MAIL COMPETITION FORUM

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Ofcom's Review of Postal Regulation Consultation: Response from the Mail Competition Forum

1. Introduction and Summary

The Mail Competition Forum provides the following response to Consultation Document on Ofcom's Review of Postal Regulation (the Consultation, published by Ofcom on 9th December 2021).

This response is not confidential; it may be published in full and attributed to the Mail Competition Forum.

The Mail Competition Forum (MCF) is a group which represents the interests of several of the UK's leading mail and parcel operators, who compete both with one another and with the incumbent Designated Universal Service Provider, Royal Mail (RM). The objective of the MCF is to support the development of conditions in the UK for fair, vibrant and sustainable competition to Royal Mail within a stable and undistorted market.

In its regulation of the UK postal market, Ofcom's review of the current regulatory framework for postal services is a crucial item of work and the MCF hopes Ofcom will seize the opportunity to make some much needed adjustments to the current regulatory regime, which has been in place, very little changed, since 2012.

The UK postal market has been experiencing an acceleration of the switch in postal volumes from mail to parcels (prompted by conditions during the Covid-19 pandemic) and although the current financial position of RM is consequently less precarious than in previous years, the MCF believes this is very much due to the benefits of the surge in parcels volumes and greatly increased mail prices, and not because of either improved, underlying performance by RM or the efficacy of the current regulatory regime.

There has never been more reliance on the postal service sector than in the last two years, during which time parcel operators have seen volumes increase by 60% or more, while mail operators have seen a significant decline in volumes.

Parcel operators have invested heavily in their networks to ensure that the sustained increase in demand and volumes can be accommodated; mail operators have invested to continue services with Covid-19 security measures. Both have made great efforts to ensure service performance for customers has been maintained. RM has failed to match this and appears to have prioritised parcels to the detriment of letters. This can be seen in the abysmally low levels of quality of service provided by RM for letters throughout the period from March 2020 (with no improvement in sight) and anecdotal evidence from numerous sources.

Furthermore, operators other than RM have continued to honour their service level agreements with clients, providing compensation for any service delays, regardless of whether these have been caused by Covid-19.

While the benefits to RM of increased revenue from unprecedented parcels volume have given RM a financial boost sufficient for it to report and predict high profits, and to make large-scale payments to shareholders, it is clear that RM's ability to finance provision of the Universal Service remains fragile – as evidenced by Ofcom's latest Annual Monitoring Review and data given in the Consultation.

For Ofcom to fulfil its principle statutory duties (that Universal Service provision be financially sustainable and efficient, and to further the interests of citizens and consumers, where appropriate by promoting competition), the MCF believes important changes to the regulatory regime need to be made.

The MCF's responses to previous consultations (e.g. on successive Ofcom Plans of Work and to the Call for Inputs in May 2021) have had a common theme on the need to revise the regulatory regime set by Ofcom in 2012 and we continue to argue for that regime to be adjusted, in particular in relation to constraining increases in postal service prices and ensuring RM efficiency improvement.

The MCF calls on Ofcom to:

- Implement new regulatory measures in the letters market to constrain RM's ability to impose large price increases and ensure RM makes good progress in efficiency/productivity improvement and focuses on maintaining high service performance
- Set parameters clarifying when and for how long RM can declare "emergency conditions" which allow it unilaterally to alter Universal Service provision and suspend compliance with its contract obligations
- Change the regulatory regime relating to downstream Access so that Access prices are directly controlled and 'ring-fencing' apply around RM Retail bulk mail
- Establish a new governance model for access to the Universal Service network to be developed in a way that promotes competition, benefits customers and supports RM in receiving revenue towards sustainable provision of the Universal Service

Please note that the comments below represent the general views of MCF members, rather than the opinion of each and every MCF member. Several MCF members will be making their own, specific inputs.

(The comments below follow the structure of the Consultation and use that document's paragraph and question numbering.)

2. <u>The postal services market and Ofcom's proposed approach to regulation</u>

Question 2.1: Do you agree with Ofcom's proposed regulatory approach for regulating postal services over the next 5-year period (2022-2027)? If not, please explain the changes you think should be made, with supporting evidence.

For the letters market, the MCF does not believe the current, overall regulatory approach remains appropriate and argues that important changes are overdue.

Ofcom's regulatory regime has remained essentially unchanged since 2012 and continues to rely on the three "regulatory safeguards" that were established 10 years ago:

- Affordability: a cap on the price of Second Class stamps for letters and parcels up to and including 2kg;

- Competition: requiring RM to continue to provide access to its network for bulk letter competitors; and
- Monitoring: an effective and on-going monitoring regime to track RM's performance in respect of the universal service, efficiency levels, pricing and competition.

At the same time as establishing these safeguards, Ofcom allowed RM far greater commercial freedom than was the case before (under Postcomm). In particular, direct price control on Access prices and a general requirement for RM to allow access to its network were removed.

Ofcom saw and have since 2012 continued to see these three safeguards as being sufficient to meet its statutory duties. The MCF believes that has not been the case.

Price control:

Although the price cap on Second Class stamped and metered USO mail has been applied (though it was breached in 2019), the real cost of both First Class and Second Class USO mail has increased since 2012 (by 13% and 16% respectively, according to Ofcom's Call For Inputs).

The MCF is more concerned that the absence of any price control on other mail services has seen large, real-terms price increases throughout the period of Ofcom's regulatory responsibility.

In particular, Access prices for business mail have increased by an average of 5.9% in real terms each year between 2016 and 2021 and increased again well above the rate of inflation in January 2021.

Over the same period, mail volumes have seen an average annual reduction of c5%. Ofcom see this as being due to structural switching of communications from mail to other media. The MCF firmly believes this is the consequence of rapid increases in mail prices.

Competition:

Despite Ofcom having a statutory duty to further the interests of citizens and consumers, where appropriate by promoting competition, the MCF would argue there is now less competition in the UK letters market than when Ofcom became the postal regulator in 2012 and less now than in 2017 when the last Regulatory Review was completed.

Competition for Access mail contracts remains vibrant with a wide range of service providers bidding for client work from originating customers, mailing houses, postal consultancies and intermediaries. However, while a number of these had previously organised their own collection and transport of mail to RM inward mail centres, several have since chosen to sub-contract this to larger operators and three operators collectively handle more than 90% of Access mail. This should be seen as a reduction in competition.

It remains the position that there is no competition to RM in the final delivery of mail (only 0.5% of mail is delivered by a company other than RM). Without change to regulatory regime, that position shows no prospect of changing and development of competition remains stifled.

While Ofcom has continued to rely on competition to mitigate the commercial freedoms it has allowed RM, Ofcom itself recognised in 2017 that it was highly unlikely any nationwide end-to-end competition in the bulk letters market would emerge, and no such competition has emerged since.

Monitoring:

Ofcom has continued to monitor and report on RM's performance in respect of the universal service, efficiency levels, pricing and competition, but in each of its reports since 2017 have evidenced RM failing to improve its efficiency, while letters prices have increased significantly in real terms and direct competition in letters has declined.

It seems to the MCF that Ofcom has been content to continue to believe that monitoring and reporting alone will achieve the required improvement in RM's performance, when the evidence shows that has not been the case.

Other than for USO services, Ofcom has not set any service performance targets – and performance has not improved.

