall provide, or procure the provision of, <u>letter boxes</u> and other <u>access points</u> for the purpose of providing the universal postal services referred to in DUSP 1.6.
DUSP 1.8.2	In particular the <u>universal service provider</u> must ensure that – (a) in the UK as a whole, the distribution of <u>letter boxes</u> is such that there is a <u>letter box</u> within half a mile (805 metres) of the premises of not less than 98% of <u>users of postal services</u> ; and (b) in the case of any <u>users of postal services</u> whose premises are not within half a mile (805 metres) of a <u>letter box</u> or other <u>access point</u> , the <u>universal service provider</u> shall provide, or procure the provision of, access to the universal service in a manner which sufficiently meets the reasonable needs of such <u>users</u> , having regard to the costs and operational practicalities of doing so; and (c) the distribution of <u>access points</u> capable of receiving the largest relevant <u>postal packets</u> and <u>registered items</u> is such that – i. in the UK as a whole the premises of not less than 95% of <u>users of postal services</u> are within 5 kilometres of such an <u>access point</u> ; and ii. in all <u>postcode areas</u> the premises of not less than 95% of <u>users of postal services</u> are within 10 kilometres of such an <u>access point</u> , and such <u>access points</u> are available to the public in accordance with conveniently published schedules.

DUSP 1.8.2AA	<p>The <u>universal service provider</u> shall within 3 months from 31 March each year provide an annual report to <u>OFCOM</u> on its provision of <u>letter boxes</u> in the UK. The report shall include the following information:</p> <ul style="list-style-type: none"> (a) the percentage of <u>users of postal services</u> across the UK with a <u>letter box</u> within half a mile, by straight line distance, of their premises as at 31 March that year, including details of any system used and steps taken to produce this calculation; (b) the total number of <u>letter boxes</u> nationwide and per nation as at 31 March that year, including a comparison with the previous year; and (c) the number of customer complaints received by the <u>universal service provider</u> as at 31 March that year in relation to the provision and / or location of <u>letter boxes</u> (not including complaints regarding <u>specified collection times</u>). <p>The <u>universal service provider</u> shall publish the report on its website within 3 months from 31 March each year.</p>
DUSP 1.8.2A	<p>If exceptional circumstances exist such that pursuant to DUSP 1.3.2 no collection is required from a particular <u>access point</u>, that <u>access point</u> shall be taken into account for the purposes of DUSP 1.8.2 except as follows:</p> <ul style="list-style-type: none"> (a) If the exceptional circumstances concerned are those set out in paragraphs 5 (health and safety), 10 (difficulty of access: other) or 12 (anticipatory temporary health and safety closure), no account shall be taken of the access point if the exceptional circumstances concerned have persisted for 12 months or longer; and (b) If the exceptional circumstances concerned are those set out in paragraph 8 (third party blockage), account shall be taken of the access point if either: <ul style="list-style-type: none"> a. a collection is made from that access point at least once per week; or b. a collection is not made from that access point at least once per week but the exceptional circumstances concerned have persisted for less than 12 months.¹⁵
DUSP 1.8.3	<p>The <u>universal service provider</u> shall establish, maintain, and review annually a statement of arrangements to ensure that <u>users of postal services</u> whose premises are not within 10 kilometres of an <u>access point</u> provided pursuant to DUSP 1.8.2(c) will be provided with reasonable access to such facilities.</p>
DUSP 1.8.4	<p>The <u>universal service provider</u> shall establish, maintain and review annually a statement of arrangements to ensure that <u>users of postal services</u> who are <u>blind</u>, <u>partially sighted</u>, infirm through age, chronically sick, or disabled are able to post <u>postal packets</u> using the universal services regularly and as far as possible without significant cost to those <u>users</u> attributable to their difficulties.</p>

.....

1.10 Obligation to notify and publish information

DUSP	The <u>universal service provider</u> shall notify <u>OFCOM</u> and the <u>Consumer</u>
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¹⁵ Direction relating to exceptions to the postal collections Universal Service Obligation and minor amendment to Designated Universal Service Provider Condition 1 (18 December 2013) – added DUSP 1.8.2A.

