

## Your response

Question	Your response
<p><b>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.</b></p>	<p>Confidential? – N</p> <p>Broadly Whistl is supportive of Ofcom's proposed regulatory approach in extending the regulation for a further five years.</p> <p>Unsurprisingly Whistl would generally like Ofcom to expend more effort</p> <ol style="list-style-type: none"><li>1) in supporting effective competition in postal services for the benefit of consumers</li><li>2) in ensuring RM improve their performance efficiency</li><li>3) in ensuring RM deliver the quality of service expected by our posting clients</li></ol> <p>Our concern is that Royal Mails financial performance, and that of the sustainability of the USO, is being driven not by improvements to the business model and cost reduction initiatives but by continued above inflation price increases. Ofcom have on a number of occasions (following management reshuffles) allowed Royal Mail time and space to implement their "new" plans only to be met with disappointment when the plans fall behind expectation. Ofcom's focus on efficiency improvement is therefore to be welcomed but the measures proposed do not go far enough in our view.</p> <p>In particular Ofcom needs to be aware of failings in USPA4 and 5. Innovation in the market through USPA4 Access requests is being effectively stifled (to the detriment of postal users) by Royal Mails insistence of separate systems to preserve the USPA5 ringfence with its associated development costs and delays. Despite a number of USPA4 requests none have satisfactorily been brought to market, all have floundered under the burden of unnecessary USPA5 ringfence costs imposed by Royal Mail. Ofcom's view is that this can be addressed through a fair and reasonable terms challenge under USPA3. This will shortly be tested.</p>

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

Confidential? – N

Whistl agrees with Ofcom's approach when coupled with its efficiency strand.

Much of the revenue associated with the ongoing sustainability of the USO comes from non USO services, either through the Access arrangements in place or through Royal Mails parcel activity. Royal Mails commercial freedoms in these markets have seen price levers pulled hard year after year in order to deliver Royal Mails required financial performance. These increases are not sustainable and Royal Mail must be encouraged to do more to improve its efficiency and reduce its cost base to deliver its financial performance, not rely on the easy option of price increases.

Whistl are pleased that Ofcom continue to consider the detailed rationale behind Royal Mail's pricing decisions in access and continue to look out for the impact of price increases on volumes.

**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.**

Confidential? – N

Increasing the visibility of Royal Mails efficiency plans and progress against them, is a welcome move. To a degree Royal Mail already provide some of this information as part of their regular reports to shareholders but it would certainly be useful to have something more formal.

Whistl and the industry have long called for further improvements in Ofcom's involvement in this area, particularly the setting of relevant targets on the back of the enhanced monitoring regime. In 4.42 Ofcom argue that setting such targets may be a distraction if not set appropriately in an organisation that is already under pressure to cut costs. It wouldn't be unreasonable for Ofcom to align its efficiency targets with those of Royal Mail own business plan (provided of course that the targets Royal Mail propose are reasonable) thus avoiding both confusion and distraction.

Under the PSA 2011 29 3 b Ofcom have the following duty *"the need for the provision of a universal postal service to be efficient before the end of a reasonable period and for its*

	<p><i>provision to continue to be efficient at all subsequent times”.</i></p> <p>Ten years after legislation was passed there is no statement or evidence that Ofcom have met this duty, that Royal Mail are adjudged to be efficient by Ofcom or that plans are in place to ensure their efficiency continues or improves.</p> <p>Agreeing performance expectations /targets and holding Royal Mail to account for hitting these targets, as it does with Quality of Service, should be a key part of Ofcom’s focus in the next five years and form part of its regulatory remit.</p> <p>The industry cannot afford for Royal Mail to fail to make the improvements necessary and Ofcom must do more than sit in the stands for the next five years simply spectating on Royal Mails performance in this area.</p>
<p><b>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. Please substantiate your response with reasons and evidence.</b></p>	<p>Confidential? – N</p> <p>There is a clear lack of jeopardy for Royal Mail in the proposed approach. Ofcom are simply asking for Royal Mail to set a five year target and report on progress against this target in each of the years of the plan. There are no consequences other than minor corporate embarrassment for failing this target and such failings have previously been deftly dealt with by Royal Mail CFOs by promising shareholders that financial performance can be maintained by pulling pricing levers.</p> <p>Ofcom must do more to strengthen their proposals in this area and hold Royal Mail to account should it once again fail to make the improvements necessary.</p>
<p><b>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.</b></p>	<p>Confidential? – N</p> <p>Whistl agrees with Ofcom’s proposed approach.</p> <p>Given the shared nature of the delivery network and the proportion of letters in DSA Whistl would welcome Ofcom’s inclusion of Access mail in its ongoing monitoring of QofS and would welcome further discussions on how this downstream measure might be incorporated.</p>