Ofcom has not set any efficiency targets – and efficiency has not improved.

Other than for Second Class USO mail, Ofcom has not set any direct price controls – and prices have increased greatly in real terms.

It therefore seems clear to the MCF that the regulatory approach relied on by Ofcom for ten years has meant Ofcom's statutory duties have not been sufficiently fulfilled.

It is clear to the MCF that what Ofcom has termed a "clear and stable regulatory environment" since 2012 has resulted in real increases in prices (and marked decline in mail volumes), no increase in mail competition, no improvement in service performance or efficiency and no improvement in the long term financial sustainability of Universal Service provision.

The MCF believes the existing regulatory regime does not provide sufficient incentive for RM to improve efficiency, or sufficient constraint on its behaviour or its ability to exercise its market power, and does not promote effective competition.

In several submissions to Ofcom since 2017, including to the Call for Inputs, the MCF has argued that there was a clear need for Ofcom to revise the regulatory regime and we have asked for implementation of regulatory measures on efficiency and prices.

In this Consultation, Ofcom is proposing to make some changes to its regulation of RM, "to strengthen our approach to financial sustainability and efficiency and hold Royal Mail to account for the achievement of its planned efficiency savings".

The MCF welcomes and supports those changes, but we do not believe they are sufficiently robust or extensive to ensure change in RM's behaviour or to address all the aspects of regulation which the MCF argues are necessary and justified.

The MCF does not believe the proposed changes are sufficient to fulfil Ofcom's statutory duty under the Postal Services Act 2011 to secure the provision of a universal postal service with regard to 'the need for the provision of a universal postal service to be financially sustainable' (s29.3.a) and for RM's provision of the universal service to 'be efficient before the end of a reasonable period and for its provision to continue to be efficient at all subsequent times' (s29.3.b). In that respect, it is clearly arguable that 10 years on form Ofcom becoming the postal regulator, RM is still not efficient in its provision of the universal service.

The MCF also does not believe that current regulatory regime is fulfilling Ofcom's statutory duty under the Communications Act 2003 to "further the interests of consumers, where appropriate by promoting competition" within the market for mail and Ofcom makes no proposals that, in our view, will change that.

3. <u>Financial sustainability</u>

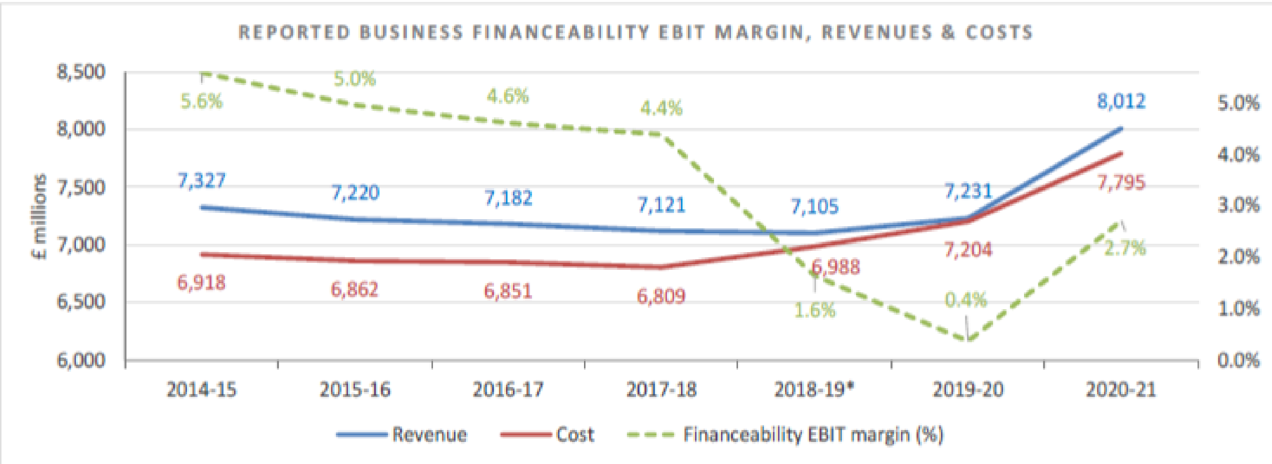
Question 3.1: Do you agree with our proposed approach to sustainability of the universal service? Please substantiate your response with reasons and evidence.

The MCF believes Ofcom's current approach to financial sustainability and efficiency needs to change. We support the changes Ofcom proposes to make, but believe they need to be enhanced further.

We have noted above that Ofcom has a statutory duty to ensure that provision of the universal service is financially sustainable and for that provision to be efficient before the end of a reasonable period and to continue to be efficient at all subsequent times.

Since 2012, Ofcom has used EBIT as the measure to indicate financial sustainability, with it appropriate for this to be in the 5%-10% range; this was confirmed by Ofcom in 2017 and in this Consultation Ofcom again says it believes this continues to be the right measurement.

However, since 2015-16, not only has RM failed to have an EBIT in this range, with EBIT below 5% and it has been declining, other than an upturn in 2020/21 as a result of the great increase in parcels volumes.



Ofcom believes “the significant changes in the parcels market present Royal Mail with an opportunity to transform into a sustainable parcel-led business over the longer-term, which in turn would support a sustainable USO.”

The MCF does not share this optimism. As we said in our response to the Call For Inputs:

> “The MCF sees a threat to the longer term sustainability of Universal Service provision arising from the decline in mail volumes while parcels volume increases significantly.
>
> This is because as letter volume falls and RM becomes more of a parcels operator (as it has clearly stated it intends to), RM’s ability to leverage its letter delivery network capability to compete in the parcels market will also decline and competition in the parcels market will limit RM’s ability to increase parcel prices. This then means provision of the Universal Service for letters could no longer be subsidised from parcels, while letters volume and revenue continued to decline.
>
> Without regulatory intervention to ensure letters efficiency improvement and support letters volume and revenue, the Universal Service for letters could become unsustainable and/or unaffordable.”

Indeed, Ofcom itself says it has analysed RM’s latest business plan (2021/22-2023/24) and considered sensitivities around key assumptions and plausible longer-term trends. Ofcom sees RM’s strategy as being centred on it being able to grow its share of the growing parcels market and on cost efficiencies being achieved, and Ofcom has concluded that revenue growth alone is unlikely to be enough to secure a sustainable level of profit unless RM can also improve on its recent efficiency performance. Ofcom hence states that “significant risks remain”.

Given “the potential sustainability risk”, Ofcom proposes “to increase accountability and our understanding of Royal Mail’s outlook in the longer term… by requiring a five-year financial forecast from Royal Mail. Furthermore, given the relevance of efficiency to sustainability, we seek to strengthen our monitoring regime on efficiency also. To do this, we will be consulting in due course on the necessary changes to our financial regulatory requirement which are set out in the USP Accounting Condition and the Regulatory Accounting Guidelines."

The MCF supports this enhanced monitoring and changes to the Regulatory Accounting Guidelines to facilitate it.

It is critical for Ofcom to ensure it is able to collect the necessary, relevant information and is able to demonstrate the effectiveness of this in ensuring sustainable universal service provision.