1.10.1	<p><u>Advocacy Bodies Council</u> of, and publish in such a manner as will ensure reasonable publicity for it –</p> <ul style="list-style-type: none"> (a) the brand names of the services it provides with a view to meeting its obligations under DUSP 1.6 and 1.7; (b) the terms and conditions of those services (including prices); and (c) any proposed change to the information in (a) and (b), at least one month in advance of the date on which it is to be implemented.
DUSP 1.10.2	<p>The <u>universal service provider</u> shall notify <u>OFCOM</u> and the <u>Consumer Advocacy Bodies Council</u> of, and publish in such a manner as will ensure reasonable publicity for it –</p> <ul style="list-style-type: none"> (a) the <u>latest delivery times</u> for the United Kingdom and the <u>specified collection times</u>; (b) any changes it intends to make to its <u>latest delivery times</u> and its <u>specified collection times</u> not less than three months prior to the change being made; and (c) every re-classification of addresses that will result in the <u>latest delivery time</u> of an address becoming later and of every re-classification of <u>access points</u> that will result in an <u>access point's specified collection time</u> starting earlier, within one month of such a change.
DUSP 1.10.3	<p>The <u>universal service provider</u> shall publish its <u>latest delivery times</u> and its <u>specified collection times</u> and shall ensure any changes to them are published within one month of the change in such a manner as will ensure reasonable publicity for them.</p>
DUSP 1.10.4	<p>The <u>universal service provider</u> shall publish, in such a manner as will ensure reasonable publicity for them, its statement of arrangements under DUSP 1.8.3 (access arrangements for premises more than 10 km from access points) and DUSP 1.8.4 (access arrangements for those facing mobility challenges).</p>
DUSP 1.10.5	<p>The <u>universal service provider</u> shall notify <u>OFCOM</u> and the <u>Consumer Advocacy Bodies Council</u> and publish, no later than two months from the end of each quarter, its performance for that quarter in relation to -</p> <ul style="list-style-type: none"> (a) all the standards in Table 1; and (b) the D+3 standard for the European Union outgoing service required by DUSP 1.6.1(f).
DUSP 1.10.6	<p>The <u>universal service provider</u> shall notify <u>OFCOM</u> and the <u>Consumer Advocacy Bodies Council</u> and publish in such a manner as will ensure reasonable publicity for it, no later than two months from the end of each <u>Christmas period</u>, its performance during that <u>Christmas period</u> in relation to -</p> <ul style="list-style-type: none"> (a) the D+3 standard for the European Union outgoing service required by DUSP 1.6.1(f); and (b) all the standards in Table 1 apart from - <ul style="list-style-type: none"> (i) deliveries made every day upon which a <u>delivery collection</u> is required in the area in question by the latest delivery time notified to <u>OFCOM</u> in accordance with DUSP 1.10.2; and (ii) collections made each day upon which a collection is required in the area in question from <u>letter boxes</u> and other <u>access points</u> used in the provision of any <u>domestic service</u> provided pursuant to DUSP 1.6, at or after the final time of collection advertised on the <u>access point</u>.
DUSP 1.10.7	<p>The <u>universal service provider</u> shall notify <u>OFCOM</u> and the <u>Consumer Advocacy Bodies Council</u> and publish in such a manner as will ensure reasonable publicity for it, no later than three months from 31 March each</p>

	year, its performance in relation to the following standards for the period of 12 months ending 31 March, (providing both adjusted and unadjusted results when appropriate ¹⁶): (a) the D+3 standard for the European Union outgoing service required by DUSP 1.6.1(f); and (b) all the standards in Table 1. ¹⁷
1.10.8	The <u>universal service provider</u> shall ensure that <u>OFCOM</u> and the <u>Consumer Advocacy Bodies Council</u> are provided with up to date copies of the code of practice maintained in accordance with DUSP 1.9.6.

....

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 of the Act
<i>access points</i>	29(11)
<i>Citizens Advice</i>	65(1)
<i>Citizens Advice Scotland</i>	65(1)
<i>OFCOM</i>	90
<i>postal packet</i>	27(2)
<i>universal service provider</i>	65(1) and Schedule 9 paragraph 3(3)
<i>user</i>	65(1)

¹⁶ E.g. to take account of a force majeure incident.

¹⁷ Technical and minor amendments in postal regulation - Notifications of technical and other minor amendments to the Universal Postal Service Order and related conditions (10 December 2013) – consequential amendments made to DUSP 1.10.5 and 1.10.6

Annex 7

Statutory Notification: proposed revocation and imposition of Consumer Protection condition 1

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

BACKGROUND

A. On 27 March 2012, following a consultation, Ofcom published a statement entitled ‘*Securing the Universal Postal Service - Decision on the new regulatory framework*’¹⁸ setting out various decisions, including the imposition of regulatory conditions under section 51 of the Postal Services Act 2011 (the “**Act**”). Amongst the conditions imposed was Consumer Protection Condition 1 (“**CP 1**”). CP 1 was modified on 28 March 2013.

B. On 5 December 2013, a draft statutory instrument under the Public Bodies Act 2011, the Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (the “**Order**”), was laid before Parliament. The Order would amend section 51 of the Act to change the institutions in respect of whose qualifying consumer expenses Ofcom may require postal operators to make payments.

