



RECOVERING POSTAL REGULATION AND CONSUMER ADVOCACY COSTS

– Ofcom Consultation, 27th July 2017

Response from Secured Mail

The comments made in this response may be published and attributed to Secured Mail.

Background:

Secured Mail understands from Ofcom that:

- the costs to be recovered in relation to its work in the postal market are around £2.9m and the relevant costs of the consumer advocacy bodies (CABs) are around £3.5m
- these costs would be recovered on the basis of about £4.3bn of total relevant revenue

An approximate calculation on that basis suggests a charge of about £1,500 per £1m relevant revenue; with Ofcom's Communications Market Report giving Access operators' revenue as £160m, which indicates recovery would be around £240,000 from those operators.

Response to Ofcom Questions:

Question 1: Do you agree that revenues from single piece end-to-end letter delivery services should be taken into account for the purposes of setting administrative charges?

Secured Mail agrees with this proposal.

We believe Ofcom's interpretation of the relevant sections of the Postal Service Act and of end-to-end letter delivery services being within the scope of the universal postal service is correct.

Question 2... Do you agree that revenues from bulk mail and access services should be taken into account for the purposes of setting administrative charges?

Secured Mail strongly disagrees with this proposal.

Ofcom considered its approach to cost recovery in March 2014 (the Statement of Charging Principles Review) and made a similar proposal then as is proposed now. However, based on responses from the industry Ofcom decided not to proceed with the 2014 proposal. Secured Mail believes that should also be the outcome now.

In 2014, the Mail Competition Forum (of which Secured Mail is a member) gave a number of reasons why it would be incorrect for Ofcom to include revenue from Access services in the assessment for cost recovery.

Secured Mail believes the points made in 2014 remain true and relevant:

- It is Royal Mail's provision of access that is regulated, not the activities of access operators (other than a few, minor conditions for consumer protection)

- Ofcom's regulation of mail services is very largely related to RM's provision of the Universal Postal Service (UPS)
- Where Ofcom regulation relates to the wider letters market (including Access services), the need for such regulation is driven by RM's extreme market power in the letters market.

Hence, Ofcom's regulatory costs in relation to the postal market arise either from RM's UPS provision or from issues stemming from RM's market power.

This is clearly evidenced by the breakdown of its costs provided by Ofcom in this consultation, which shows that, for the past three years:

- 84% of costs were related to RM UPS
- Only 15% of costs were related to the wider letters market.

Secured Mail cannot then see how it would be consistent with Ofcom's criteria for charging principles (e.g. "Fairness and equality") for mail operators other than RM to have to pay for Ofcom's costs relating to the RM UPS. Only RM is a designated Universal Service Provider, therefore only RM should pay costs relating to Universal Service Provision.

Where Ofcom's costs relate to the wider letters market, including Access, Ofcom says that "access services are subject to and benefit from regulation to a significant degree, and contribute significantly to some of our regulatory costs in relation to the postal sector."

However, Secured Mail believes Ofcom's regulatory work on Access is about two issues: the condition on RM to offer Access and any disputes referred to Ofcom about RM's terms and conditions of Access.

That means Ofcom's work on Access therefore is caused by RM's position of high dominance in the letters market, not by the activities of Access service providers themselves.

Therefore, the cost of Ofcom's work on Access should be recovered from RM and not from Access operators.

In any case, Access operators already contribute to recovery of Ofcom's costs through RM's Access charges, as money RM pays to Ofcom will be included in RM's costing systems.

Ofcom's proposal would mean about £240,000 was paid by Access operators and so RM would pay £240,000 less. But Secured Mail does not believe that saving by RM would be passed through by RM in lower Access prices, RM would just keep the benefit of paying less to Ofcom as increased profit.

Because the highly competitive nature of the upstream market, we strongly believe that neither Secured Mail nor any of the other Access operators would be able to meet the burden of contributions to Ofcom through increasing prices to Access customers.

Which means that the effect of Ofcom's proposal would simply be to reduce the (very limited) profit of Access operators and increase the profits of RM.

Question 3...Do you agree that turnover from access revenues should be calculated on a net basis (i.e. after the deduction of access charges to Royal Mail)?

As Secured Mail does not agree that access revenues should be included in the assessment for recovery of costs, this question does not apply.

However, if Ofcom did proceed with its proposal, it is clear that only net revenues could be used as there would otherwise be double counting of revenue.