However, we do not agree with Ofcom when it says: "we do not propose to hardwire specific regulatory actions to a given measure such as EBIT margin thresholds to maintain flexibility. EBIT margins, whether actual or forecast, which fall out of the 5 to 10% range do not necessarily mean that the financial sustainability of the universal service is threatened or that excessive profits are being earned. We will consider each case in its specific circumstances and in the wider context of Royal Mail's financial performance and position."

The MCF accepts EBIT margins which fall out of the 5% to 10% range do not necessarily mean that sustainability is threatened, or excessive profits being earned, but we urge Ofcom to modify this position.

Given the entrenched history of RM failing to achieve the EBIT performance which Ofcom believes is necessary to show sustainability of universal service provision, we strongly believe that it would give postal market stakeholders appropriate and necessary reassurance if Ofcom were to change this position such that if, for any year, RM's EBIT was outside the 5%-10% EBIT range then that would automatically trigger a regulatory assessment of the position to ensure that Ofcom is considering appropriate regulatory actions wherever there is a perceived risk to sustainability.

This would not be to "hardwire specific regulatory actions", but would demonstrate Ofcom was doing more than just allowing the established approach to stumble forwards for yet another 5-year period until the next Regulatory Review.

4: <u>Efficiency</u>

Question 4.1: Do you agree with our proposal to maintain the historic approach but with the additional requirement on Royal Mail to set and report against a five-year expectation? Please substantiate your response with reasons and evidence.

Question 4.2: Do you agree with our proposals in relation to the monitoring and publication of the efficiency expectations prepared by Royal Mail? Please substantiate your response with reasons and evidence.

In its last Regulatory Review (March 2017), Ofcom decided not to apply any price control on RM other than for 2nd Class Stamped mail and not to set any efficiency targets, despite having concerns that if RM relied on service degradation and/or price increases without efficiency improvement, that could undermine financial sustainability and undermine users' needs. That decision was also despite several stakeholders (including the MCF) urging Ofcom to recognise the need to introduce price controls and/or efficiency targets.

Ofcom's decision not to introduce regulatory measures was because RM had provided plans "which demonstrated greater ambition than its past performance and set targets within a reasonable range" and Ofcom "also believed that there was potential for Royal Mail to make greater efficiency gains than those forecasted."

Since 2017, RM has abjectly failed to improve efficiency sufficiently, has increased mail prices well above the rate of inflation and has failed its service performance obligations, leaving Ofcom to now admit that "overall progress since 2016-17 has been concerning".

The Postal Services Act 2011 gives Ofcom a duty on "*the need for the provision of a universal postal service to be efficient before the end of a reasonable period and for its provision to continue to be efficient at all subsequent times"*.

That legislation was passed ten years ago, yet Ofcom has made no statement nor published any evidence to show that this duty has been met. Ofcom has not said whether or not it believes RM's provision of the Universal Service is efficient or if RM has arrangements in place to ensure Universal Service provisions will continue to be efficient.

Ten years is surely, the MCF believes, more than a long enough a "reasonable period" for Ofcom to comment on whether it has met this statutory duty.

Ofcom's Annual Monitoring Report for 2020/21 shows that RM's real costs have been increasing while efficiency improvement (PVEO analysis) has been minimal or nil.

Hence, it is clear to the MCF that the mechanisms relied on by Ofcom so far (e.g. shareholder pressure and competition) have simply not worked, while Ofcom has shied away from any proactive regulation.

We believe Ofcom's expectation that shareholder pressure creates incentives for RM to become more efficient is manifestly false.

Rather than improving efficiency, RM has simply compensated for its inefficiency by implementing above inflation price increases, using the resulting revenues to pay substantial shareholder dividends. In November 2021, RM paid shareholders £200m through a special dividend, £200m through a share buyback and an additional £67m interim dividend.

As long as RM's shareholders receive these dividends, there is no prospect of meaningful pressure to spur greater efficiency. It is entirely possible that these substantial dividends are set to continue, further supressing pressure for greater efficiency, because shareholder pressure will only be a factor where profitability is impacted by lack of cost control and ability to increase prices is constrained.

The MCF sees the position as one where RM has repeatedly failed to achieve its own, modest targets for improved efficiency/productivity. Pressure to improve efficiency (and pressure to limit price increases) would be present in a normally competitive market, but RM is not subject to such market pressures in relation to mail, where it has extreme market power through a monopoly in mail delivery, or (to a degree) in lightweight parcels, where it is able to gain market advantage through use of its universal service network for letters.

The MCF has consistently called for efficiency improvement targets to be set and for RM to be held to account for hitting these targets. Ofcom has consistently ignored such calls.

Meanwhile, RM talks of recognising the need for it to improve efficiency and outlines plans to achieve that.

Recently, in its Annual Report for 2020-21 RM stated that "Royal Mail must become more efficient and flexible to compete effectively in the parcel and letter markets. The success of our strategy relies on the effective control of costs and delivery of efficiency and productivity benefits across all areas of the business. Failure to effectively control costs while at the same time delivering high-quality services could result in a loss of customers, market share and revenue."

Ofcom has continued to believe and rely on such aspirations, but RM has consistently failed to achieve what it has promised. With RM, it is always 'efficiency tomorrow'.

Against this background, Ofcom still does not believe price controls or efficiency targets are warranted.

Ofcom asserts that price controls “could constrain Royal Mail’s commercial flexibility and therefore its ability to respond to market changes effectively” and “commercial flexibility can also create a stronger incentive to generate efficiency gains than price controls”, while structural changes in the market might mean price controls lead to unintended consequences. Efficiency targets, Ofcom believes could be difficult to establish and distracting for RM.

It would be useful if Ofcom could explain the difficulties it sees in setting efficiency targets. Any market regulation by the sector regulator is ‘difficult’, but the challenges faced by the regulator in setting targets is not an adequate reason to not pursue such remedies.

Ofcom says “we therefore do not consider that such targets would be beneficial at this stage”, but the difficulties it could face in setting efficiency targets will remain and intervention may become even more ‘difficult’ to establish, monitor and enforce if the situation deteriorates further.

There is a danger that Ofcom could be seen to be averse to setting targets in the future even if it becomes clear that RM is not setting ambitious efficiency expectations and/or is failing to meet the expectations it does set. This attitude may not incentivise RM to make satisfactory progress against its efficiency expectations, even if it sets and reports against five-year expectations.

Ofcom also says that efficiency targets “may have little additional effect for an organisation that is already under pressure to cut costs”. As the MCF has already said, RM is allowed to compensate for failing to meet efficiency targets by implementing above inflation price increases and so is able to pay substantial dividends, reducing any shareholder pressure for greater efficiency.

Given this background, the MCF firmly believes that Ofcom should seriously consider the need for efficiency targets and price controls, and the design of such measures. At the very least, Ofcom should be conducting the work needed to explore the design such a framework, to gain information on the feasibility and likely impact of such measures.

Instead, Ofcom proposes to require RM to publish the efficiency gains it expects to make and its progress in achieving them. The first publication of this would be in May 2023, for the 5-year period from 2023/24 to 2027/28.

In the absence of other regulatory action by Ofcom, the MCF supports this proposal, which we see as an absolute minimum.

We believe Ofcom should review progress made against those targets with RM and benchmark the progress against international comparisons.

We believe Ofcom should report annually on how it views RM’s progress against the 5-year plan and RM’s achievement, or otherwise, of the of the efficiency targets in that plan.

