

Postcomm's response to BERR consultation on consumer redress schemes in gas, electricity and postal services

1. Summary of Postcomm's response

- The aim of Postcomm's proposals is ensure that the redress scheme(s) provide appropriate protection for customers whilst minimising the potential adverse impact of this additional regulation on the development of competition in the postal industry.
- It is important to note that the redress schemes in postal services will only apply to mail in the licensed area i.e. items weighing up to 350 grams and costing less than £1 to deliver.
- The description of complainants to be covered by redress schemes should reflect the characteristics of the postal market. There is no evidence that a common description of "micro-enterprises" across energy and post would be helpful to customers or redress scheme operators.
- Complaints about services and products in the Universal Service (excluding the bulk mail services and products) should be covered by redress schemes. Users of these services are unlikely to be able to switch to other operators if their complaint is not dealt with to their satisfaction. Senders using these mail services are mainly retail and small business users. Therefore, although recipients of these services can complain to the sender, the sender is unlikely to have any powers to resolve a dispute with a postal operator.
- Senders of bulk mail products (including bulk mail services provided under the USO and access agreements) should not be covered by redress schemes. The terms of their contract with their postal operator can include complaint resolution procedures if this is desirable commercially. They can switch to another operator or take action under their contract if complaints are not dealt with to their satisfaction.
- All recipients of mail should be entitled to take any delivery-related complaints to a redress scheme. Recipients of bulk mail products should be covered by redress schemes. Although these customers are not entitled to compensation for delay, they should still be able to complain to the redress scheme if their complaint has not been dealt with properly. All recipients can claim compensation for lost and damaged mail and should have recourse to a redress scheme if their claim is not satisfactorily dealt with.
- BERR's impact assessment of its proposals has not highlighted the risk that the requirement for licensed operators to become members of a redress scheme may deter operators from entering the market or result in the withdrawal of some licensees from operating in the licensed area.
- It is important for BERR to issue its decision on the scope of redress schemes as early as possible and well before its 21 December deadline to

allow more time for subsequent actions to take place before 1 October 2008 when Postwatch is merged in the new NCC.

2. Introduction

BERR proposes that all regulated providers (as defined in the Consumers, Estate Agents and Redress Act 2007 – referred to in this response as the “Consumers etc. Act”) should be required to be members of redress schemes. The Consumers etc. Act defines a regulated provider as being “a person holding a licence under Part 2 of the Postal Services Act 2000”.

There are currently 18 licensed postal operators including Royal Mail. Under the BERR proposals, all 18 operators will be required to be members of redress schemes. It is important to note that some licensees have yet to start operating in the licensed area. The licensed area relates to mail weighing up to 350 grams and costing less than £1 to deliver.

Whilst the postal market has been open to full competition since 1 January 2006, Royal Mail still retains well over 90% of the UK addressed letter market and still delivers more than 99% of all mail in the UK. Although the volume of mail handled by Royal Mail under Access Agreements has increased year on year, Royal Mail remains overwhelmingly dominant as an end-to-end provider.

One of Postcomm’s duties under the Postal Services Act 2000 is to exercise its functions in the manner which it considers is best calculated to further the interests of users of postal services, wherever appropriate by promoting effective competition. Postcomm is seeking ways in which to promote more competition in the UK postal market. For example, in May 2007 Postcomm published a consultation reviewing the current licensing rules, in order to assess whether making some of the requirements less prescriptive might encourage small and medium-sized operators to enter the market.

In order to promote competition, it is important to remove barriers to entry and market distortions. Postcomm is taking a proportionate and targeted de-regulatory approach in the postal market and ensuring that its policy-making is assessed against the five principles of Better Regulation. Postcomm launched its Strategy Review in August 2006 to consider whether Postcomm needs to reshape its regulatory strategy so that it can continue to protect postal users in the future – from 2010 and beyond – and also allow all mail operators the flexibility to adapt to changes in the postal market. Postcomm has just published a document¹ which sets out the emerging themes from the first part of this review. In the document, Postcomm reaffirms its aim to move to less detailed regulation from 2010 onwards (for example, reducing the scope of the USO) subject to a number of pre-requisites.

¹ Postcomm’s Strategy Review: The Postal Market 2010 and Beyond - Emerging Themes, 23 August 2007

Postcomm considers that some of BERR's proposals are not in line with a regulatory framework that will encourage entry and growth in the postal market. BERR's proposals will place more requirements on operators wanting to enter the market and some existing licensees have indicated that they may relinquish their licences in the face of any increased requirements. We believe that the proposals in our response will help to minimise the potential adverse impact on the developing competitive market.

