

20<sup>th</sup> May 2021

## **CWU Response to Ofcom's Review of Postal Regulation – Call for Inputs**

### **Introduction**

1. The Communication Workers Union (CWU) is the largest union in the communications sector in the UK, representing approximately 192,000 members in the postal, telecoms, financial services and related industries. We are the recognised trade union for around 140,000 non-managerial staff in Royal Mail.
2. The CWU welcomes the opportunity to respond to Ofcom's *Review of Postal Regulation - Call for Inputs* (CFI).<sup>1</sup> **We believe postal regulation must be centred on securing the future sustainability of the universal postal service through growth and innovation, rather than cost cutting and scaling back services.** The CWU is proud to have reached an agreement with Royal Mail which takes a step in this direction and is based on growth and not decline.<sup>2</sup>

### **Summary of key points**

3. As letter volumes continue to fall, **the sustainability of the universal postal service will increasingly depend on Royal Mail's ability to leverage the network by offering new services and expanding the role of postal workers.** The postal Universal Service Obligation (USO) must be allowed to evolve so that it remains relevant and effective in future. **This requires a stable and supportive regulatory environment that enables Royal Mail to innovate, invest in the business and compete for new and diverse revenue streams.**
4. During this period of significant change in the postal market, **we believe there are some key areas where regulation needs adjusting** to reflect changing user needs and to protect the universal service. **This includes allowing the introduction of tracking on USO parcels, extending parcel delivery to six days under the USO,** and establishing a level of monitoring and some minimum consumer protection standards for currently unregulated parcel operators.
5. **Royal Mail has delivered substantial efficiency improvements over more than a decade with the cooperation of its workforce and the CWU, and Ofcom should take full account**

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<sup>1</sup> Review of postal regulation, call for inputs, Ofcom, 11<sup>th</sup> March 2021:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/215664/call-for-inputs-review-of-postal-regulation.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/215664/call-for-inputs-review-of-postal-regulation.pdf)

<sup>2</sup> The CWU (2020) – RMG and CWU Key Principles Framework Agreement (Pathway to Change), 22<sup>nd</sup> December 2020; Available at: <https://www.cwu.org/news/rmg-cwu-key-principles-framework-agreement-the-pathway-to-change/>

**of this.** Efficiencies have been achieved through changes to working practices and reductions in core network hours, whilst Royal Mail's pension costs and financial risk have been reduced through agreement on a new Collective Defined Contribution (CDC) pension scheme. Royal Mail already faces sufficient market challenges that will spur efficiency and **we call on Ofcom not to introduce binding efficiency targets or set unreasonable efficiency expectations for Royal Mail.** This would create pressure for even greater cost cutting which would undermine the scope and quality of the universal postal service.

6. We consider that **in light of growing concerns of citizens, consumers and investors in relation to environmental issues and employment standards, Ofcom must take a lead on addressing this within the postal sector. We call on Ofcom to push for more powers and duties in this area if necessary** to meet this objective and to prevent a race to the bottom on labour, consumer and environmental standards within the postal sector. **We also urge Ofcom to work with the Government to tackle the extreme exploitation faced by self-employed owner-drivers,** and to curb the damaging environmental impact of a highly competitive and largely deregulated parcels market.
7. **The postal regulatory framework should support a higher level of corporate social responsibility across the postal sector** for the benefit of citizens and consumers. Royal Mail is a major employer providing 141,500 UK jobs, and is alone amongst postal operators in employing a predominantly permanent workforce on decent pay and conditions and recognising trade unions.<sup>3</sup> Royal Mail has also been found to be the most carbon conscious delivery company, substantially reducing its carbon emissions in recent years. **These commitments to investment in decent labour and environmental standards must not be treated as cost inefficient in comparison with low cost postal competitors.** Instead they should be held up and encouraged by Ofcom as important objectives for Royal Mail to maintain, and as a benchmark for the rest of the postal sector to achieve in the interests of postal users and wider society. **Improving employment standards will help to address poor service levels in the parcels market,** as there is a connection between employment conditions and service quality.

## CWU's response to Ofcom's questions

### Approach to regulation

*Ofcom Question 3.1: Do you consider that Ofcom's overall regulatory approach remains appropriate for regulating postal services over the 5-year period (2022-2027)? If not, please explain the areas where you think changes should be made, with supporting evidence.*

### **The universal postal service is crucial to economic activity and social cohesion**

8. The coronavirus pandemic has highlighted the importance of the universal postal service to the UK economy and society. Postal workers have been declared key workers, keeping the nation connected, playing a crucial role in sustaining economic activity, and

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<sup>3</sup> Corporate Responsibility Report 2019-20, Royal Mail, accessed on 19<sup>th</sup> May 2021 at: [https://www.responsibilityreports.com/HostedData/ResponsibilityReports/PDF/LSE\\_RMG\\_2020.pdf](https://www.responsibilityreports.com/HostedData/ResponsibilityReports/PDF/LSE_RMG_2020.pdf)

delivering essential goods and services. Royal Mail has also taken on important new tasks, including the delivery and collection of coronavirus testing kits.

9. At the same time, the pandemic has created enormous challenges for the universal postal service through a rapid acceleration of letter volume decline and parcels growth. Royal Mail has had to adapt to these changes at pace, and regulation must enable this to continue in order to meet the evolving needs of postal users and to secure the future of the universal service.

#### **Postal regulation must support and protect the universal service as a priority**

10. In general terms, we believe **the postal regulatory framework should continue to provide commercial flexibility for Royal Mail** to ensure the universal service can be fully funded. It should also provide a **clear and stable environment in which to plan and make longer-term investment decisions**. We also call on Ofcom to place **greater emphasis on securing the universal service through innovation, investment and growth**, and **less on encouraging price competition and cost cutting**, which undermines the economics of the universal service.
11. There are some specific areas where we believe changes are needed to reflect changing user needs and to protect the universal service. In particular, we want to see six day USO parcel delivery enshrined in the universal service obligation. We also believe tracking should be permitted on USO parcels; and that there should be some monitoring and regulation of currently unregulated parcel operators, especially in relation to consumer protection. We discuss these issues more fully in our answers to the questions on the USO and parcels regulation.
12. **Ofcom should also develop its regulatory approach on environmental sustainability and employment standards**. With ever greater focus and attention from Government and wider society about environmental sustainability and social inequalities exposed by the coronavirus pandemic, this is vital to addressing Ofcom's principal duty to further the interests of citizens in relation to communications matters.<sup>4</sup> **We urge Ofcom - as the independent regulator overseeing the postal industry - to take ownership of these issues and to treat them as key challenges for the sector**. We are disappointed that Ofcom has not been more proactive on these issues to date given its duties towards citizens and consumers, including the need to have regard for the opinions of consumers in relevant markets and members of the public generally.<sup>5</sup> If Ofcom considers that its powers and duties are not clear enough on these matters, we call on Ofcom to seek whatever approval is necessary from Government to ensure they can be properly addressed in the postal regulatory framework.

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<sup>4</sup> Under the 2003 Communications Act (the "Act"), it is stated (Section 3, 1a): "it shall be the principal duty of Ofcom, in carrying out their functions: a) to further the interests of citizens in relation to communications matters, Act available at: [https://www.legislation.gov.uk/ukpga/2003/21/pdfs/ukpga\\_20030021\\_en.pdf](https://www.legislation.gov.uk/ukpga/2003/21/pdfs/ukpga_20030021_en.pdf)

<sup>5</sup> Under the 2003 Communication Act, it is stated (Section 3, 4k): "Ofcom must have regard, in performing these duties, to such of the following as appear to them to be relevant in the circumstances – the opinions of consumers in relevant markets and of members of the public generally