If it would be difficult (as Ofcom claims) for Ofcom to establish targets and distracting for RM if Ofcom were to do that, it would be straightforward for Ofcom and not distracting for RM if Ofcom adopted RM’s expectations as regulatory targets. That would, at least, be a form of active regulation, rather than Ofcom being little more than a passive observer.

Agreeing efficiency improvement expectations/targets and holding RM to account for achieving those targets (as it does with Quality of Service), should be a key part of Ofcom’s focus in the Regulatory Regime for the next five years.

In addition, while we accept that Ofcom cannot give a firm commitment of what further action it will take if efficiency expectations are not met, Ofcom should at least give a clear indication of what action(s) it would consider. Otherwise, there is little prospect that the new requirement will prompt any meaningful change.

The MCF is also concerned that the proposal to have RM publish a 5-year plan from 2023/24 means that even this regulatory development will not be in place until then, when the next 12 months will be crucial to RM making realistic progress and there are clear dangers to RM being able to achieve efficiency improvement.

For example, RM's own Annual Report and Financial Statements for 2020-21 lists efficiency as a principal risk or uncertainty, with a 'high' 'relative severity' rating.

RM stated: 'The continuation of tighter COVID-19 restrictions, including changing standard ways of working to allow social distancing, has added costs and has impacted our processing and delivery operations. These arrangements may continue for some time. In turn, they may have an adverse impact on cost control and productivity'.

Additionally, RM's reduction in the working week for frontline workers while at the same time implementing a pay rise represents a very real challenge for sustainability.

Ofcom's Annual Monitoring Report 2019-20 noted: "Frontline pay increased due to the October 2019 pay rise of 5% and the impact of the shorter working week, and this was not fully offset by hours reductions." This may be compounded by wage inflation, with around half of RM's operating costs being staff costs.

As well as hours reduction and pay increases, the 2022 National Insurance increase is set to cost RM £50m p.a., every 1% of wage inflation increasing costs by a further £40m.

Hence, the MCF urges Ofcom to bring forward the application of its proposals relating to RM's efficiency plans, so that they are in effect in some form for 2022/23.

5: <u>USO letters regulation</u>

Question 5.1: Do you agree with our proposed approach of maintaining the current regulatory safeguards of the safeguard cap, high quality of services standards, and requirements on access to universal services? Please substantiate your response with reasons and evidence.

<u>Safeguard Cap:</u>

In our response to the Call For Inputs, the MCF said:

> "The MCF notes that there is clear inconsistency here, in that RM prices are significantly below the cap for parcels, but not for letters (where prices are increased annually). For parcels, RM is pricing well below the second class safeguard cap, which may suggest that RM's prices are, therefore, not fully cost reflective.
>
> We suspect this is because RM is concerned about the level of competition in the parcels market and Ofcom's assertion that there is insufficient competition to protect consumers.
>
> As there is such a large gap between RM's prices and the second class safeguard cap, this may suggest that RM is in no rush to increase prices should the cap be removed."

We remain of this view and believe Ofcom should actively investigate whether RM's prices for USO parcels are sufficiently cost reflective, in particular, to ensure they are priced at a level that gives an appropriate commercial profit. If that is not the case, it would mean RM was cross-subsidising within the USO between letters and parcels and, hence, prejudicing the continuing financial sustainability of USO provision.

<u>Service Standards:</u>

The MCF continues to be very concerned at the exceptionally poor Quality of Service (QofS) which RM is providing to customers (both on USO and an Access services), despite Ofcom having said that the Emergency Period ended on 31st August 2021.

Ofcom has confirmed that "Many stakeholders expressed concern about the poor quality of service experienced by users as a result of the impact of the Covid-19 pandemic….Some respondents suggested that we should review the procedures in place for future emergency periods. This included considering setting out criteria on how long such a period could go on for, and deciding when the normal regulatory regime would be restored".

Despite this, Ofcom says: "we do not agree that we should set out criteria on how the length of any future period should be decided. This is because this is a statutory exemption set by Parliament in the legislation, and we do not think it is appropriate for us to seek to prejudge how future emergency periods should be treated."

The MCF strongly disagrees with Ofcom's view that this is only a statutory issue and not also a regulatory one.

It is very difficult to reconcile Ofcom's view that the existing regime for QofS targets is working well with Ofcom's January 2022 update on Royal Mail delivery days.

In that, Ofcom stated: "As the regulator for Royal Mail, we're concerned about these delays and have made it clear to Royal Mail that it must take steps to improve its performance as the effects of the pandemic subside." Ofcom is well aware of the great number of recent news reports of major delays in mail deliveries by RM and that despite Ofcom having declared that the Emergency Period finished on 31st August 2021, significant delays have persisted for 6-months beyond that.

The MCF, along with several other mail industry stakeholders, urges Ofcom to take appropriate action.

In our view, customers' experience during the Emergency Period clearly showed that Ofcom does not currently have the necessary regulatory ability to do anything more than simply allow RM to have a unilateral, unconstrained and unchallenged ability to be exempt from providing the Universal Service if it decides there is an emergency situation.

The Emergency Period suffered for 18 months during 2020 and 2021 may have been the first time it had existed and the circumstances may have been "genuinely extraordinary", but any Emergency Period must only be in genuinely extraordinary circumstances and it is entirely justifiable for customers to expect that Ofcom is able to require RM to provide information on how its service provision has been affected, what RM is doing about it and for how long RM expects the circumstances to continue.

At the moment, Ofcom does not even have the ability formally to review the position after any set period of time.

The MCF is not calling for Ofcom to have regulatory ability to require RM to act in any particular way during an Emergency Period, or for RM to need Ofcom's formal authorisation to declare an Emergency Period, but Ofcom should have clear regulatory ability to monitor what RM is doing.

While Ofcom may, in practice, have been doing that during the Emergency Period, there was very little information provided by Ofcom to customers during that period. (We do not believe it is sufficient for Ofcom to report retrospectively as part of the Annual Monitoring Report).

In section 8 below (Access for Bulk Mail), the MCF sets out its grave concerns with continuing, abysmally poor QofS on Access mail and the unreasonable Disruptive Event power held by RM. Given these issues and RM's monopoly in mail delivery, plus the facts that Access mail and USO mail use the same operational network from Inward Mail Centres to delivery, and that 65% of all addressed mail is Access, the MCF argues Ofcom should include Access mail in its monitoring of QofS. We would welcome further discussions on how this could be done.

In its response to the Call For Inputs, MCF pointed out that certain of the existing Ofcom's Regulatory Conditions did not seem to have been complied with.

DUSP1.11.1 requires:

> "The universal service provider shall at all times maintain appropriate contingency plans, which set out the measures to be taken by the universal service provider to ensure as far as practicable the provision of the services required by DUSP 1.4 to 1.7 without interruption, suspension or restriction of any service in the event, locally, regionally or nationally, of industrial action, an emergency or a natural disaster, and implement those plans, as appropriate, where such events occur"

and DUSP1.11.2 requires:

> "At least once every two years from the appointed date, the universal service provider must review and where appropriate, update or amend its contingency plans."

The MCF has not been able to find on the Ofcom or RM websites any information to confirm that RM has complied with those Conditions, or about its contingency plans, or about how such contingency plans have been implemented.