3. Description of complainants to be covered by redress schemes

Overview

Access to redress schemes in the post and energy sectors should be tailored to ensure that customers are adequately protected in each sector. Postcomm considers that it would be inappropriate to apply the same description of complainants to both sectors as each sector has its own unique characteristics. For example, in the energy sector a domestic customer will have contract with their gas and/or electricity supplier whereas in post, a domestic/retail customer is unlikely to have a contract with their postal operator. Another main difference of the postal sector is that there is a sender and recipient. It is the sender who pays the postage to ensure that an item is sent to the recipient. However, a recipient could also pay the postage for something they have bought from the internet. There is no evidence that it is necessary to have a common definition for the type of customer(s) that should be covered by the relevant sectoral redress schemes.

Consumers will always have to complain to the regulated service provider before they can take their complaint to a redress scheme. It is best practice for both the regulated provider and the redress scheme operator to make their complaint procedures easily accessible and understandable to customers. Confusion amongst customers due to the energy/post split should be avoidable if the licensed providers and redress schemes make readily available the appropriate description of complainants that will be covered by redress schemes.

Postcomm proposes that:

- Users of products and services (excluding the bulk products and services) in the Universal Service should be able to take their complaint to a redress scheme;
- Senders of bulk mail (including USO bulk products and bulk mail services provided under access agreements) should not be covered by redress schemes; and
- All recipients of mail should have access to a redress scheme.

Complainants to be covered by redress schemes in postal services

Postcomm considers that it is vital to protect the interests of captive customers i.e. those that can only use Royal Mail and do not have the choice now or in the foreseeable future to switch to other licensed postal operators. Postcomm considers that senders and recipients of stamped and metered mail, Special Delivery (Next Day) not posted on account, Recorded Delivery, standard parcels and users of Royal Mail's redirection services should have access to redress schemes. There are other non-bulk mail USO products and services that would also be included, but these listed here are the main ones likely to be used by customers. Senders or recipients using these services can claim retail compensation².

Users of these services are most likely to be retail or small business customers. These customers are unlikely to have any real power to resolve a dispute with Royal Mail, therefore they should be protected by a redress scheme. Although recipients of these services will still be able to complain to the sender, the sender is likely to be a small user customer with little to no power to take a complaint up on the recipient's behalf. Therefore, both senders and recipients should be protected by a redress scheme.

Postcomm considers that senders of bulk mail products (including bulk mail sent under access agreements) should not be covered by a redress scheme. A bulk mail sender who has a contract with a postal operator should be capable of resolving a complaint through the terms of the contract, which may include compensation arrangements in the event of service failure. Postcomm considers that senders of bulk mail will have sufficient commercial powers to resolve problems directly with the regulated providers. If a bulk mail sender remains dissatisfied, they can switch to another operator. This provides the incentive on the licensee to resolve the dispute; additional regulation is not required.

In addition, Postcomm's licensing review may result in some licensed operators not needing a licence to carry on with their current activities. These operators currently focus their activities on bulk mail. If bulk mail is included within the scope of redress schemes, then there will be added confusion for customers as complaints about a licensed operator handling bulk mail will be dealt with by the redress scheme whereas complaints about an unlicensed operator handling bulk mail will not be dealt with by the redress scheme.

Recipients of bulk mail

Under Royal Mail's current compensation for delay, recipients of bulk mail are not entitled to compensation for delay because compensation is paid automatically to

² Customers have to complain and submit claims to Royal Mail about individual products and services. Unlike the bulk compensation scheme, retail compensation is not paid automatically to customers when quality of service targets are not met.

the bulk mailer if quality of service targets are not met. Although bulk mail recipients cannot claim compensation from Royal Mail, Postcomm considers that these customers should still be able to take a complaint to a redress scheme if they are not satisfied with the way Royal Mail has dealt with their complaint. For example, a customer with a complaint about a bank statement that has been damaged in the post will not be able to claim compensation from Royal Mail but should still be able to request an apology for the damage and any inconvenience caused. If Royal Mail does not provide a satisfactory response to their complaint, the customer should be able to take their case to a redress scheme.

It is important to note that businesses send about 87% of all mail in the UK licensed postal market, with the largest 500 companies accounting for approximately 50% of all mail volumes. About 60% of mail goes from business to consumers. As the volume of bulk mail items sent is far greater than the volume of domestic single-piece mail items sent, Postcomm considers that it is important that bulk mail recipients should be included within the scope of redress schemes. In addition, recipients of mail are unlikely to be aware of the type of product that has been used so it would be confusing for them if they had to differentiate between bulk and non-bulk mail for the purpose of taking a complaint to a redress scheme.