	<p>Royal Mails QoS post pandemic performance has been frankly appalling and its efforts to improve the situation sadly falling short of others in the delivery market. Regulated oversight in a regulated (but non USO) stream would be welcome.</p>
<p><b>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.</b></p>	<p>Confidential? – N Whistl agrees with Ofcom’s proposed approach</p>
<p><b>Question 5.3: Do you have any further evidence on other issues raised in this section?</b></p>	<p>Confidential? – N Whistl does not agree with Ofcom’s assessment that Metered mail should be a USO VAT exempt service and submits that both unsorted and hybrid services are providing emerging competition to users of metered products. Ofcom’s proposals are frustrating the possibility of further competition emerging in support of posting customers in this area.</p> <p>This is in clear contrast with Ofcom’s desire not to extend the parcels mandate to protect emerging competition.</p>
<p><b>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.</b></p>	<p>Confidential? – N</p> <p>In the call for inputs submission Whistl made a case that the bulk lightweight parcel market was not competitive, Royal Mail enjoyed an effective monopoly and that there would be benefits in extending the mandate to include lightweight parcels. In contrast Royal Mail made the case for the removal of GLL/ FLL from the mandate in that they were really parcels in disguise.</p> <p>Through its statutory powers Ofcom have collected information on the sector and have concluded that competition in this segment is growing. Accordingly, Ofcom propose to make no changes to legislation, in order to protect the emerging competition. Without sight of the data available to Ofcom Whistl must accept Ofcom’s view that competition is growing in this sector despite the conclusion being very</p>

	<p>different to its own experience of buying in the marketplace.</p> <p>Whistl has of course seen first-hand what Royal Mail is capable of in order to thwart emerging competition in the regulated letters market. Thankfully Ofcom, CAT and The Appeals Court have all agreed the nature of Royal Mails anti-competitive behaviour and the matter is finally to be settled by The Supreme Court.</p> <p>It remains to be seen what Royal Mail will do to protect their position in the lightweight section of the unregulated parcels market. We will see the extent that fledgling competition is allowed to emerge and if necessary will address the issue again at the next review in five year's time should the position not improve.</p>
<p><b>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.</b></p>	<p>Confidential? – N Whistl is happy with Ofcom's assessment</p>
<p><b>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.</b></p>	<p>Confidential? – N Whistl is happy with Ofcom's assessment</p>
<p><b>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.</b></p>	<p>Confidential? – N Whistl would like to see tracking more widely available throughout Royal Mails entire customer base but understand the issues around VAT exemption.</p>
<p><b>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.</b></p>	<p>Confidential? – N Whistl would like to see tracking more widely available throughout Royal Mails Access products.</p> <p>It seems highly likely that tracking will become more important and prevalent to both senders and receivers in the next five years. Royal Mail is working towards an environment where 100% of items carry a barcode including all stamp traffic from next year and it is this barcode that will facilitate a growth in tracked offerings.</p>

	<p>Royal Mail currently tightly control the terms on which third parties like Whistl can offer access to its T24 and T48 products to Whistl's own posting customers, preferring to service them directly. This constrains any upstream competition at the moment and denies customers choice.</p>
<p><b>Question 8.1: Do you agree with our proposals on the scope of access regulation? Please substantiate your response with reasons and evidence.</b></p>	<p>Confidential? – N</p> <p>DSA customers requesting access or variation of terms under USPA4 are being consistently thwarted in their applications by Royal Mail's interpretation of the regulations.</p> <p>In particular the insistence of unnecessary and costly parallel systems development (purportedly justified by USPA5) in the wholesale space makes attempts to bring new access products to market both prohibitively expensive and slow to deliver, hence no new requests have materialised.</p> <p>Royal Mail have not met their obligations under USPA4 for Access Variation Requests, initially failing to consult prior to the current statement of process being loaded onto the website in 2021 and failing to provide a reasonable timescale by which requests can be made. We note Royal Mail have belatedly commenced a consultation in this area.</p> <p>Ofcom believes that any deficiencies in these regards can be met through regulatory complaint using the USPA3 Fair and Reasonable test and so do not propose to make changes to the existing regulations.</p> <p>Whistl and Royal Mail have recently failed to reach agreement on a New Service Request in the mandated area for a tracked Large Letter product due to USPA5 costs and consequently the dispute materials are being prepared for Ofcom's consideration.</p> <p>A large number of Royal Mail customers have collaborated on an Access Variation Request around the disruptive and service standard clauses in the ALC and are not satisfied that the response times for consideration are fair and reasonable. The request was submitted in mid January and Royal Mail published a timetable at</p>

	<p>the end of February suggesting conclusion by August 2023. Such delays are neither fair nor reasonable.</p> <p>Ofcom make the valid point that Ringfencing in the manner that Royal Mail have adopted is not a requirement of USPA5. Whistl believes that a more pragmatic approach to USPA5 may be to contractually restrict Access to information on DSA customers and volumes from the few remaining retail sales team members.</p>
<p><b>Question 8.2: Do you agree with our proposals on access price regulation? Please substantiate your response with reasons and evidence.</b></p>	<p>Confidential? – N</p> <p>Whilst disappointed that Ofcom will not set a cap on Access prices Whistl is pleased to read of Ofcom’s efforts to monitor Royal Mails pricing decisions in Access and will continue to keep this under review.</p> <p>Whistl is largely ambivalent on the margin squeeze control but believes that improvements could be made on the monitoring of the contract test to ensure that squeeze has not occurred during the life of the contract as opposed to Royal Mail having a reasonable expectation that squeeze would not occur at the start of the contract.</p>
<p><b>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.</b></p>	<p>Confidential? – N</p> <p>As discussed elsewhere greater clarity is needed in the handling of USPA4 requests and the fair and reasonable treatment of USPA5 costs. Ofcom have indicated that any deficiencies in this area can be dealt with under existing regulation.</p>

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