13. From a social perspective, **the CWU is particularly concerned about the damaging effects of false self-employment and extreme labour market exploitation in the unregulated parcels sector** both on employment standards across the whole sector and on service standards.
14. The recent ruling against Uber on the employment status of its drivers strongly demonstrates that owner-drivers in the parcels sector - whose work is typically highly controlled in a similar way to Uber drivers - are incorrectly classed as self-employed and should be granted the employment rights that come with worker status.<sup>6</sup> Concern from major investors who boycotted the float of delivery firm Deliveroo due to investment risk and social issues relating to the company's treatment of its workers also indicates there are serious problems with continuing to allow this exploitative model to dominate the growing parcel delivery sector.<sup>7</sup>
15. Perhaps even more importantly, customers are all too aware of the damaging effects on society and the environment of irresponsible employers, and customers want to associate with companies that set high social and environmental standards.<sup>8</sup> Indeed, Ofcom's qualitative research on user needs shows both the environment and broader social considerations being raised as issues by respondents in different ways.<sup>9</sup>
16. Delivery operators that rely on self-employed couriers such as Amazon and Yodel are notorious for poor employment practices. In contrast, Royal Mail - a decent employer that formally recognises and works with trade unions - has a reputation for offering good jobs right across the UK including in areas of deprivation and high unemployment. Royal Mail has also recently been found to be the most carbon conscious delivery company, reducing carbon emissions by 29% since 2005 and investing in a fleet of electric vehicles.<sup>10</sup>

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<sup>6</sup> Uber's UK concessions change game for gig economy, Financial Times, 17<sup>th</sup> March 2021, accessed at: <https://www.ft.com/content/68718de3-b25f-47d6-8f51-4df1f66d8b1e>

<sup>7</sup> Top UK fund refuses to invest in Deliveroo amid City concern over riders' rights, Guardian, 24<sup>th</sup> March 2021, accessed at: <https://www.theguardian.com/uk-news/2021/mar/24/top-uk-fund-refuses-to-invest-in-deliveroo-amid-concern-over-riders-rights>

<sup>8</sup> See for example: 88% of consumers want you to help them make a difference, Forbes, 21<sup>st</sup> November 2021, accessed at: <https://www.forbes.com/sites/solitairetownsend/2018/11/21/consumers-want-you-to-help-them-make-a-difference/?sh=34a97cdf6954>; and Consumers expect the brands they support to be socially responsible, businesswire, 2<sup>nd</sup> October 2019, accessed at: <https://www.businesswire.com/news/home/20191002005697/en/Consumers-Expect-the-Brands-they-Support-to-be-Socially-Responsible>

<sup>9</sup> In relation to employment standards, the research noted commercial courier companies were viewed as erratic and quality of service was dependent on individual drivers' "conscientiousness"; in contrast, with Royal Mail there are repeated references to relationships with "the postman", the 'human touch' that is lacking from other providers and knowing a longstanding postal worker personally, issues that we believe are linked to employment standards. UK Postal User Needs: Qualitative Research Report, Ofcom, September 2020.

<sup>10</sup> The Dirty Delivery Report; counting the carbon cost of online shopping, money.co.uk, 3<sup>rd</sup> November 2020, accessed at: <https://www.money.co.uk/guides/dirty-delivery-report-2020>

## Financial sustainability and efficiency

**Ofcom Question 4.1:** *Do you consider that Ofcom’s current approach to financial sustainability and efficiency of the universal postal service will remain appropriate going forward? If not, please explain what changes you think should be made, with supporting evidence.*

### **The CWU recognises the need for Royal Mail to be financially sustainable and efficient**

17. The CWU has always recognised the need for Royal Mail and the universal postal service to be financially sustainable and efficient. This is important to the success of the business and its ability to provide secure employment on good terms and conditions in the future. Royal Mail has continuously improved its efficiency over many years with the support and cooperation of the CWU. This has been enabled by joint agreements including the ‘Key Principle Framework Agreement (The Pathway to Change)’ in 2020, the ‘Four Pillars Agreement’ in 2018, the ‘Agenda for Growth Agreement’ in 2014, and the ‘Business Transformation 2010 and Beyond Agreement’ in 2010.

### **Ofcom is not giving Royal Mail sufficient credit for efficiency improvements**

18. We disagree with Ofcom’s recent statement that: *“While Royal Mail has made some improvements, notably an increase in parcel automation from 12% to 33%, efficiency achievements continue to be disappointing.”*<sup>11</sup> We are concerned that Ofcom is not granting Royal Mail sufficient credit or recognition for the changes that have been agreed with the CWU on cost reduction and efficiency. These are changes that have had a considerable impact on frontline Royal Mail staff, both in relation to their terms and conditions of employment and the additional demands placed on them in the workplace. We urge Ofcom to take greater account of these issues, as there is a limit to how hard staff can be expected to work in physically demanding jobs and how far Royal Mail can push efficiency improvements before quality of service is affected.

### **Royal Mail has delivered substantial efficiency gains with the cooperation of the CWU**

19. Royal Mail began a modernisation programme in 2008 to adapt its processes to the changing market. This saw a significant reduction in mail centres, the introduction of automated walk sequencing, the deployment of new delivery methods including trolleys and vans, and extended delivery spans. These changes were delivered in partnership with the CWU and the workforce. Even as far back as 2003, we moved to a single daily delivery from two daily deliveries previously, and accepted a delivery span that was longer than the previous first delivery. There have also been significant headcount reductions in Royal Mail since 2008, annual improvements in productivity, hundreds of millions saved in cost avoidance programmes through operational efficiency activities and reductions in core network hours. Consequently, CWU members are working harder and longer whilst maintaining high quality of service standards for nearly 31

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<sup>11</sup> Annual Monitoring Update on Postal Services, Financial Year 2019-20, Ofcom, 26<sup>th</sup> November 2020, accessed at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/208219/2019-20-annual-monitoring-update-postal-market.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/208219/2019-20-annual-monitoring-update-postal-market.pdf)

million addresses in the UK<sup>12</sup> – a number that increases by over 100,000 per year.<sup>13</sup> The hard work and commitment of Royal Mail employees has brought efficiency improvements each year for the last several years despite the fact that the annual increase in delivery points makes efficiency more difficult to achieve.

20. Royal Mail has acknowledged the importance of the CWU in its ability to deliver efficiency and productivity improvements, stating in its latest annual results published on 20<sup>th</sup> May 2021 with reference to the Pathway to Change Agreement: “Deployment of the ground-breaking agreement with the CWU is on track. This agreement gives us a platform for future growth, and the means to achieve productivity benefits of 3% plus in 2021-22, resulting in more than £100 million in benefits, linked to effective execution of the agreement.”<sup>14</sup>
21. The annual results announcement also states that Royal Mail has a number of initiatives in place to drive efficiency benefits across the business. This includes transforming to a parcels led business, enabling a range of digitally enabled work tools to improve productivity and efficiency, and building dedicated parcel hubs. It says that Royal Mail’s improved relationship with the CWU will allow it to move faster and deliver the benefits associated with the Agreement.

### **The CWU has successfully challenged attempts to weaken the sustainability of the universal postal service**

22. It is also important to highlight that whilst cooperating on efficiency and productivity improvements, the CWU has robustly defended the universal postal service against previous attempts to undermine its sustainability in the narrow pursuit of profit. During Rico Back’s time as CEO between 2018 and 2020, the CWU successfully challenged the company’s plans to end Saturday letter deliveries and create a separate parcels business which would not only have destroyed thousands of postal jobs, but would have made letter deliveries inefficient and damaged the financeability of the universal service. When Rico Back left Royal Mail in May 2020, the CWU called for a total change in strategy and direction, and emphasised the need for the new CEO to work with the CWU to overcome the challenges we all face and deliver the postal service the public and our members deserve.<sup>15</sup>
23. Following this extremely difficult period when the future of this essential public service was threatened out of pure commercial self-interest, the industrial relations climate has transformed and the CWU and Royal Mail are working together in a shared vision for the future based on growth and not decline. Our recent Agreement confirms that Royal Mail will not be pursuing UK parcel growth through a separate parcels company, and

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<sup>12</sup> Corporate Responsibility Report 2019-20, Royal Mail, accessed on 19<sup>th</sup> May 2021 at:

[https://www.responsibilityreports.com/HostedData/ResponsibilityReports/PDF/LSE\\_RMG\\_2020.pdf](https://www.responsibilityreports.com/HostedData/ResponsibilityReports/PDF/LSE_RMG_2020.pdf)

<sup>13</sup> Families and households in the UK, Office for National Statistics, 2<sup>nd</sup> March 2021, accessed at:

<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/2020>

<sup>14</sup> Royal Mail Annual Results to 28 March 2021, accessed at:

<https://www.royalmailgroup.com/media/11446/royal-mail-plc-fy2020-21-results-20-5-21.pdf>

<sup>15</sup> CWU calls for “total change” as Royal Mail boss quits, union news, 15<sup>th</sup> May 2020, accessed at:

<https://www.union-news.co.uk/cwu-calls-for-total-change-as-royal-mail-boss-quits/>

that letters – which have a wider social and economic value - will continue to be an important part of Royal Mail’s future. The Agreement also contains a commitment on the future of the USO, including exploring the potential for new USO products to support its long-term economic sustainability.<sup>16</sup>

**Pensions cost savings should be recognised as a cost efficiency**

24. Royal Mail staff have accepted notable changes to terms and conditions of employment in the interests of cost efficiency in recent years. This includes in particular the closure of the Defined Benefit Pension Scheme, which has saved the business an estimated £600m in annual pension contributions whilst significantly reducing the benefits that members could expect to receive from the scheme in retirement. For example, based on both past and future service, a member of Section C of the Royal Mail Pension Plan (RMPP) aged 50 with 20 years pensionable service on an annual salary of £25,000 saw their annual pension benefits reduced by over £4,000, or 29%, down from around £14,500 to £10,300. Younger pension scheme members were harder hit, with those aged 30 on an annual salary of £25,000 seeing a total annual loss of £11,767, or 52%, down from around £22,800 to £11,000.<sup>17</sup>
25. At the same time and with a view to mitigating the impact of the DB closure and ensuring dignity and security in retirement for our members, the CWU pushed for a ‘Wage in Retirement’ pension scheme for all Royal Mail employees. Consequently, the CWU and Royal Mail reached a groundbreaking agreement on the introduction of a Collective Defined Contribution pension scheme. This will allow Royal Mail not only to significantly reduce its pension costs, but it also moves the majority of the financial risk over to scheme members, whilst giving Royal Mail certainty over its future pension costs. Although modelling suggests that Royal Mail’s CDC scheme has the potential to outperform its DB scheme in future, the closure of Royal Mail’s DB scheme removes certainty over pension benefits and could have a detrimental impact on pension benefits for Royal Mail’s workforce.
26. The agreement on CDC was achieved following lengthy negotiations that concluded in 2018 with the Four Pillars Agreement, supported in a ballot of CWU members. It has also relied on the support of Government and a change to legislation through the Pension Schemes Act which received Royal Assent in February 2021.<sup>18</sup> These considerable changes and the associated cost savings are not currently accounted for in Ofcom’s real cost measure of efficiency, but we consider they should be recognised within this given that they represent substantial savings and financial de-risking for Royal Mail.

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<sup>16</sup> The CWU (2020) – RMG and CWU Key Principles Framework Agreement (Pathway to Change), ibid

<sup>17</sup> Royal Mail Pension Review 2017, example illustrations of the financial impact of the DB Cash Balance Proposal, CWU Research, 2017

<sup>18</sup> Pension update: Union ‘delighted’ that Pension Bill receives Royal Assent, CWU, 12<sup>th</sup> February 2021, accessed at: [https://www.cwu.org/press\\_release/pension-update-union-delighted-that-pension-bill-receives-royal-assent/](https://www.cwu.org/press_release/pension-update-union-delighted-that-pension-bill-receives-royal-assent/)

### **Royal Mail's EBIT margin should not restate pension costs on a cash basis**

27. As we argued in 2016, the CWU does not support Ofcom's view that Royal Mail's reported EBIT margin should be adjusted to restate pension costs on a cash basis. Using the pension cash cost (currently 15.6 per cent of pensionable pay) has the effect of improving the reported EBIT margin because it is lower than the accounting cost (20.8 per cent of pensionable pay). This does not provide an accurate reflection of the real ongoing costs of funding the Royal Mail Pension Plan (RMPP).
28. Ofcom has assessed an indicative range of 5-10 per cent as a reasonable commercial rate of return for the "Financeability EBIT" margin.<sup>19</sup> In 2019-20, the Reported Business achieved a "Financeability EBIT" of 0.4 per cent on a 52 week basis (2018-19: 2.1 per cent on a 53 week basis, 1.6 per cent on a 52 week basis). If Ofcom's alternative "Financeability EBIT" measure used the accounting cost rather than the pension cash cost, the margin would have been lower than 0.4% in 2019-20.<sup>20</sup> This would have been a better reflection of the challenges faced by Royal Mail at that time in achieving a reasonable commercial rate of return.

### **Ofcom should account for increased pressures on frontline workers in efficiency assessments**

29. There is a limit to the efficiency improvements and cost cutting that can be made in a labour intensive industry without compromising service levels. Ofcom should build a greater understanding of the role of frontline workers in Royal Mail with a view to assessing what level of efficiency improvement is actually achievable when considering the extra demands that are placed on workers. Ofcom should examine in detail how Royal Mail staff have adapted to change in working practices and new technologies over recent years, and how this has impacted on their workload and the increased pressures they deal with on a daily basis. This will provide a clearer understanding of Royal Mail's efficiency frontier, or the point at which cost efficiencies will undermine the scope of the universal postal service, quality of service standards and labour standards.

### **Efficiency expectations must be reasonable and proportionate**

30. Ofcom should continue to recognise that Royal Mail already faces sufficient market challenges that will spur efficiency such as shareholder scrutiny, parcels competition and e-substitution in letters. We call on Ofcom not to set unreasonable efficiency expectations for Royal Mail, and to maintain the approach taken at the last review in 2017 not to introduce binding regulatory efficiency targets on parts of Royal Mail's business.<sup>21</sup>
31. Ofcom should not benchmark Royal Mail's cost efficiency against unregulated, low cost parcel delivery operators, many of whose employment models we believe to be in breach of employment law, and who are not subject to minimum quality of service standards or the high fixed costs of delivering the universal postal service. Equally,

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<sup>19</sup> Ofcom, Review of the Regulation of Royal Mail, March 2017, Paragraph 3.60.

<sup>20</sup> Royal Mail, Regulatory Financial Statements 2019-20, August 2020, p.5

<sup>21</sup> See para 4.12, p.18, Review of postal regulation, call for inputs, Ofcom, 11<sup>th</sup> March 2021: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0024/215664/call-for-inputs-review-of-postal-regulation.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0024/215664/call-for-inputs-review-of-postal-regulation.pdf)



Ofcom should not benchmark Royal Mail's cost efficiency against other universal service operators who have implemented a two tier grading structure and who outsource delivery work to low cost operators that rely on false self-employment. As we argued in 2016, this is exploitative and damaging for postal services and society more generally by encouraging a race to the bottom on labour and service standards across the sector.<sup>22</sup>

32. Instead, we call on Ofcom to ensure Royal Mail has sufficient regulatory flexibility to be able to continue to offer decent standards of employment, pay and training both now and in the future. We do not accept that Ofcom should treat Royal Mail pay rises above the CPI measure of inflation as an inefficiency as this puts downward pressure on pay settlements and risks eroding the value of wages over time. The RPI measure of inflation is a better reflection of the actual rising cost of living for workers, and although the Government has accepted a proposal for RPI to be reformed from 2030, there remains widespread opposition to this and RPI is still widely used by organisations in setting prices, including Royal Mail.<sup>23</sup>
33. Royal Mail has made significant contributions of approximately £22 million per year to the Apprenticeship Levy since its inception in 2017. As the levy only applies to total employee earnings subject to employer Class 1 NICs (national insurance contributions)<sup>24</sup>, Royal Mail's competitors are unlikely to be liable for an equivalent level of contribution given their heavy reliance on self-employed workforce of delivery drivers who do not qualify for employer NICs.
34. The CWU believes that Royal Mail's contribution to the apprenticeship levy is a justified contribution to the social and economic development of the UK. However, this adds yet another layer of cost pressures for Royal Mail and the universal service arising from the expansion and prevalence of low cost competition in the parcels sector. Furthermore, Royal Mail is only able to recoup the cost of the training for apprentices from the levy which is currently set at £4,000 per person, so even with the potential to employ 1,000 apprentices only £4 million would be available to support this.
35. The regulatory framework must not treat Royal Mail's apprenticeship levy contribution as a cost inefficiency, and must grant Royal Mail the flexibility necessary to ensure this cost does not impact on the sustainability of the universal service. It is also important to note that Royal Mail and the CWU are exploring the potential to recruit more apprentices into the postal operation, which also includes the re-introduction of a Postal Cadet Training Scheme targeted at 16/17 year olds. We are also working together to ensure that Royal Mail's apprenticeships are a success with the final objective being a

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<sup>22</sup> See paras 70-73 of CWU response to Ofcom review of the regulation of Royal Mail, 3<sup>rd</sup> August 2016

<sup>23</sup> Annual monitoring update on postal services, Financial Year 2019-20, Ofcom, November 2020, para 3.70, p.23, accessed at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/208219/2019-20-annual-monitoring-update-postal-market.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/208219/2019-20-annual-monitoring-update-postal-market.pdf)

<sup>24</sup> Pay Apprenticeship Levy, Government Guidance, updated 13 May 2021. The guidance states that the Apprenticeship Levy is an amount paid at a rate of 0.5% of an employer's annual payroll. The annual pay bill is all payments to employees that are subject to employer Class 1 secondary National Insurance contributions. This means employees earning more than £184 a week and under State Pension age ; accessed at: <https://www.gov.uk/guidance/pay-apprenticeship-levy#employment>

permanent job, decent rates of pay and terms and conditions. Investing in skills and training in this way supports quality and efficiency in the postal service, and therefore Ofcom should ensure Royal Mail has the regulatory enablers and incentives to continue to invest in high quality apprenticeships and other workforce training.