Ofcom has not commented on this.

The MCF recognises that RM has experienced staff absences related to COVID-19 (as all postal operators have also experienced), but we are extremely concerned that RM's monopoly in final delivery of mail has allowed it to prioritise parcel delivery, where it faces strong competition outside lighter-weight, letterboxable items. Such prioritisation has been reported many times in the media, based on information from within RM.

RM's own Chief Executive has also admitted that RM failed properly to prepare for the predictable spike in December mail volumes.

Ofcom will soon be preparing to review RM's service performance for the 2021/22 year: The MCF expects Ofcom will distinguish between the unavoidable impacts of COVID-19 and commercial decisions made by RM to favour its position in the parcels market.

In July 2020, after investigating RM's failure to achieve QofS targets in 2018/19, Ofcom fined RM £1.5m because "Royal Mail didn't provide a satisfactory explanation for this, and didn't take sufficient steps to get back on track during the year."

The MCF firmly believes RM has similarly failed in relation to that part of 2021/22 outside the Emergency Period and awaits the outcome of Ofcom investigation with great interest.

Question 5.2: Do you agree with our proposal to not impose further regulatory requirements on Royal Mail in relation to Redirection pricing, following implementation of its improved Concession Redirection scheme? Please substantiate your response with reasons and evidence.

The MCF does not disagree with this proposal at this stage.

We note that Ofcom says it had "intended to propose a new targeted price cap on redirection services for financially vulnerable consumers", but that as RM has announced several significant changes to the scope and scale of its discounted service, Ofcom's view now is that RM's "refreshed Concession Redirection largely addresses our affordability concerns" and so Ofcom "do not propose to impose new regulatory requirements on Royal Mail at this time."

Clearly, Ofcom must keep this issue under close review and has expressed concern that prices might rise by above CPI inflation.

The MCF suggests that Ofcom should consider applying a safeguarding price cap, in the way it does for 2nd Class stamped mail.

Question 5.3: Do you have any further evidence on other issues raised in this section?

Meter Mail:

The MCF continues to believe Meter mail should not be part of the USO.

Part of our reason for this is that Meter mail is charged at a discounted rate. Ofcom recognise that payment by meter is at a discount to paying by stamp, but say that the discount is not volume-related (which the MCF accepts) nor is it based on “one of the other discounts which is specifically prohibited”.

If that is so, the MCF asks Ofcom to explain what the discount is based on and how that basis is permissible within the USO.

One of the “other discounts which is specifically prohibited” is “the use of markings which facilitate the use of machines to sort postal packets”.

RM requires that any item of Meter mail show a franking mark and that part of the franking mark be a Mailmark barcode. That barcode is specifically to facilitate the use of machines in processing postal packets, for example to validate the correct postage has been paid for the weight/format of the item and direct it to the appropriate onward sortation.

While the Mailmark barcode on meter mail items is not used for sortation to delivery destination (as it does not include the postcode), the MCF nonetheless believes the availability of the Meter mail discount is dependent on a requirement which Ofcom has specifically prohibited.

Ofcom also report that Access operators require a minimum daily volume of 250 items for unsorted mail (such as Meter mail). However, this is an incomplete and therefore misleading picture. Several mail operators competing with RM (including, but not limited to, Access operators) only require a minimum daily volume of 250 items for unsorted mail if the operator is not already making a collection from the customer’s premises. Where other mail is already being collected, that 250 minimum daily volume is typically not be required.

The MCF also believes Ofcom has failed to recognise the effect of the VAT exemption from which RM benefits because Meter Mail is included in the USO.

Ofcom say “we do not think this is likely to have any significant adverse effect on competition between metered mail and other market services. This is because primary users of meter mail are SMEs sending low and variable volumes of mail, while access operators offering bulk mail services target businesses sending higher and stable volumes of mail.”

This assumes that the only competition to RM for Meter mail can be from access operators offering bulk mail services, when it is the VAT exemption on Meter mail that is hindering the development of competition for low volumes of mail.

Ofcom also say: “Removing meter mail as a payment channel from the USO may instead encourage substitution to Royal Mail stamps and/or further e-substitution, rather than to alternative bulk mail providers”. Again, this considers bulk mail providers as the only competitive alternative.

Ofcom acknowledges the availability of hybrid mail services that can be suitable for businesses with lower volumes of mail, but (when offered by companies other than RM) hybrid services are subject to VAT and this prevents businesses with small volumes of mail from being able to use such services if they are unable to recover the VAT paid.

The inclusion of Meter mail in the USO and its consequent VAT-exempt status is a major factor hindering the growth of hybrid mail and does have significant adverse effect on competition between metred mail and other market services.

Also, the MCF is very confident that RM would continue to offer postage franking as a means to post mail, even if it was under no USO obligation to do so.

We strongly argue, therefore, that:

- there is no need for Meter mail to be part of the USO to ensure it remains an option for customers

- it is not evident what the basis is for the discounting of metered mail and so whether the basis is permissible in terms of the USO, while the requirement for Meter mail to carry a marking that facilitates the use of machines to process the items may be specifically prohibited in terms of the USO as the basis for discount

- the VAT distortion arising from Meter mail being in the USO does have significant adverse effect on competition between Meter mail and other market services.

User Needs:

We said in our Call For Inputs response that:

> "We believe it is crucially important for Ofcom to understand the importance of large-volume mail and parcel users in the sustainable provision of USO services. While such users are not using USO services, it is their use of other services which very largely provides RM with the funds needed to sustain provision of the Universal Service network. All services offered by RM use the Universal Service network to some extent (especially the delivery network) and the specification for non-USO services follows that for USO services.
>
> The MCF recognises that Ofcom has a statutory responsibility to review the needs of users of the Universal Service and has done that. However, we believe that as the revenue from large-volume users of non-USO services is so important for the financial sustainability of the Universal Service, the needs of such users' should be properly understood.
>
> We believe Ofcom should, as a matter of urgency, research the needs and opinions of large-volume users of mail and parcels - to ensure that the conclusions of the User Needs report meets their postal needs, particularly in relation to the impacts of a reduction in delivery frequency to five days for letters and the impacts of dropping Saturday deliveries"

The MCF believes the 2020 User Needs report did not provide a full picture of the needs of business customers. It is our understanding that while close to 1,000 SME customers were interviewed as part of Ofcom's research, only a very small number (perhaps just around a dozen; no figure was provided) large-volume users were interviewed by Ofcom staff, and that this was done only a short time before the report was written.

Although Ofcom's statutory duty is to review the needs of USO users, we ask for confirmation that Ofcom's future work on assessing User Needs will fully recognise this interaction between USO services and non-USO services and hence include thorough research on the needs and opinions of large-volume users of mail and parcels. In particular, the impact on larger businesses of any reduction in the number of days for delivery of mail and, were there to be any such reduction, the impact of ceasing Saturday deliveries.

6: Parcels market regulation

Question 6.1: Do you agree with our assessment of the parcels market, namely that it is generally working well for consumers, but improvements are needed in relation to complaints handling and meeting disabled consumers' needs? Please substantiate your response with reasons and evidence.

The MCF does not disagree with Ofcom's assessment of the parcels market.