Question 4... Do you agree that turnover from parcel services should not be taken into account for the purpose of setting administrative charges?

Secured Mail supports this proposal.

It is clear from the breakdown of cost provided by Ofcom that only a very small proportion (1%) of costs relate to parcels.

Ofcom has also said that the parcels market is only very lightly regulated and what regulation there is applies to RM as the Universal Service Provider. Ofcom does not include parcel services for mail integrity or consumer protection regulations and Ofcom has chosen not to include parcel services in the mandate for Access.

It is therefore consistent with Ofcom's criteria for cost recovery for parcel services be excluded (which effectively means that the small cost related to the parcels market is recovered from RM as the Designated Universal Service Provider).

Question 5... Do you agree that the minimum revenue threshold for payment of administrative charges should be lowered to £5m?

Secured Mail does not agree with this proposal as we believe the threshold should remain at £10m.

In 2014, the Mail Competition Forum argued that the revenue threshold should be increased from £10m to £15m to recognise the effect of inflation since the threshold was originally set by Postcomm and that the threshold should then be increased from time to time to reflect further inflation.

Secured Mail sees the logic of that view, as it would mean the threshold continued to reflect the same level of activity in the mail market and so be adjusted upwards as market prices rise. That would suggest the threshold should now be around £12.5m.

However, Secured Mail also sees the logic in Ofcom's concern that larger operators should not have to pay disproportionately because smaller operators were excluded from cost recovery.

Taking these points in balance, we therefore believe it is appropriate to maintain the revenue threshold at £10m.

Question 6... Do you agree with the proposed changes to CP1 that are set out in Annex 6?

Secured Mail does not agree with the proposed changes to CP1, as these include the extension of cost recovery to include Access services and a reduction in the turnover threshold for recovery.

We believe there should be no extension of cost recovery from the current principles and that the revenue threshold should remain at £10m.

Ofcom suggests that using the same approach to recover CABs costs would be simpler and clearer for both the industry and Ofcom, but Secured Mail does not agree with that view, as a shared mechanism is not justified when the costs concerned do not relate to the same activities and administrative ease cannot be justification for unreasonable action.

We believe the issue of the recovery of CABs costs from all operators in the letters market must be reconsidered by Ofcom.

From our understanding of the work of the CABs in the postal market, they are largely concerned with the Post Office network. However, Ofcom cannot recover costs from the Post Office as it is not a postal operator within the meaning of the Postal Services Act.

It is then relevant to take account of the fact that RM has exclusive access to the Post Office network for postal services and it would be entirely unreasonable to require those with no ability to use that network to contribute to the costs of the CABs' work in relation to the Post Office network.

We would also argue that the CABs work in relation to Post Offices is very largely concerned with RM's use of the Post Office network as part of RM's Universal Service Provision, especially in providing access points for consumers. For the reason given above on recovery of Ofcom's UPS costs, this also means recovery of those CAB costs should be only from RM.

Secured Mail therefore strongly believes the CAB costs in relation to the Post Office network should therefore continue to be recovered from RM alone and not from all operators in the letters market.

It is also clear to us that the CABs' work in the postal market other than the Post Office network is to a great extent related either to the parcels market (not the letters market) or to services that are part of the UPS.

It is therefore unreasonable for Ofcom to recover those costs from operators in the letters market, or letters market operators other than RM as the designated Universal Service Provider.

As CAB costs other than in relation to the Post Office network are predominately concerned with the parcels market, not the letters market, Ofcom should consider recovery of the appropriate proportion of CAB posts from RM and other parcel operators, but not from letter market operators such as Access operators.

Also, we do not believe recovery of CAB costs in the way Ofcom proposes is at all consistent with Ofcom's criteria for the cost recovery principles:

- they are not objectively justifiable as they impose costs on operators who have no role in the costs being incurred
- they discriminate unfairly against those operators while clearly favouring the Post Office and RM
- they are not proportionate as they allocate costs not relating to the letters market on the basis of revenue in the letters market
- they are not transparent in what they are intended to achieve as they are based on administrative convenience for Ofcom and not any principle of costs being borne by those who benefit

Given that the CAB costs to be recovered are actually significantly more than Ofcom's costs, Secured Mail very strongly argues that Ofcom must reconsider the recovery of CAB costs.