36. Ofcom should maintain a target EBIT margin range of at least 5-10% when considering the medium to longer-term financial sustainability of Royal Mail's Reported business. As we suggested in 2016, this may not be high enough to ensure consistency with the financial sustainability of the universal service.<sup>25</sup> It should not be returned to a lower range as this could put the universal service at risk.

**The CWU and Royal Mail have agreed significant efficiency and productivity commitments under the Key Principle Framework Agreement 2020 (The Pathway to Change)**

37. The latest agreement between Royal Mail Group and the CWU – the Framework Agreement 2020 (The Pathway to Change) - recognises that to secure our future as we introduce change, it is also important that we improve overall efficiency within the business. The Agreement includes a commitment by both parties to work together to implement new efficient and productive ways of working and to raise overall standards across the operation.<sup>26</sup>
38. The Agreement also recognises the increased pressures for staff arising from ongoing efficiency measures and commits to addressing this, stating: *“As we work towards improving efficiency, we are also committed to ensuring greater fairness for all our employees and providing a manageable workload.”*
39. A Joint Working Group (JWG) involving expertise from both management and the CWU has been established and has produced a report and joint recommendations on the best way to move forward productivity and efficiency within Royal Mail.
40. It has been agreed that a new productivity measure - Weighted Items per Work Hour (WIPWH) - will be used as the most appropriate form of internal productivity measurement and will enable Units to both maintain and improve upon their current productivity. WIPWH will be used to calculate an individual Unit's productivity against a previous reference period in the same unit. This will establish a baseline for the unit's productivity and will enable local discussions to scope opportunities for improving performance.<sup>27</sup>
41. This approach will introduce a far more accurate measure of productivity than the previous metric which was based on national averages and gross hours. The new metric will instead take into account site specific considerations such as distances between

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<sup>25</sup> See para 43 of CWU response to Ofcom review of the regulation of Royal Mail, 3<sup>rd</sup> August 2016.

<sup>26</sup> RMG & CWU Key principles Framework Agreement (The Pathway to Change), 18<sup>th</sup> December 2020, accessed on 28<sup>th</sup> April 2021 at: <https://www.cwu.org/news/rmg-cwu-key-principles-framework-agreement-the-pathway-to-change/>

<sup>27</sup> RMG & CWU Key principles Framework Agreement (The Pathway to Change), 18<sup>th</sup> December 2020, accessed on 28<sup>th</sup> April 2021 at: <https://www.cwu.org/news/rmg-cwu-key-principles-framework-agreement-the-pathway-to-change/>

sorting equipment and whether lifts are in operation. It will also be based on hours that are actually worked, taking account of sick leave, annual leave and meal breaks. Having agreed relevant standards across the operation and a plan to achieve these in the first year, further work is underway by the JWG to agree a flightpath programme to achieve objectives for years two and three.

### **We have already made good progress on implementing the 'Pathway to Change' agreement since its introduction in December 2020**

42. Work on implementing the measures set out under the Pathway to Change Agreement has resulted in strong progress already being made. **This is a huge programme of work containing a total of 71 headline commitments** that needed to be agreed and progressed. A strict 'Management and Governance' procedure has been agreed to monitor each facet of the agreement, through to implementation. This process was successfully adopted previously following the 'Four Pillars' agreement in 2018, with 18 of 41 commitments adopted in just the first six months. However, the arrival of a new CEO in 2018 halted this positive work and triggered a protracted dispute. Now, following a change in Royal Mail's leadership, both parties have adopted a positive attitude to rebuilding trust. Consequently, as of 7 May 2021, **40 of the 'Pathway to change' joint commitments have been agreed and the joint deployment of these is underway.** The remaining commitments are all green in status apart from the 'policy' negotiations talks that are amber and subject to a joint review on 31 May 2021.

43. The commitments under the Pathway to Change agreement include joint action plans to improve workplace culture; strategic meetings to look at growth, diversification and new products and services; joint recommendations in relation to the new productivity measure of 'Work items per work hour' (WIPWH) that is being used to inform our joint revision activity; the introduction of new auto hours data capture technology; and revisions and realignments of duties across the business.

44. The CWU and Royal Mail have worked hard for achievement where original dates have been attainable and pragmatic in jointly revising dates where necessary. For example, the rollout of Scan in Scan Out technology was commenced across all offices on 22<sup>nd</sup> February 2021 under joint agreement. We have also agreed dates in late spring and early summer for implementation of a number of high level milestones, including deployment of the 20/21 Network Review, conclusion of the Pipeline Review with joint recommendations, and deployment of the 2021 Mail Centre, RDC<sup>28</sup>, WBC<sup>29</sup> and Air Hub realignment projects.

### **The CWU has worked with Royal Mail on the introduction of new technology**

45. With the cooperation of the CWU, Royal Mail has introduced a range of digitally-enabled work tools to improve efficiency and productivity. This includes completion of the deployment of its route optimisation tool, which improves visibility of changes to delivery routes and is used to undertake delivery revisions.<sup>30</sup>

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<sup>28</sup> Regional Distribution Centre

<sup>29</sup> Walk Bundling Centre

<sup>30</sup> Royal Mail Group Annual Report 2019-20, ibid

46. The CWU has a record of working with Royal Mail on the development and deployment of new technology throughout the Royal Mail operation, commencing in 1985 with the introduction of OCR sorting machines. This and the subsequent deployment of new technology was done on the basis of agreed mutual interest and supported by national agreements to reflect this.

#### **Financial sustainability of the USO should be based on growth, not cost cutting**

47. We are concerned by Ofcom's emphasis on the need for ongoing cost cutting, as opposed to productivity improvements, revenue growth and diversification, to achieve its objective of securing a financially sustainable universal service.

48. To survive and thrive over the long term, the universal postal service must have the scope and incentive to grow and adapt to market changes. Without this, the relentless pursuit of cost cutting would result in a much reduced service which will not be able to meet the evolving needs of postal users and will fail to fulfil its role as a service of general economic interest.

#### **Postal services must be innovative and inclusive**

49. It is clear from developments in other countries, and from Royal Mail's ability to introduce new services in response to the coronavirus crisis, that postal networks are fully capable of offering services to citizens over and above the delivery of letters and parcels. The full potential of the Royal Mail's network must be leveraged to maximise its growth potential and we believe there needs to be much greater focus on ensuring the universal service generates sufficient revenue to allow Royal Mail to invest and innovate, in line with Ofcom's duties to ensure it is financially sustainable and to encourage investment and innovation.

### **Universal service obligations**

#### ***Ofcom questions:***

***Question 5.1: Do you consider Ofcom's approach to the safeguard cap and ensuring affordability will remain appropriate going forward? If not, please explain what changes you think should be made, with supporting evidence.***

50. **We support the approach of ensuring that a basic, affordable service is available to postal users**, and the need to protect consumers from excessive price increases. However, **this must be balanced with Royal Mail's need to earn a reasonable commercial rate of return** on safeguarded products, and to avoid an adverse effect on the financial sustainability of the universal service.