Senders and recipients

Postcomm considers that senders of bulk mail will have sufficient commercial power to resolve problems directly with the regulated providers. Senders of bulk mail also have an advantage in being able to switch providers if they are not satisfied with quality of service. Therefore, bulk mail senders should not be included in the description of complainants to be covered by redress schemes.

However, as Royal Mail still delivers more than 99% of all mail in the UK and with little end-to-end competition expected to develop in the immediate future, Postcomm considers that all recipients of mail (including large businesses) should be entitled to take any delivery-related complaints, e.g. lost mail, to a redress scheme.

“Micro-enterprise consumers”

The ability to switch to another postal operator is dependent on the volume of mail sent, not on turnover or the number of employees. The threshold proposed by BERR of micro-enterprise consumers is not therefore appropriate to define captive customers in postal services. Those sending out small volumes of mail currently do not have an alternative to Royal Mail as most licensed operators currently target volumes of around 250 items as a minimum pick up.

Micro-enterprises are defined by BERR as those with a headcount of less than 10 and whose annual turnover and/or balance sheet total does not exceed €2

million. This categorisation is not consistent with anything in the regulatory regime for post (or energy) and may lead to more confusion amongst customers. According to statistics published by BERR³, approximately 95% of UK enterprises employ fewer than 10 people. Postcomm has already outlined its view that only captive customers (i.e. customers that can only use Royal Mail and do not have the choice now and in the foreseeable future to switch to other licensed postal operators) need protection (as senders) by a redress scheme. This category of customers will change over time as competition develops and more customers who send out smaller volumes of mail are able to use other postal operators. Postcomm considers that its proposal for the users of the services specified to be covered by a redress scheme is a proportionate and targeted approach in an ever changing competitive environment.

4. Types of complaints to be specified in the Order?

The Order can only include complaints about products and services that are licensed. It is important to note that Royal Mail receives a very wide range of complaints whereas other licensed operators could be expected to receive a more limited range.

Complaints that “relate to the regulated products and services of the service provider, as provided to the complainant”

BERR has proposed that complaints that “relate to the regulated products and services of the service provider, as provided to the complainant” should be included within the scope of redress schemes. Postcomm considers that BERR needs to clarify what it means by “relate to” and “provided to” in this proposal. For example, does the proposal mean that complaints about any activity carried out in the course of providing a regulated service (such as bad driving by Royal Mail van drivers whilst performing USO collections or the dropping of rubber bands by delivery officers whilst perform USO deliveries) can go to redress schemes? Or does it mean complaints about the licensed products and services can go to redress i.e. first class letter, standard parcel etc. Postcomm does not consider that it would be appropriate for complaints about the dropping of rubber bands or bad driving to be considered by the redress provider.

In Royal Mail’s licence the “Regulated Services” are defined. The definition and a list of the services can be found in Annex A. These services may change at or during a price control and should not, therefore, be listed in any Order.

However, other licensees are not subject to the strict price and service quality requirements found in Royal Mail’s licence. The licences of other operators enable them to provide postal services but do not include a definition of what the ‘regulated services’ are. Some licensed operators and large business users

³ Small and medium enterprise statistics for the UK and regions found at <http://stats.berr.gov.uk/ed/sme/>

have entered into Access Agreements with Royal Mail. The agreement allows them to collect and pre-sort mail before handing this mail over to Royal Mail for final delivery. Access operators also use some of Royal Mail's regulated products as part of their services. However, it is important to note that it is predominantly the bulk mailers (not retail/domestic customers) that can switch to using Access operators and Postcomm considers that senders of bulk mail products should not be included in the description of complainants to be included in redress schemes.

Where complaints of a particular type have an established resolution mechanism in legislation

The BERR consultation states that where complaints of a particular type have an established resolution mechanism in legislation, it should not seek to add a further parallel scheme of redress. The examples given are that of Guaranteed Standards of Performance for energy network operators for loss of supply and disputes about connection charges.

Postcomm believes that there are established resolution mechanisms for Royal Mail. It currently makes compensation arrangements for lost and damaged mail under Section 89 of the Postal Services Act. In addition, there is currently a licence requirement to provide a compensation scheme for retail and bulk delayed mail.

Postcomm is currently reviewing Royal Mail's compensation arrangements for loss, damage and delay and any new arrangements for retail mail should already be in place by the time redress schemes are introduced. The new compensation arrangements will be able to deal with claims where a customer is not able to provide evidence (i.e. proof of posting) to support their complaint.

For loss and damage, Postcomm is proposing that the compensation payment for all claims for items with no intrinsic value and all first time claimants with no proof of posting should be a book of 6 x 1st class letter stamps. Where Royal Mail's compensation schemes clearly states the amount of compensation that will be paid (e.g. a book of 6 x 1st class stamps), customers should not be able to complain to a redress scheme about the *level/amount* of compensation paid. However, a customer with a complaint about how Royal Mail *dealt* with its complaint and compensation claim should be able to go to a redress scheme.