C. The relevant part of the Order, if made, will come into effect on 1 April 2014.

PROPOSAL

1. Ofcom hereby proposes, 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, to revoke CP 1 and impose a new consumer protection condition 1 to make provision for matters set out in that section 51 in accordance with the changes proposed by the Order, to be in force on 1 April 2014.

2. The proposed new consumer protection condition 1 is specified in the Schedule hereto.

3. The effect of, and Ofcom’s reasons for making, this proposal are set out in the accompanying consultation document.

OFCOM’S DUTIES AND LEGAL TESTS

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

¹⁸ <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/statement.pdf>

5. In making this proposal, 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.

MAKING REPRESENTATIONS

6. Representations may be made to Ofcom about the proposal set out in this Notification by no later than **3 March 2014**.

7. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.

8. By virtue of paragraph 3(5) of Schedule 6 to the Act, Ofcom may give effect, with or without modifications, to a proposal with respect to which it has published a notification only if Ofcom has—

- (a) considered every representation about the proposal that is made to Ofcom within the period specified in this Notification; and
- (b) had regard to every international obligation of the United Kingdom (if any) which has been notified to Ofcom for this purpose by the Secretary of State.

9. 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

30 January 2014

**SCHEDULE
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) “access payments” means payments made to any other <u>regulated postal operator</u> for the conveyance of <u>letters</u> conveyed by the <u>regulated postal operator</u> from its customers to that other <u>regulated postal operator</u>;</p> <p>(b) “Act” means the Postal Services Act 2011 (c.5);</p> <p>(c) “appointed day” means 1 October 2011;</p> <p>(d) “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> (in the case of <u>postal operators</u> other than the <u>universal service provider</u>, subtracting any <u>access payments</u> made in respect of <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 Act¹⁹;</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</u> .
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	<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

¹⁹ 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.

	<p>amount greater than £100:</p> <p>(a) take the total <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> in the <u>relevant year</u>,</p> <p>(b) multiply it by that <u>regulated postal operator's share of calls relating to regulated postal operators</u> expressed as a percentage of the total <u>calls relating to regulated postal operators</u>.</p>
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 of Citizens Advice and 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 share of 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 <u>charges in the previous 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</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>	<i>90</i>
<i>postal operator</i>	<i>27(3)</i>
<i>postal packet</i>	<i>27(2)</i>
<i>qualifying consumer expenses</i>	<i>51(4)</i>
<i>universal service provider</i>	<i>65(1) and Schedule 9 paragraph 3(3)</i>

Statutory Notification: proposed modification of Consumer Protection conditions 2 and 3

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

BACKGROUND

A. On 27 March 2012, following a consultation, Ofcom published a statement entitled ‘*Securing the Universal Postal Service - Decision on the new regulatory framework*²⁰’ setting out various decisions, including the imposition of regulatory conditions under section 51 of the Postal Services Act 2011 (the “**Act**”). Amongst the conditions imposed were Consumer Protection 2 (“**CP 2**”), and Consumer Protection 3 (“**CP 3**”).

B. On 5 December 2013, a draft statutory instrument under the Public Bodies Act 2011, the Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014 (the “**Order**”), was laid before Parliament. The Order would abolish the National Consumer Council and transfer relevant functions to the National Association of Citizens Advice Bureaux, the Scottish Association of Citizens Advice Bureaux, and the General Consumer Council for Northern Ireland.

C. The relevant part of the Order, if made, will come into effect on 1 April 2014.

PROPOSAL

1. Ofcom hereby proposes, 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, to modify CP 2 and 3 in accordance with the changes proposed by the Order, to be in force on 1 April 2014.

2. The proposed modifications to CP 2 and 3 are specified in Schedules 1 and 2 hereto.

3. The effect of, and Ofcom’s reasons for making, this proposal are set out in the accompanying consultation document.

OFCOM’S DUTIES AND LEGAL TESTS

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

²⁰ <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/statement.pdf>

5. In making this proposal, 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.

MAKING REPRESENTATIONS

6. Representations may be made to Ofcom about the proposal set out in this Notification by no later than **3 March 2014**.

7. Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.

8. By virtue of paragraph 3(5) of Schedule 6 to the Act, Ofcom may give effect, with or without modifications, to a proposal with respect to which it has published a notification only if Ofcom has—

- (a) considered every representation about the proposal that is made to Ofcom within the period specified in this Notification; and
- (b) had regard to every international obligation of the United Kingdom (if any) which has been notified to Ofcom for this purpose by the Secretary of State.