51. As of December 2020, Royal Mail is pricing its Second Class standard letter up to the safeguard cap of 66p, and will not be able to increase this before April 2022. The cap will continue to increase by CPI each year on 1<sup>st</sup> April 2022 until 31 March 2024. We are concerned that not giving Royal Mail any more headroom in the price cap on second class letters means that this cannot be used as a lever for financial sustainability. This approach risks undermining the universal service, especially in view of letter volume

decline at current levels.<sup>31</sup> The current price cap may therefore be inconsistent with the commitments made in the 2012 review to allow Royal Mail sufficient commercial flexibility to make a reasonable commercial rate of return and avoid a material effect on the universal service.

52. We recognise that affordability concerns could be addressed by limiting the safeguard cap to apply to consumers who are particularly vulnerable, for example people in receipt of certain benefits. However, such a concessionary scheme could incur significant administrative costs for Royal Mail, which risks creating pressure for further price rises. There is a delicate balance to be struck here, and it is important that Ofcom considers all of these issues carefully when ensuring affordability will remain appropriate going forward, whilst also giving Royal Mail the regulatory flexibility needed for the service to remain financially sustainable.

*Question 5.2: Do you consider Ofcom's approach to the regulation of residential and business redirections services will remain appropriate going forward? If not, please explain what changes you think should be made, with supporting evidence.*

53. **We agree that the redirection service remains an important part of the USO and that this should be an affordable service.** Evidence from Citizens Advice demonstrates the value of Royal Mail's redirection service, finding that people can face significant harm when they don't get their mail, such as fraud or missing bills or medical appointments.<sup>32</sup> Citizens Advice has also raised concerns that having to pay the whole cost upfront makes the service unaffordable for households on low incomes. They recommend that Royal Mail should allow people to pay monthly and that Royal Mail should be able to afford to put in place these changes.

54. The CWU agrees that having to pay the whole amount upfront could be difficult for low income households. However, as with Second Class letters, introducing such administrative changes will be very costly for a large business like Royal Mail. Furthermore, as a commercial entity no longer supported by public funding, Royal Mail must be able to at least ensure that these services are not loss making.

55. We therefore call on Ofcom to provide Royal Mail with the regulatory flexibility it needs on prices so that it can recover the costs of any adjustments it makes to ensure affordability of the redirection service for low income groups.

*Question 5.3: Do you consider Ofcom's approach to regulating quality of service for key USO services remains appropriate going forward? If not, please explain what changes you think should be made, with supporting evidence.*

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<sup>31</sup> Royal Mail's reported letter volumes declined by 7.6% in 2019/20 compared with the prior year. This decline has accelerated during the pandemic, with letter volumes declining by 23% year on year as at Q32020.

<sup>32</sup> Royal Mail has made redirection fairer, but they shouldn't have redirected the cost, Citizens Advice, 25<sup>th</sup> March 2021, accessed on 29<sup>th</sup> April at: <https://wearecitizensadvice.org.uk/royal-mail-has-made-redirection-fairer-but-they-shouldnt-have-redirected-the-cost-85e9a1edbd09>

56. **Yes, we believe this remains appropriate.** We welcome Ofcom’s acknowledgement that the coronavirus pandemic has materially affected Royal Mail’s ability to meet its quality of service targets. However, like Ofcom, we wish to see normal service levels restored as quickly as possible. It is welcome that Ofcom’s User Needs Survey found that postal users value high quality of service standards.<sup>33</sup> This demonstrates the importance of continued quality of service regulation to ensure that standards remain high and the postal service continues to meet the needs and expectations of users.

*Question 5.4: Do you consider Ofcom’s approach to regulating USO services, including access requirements, Special Delivery Guaranteed by 1pm, Signed For and Meter mail will remain appropriate going forward? If not, please explain what changes you think should be made, with supporting evidence.*

57. **Yes, we believe all of these USO services remain important for users and should continue to be regulated by Ofcom.** In particular, Ofcom’s user needs research demonstrates that a significant percentage of SMEs (14%) use metered/franked mail and that 85% of those considered this method to be ‘important’ or ‘very important to their business.’<sup>34</sup>

58. **The CWU is very concerned at Ofcom’s suggestion that user satisfaction would remain high in the event of Royal Mail withdrawing its Saturday delivery service.**<sup>35</sup> As we have discussed with Ofcom, we note that 68% of respondents in its own research considered a 6 day service to be important and that 98% of residential users believe the current levels of service meet their needs; we are therefore concerned that there is a constant focus on cutting this.<sup>36</sup> Any attempt at managed decline of the universal postal service risks compounding existing regional, age and incomes inequalities as Citizens Advice highlighted in its draft annual plan and maintaining postal services is particularly important at the current time.<sup>37</sup> A move to cut services would also risk job losses in Royal Mail at a time when postal workers have rightly been considered essential workers.

59. **As the CWU has previously said, we believe there should be an extension of the Universal Service Obligation (USO) to cover parcel delivery six days a week.**<sup>38</sup> We

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<sup>33</sup> Review of Postal Users’ Needs 2020, Ofcom, 26<sup>th</sup> November 2020, see for example p.23 on user research, accessed on 5<sup>th</sup> May 2021 at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/208220/2020-review-of-postal-user-needs-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/208220/2020-review-of-postal-user-needs-report.pdf)

<sup>34</sup> Review of Postal Users’ Needs 2020, Ofcom, 26<sup>th</sup> November 2020, para 6.50, p.77

<sup>35</sup> See para 6.49, p.51, Review of postal regulation, call for inputs, Ofcom, 11<sup>th</sup> March 2021

<sup>36</sup> We note, for instance, that despite these findings, the headline Ofcom chose to emphasise on the USO in its media statement on its Review of User Needs was that “reducing letter deliveries to five days a week would meet the needs of nearly all people.” Delivering Postal User Needs in a Digital Age, Ofcom, 26<sup>th</sup> November 2020, accessed on 13<sup>th</sup> May 2021 at: <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2020/delivering-postal-users-needs-in-a-digital-age>

<sup>37</sup> Citizens Advice Consumer Work Plan 2021-22, 15<sup>th</sup> January 2021, p.12 accessed on 12 February 2021 at: <https://www.citizensadvice.org.uk/about-us/our-work/policy/policy-research-topics/consumer-policy-research/consultation-the-citizens-advice-draft-consumer-work-plan-202122/>

<sup>38</sup> Don’t kill off the six day postal service, CWU urges government, CWU, 26<sup>th</sup> November 2020, accessed on 5<sup>th</sup> May 2021 at: <https://www.cwu.org/news/dont-kill-off-the-six-day-postal-service-cwu-urges-government/>; and CWU response to Ofcom, modifications of the USP access condition, 12<sup>th</sup> January 2021

believe this would help to meet increased demand for parcels whilst also strengthening the universal service and making six day letter delivery more efficient.<sup>39</sup> USO packets and parcels are growing consistently with the growth in non USO parcels. The postal USO must reflect this trend so that it continues to fulfil its purpose of ensuring social inclusion, equality of access and connectivity for all.

60. We do not believe the wider parcels market is always meeting the reasonable needs of users, especially those who are disabled, vulnerable or living in difficult to serve areas. Overall, we consider that extending USO parcel delivery to six days a week would benefit customers through greater certainty and reliability of parcel delivery. The obligation to deliver USO parcels should also generate increased revenues to secure the universal service and should help to support jobs in Royal Mail.
61. **We believe the postal regulatory framework must support and incentivise Royal Mail to innovate, grow and enhance the postal USO to help secure its future sustainability.** The CWU calls on Ofcom to work with Royal Mail to find ways to protect and enhance the universal postal service through revenue growth. Royal Mail has enormous potential to leverage its unrivalled network to develop more commercial, public and social services, as other universal postal operators are doing to sustain the economic viability of their networks. For example, La Poste in France has introduced an ambitious diversification strategy, which includes providing storage and delivery solutions for local businesses; delivering food and medicines to people with limited mobility; and checking on the elderly and vulnerable at home.
62. **We do not accept that there is any case for reducing the weight limits for parcels covered by the USO.** The requirement for Royal Mail to collect and deliver parcels up to 20kg under the USO is important in meeting the needs of citizens and consumers. Reducing the weight limits for USO parcels would reduce the scope of the USO and make services more costly for customers. There is evidence to suggest that the market will not meet the needs of all users in this regard, with high surcharges imposed by courier services for non USO services delivered to remote and other difficult to serve areas.<sup>40</sup>
63. **It is welcome that Ofcom has ruled out making changes to First Class and Second Class services.** Ofcom's user needs survey clearly showed that customers value the certainty and reliability of First Class mail, and that replacing First Class with a single class service would risk reduced revenues whilst having limited scope for cost savings.<sup>41</sup> Therefore we do not believe there is any case for removing First and Second Class services and creating a single class service. We also consider that the potential revenue loss from doing so would pose a threat to the future sustainability of the universal postal service.