For items with an intrinsic value where the customer has proof of posting, the maximum compensation payable by Royal Mail is limited to the market value of the item or 100 x the value of first class letter stamp. Therefore, the amount of compensation that is paid can be variable. Where a customer disagrees with the amount of compensation received in such circumstances then they should be able to have access to a redress scheme.

Postcomm is proposing that Royal Mail's regulated bulk mail compensation scheme should end with effect from 1 April 2009 or 1 April 2010. If Royal Mail replaces the scheme with its own one, that would form part of the customer's contract for bulk mail products and, under Postcomm's recommended approach, complaints about it would not be eligible for the redress scheme.

5. Other comments

BERR's impact assessment

Through the Mail Competition Forum (MCF), some licensees have suggested to Postcomm that the requirement on all licensed operators to become members of redress schemes could result in the withdrawal of activity from the licensed area. They also suggested that this requirement could deter operators wanting to enter the licensed area. BERR's impact assessment does not mention these risks nor the fact that the relinquishing of licences will mean that fewer customers are protected from redress schemes (as only complaints about licensed operators and licensed products and services will be dealt with by a redress scheme).

Timescales

Postcomm considers that it is important for BERR to issue the decision on the scope of redress scheme as early as possible and well before the 21 December deadline stated in its consultation document. Earlier publication of its decision will allow more time for subsequent actions to take place. For example, Postcomm will need to consult and issue a decision on the criteria for approval of redress scheme, licensed operators will then need to apply to Postcomm for approval of their schemes and the redress body will need time to establish its procedures etc. before it can start taking on complaints.

Annex A – Royal Mail’s “Regulated Services”

“The Regulated Services comprise –

- (a) all the Controlled Services,
- (b) all the unpriced services listed in paragraph 23,
- (c) the Miscellaneous Services, and
- (d) Business Collections.”⁴

A. The Controlled Services:

1. First Class mail not conveyed by other services listed below;
2. First Class Metered
3. Second Class mail not conveyed by other services listed below;
4. Second Class Metered
5. Standard Parcel;
6. Airmail Europe;
7. Airmail World Zone 1;
8. Airmail World Zone 2;
9. Surface Mail;
10. Response Services 1st Class;
11. Response Services 2nd Class;
12. First Class Postage Paid Impression (PPI)
13. Second Class Postage Paid Impression (PPI)
14. Special Delivery (Next Day) other than when sold to users having an account with the Licensee buying the service using their account;
15. Cleanmail OCR 1st Class;
16. Cleanmail CBC 1st Class;
17. Cleanmail OCR 2nd Class;
18. Cleanmail CBC 2nd Class;
19. Mailsort 120 OCR 1st Class;
20. Mailsort 120 CBC 1st Class;
21. Mailsort 120 OCR 2nd Class;
22. Mailsort 120 CBC 2nd Class;
23. Mailsort 700 1st Class;
24. Mailsort 700 2nd Class;
25. Mailsort 1400 1st Class;
26. Mailsort 1400 Residues 1st Class;
27. Mailsort 1400 2nd Class;
28. Mailsort 1400 Residues 2nd Class;
29. Presstream 1st Class;
30. Presstream 2nd Class;
31. Packetpost 1st Class;
32. Packetpost 2nd Class;
33. Packetsort 8 1st Class (including Flatsort 8 1st Class);
34. Packetsort 8 2nd Class (including Flatsort 8 2nd Class);
35. Walksort 1st Class;

⁴ Royal Mail’s Licence, 25 May 2006, Schedule 2 – Condition 21.

- 36. Walksort 2nd Class;
- 37. Mailsort 700 3;
- 38. Mailsort 1400 3 (including Flatsort 1400 3);
- 39. Access 1400;
- 40. Access 120 Letter;
- 41. Access 120 Flat & Packet;
- 42. Access 120 OCR;
- 43. Access 120 CBC;
- 44. Access 700 CBC
- 45. Access Walksort;

B. The unpriced services listed in paragraph 23 of Condition 21:

- 1. Return to sender as part of a Regulated Service
- 2. Poste Restante
- 3. Petitions to Parliament
- 4. Petitions to Her Majesty the Queen
- 5. Certificate of Posting

C. The Miscellaneous Services are:

- 1. Proof of delivery
- 2. Private Boxes Transfer to PO Box 12 months
- 3. Recorded delivery
- 4. Response Services Licence fees
- 5. Redirection services
- 6. Ministerial Pouch services