

Ofcom  
Riverside House  
2A Southwark Bridge Road  
LONDON  
SE1 9HA

11<sup>th</sup> August 2021

Dear Gianpiero,

**Recovering consumer advocacy costs:  
Supplementary consultation on minor amendments to Consumer Protection Condition 1  
- Response from the Mail Competition Forum**

The Mail Competition Forum (MCF) provides the following response to the consultation issued by Ofcom on 7<sup>th</sup> July 2021.

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

Please note that this response represents the general view of MCF members, rather than the opinion of each and every MCF member. Given the nature of the proposals and the differing operational models of MCF members, some MCF members will be making their own, specific responses.

Ofcom has proposed three changes to the current Consumer Protection Condition 1 (CPC1):

- a) to change the definition of an “intermediary postal operator” in order to clarify the scope of ‘relevant parcels postal services’ for which revenue must be reported for the purpose of the cost recovery mechanism, so that the exclusion of revenues from postal services provided by postal operators acting as true intermediaries remains, but does not apply where postal operators retain responsibility for delivery of a parcel to the recipient when using other operators;
- b) to insert an ancillary provision making it clear that, when postal services (and postal turnover) are bundled with non-postal services, the postal operator must allocate a reasonable proportion of such turnover to the relevant turnover for the purpose of CPC1; and
- c) to correct a discrepancy in the definition of ‘relevant parcel’.

The general view of the MCF is that it supports all three proposals.

We believe it is important that Ofcom provide clear and unequivocal guidance to postal operators, so that operators cannot seek to unfairly exempt themselves from providing “relevant postal services” and having “relevant revenue”, and the proposed changes are a move in that direction.

However, it seems the position will still be ‘opt-in’, with Ofcom leaving it to postal operators to decide whether or not they provide “relevant postal services” and having “relevant revenue”, rather than Ofcom deciding whether that is the case and pro-actively requiring postal operators to submit the relevant information.



We understand that the regulatory regime is not based on licensing (as it was under Ofcom's predecessor, Postcomm), but the MCF is concerned that this is not a robust way to regulate and could lead to unfairness, with some operators seeking to avoid eligibility under CPC1 (as we believe may have been the case in the past).

In the consultation Ofcom say that (if the proposals are confirmed) "we plan to publish a statement by early autumn. Alongside publishing that statement, we also plan to issue our final information requests to relevant postal operators" [3.52].

The MCF believes this will be an important step and is an opportunity for Ofcom to be pro-active by ensuring formal Requests for Information are sent to all those large businesses who may have previously considered they were exempt from CPC1.

MCF members are also concerned that the ability in the past for some companies to decide the Conditions did not apply to them (even when they had relevant revenue) means they have avoided being part of the cost recovery, while there has been cost recovery from companies who had accepted they had relevant revenue; such companies will then have hence paid more than they would have done if all relevant revenue had been considered (while companies deciding they could opt-out will have unfairly avoided any cost recovery).

The MCF would therefore be interested to know what retrospective adjustments can be made to cost recovery charges.

As part of Ofcom's earlier statement on CPC1 (in January 2019), it included "Guidance to relevant postal operators" and the MCF would encourage Ofcom to issue new guidance after the decision following this consultation – in order that it is as clear as possible to companies whether they are exempt or not.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ian Paterson", written over a light blue horizontal line.

Ian Paterson  
MCF Secretary