Ofcom has arrived at this assessment on the basis of extensive research and with the benefit of the data it gathers from market participants; the MCF and its members do not have the resource to undertake such research themselves or similar power to gather data. Ofcom has also used information it obtains from RM, which has very largely been redacted from the Consultation document.

However, individual MCF members may, in their responses, comment from their perspectives of the parcels market.

Question 6.2: Do you agree with our assessment of the consumer issues in relation to complaints handling and our proposed guidance? Please substantiate your response with reasons and evidence.

The MCF believes the generally competitive nature of the parcels market incentivises operators to provide good, reliable service and offer effective customer services to deal with and resolve enquiries when they arise.

Parcel operators have contracts with their customers (typically on-line retailers) and work closely with them on their desired process for how consumers (as the customers of the retailers) can contact the retailer or the parcel operator on delivery issues. This is dependent on the interaction that the retailers which to have with their customers.

In the competitive parcels market, all operators strive to improve their engagements with consumers, mindful that consumer's power to publicly complain is pervasive and retailers are able to change contracts because of the competitive nature of the market.

The MCF supports Ofcom's proposed guidance to all parcel operators (including RM) on how complaints should be managed, and the information to be kept to ensure compliance on complaints handling.

However, we would welcome further information from Ofcom on when the proposed guidelines will become effective.

While the MCF members providing parcel delivery services are already working to enhance their processes and procedures (and this has been discussed in bi-lateral meetings with Ofcom), it's not clear if the new guidelines will apply from the date of Ofcom's decision following this Consultation or from some other, later date. It is important for operators to understand the timeline and so be able to plan for application of the guidelines.

Ofcom has said "We will monitor operators' performance in these areas and may consider enforcement action or additional regulation, as appropriate, should it be necessary to protect consumers".

While the MCF appreciates that Ofcom wishes to avoid any risk of fettering or prejudicing its future regulation in this respect, it would be useful to understand how such monitoring will work, how Ofcom will respond to any believed failure to work to the guidelines and what enforcement action might result. Further bilateral discussions would be useful.

As with Q6.1, individual MCF members may, in their own responses to the Consultation, have further comments.

Question 6.3: Do you agree with our assessment of the issues faced by disabled consumers in relation to parcel services and our proposed new condition to better meet disabled consumers' needs? Please substantiate your response with reasons and evidence.

As with the general guidance on complaints handling and management, the MCF supports Ofcom's proposal to introduce a new Consumer Protection Condition (CPC) requiring parcel operators to have in place policies and procedures for the fair and appropriate treatment of disabled consumers. As Ofcom recognises, some operators have already signed-up to the Citizens Advice delivery charter.

However, there are aspects of the proposal and the draft CPC that raise questions.

For example, MCF members note that while Ofcom's research found that "31% of disabled consumers who had a delivery issue experienced significant inconvenience, stress or financial loss - compared with 21% of consumers who did not identify as disabled", the main issues of per experience reported do not seem to be particular to disabled consumers.

Issues such as “I was not given sufficient time to answer the door” may be relevant to consumers who would not consider themselves ‘disabled’ (e.g. those caring for babies or pre-school children).

We note that the draft of the new CPC refers to disabled consumers but do not give any definition of “disabled”. Disabled consumers are not a homogenous group and will have a range of needs.

Also, we have concerns about how retailers would identify the consumer as having a disability likely to affect their experience of receiving a parcel delivery (and so make this known to the delivery operator) or how an operator making a delivery would be aware of the circumstances of a specific recipient. If there were an expectation for consumers to ‘self declare’ that may raise issues of maintaining personal safety and security (especially if such ‘self declaration’ were public).

There may also be issues with collecting and using data that identifies consumers as being vulnerable and how such data is held and used so as to meet consumers’ needs while respecting data protection regulations. For example, would the information need to be deleted after each parcel delivery as the consumer is a customer of the retailer, not of the parcel delivery provider?

Ofcom says “We do not consider it appropriate at present for us to specify detailed requirements of what an operator must do, as the needs of consumers – and the capacity of operators to adapt to these needs – will vary, and may evolve over time. Instead we believe that it will be more effective to give flexibility to operators by requiring them to establish clear and effective policies and procedures for fair and appropriate treatment of disabled consumers.”

Parcel delivery operators will welcome having a degree of flexibility, but there is a balance between allowing such flexibility and inconsistent or inadequate implementation of the new CPC.

This also leads to operators wishing to have some understanding of how Ofcom will monitor compliance with the new CPC, what issues might cause Ofcom to consider an operator was failing to comply and what actions Ofcom might then take.

Clarification and implementation of the changes needed will take some time. The MCF notes Ofcom’s intention that the requirements of the proposed new CPC will commence in April 2023, but we believe there should be a full 12 month implementation period from the date of publication of Ofcom’s decision statement.

We would emphasise that in making these points, MCF members are seeking to ensure that the new CPC can work effectively, not to challenge it or the intentions behind it.

Again as with Q6.1 and Q6.2, individual MCF members may, in their own responses to the Consultation, have further comments and seek bilateral discussions with Ofcom.

7: <u>USO parcels regulation</u>

Question 7.1: Do you agree with our proposal not to include tracking facilities within First and Second Class USO services? Please substantiate your response with reasons and evidence.

The MCF said in its response to the Call For Inputs that it was not convinced that any change to bring tracking for First Class / Second Class services within the scope of the Universal Service Order (USO) was warranted and we set out our case for this.

We said that by not making tracking a USO requirement and leaving DUSP1 unchanged, Ofcom would ensure that RM continues to offer non-tracked, standard First Class/Second Class services - while we believed it is very likely that RM would continue to offer tracked First Class/Second Class services as a commercial decision, without being under regulatory obligation. Leaving the USO and DUSP1 as they are would hence mean customers will continue to have the choice of tracked and untracked services.

We also pointed to the clear impact on competition if tracking were added to the USO requirements and/or allowed for these services by DUSP1, because of the VAT-exemption which would result.

We therefore support Ofcom's proposal not to include tracking facilities within First and Second Class USO services.

Since the Call For Inputs, Ofcom has conducted further consumer research and found "high levels of satisfaction with Royal Mail's existing services" and "people who use Royal Mail's First or Second Class services (which do not include tracking) said that these services have most of the features they were looking for." Further, Ofcom found that adding tracking to the product design of the standard First or Second Class service did not did not enhance the mean scores for customer satisfaction.

Ofcom has also closely examined the market place for tracked services, in which several operators compete with RM.

RM already has significant market power in lightweight parcels and including tracking in the USO would give further dominance to one operator, making it potentially impossible for other operators to compete against a VAT-exempt price. This could result in a *de facto* monopoly in this market segment and loss of competition in part of the parcels market may lead to poorer quality of service for consumers, with reduced incentive for higher standards or service innovations.

There is no clear evidence to warrant adding to the USO something which the competitive market is already providing. The purpose of the Universal Service is to ensure that, regardless of market developments, users can access affordable services which meet their reasonable needs at affordable prices. There is no evidence that users cannot do that now.

We believe all of this assessment by Ofcom supports Ofcom's conclusion that tracking should continue to be a required feature of the Special Delivery Guaranteed product, while retaining the requirement that the First and Second Class services should not include tracking facilities.

Question 7.2 Do you have any further evidence or views on other issues relating to USO parcels regulation? Please substantiate your response with reasons and evidence.