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<sup>39</sup> See para 5 of CWU response to Ofcom, modifications of the USP access condition, 12<sup>th</sup> January 2021

<sup>40</sup> Navigating remote area surcharges, Parcelhero, July 2015, accessed on 30<sup>th</sup> April 2021 at: <https://www.parcelhero.com/blog/expert-shipping-advice/parcelhero-tips-remote-area-surcharges>

<sup>41</sup> Review of Postal Users' Needs 2020, Ofcom, 26<sup>th</sup> November 2020, *ibid*, see p.3

## Parcels regulation

### *Ofcom questions:*

**Question 6.1:** *Do you think the parcels market is working well for all senders and receivers of parcels (such as online shoppers, marketplace sellers and/or small retailers)? If not, please explain what changes you think should be made, with supporting evidence.*

64. **No, we do not think the parcels market is working well for all senders and receivers of parcels.** Ofcom's expectation that unfettered competition would resolve the problems of poor service quality has not transpired<sup>42</sup>, and it is now clear that new standards and safeguards for postal users are urgently needed. **We also believe that the unregulated parcels market is failing its own workforce, and that this has a detrimental impact on customers.** The CWU is calling for regulation to improve transparency and minimum requirements in the unregulated parcels sector, especially in relation to social, service quality, and environmental standards.

### Tackling labour market exploitation in the interests of workers, customers and society

65. **There is an urgent need to address false self-employment, extreme labour market exploitation and abysmal health and safety standards in the unregulated parcels sector.** Amazon drivers have reported delivering up to 75% more parcels a day during the pandemic with no extra pay. They have reported having no toilet breaks, being on shift for over ten hours a day and feeling pressure to drive unsafely to keep up with targets monitored by an app.<sup>43</sup> Their shifts can be cancelled at the last minute, yet they still have to pay for the hire and insurance of their vans through the company. They are responsible for the costs of damage to their hired vehicle which is automatically deducted from their pay.<sup>44</sup>

66. Couriers have reported earning below the minimum wage due to cost obligations and poverty piece rate pay; being unable to make ends meet; and having to take their children out on the road with them to help with their work.<sup>45</sup> The lack of health and

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<sup>42</sup> In March 2017, Ofcom published a statement following its Review of the Regulation of Royal Mail, in which it concluded that sufficient mail integrity measures were already in place to maintain quality of service for non-universal service parcels, and that no further regulation was necessary (Ofcom, statement 1<sup>st</sup> March 2017, paras 6.10 – 6.21), available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf)

<sup>43</sup> See for example the many first hand accounts and reports published over recent years about the scandalous working conditions and severe exploitation experienced by parcel delivery workers. These include: 'I'm now delivering 320 parcels a day': The pressure of Amazon delivery targets, BBC Newsnight, 2<sup>nd</sup> April 2021, accessed at: <https://www.bbc.co.uk/programmes/p09ck61l>

<sup>44</sup> I struggled as a self-employed Amazon driver – while the company boomed, Guardian, 4 Feb 2021: <https://www.theguardian.com/commentisfree/2021/feb/04/self-employed-amazon-driver-company-delivered>  
DPD courier who was fined for a day off to see doctor dies from diabetes, Guardian, 5 Feb 2018, accessed at: <https://www.theguardian.com/business/2018/feb/05/courier-who-was-fined-for-day-off-to-see-doctor-dies-from-diabetes>

<sup>45</sup> I did 18 hour days and delivered 254 parcels in a shift, Sky News, 19<sup>th</sup> Jan 2019: <https://news.sky.com/story/black-friday-i-did-18-hour-days-and-delivered-254-parcels-in-a-shift-for-christmas-rush-11560933>



safety standards has reportedly prompted police concerns about some delivery companies, who have found fatigued drivers and worn out vans.<sup>46</sup>

67. Companies like Amazon are shamelessly taking advantage of high levels of poverty and unemployment across the UK by exploiting workers for financial gain. They are using an employment model that was found to be unlawful in a recent case against Uber on the status of its drivers. However, the lack of labour market enforcement or any kind of regulatory oversight means that without workers (who are largely unorganized with no collective bargaining rights due to Amazon's aggressive hostility towards trade union representation) entering a lengthy and costly legal battle, there is nothing to stop Amazon continuing on this path.
68. Amazon also exploits loopholes and tax havens to pay next to no corporation tax. Ofcom can not genuinely benchmark Royal Mail against companies using this kind of predatory, ultra low cost business model, or hold them up as a beacon for cost efficiency in Royal Mail without doing enormous damage to the universal postal service.
69. **As the postal regulator, we believe Ofcom is well placed to gather evidence from operators on labour market exploitation in the parcels sector and work with the Government to address these issues, including through regulation, better employment rights and enforcement measures.** We believe that Ofcom needs to develop its role on this issue in line with its general duty to further the interests of citizens and consumers under the Communications Act. If this requires a change in Ofcom's powers under the Postal Services Act, we believe the legislation should be amended and we would welcome Ofcom outlining the approach it could take in its response to this consultation. In particular, the CWU calls on Ofcom to join us in urging the Government to introduce a ban on insecure employment practices, such as bogus self-employment and zero-hours contracts. There must also be a major new commitment from Government to properly enforce workers' rights.
70. **Tackling labour market exploitation will help to address poor service standards in the parcels market, as there is undoubtedly a connection between employment conditions and service standards.** Citizens Advice has been exploring evidence of a link between driver pressure and poor consumer outcomes which we understand is due to be published in the coming weeks.<sup>47</sup> More generally, it is well documented that providing good customer service depends on treating workers well and offering good terms and conditions of employment.
71. **Improving quality of service in parcels will involve granting drivers the 'worker' or 'employee' status that reflects the reality of their employment relationship, with entitlement to a basic floor of rights such as the statutory minimum wage, a workplace pension, sick pay, paid annual leave and guaranteed hours.** Parcel companies should

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<sup>46</sup> Long hours and low pay make life tough for delivery drivers, WhatVan?, 30 Jan 2017, accessed at: <https://www.whatvan.co.uk/analysis-and-comment/2016/long-hours-and-low-pay-make-life-tough-for-delivery-drivers>

<sup>47</sup> Research from Citizens Advice is due to be published in the coming weeks on Parcel delivery drivers – how workplace pressure leads to consumer delivery problems

take responsibility for their workforce and provide **decent levels of training and equipment to do the job properly** and to protect the health and safety of staff and the wider public. Parcel companies should also **recognise and work with trade unions** to ensure their staff are fairly treated, properly paid and supported in their role. Instead, these companies go to great lengths to stem trade union activity, with Amazon recently accused by Amnesty International of putting lives at risk whilst it suppresses its workers' right to organise.<sup>48</sup>

*Question 6.2: What is the nature and extent of detriment (if any) that consumers may suffer in the C2X or B2C segments of the parcels market? Please provide your views with supporting evidence.*

72. **There is an urgent need to address a problem of serious delivery failures in the unregulated parcels sector.** Citizens Advice has found that 1 in 2 people have experienced a parcel issue during lockdown, and that disabled and vulnerable groups are particularly affected.<sup>49</sup> They also found that consumers lost at least £85 million because of parcel problems in 2019, with individuals paying £15.50 on average to fix a parcel problem. This could include making telephone calls, replacing damaged or lost items, or travel to return the item in person or drop off at a depot.
73. Citizens Advice says the scale of the problem with parcels is a sign of a broken market, rather than simply isolated bad practice. Problems include parcels being left in an insecure location, delivery instructions being ignored, damaged contents, and parcels arriving late or not at all. For 1 in 6 people, a parcel delivery going wrong caused stress or anxiety.<sup>50</sup> Citizens Advice has found that of those who attempted to take action against a delivery company after a problem, 3 in 5 could not find any contact details and a third did not get a response. They say that regulations and consumer protections have not kept pace with the market and that as an essential service, they are asking the Government to take action to address this.<sup>51</sup>
74. Other reports confirm these claims, with issue resolution service 'Resolver' finding that complaints about package deliveries rose by a huge 155% in the year to June 2020,<sup>52</sup> whilst financial website 'This is Money' reported that complaints about deliveries rocketed by 159 per cent to 11,209 in May, compared to 4,334 in February.<sup>53</sup> Their