9. 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

30 January 2014

SCHEDULE 1

PROPOSED MODIFICATIONS TO CONSUMER PROTECTION 2

	Modification
1.	In CP 2.1.2: (a) delete: “ Council ” means the National Consumer Council established by s.1 of the Consumers, Estate Agents and Redress Act 2007”; (b) insert the following definition in its appropriate alphabetical place: “ Consumer Advocacy Bodies ” means Citizens Advice, Citizens Advice Scotland and the General Consumer Council for Northern Ireland”; and (c) renumber the definitions accordingly.
2.	In CP 2.2.7 replace the word “ <u>Council</u> ” with “ <u>Consumer Advocacy Bodies</u> ”

SCHEDULE 2

PROPOSED MODIFICATIONS TO CONSUMER PROTECTION CONDITION 3

	Modification
1.	In CP 3.1.2: (a) delete: “ Council ” means the National Consumer Council established by s.1 of the Consumers, Estate Agents and Redress Act 2007”; (b) insert the following definition in its appropriate alphabetical place: “ Consumer Advocacy Bodies ” means Citizens Advice, Citizens Advice Scotland and the General Consumer Council for Northern Ireland”; and (c) renumber the definitions accordingly.
2.	In CP 3.3.10 replace the word “ <u>Council</u> ” with “ <u>Consumer Advocacy Bodies</u> ”.
3.	In CP 3.3.16 replace the word “ <u>Council</u> ” with “ <u>Consumer Advocacy Bodies</u> ”.

Statutory Notification: proposed modification of Essential condition 1

NOTIFICATION OF PROPOSALS TO MODIFY REGULATORY CONDITION IN ACCORDANCE WITH SECTION 49 OF, AND PARAGRAPH 3 OF SCHEDULE 6 TO, THE POSTAL SERVICES ACT 2011

BACKGROUND

A. On 27 March 2012, following a consultation, Ofcom published a statement entitled ‘*Securing the Universal Postal Service - Decision on the new regulatory framework*’²¹ setting out various decisions, including the imposition of regulatory conditions under section 49 of the Postal Services Act 2011 (the “**Act**”). Amongst the conditions imposed was Essential Condition 1 (“**E 1**”).

B. On 5 December 2013, a draft statutory instrument under the Public Bodies Act 2011, the Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (the “**Order**”), was laid before Parliament. The Order would abolish the National Consumer Council and transfer relevant functions to the National Association of Citizens Advice Bureaux, the Scottish Association of Citizens Advice Bureaux, and the General Consumer Council for Northern Ireland.

C. The relevant part of the Order, if made, will come into effect on 1 April 2014.

PROPOSAL

1. Ofcom hereby proposes, in accordance with section 49 of, and paragraph 3 of Schedule 6 to, the Act and pursuant to powers in section 49 of the Act, to modify E 1 in accordance with the changes proposed by the Order, to be in force on 1 April 2014.

2. The proposed modifications to E 1 are specified in the Schedule hereto.

3. The effect of, and Ofcom’s reasons for making, this proposal are set out in the accompanying consultation document.

OFCOM’S DUTIES AND LEGAL TESTS

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

5. In making this proposal, 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.

²¹ <http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/statement.pdf>

MAKING REPRESENTATIONS

- 6.** Representations may be made to Ofcom about the proposal set out in this Notification by no later than **3 March 2014**
- 7.** Copies of this Notification and the accompanying consultation document have been sent to the Secretary of State in accordance with paragraph 5(1)(a) of Schedule 6 to the Act.
- 8.** By virtue of paragraph 3(5) of Schedule 6 to the Act, Ofcom may give effect, with or without modifications, to a proposal with respect to which it has published a notification only if Ofcom has—
- (a)** considered every representation about the proposal that is made to Ofcom within the period specified in this Notification; and
 - (b)** had regard to every international obligation of the United Kingdom (if any) which has been notified to Ofcom for this purpose by the Secretary of State.
- 9.** 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

30 January 2014

SCHEDULE

PROPOSED MODIFICATIONS TO ESSENTIAL CONDITION 1

	Modification
1.	In E 1.1.2: (a) delete: “ Council ” means the National Consumer Council established by s.1 of the Consumers, Estate Agents and Redress Act 2007”; (b) insert the following definition in its appropriate alphabetical place: “ Consumer Advocacy Bodies ” means Citizens Advice, Citizens Advice Scotland and the General Consumer Council for Northern Ireland”; and (c) renumber the definitions accordingly.
2.	In 7.6 of the Mail Integrity Code replace the word “ <u>Council</u> ” with “ <u>Consumer Advocacy Bodies</u> ”.
3.	In 7.7 of the Mail Integrity Code replace the word “ <u>Council</u> ” with “ <u>Consumer Advocacy Bodies</u> ”.