The MCF has no other views to express at this stage.

8: <u>Access for Bulk Mail</u>

Question 8.1: Do you agree with our proposals on the scope of access regulation? Please substantiate your response with reasons and evidence.

In our response to the Call for Inputs, the MCF set out concerns with the operation of USPA5 (the 'ring-fencing' of Wholesale from Retail) and explained how USPA5 now hinders competitive development, as its requirements can be used by RM Wholesale to justify requiring separate systems for Wholesale service development in response to new Access service requests, even when there is already a directly comparable Retail service in operation.

This makes the comparable new Wholesale service prohibitively expensive (as is evidenced by the failure of all new Access service requests since 2012).

In response, Ofcom has said (in Annex 10 to the Consultation) that it considers USPA3 (regarding unfair terms) can be used to address the concerns raised by the MCF.

We believes that is unrealistic, as USPA3 is too generic a provision to resolve the issue and use of USPA3 would require a lengthy, complex and very burdensome complaint to be raised for each instance in which a customer believed RM had used USPA5 to prevent introduction of a requested, new Access Service - meaning USPA3 could only be used retroactively and would always depend on Ofcom taking up a complaint.

Hence, the MCF urges Ofcom to reconsider changing the ‘ring-fencing’ provisions of USPA5 (we have recommended that it should now apply around Retail bulk mail rather than around Wholesale) and so set a proactive framework that would support development of competition to the benefit of users as well as benefit RM in receiving revenue towards sustainable provision of the Universal Service.

Such a change to USPA5 would also support the vital regulatory principle that RM Retail buys downstream activities on just the same terms (both price and non-price) as Access customers do.

Question 8.2: Do you agree with our proposals on access price regulation? Please substantiate your response with reasons and evidence.

As far as MCF is aware the existing USPA Conditions on Access pricing have provided some protection for Access-based competition, through the ‘price squeeze protections’, and have generally prevented unfair competition from RM Retail.

However, as we have mentioned before in submissions to Ofcom, we do have concerns about the form of the Conditions and Ofcom’s monitoring of RM’s compliance with them.

USPA 6 requires that RM must “have a reasonable expectation that at the time of setting new prices including the time of offering prices for each new individual contract” it is meeting the price squeeze requirements and that each quarter RM provides forecast and actual information in general and also specifically for any new contracts.

Our concern is that this means RM only has to show “reasonable expectation” that new prices will comply with the requirements and then provide information to Ofcom. It is not apparent to MCF that Ofcom validates RM’s “reasonable expectation” or that Ofcom assesses the information reported to verify that the requirements have not been breached.

There is no visibility to the market that the “reasonable expectations” are seen by Ofcom as reasonable, or that Ofcom have checked whether the expectations have been achieved, or that Ofcom has checked that RM has not breached the requirements in relation to any individual contract.

Ofcom have told MCF in that past that it will (and does) investigate any complaint made that RM has not met the USAP6 requirements, but it is not an appropriate use of Ofcom resources for Ofcom to carry out such checks at its own initiative.

Neither the MCF nor its individual members have access to the information needed to substantiate a complaint (such information is only provided by RM to Ofcom and in confidence); it is hence very difficult for any complaint to be made.

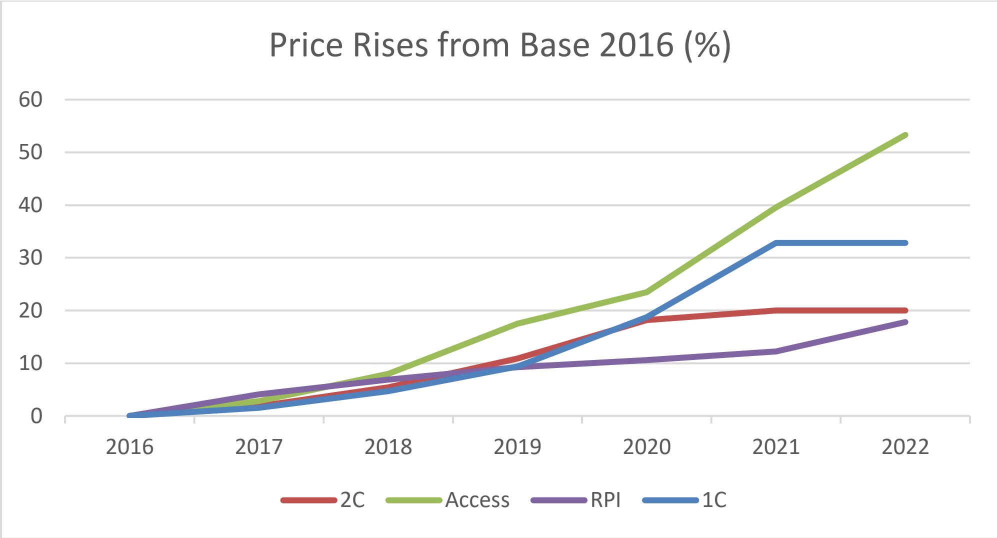
In the absence of any ‘own initiative’ checking and subsequent statement by Ofcom, the market cannot have good confidence that the USPA 6 Conditions are, in fact, being met.

The MCF believes it is important that Ofcom does carry out such checks and report the outcome. This need not be for every price change or every quarter, but should be done at intervals and on a sample of individual contracts.

In our response to the Call for Inputs, the MCF argued for Ofcom to apply some direct controls on Access Prices and supported that argument with analysis of Access price increases since 2017.

We firmly believe that the absence of any competition to RM in final mail delivery and the absence of direct regulatory control have allowed RM repeatedly to increase Access prices in real terms (with increases often several times the prevailing rate of inflation).

The graph below shows how Access prices [for Business Letter Mailmark, as the key Access service] have increased at a significantly greater rate than RPI (or 1st or 2nd Class USO stamped letters) since 2014



The great majority of bulk mail items use Access and Access charges for business mail have increased on average by 5.9% in real terms over the same period – with a further, large increase applied in January 2021.

The MCF believes that because the large majority of bulk contract mail is now posted using Access and the current USPA price regulations are those relating to price squeeze and so apply, in effect, to RM's Retail prices, not directly in Access prices, this leaves RM free to increase Access prices as it wishes; given RM's monopoly in final delivery of mail, this might be seen as abuse of market dominance.

Also, current price regulations being based on RM's upstream revenues and upstream costs is a reflection of the 'ring-fencing' of RM Wholesale and the competitive threat from RM Retail is much reduced, with upstream margins now very low.

For both these reasons, the MCF continues to strongly believe that the existing regulations should be replaced with some form of direct control on Access prices.

We have suggested such control could be liked to both CPI inflation and to efficiency improvement, thus preventing large, real terms increases and giving a mechanism for the benefits to RM from efficiency gains to be shared with customers through price.

We note the analysis Ofcom has provided in Annex 10 to the Consultation. As much of the information used by Ofcom is redacted, we are unable to make any substantive comment.

Question 8.3: Do you agree with our approach and proposals for the non-price terms of access regulation? Please substantiate your response with reasons and evidence.

The MCF believes current Access regulation does not sufficiently mitigate or counter RM's monopoly in final delivery of mail.

The Access Contract gives RM too high a degree of control over price and non-price terms, and allows RM unfettered ability to impose contract changes opposed by contract holders. The MCF's experience has been that the current regulatory requirements do not work for the benefit of customers and the industry.