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<sup>48</sup> Amazon workers "lives at risk" as employer surveils for union activity, Institute of Employment Rights, 27<sup>th</sup> November 2020, accessed at: <https://www.ier.org.uk/news/amazon-workers-lives-at-risk-as-employer-surveils-for-union-activity/>

<sup>49</sup> Citizens Advice Draft consumer work plan 2021-22, p.22, ibid

<sup>50</sup> Citizens Advice says problems with parcels costs consumers at least £85 million a year, 15 December 2019, accessed at: <https://www.citizensadvice.org.uk/about-us/about-us1/media/press-releases/citizens-advice-says-problems-with-parcels-cost-consumers-at-least-85-million-a-year/>

<sup>51</sup> Christmas is on its way, but can the parcels market truly deliver, Citizens Advice, 10 December 2020, accessed at: <https://wearecitizensadvice.org.uk/christmas-is-on-its-way-but-can-the-parcels-market-truly-deliver-81e3e729eacf>

<sup>52</sup> Dodgy delivery service? Find out how to get that package on track, resolver news, 16<sup>th</sup> June 2020, accessed on 5<sup>th</sup> May 2021 at: <https://news.resolver.co.uk/package-deliveries-your-rights/>

<sup>53</sup> How deliveries became a first class farce, This is Money, 16<sup>th</sup> June 2020, accessed on 5<sup>th</sup> May 2021 at: <https://www.thisismoney.co.uk/money/news/article-8428103/How-parcel-deliveries-class-FARCE.html>

readers complained of late deliveries and appalling customer service in December last year.<sup>54</sup>

**Question 6.3:** *How effective are the existing consumer protection measures for users of parcel services, in particular CP 3? Is a change in regulation needed to protect users of postal services (as senders and recipients) and if so, what measures? Please provide your views with supporting evidence.*

**75. Evidence of parcel delivery failures demonstrates that the existing consumer protection measures for users of parcel services are inadequate.** Resolver has reported that although a customer's contract is with the retailer rather than the delivery company, lots of the complaints they see revolve around how hard it is to contact the delivery firm to arrange a collection or redelivery.<sup>55</sup>

**76.** Consumer Protection Condition 3 (CP3) imposes minimal requirements on the majority of operators, whilst requiring strict processes and procedures for Royal Mail. Other providers must simply '*establish...inexpensive procedures for dealing with complaints of consumers of postal services*' while Royal Mail must meet a range of requirements in the provision of this service such as the ability to complain orally or in writing; they must make a record of complaints received; respond to the complainant within a given timescale; publish their complaints handling procedure; and publish a consumer complaints report each year. The Universal Service Provider must submit this information to Ofcom.<sup>56</sup>

**77. We believe there is a strong case for Ofcom to level the playing field in this area and extend CP3.3 to all parcel delivery companies so that all parcel operators have to provide an effective complaints handling and redress service.** This should include the requirement to publish an annual complaints report and to submit this information to Ofcom.

**78. The problems customers are experiencing with lost and damaged parcels also demonstrates the need for a strengthening of regulations that protect mail from damage, theft, loss and interference.** In 2016, the CWU and Royal Mail called on Ofcom to extend the Mail Integrity Code of Practice to apply to parcels as well as letters so that the same basic standards apply to the whole postal sector.<sup>57</sup> Instead, Ofcom decided to remove the Code of Practice and move to principles based regulation on the basis that operators are already incentivised to maintain aspects of quality of service due to competition.<sup>58</sup> At the same time, Ofcom committed to consider the regulatory

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<sup>54</sup> Deliver us from Christmas chaos, This is Money, 22<sup>nd</sup> December 2020, accessed on 5<sup>th</sup> May 2021 at: <https://www.thisismoney.co.uk/money/news/article-9079785/Deliver-Christmas-chaos-rights-parcels-missing.html>

<sup>55</sup> Dodgy delivery service? resolver news, 16<sup>th</sup> June 2020. *ibid*

<sup>56</sup> Consumer protection condition 3: Complaints handling and redress, Ofcom, accessed on 5<sup>th</sup> May 2021 at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/8321/con3.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/8321/con3.pdf)

<sup>57</sup> CWU response to Ofcom review of the regulation of Royal Mail, CWU, 3<sup>rd</sup> August 2016; and Review of the regulation of Royal Mail, Statement, Ofcom, 1<sup>st</sup> March 2017, para 6.7, p.77 accessed on 5<sup>th</sup> May 2021 at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf)

<sup>58</sup> Review of the regulation of Royal Mail, Statement, Ofcom, 1<sup>st</sup> March 2017, para 6.10, p.77

implications of any increase in customer complaints or mail integrity instances in future.<sup>59</sup> We believe the evidence now calls for Ofcom to follow up on this commitment.

79. We believe the introduction of such minimum mail integrity and consumer protection requirements will help to raise quality of service standards across the parcels sector. Ofcom should also consider what additional amendments could be made to the postal regulatory framework to drive up standards in the parcels market.
80. Combined with better statutory employment protections and enforcement for parcel delivery workers, we believe this will also help to lift employment standards across the sector as it will require operators to invest in decent training and ensure workers are not under excessive pressure. Thus, the levelling up of both service standards and labour standards in the parcels sector would be mutually reinforcing.

*Question 6.4: Are there any changes to the universal service obligations required for parcels, such as including tracking for First/Second Class services? If so, please provide your views with supporting evidence.*

81. **As we said in 2016, we believe Ofcom should remove the current restrictions on end-to-end tracking in the USO** in order to better meet the needs of customers and to help level the playing field for Royal Mail in this market.<sup>60</sup> It is welcome that Ofcom is now actively considering this as part of the current review.
82. We disagree with Ofcom's decision in 2017 that tracking in the universal service would hold back parcels competition.<sup>61</sup> Competition in parcels is intense with more operators now than ever and there is no evidence that tracking for USO parcels will reverse this trend. We also reject the narrative that the USO in any way harms competition. On the contrary, combined with the recent Post Office and Royal Mail agreement which gives other operators access to the Post Office network, the restrictions on USO tracking put Royal Mail at a disadvantage and could be very damaging for the universal postal service. Many online marketplace sellers - including those on eBay and Amazon - use USO products to deliver to customers, but they are increasingly looking to use tracking as a way of differentiating their service from competitors. If Royal Mail is unable to offer this under the USO, it will be at a serious competitive disadvantage to other parcel operators.
83. Furthermore, consumers see tracking on parcels as a hygiene factor in that they expect tracking to be available and are disappointed if it is not. Ofcom's research has found that 78% of residential consumers view tracking as important when receiving parcels.<sup>62</sup>

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<sup>59</sup> Review of the regulation of Royal Mail, Statement, Ofcom, 1<sup>st</sup> March 2017, para 6.20, p.80

<sup>60</sup> CWU response to Ofcom review of the regulation of Royal Mail, CWU, 3<sup>rd</sup> August 2016

<sup>61</sup> In 2017, Ofcom decided not to allow Royal Mail to offer tracking of standard parcels within the universal service, saying that this 'could harm competition in the parcels sector'. See para 1.24, p.5, Review of the Regulation of Royal Mail, 1<sup>st</sup> March 2017, accessed at:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0033/97863/Review-of-the-Regulation-of-Royal-Mail.pdf)

<sup>62</sup> Review of Postal Users' Needs, Ofcom, November 2020, Para 6.32, accessed at:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/208220/2020-review-of-postal-user-needs-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/208220/2020-review-of-postal-user-needs-report.pdf)

We do not believe the obligation to provide the universal postal service should be prohibiting Royal Mail from providing services that customers want. There is a danger for Royal Mail that customers will begin to opt for non USO products at the expense of the universal service if they continue to be denied tracking for USO parcels. This will direct parcel volumes away from Royal Mail that are increasingly important for offsetting the decline in letter volumes and securing the future financial sustainability of the universal service.