<u>Access Contract Changes:</u>

During 2020-2021, RM reviewed many of the terms of the Access Contract and proposed several changes. Despite common and strong objections from customers, RM decided to go ahead with the changes it proposed and, in November 2021, issued and formal Contract Change Notice for the changes to be effective from June 2022.

The MCF has analysed the contract changes that RM is making and we believe it is clear RM has in several instances:

- not provided sufficient notice by failing to consult as required by the Access Letters Contract:
- notified terms which are not fair and reasonable, contrary to the USPA Conditions
- misrepresented the nature of the contract changes.

The MCF is seeking resolution of this with RM, but we believe the situation may now exist where there as Access Dispute to be investigated by Ofcom.

Although the Access Contract includes some provisions for dispute resolution, they do not encourage early resolution of issues and are onerous and expensive to pursue for contract holders. Short of terminating their contract, customers have no option but to accept changes made by RM.

In theory, it is possible to escalate a contract dispute with RM to Ofcom, on grounds that RM is in breach of the USAP3 requirement for RM to provide access on “fair and reasonable terms, conditions and charges”. However, making a compliant to Ofcom in relation to USPA3 is an excessively onerous, slow and expensive process.

To MCF’s knowledge, only once since 2012 has a complaint made to Ofcom been accepted and an investigation initiated; this was in relation to the Zonal Pricing changes announced by RM for April 2016 (which effectively ended Whistl’s (then TNT Post UK) presence in final mail delivery). It took over 4 years for Ofcom to conclude the investigation (and RM is still seeking to appeal Ofcom’s decision).

<u>New Access Services and Contract Variation Requests:</u>

In relation to requests from customers for new Access services, RM has always refused to progress any request that fell outside the remit of the USPA Conditions. Where requests have been made within the USPA remit, RM has repeatedly frustrated such requests – despite there being an agreed process. The effect has been to stifle the development of competition, protect RM’s market position and prevent Access services from being able to adopt technological developments.

The problems associated with new Access Service requests were a key part of Ofcom’s last Regulatory Review in 2017, but changes recommended then have not come into effect and have not been pursued by Ofcom (e.g. the 6 week time limit for RM to respond to a request where there was already an existing, directly comparable Retail service).

Despite USPA 4.1 requiring RM to publish a “Statement of Process” for requests for variations to existing Access Contracts, the MCF for much of 2021 was only able to find mention of this in passing on RM Wholesale’s website. While a two-page form then appeared on website, unannounced and without communication to customers, there is no information of the process that will be followed after submission of the form and no mention of the timescale.

Although this is required by USPA 10.4, the “8-Stage Gateway Process” for new Access Service requests (published by RM after the consultation which followed Ofcom’s last Regulatory Review in 2017) does not cover contract variation requests (RM decided this was ‘out of scope’ for the consultation).

RM has recently initiated a consultation on the Contract Variation Request and the MCF has responded to this. We have said we find the proposed process unsatisfactory in a number of areas; for example, while the process has a timescale of one month for RM to respond to a request, RM gives itself unilateral power to impose an extended timescale. We wait to see how RM responds.

An Access Contract Variation Request was submitted in mid-January 2022 collaboratively by several MCF members and other Access Contract holders. The request is to make some changes to the contract to improve the definition of Disruptive Event and the basis on which compensation for poor service performance is payable. This would be a positive development for Access customers, given the very poor service performance on Access mail since mid-2020 and RM's continuous and continuing use of Disruptive Event to negate the existing contract terms. The requestors had a reasonable expectation that there would be discussion with RM on the changes requested before the end of February. However, RM has not done that and instead has published a timetable on which it proposes the request can be considered; this timetable does not conclude until August, several months after the request was made.

In our view this is not a fair or reasonable approach and evidences both RM's disregard for its regulatory obligations and its use of delaying tactics to stall customer-driven change.

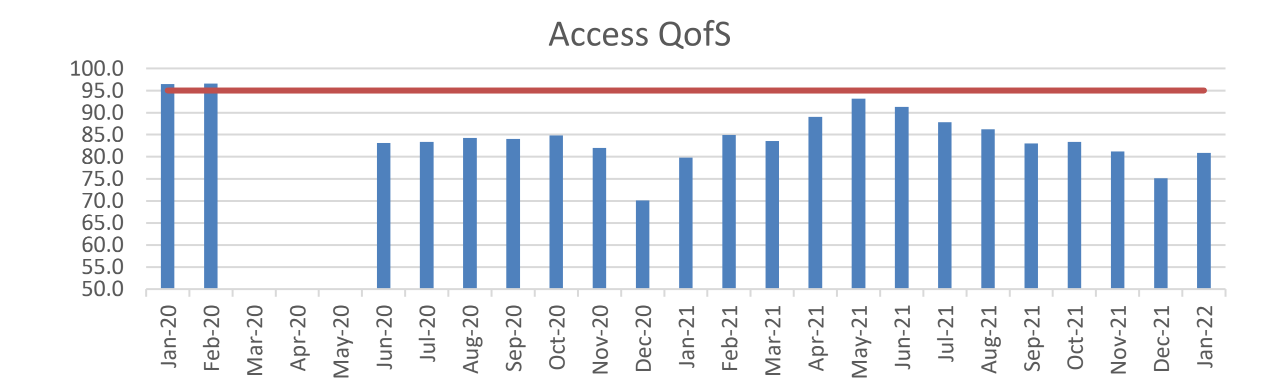
Quality of Service

Another example of current Access regulation failing Access users by not ensuring fair and reasonable contract terms is the position with Access Quality of Service (QofS).

Since April, RM has unilaterally declared a Disruptive Event, meaning its contractual obligations on QofS, including paying compensation for poor service performance are suspended. Despite Ofcom declaring that the Emergency Period (which suspended RM's QofS obligations for USO mail) ended on 31st August 2021, RM has refused to end the Disruptive Event for Access mail.

This means that RM has suspended its Access QofS obligations for almost two years.

During this period, RM has failed to provide the 95% QofS standard specified in the Access Letters Contract.



	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22
Actual	96.4	96.6				83.1	83.4	84.2	84.0	84.8	82.0	70.1	79.8	84.9	83.5	89.0	93.2	91.3	87.8	86.2	83.0	83.4	81.2	75.1	80.9
Target	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95

Although the MCF strongly believes that the Disruptive Event clause of the Access Contract cannot apply other than for a limited period of time, contract holders have no ability to challenge RM Wholesale's actions, other than through the very onerous, lengthy and expensive disputes procedure.

In the MCF's view, there is no effective redress for QofS failure within the Access market, and therefore no redress for more than 60% of the letters market. Whilst Ofcom has fined Royal Mail for QofS failures on USO services, RM has never paid compensation to Access customers for QofS failures.

For the reasons mentioned above, about RM having all the power in the Access contract, customers have never been able to change the terms for QofS compensation, which include several caveats that ensure RM does not pay compensation.

The MCF is seeking to pursue the limited opportunities provided by the Access Contract and the USPA Conditions to seek resolution of our grave concerns and will be considering submission of an Access Dispute if no progress is made.

The MCF (and its individual members) would be happy to discuss with Ofcom any of the comments made in this response.