84. It is important that Ofcom prioritises financial sustainability as a factor when assessing its approach to regulation in this area. Products within the universal service need to stay relevant to customers and their changing needs and we note that in Ofcom's user needs research, the importance of tracking was highest for younger people, with 86% of 16-34 year olds agreeing with this and 83% of 35-54s.<sup>63</sup> If Ofcom takes a narrow approach to determining what products should be part of the universal service, over time it will become irrelevant and increasingly unsustainable.
85. We do not accept any argument that preventing tracking for USO parcels is justified on the basis that Royal Mail has a VAT exemption for USO products. The VAT exemption is in place because it helps to finance the universal nature of the postal service, in terms of coverage and the uniform affordable price, which is why it is a service of general economic interest. This is a service that continues to be vital for social cohesion and economic activity, which also comes with a high fixed cost. We therefore reject any suggestion that the VAT exemption gives Royal Mail an unfair advantage.

*Question 6.5: Do you have any other comments on Ofcom's approach to regulating parcels? If so, please provide your views with supporting evidence.*

#### **Parcel growth must not be at the expense of the environment**

86. The rapid growth of e-commerce, especially during the pandemic, has highlighted the importance of the delivery sector to the UK economy. However, without better protections in place this threatens to have a serious detrimental impact on the environment.
87. The increase in parcels competition in recent years has caused higher carbon emissions as more competing operators deliver to the same address. As UNI Europa has said, the general practice amongst unregulated operators of using low-cost business models and outsourcing delivery work also undermines the financial incentives to invest in greener vehicles.<sup>64</sup> In contrast, as the universal service provider with directly employed workers and its own fleet, Royal Mail does have such an incentive, and has invested in a 295 strong fleet of electric vehicles. This has contributed to Royal Mail recently being found

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<sup>63</sup> Postal User Needs: Quantitative Research Report, Ofcom, Page 77 accessed on 13<sup>th</sup> May at [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0018/208215/2020-review-of-postal-user-needs-quantitative-report.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0018/208215/2020-review-of-postal-user-needs-quantitative-report.pdf)

<sup>64</sup> UNI Europa response to European Commission Postal Services Directive Consultation, November 2020, accessed on 5<sup>th</sup> May 2021 at: [https://www.uni-europa.org/wp-content/uploads/2020/11/UE\\_USO\\_PSDConsultationReplies\\_final\\_EN.pdf](https://www.uni-europa.org/wp-content/uploads/2020/11/UE_USO_PSDConsultationReplies_final_EN.pdf)

to be the most carbon conscious delivery company.<sup>65</sup> Royal Mail's latest financial results states that it is continuing to trial and deploy new technology to reduce the environmental impact of its fleet, including telemetry, electric vans, dual fuel hydrogen vans and Bio-CNG trucks.<sup>66</sup>

**88. Ofcom must ensure that Royal Mail has the commercial flexibility it needs to recoup its investment in electric vehicles and other environmentally responsible initiatives.**

Failure to do so would constrain Royal Mail's investment in this important area, or it would put pressure on the funding of the universal service.

89. More broadly, given the gravity and urgency of the climate crisis, we believe Ofcom should be proactive in addressing this issue and we note that a recent report estimated that online shopping on Black Friday 2020 alone would release around 429,000 tonnes of carbon emissions into the atmosphere.<sup>67</sup> While we believe there may be actions Ofcom could take under the Postal Services Act, it should set out the options in more detail or state clearly if there need to be changes to the legislation in response to this consultation.

## Access regulation

### **Ofcom questions:**

**Question 7.1:** *Does the current scope of access regulation remain appropriate or should this be changed and, if so, how and why? Please provide your views with supporting evidence.*

**Question 7.2:** *How well is our approach to access price regulation working in supporting access-based competition? Are there any improvements or changes that we should make? If so, please provide your views with supporting evidence.*

**Question 7.3:** *Is our current approach to access regulation working well in delivering fair, reasonable and not unduly discriminatory terms of access, and are there any changes we should make? If so, please provide your views with supporting evidence.*

90. The CWU holds a longstanding opposition to the downstream access regime, which mandates Royal Mail to provide access to its inward mail centres and includes a regulatory margin squeeze control to secure a share of the letter market for rival operators. As the CWU has argued previously, we do not believe the DSA regime has benefited the majority of postal users and it puts pressure on the revenues needed to help ensure the financial sustainability of the universal postal service.

91. We are concerned about the high level of access competition and the impact that this may have on the financial sustainability of the universal service in a declining letters market. Access mail in total letter volumes has increased from c.46% in 2011-12 to

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<sup>65</sup> The Dirty Delivery Report; counting the carbon cost of online shopping, money.co.uk, 3<sup>rd</sup> November 2020, accessed at: <https://www.money.co.uk/guides/dirty-delivery-report-2020>

<sup>66</sup> Royal Mail results for year ended 28 March 2021, accessed at: <https://www.royalmailgroup.com/media/11446/royal-mail-plc-fy2020-21-results-20-5-21.pdf>

<sup>67</sup> The Dirty Delivery Report; counting the carbon cost of online shopping, money.co.uk, 3<sup>rd</sup> November 2020

c.64% in 2019-20 (dipping slightly from 65% in 2018-19).<sup>68</sup> We consider that Ofcom must continue to monitor developments in this area to ensure that the level of access competition does not threaten the universal postal service.

92. We also believe that any move towards expanding the products included in Royal Mail's mandatory access requirements would impact its revenues further. In particular, **there should be no mandation of parcels in the access regime as this would seriously jeopardise investment in the network and could undermine the sustainability of the USO.**

93. Furthermore, **we do not consider that the three statutory tests required to justify the introduction of such a change have been met.** These including 1) promoting efficiency; 2) promoting effective competition; and 3) conferring significant benefits on the users of postal services.

94. **In respect of the first test on promoting efficiency, Royal Mail already has well developed plans as set out in the Key Principles Framework Agreement 2020 (The Pathway to Change).** This recognises that capturing parcel growth is essential to our future and that this will involve the introduction of change at a greater pace, including;

- Revision activity (driven by local solutions) to rebalance letters from parcels, reflecting the change in volumes between the two.
- The need to maximise parcel capacity in our existing networks.
- The development of a 24/7 operation and the introduction of Sunday deliveries (initially on a voluntary basis).
- The introduction of new automated parcel hubs and the creation of an enhanced network through a major joint review of the whole operation, whilst ensuring there is no reduction in the existing Mail Centre and RDC estate.<sup>69</sup> Royal Mail's latest financial results state that it aims to reach at least 50% of parcels sorted automatically by the end of 2021-22 –up from 33% currently.<sup>70</sup>

95. At a time when we are making significant progress on delivering this plan, we are extremely concerned that the introduction of a whole new access regime would seriously disrupt this.

96. **In respect of the second test** on promoting effective competition, as we have outlined in our submission **competition in the parcels sector is already highly developed.**

97. **In respect of the third test,** the consumer failures we are witnessing in the parcels sector with existing levels of parcels competition demonstrates that mandation of

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<sup>68</sup> Annual monitoring update on postal services, Financial Year 2019-20 Ofcom, 26 November 2020, accessed at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/208219/2019-20-annual-monitoring-update-postal-market.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/208219/2019-20-annual-monitoring-update-postal-market.pdf)

<sup>69</sup> RMG and CWU Key Principles Framework Agreement (The pathway to change), 22<sup>nd</sup> December 2020, accessed on 5<sup>th</sup> May 2021 at: <https://www.cwu.org/news/rmg-cwu-key-principles-framework-agreement-the-pathway-to-change/>

<sup>70</sup> Royal Mail results for year ended 28 March 2021, accessed at: <https://www.royalmailgroup.com/media/11446/royal-mail-plc-fy2020-21-results-20-5-21.pdf>

parcels in the access regime is not warranted, and that **introducing even greater parcels competition through access regulation is likely to be further detrimental to postal users.**

98. **In addition, we call on Ofcom not to introduce direct access price controls as these would** pose a severe threat to the financial sustainability of the universal service. They would risk a return to the failures of Postcomm's price control regime, which brought the universal service to the brink of collapse when Royal Mail lost £120m in 2010-11.<sup>71</sup>
99. **Finally, when considering what access regulation is appropriate at the current time, Ofcom must account for the competitive pressures facing Royal Mail as a result of the Post Office/ Royal Mail agreement** (also mentioned above in relation to parcels) which gives other operators access to the POL network.

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20<sup>th</sup> May 2021

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<sup>71</sup> As we have previously argued on this point - see paras 15 and 16 of CWU response to Ofcom review of the regulation of Royal Mail, 3<sup>rd</sup> August 2016