

# POSTAL SERVICES COMMISSION COMPLAINTS HANDLING STANDARDS REGULATIONS DECISION STATEMENT

## Summary

1. This statement concludes the making of the complaint handling standards regulations. In June 2008, Postcomm issued a decision document and proposals notice<sup>1</sup>, which set out Postcomm's decisions and the proposed complaint handling standards regulations.
2. Having considered the three responses received to the proposed regulations and comments from the Department for Business, Enterprise and Regulatory Reform ("BERR"), Postcomm has made minor changes to the proposed regulations and has set out further clarification on the effect of the regulations in this statement. The complaint handling standards regulations, published alongside this statement, will come into effect on 1 October 2008.

## Background

3. The Consumers, Estate Agents and Redress Act ("the CEAR Act") places a statutory requirement on Postcomm to make regulations on complaint handling standards which will apply to licensed postal operators who provide relevant postal services to relevant consumers.
4. Postcomm consulted in January 2008 on what should go into the complaints handling standards regulations. Postcomm took account of respondents' comments, and suggestions from the industry working group for licensed postal operators (facilitated by Postcomm) and the postal complaints working group (facilitated by BERR). In June 2008, Postcomm published its decision document and the proposed regulations.

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<sup>1</sup> Complaints handling standards for licensed postal operators: A decision document and proposals notice, June 2008.

5. The regulations published alongside this statement seek to provide effective protection for consumers (including recipients) of licensed postal products and services; ensuring complaints are dealt with comprehensively and quickly, without imposing disproportionate burdens on licensed postal operators. In accordance with the principles of better regulation the regulations set out what Postcomm and BERR consider to be the minimum acceptable requirement for what is to be included in licensed postal operators' complaint handling arrangements. Licensed postal operators may offer enhanced arrangements if they wish.

### **Response to June 2008 decision document and proposed regulations**

7. Postcomm received three responses to its decision document and proposed regulations and these are available on the Postcomm website. The respondents were Postwatch, Royal Mail and the Mail Competition Forum (MCF).
8. Postwatch was pleased that many of its recommendations were taken into account and is satisfied that the regulations correctly implement Postcomm's decisions and are enforceable by Postcomm.
9. The MCF believed that the regulations strike an acceptable balance for consumer protection relying on mandatory regulation and market pressure. The MCF made several specific comments in relation to the draft regulations and these are addressed in the 'Postcomm's decision' section below.
10. Royal Mail generally supported the principles of Postcomm's approach but raised concerns with how these principles were set out in the draft regulations. These are also addressed below.

### **Postcomm's decision**

11. Having considered the responses to the January 2008 and June 2008 documents Postcomm has made the complaint handling standards regulations which are published alongside this statement.
12. Set out below is Postcomm's response to the main comments made by respondents to the June 2008 decision document and proposed regulations.

### Definition of “relevant postal services”

- Postcomm has removed the reference to “relevant postal services” from the regulations. Standard drafting practice for regulations requires that definitions are not repeated in the regulations if they are the same as definitions already stated in the Act which gives the power to make the regulations. The term ‘relevant postal services’ is defined in the CEAR Act and shall have the same meaning in the regulations. The CEAR Act defines relevant postal services as “any postal service provided in connection with the provisions of the universal postal service (within the meaning of the Postal Services Act 2000) and any other postal services which are provided, or authorised or required to be provided by a licence holder under Part 2 of that Act in accordance with a licence under that Part”.

### Definition of “contract customers”

- Both MCF and Royal Mail raised concerns with the definition of “bulk mail” that was set out in the proposed regulations. Both organisations said that as many customers who send volumes under 4000 items are able to choose their operator they should be able to negotiate adequate redress terms under their contracts and therefore not be covered by the regulations. The MCF and Royal Mail recommended that the regulations should instead refer to ‘contract customers’ because a sending customer with a contract with a postal operator should already have adequate protection through having a choice of postal operator, the negotiated terms of their contract, and standard contract law. It would also be more in line with the BERR decision document<sup>2</sup>.
- Royal Mail also confirmed that certain products where a consumer might appear to have a contract with Royal Mail (e.g Redirections, Poste Restante) would actually be covered by the regulations as they are universal service products provided under the terms of the Section 89

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<sup>2</sup> Consumer redress schemes in gas, electricity and postal services. Government response to consultation. December 2007.

schemes which Royal Mail has made under the Postal Service Act 2000 and which are not subject to normal contract law.

- Postcomm accepts the comments made by respondents and has changed the definition from 'bulk mail' to 'contract customer' in the final regulations. Therefore any senders of mail who have a contract with a licensed postal operator will not be covered by the regulations in relation to complaints about any services provided to them under the terms of that contract. As set out in the June 2008 decision document, licensed postal operators are expected to set out publicly which products are covered by the regulations and eligible for redress to minimise consumer confusion. Postcomm considers that if there is any change to the status of any products currently covered by the Section 89 schemes which results in consumers of those products losing the protection provided by the regulations / redress arrangements then Postcomm would have to urgently consider the need for consultation on whether regulatory action was required.

#### Complaints with no evidence base

- Following comments from respondents, Postcomm can clarify that a licensed postal operator must deal with consumer complaints with no evidence base. However, it is for the licensed postal operator to determine how these complaints should be dealt with and nothing prevents a licensed postal operator requiring a reasonable amount of detail from the complainant in order to progress or investigate the complaint.

### Progression of complaints orally

- Following comments from respondents, Postcomm can clarify that the ability of a consumer to make and progress a complaint orally does not prevent the licensed postal operator from requesting certification or evidence from the complainant in order to progress the consumer complaint. For example, if a complainant is making a claim for compensation about a damaged item, the complainant could be required to provide relevant evidence of damage to an item and its packaging to validate that claim and allow the complaint to be progressed.

### Making of complaints by a third party on behalf of a relevant consumer

- Following comments from respondents, Postcomm can clarify that the regulations do not prevent a licensed postal operator from obtaining appropriate consents where a third party is acting on behalf of a consumer. Licensed postal operators can then be assured the third party has the consumer's consent. This can avoid multiple claims in respect of the same incident or claims brought by people or organisations with no direct interest in the outcome of the complaint.

### Signposting the redress scheme

- Respondents raised concerns over paragraph 3.47 in the decision document which states "where a complaint is not eligible for redress, for example if a licensed postal operator has voluntarily used the complaint handling procedure for all complaints received, Postcomm would expect the licensed postal operator to provide information of any other independent guidance available". Postcomm considers it is sufficient that in such circumstances a licensed postal operator directs a consumer to Consumer Direct.

### Binding nature of redress

- The MCF wished for the finding of the redress operator to be binding on the consumer. Postcomm set out in its April 2008 decision document on redress<sup>3</sup> that after considering responses to the initial consultation that it

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<sup>3</sup> Criteria for the approval of redress schemes in postal services, a decision document, April 2008.

would clarify that a decision by the redress scheme would be binding on licensed postal operator but not the consumer. Postcomm still considers this to be appropriate.

#### Vulnerable consumers<sup>4</sup>

- Postcomm has slightly amended the requirements relating to vulnerable consumers to reflect comments from respondents and feedback from the postal complaints working group. The regulations require licensed postal operators to have arrangements in place to deal with vulnerable consumer referrals from Consumer Focus but there is no requirement to have agreed these arrangements with Consumer Focus. This was felt to be unnecessary as the postal complaints working group (which contains representatives from licensed postal operators and Consumer Focus) had agreed a definition of vulnerable and a referral process for cases relating to vulnerable consumers.

#### Publication of complaint handling procedures

- The MCF asked for clarification on what ‘reasonable publicity’ would mean for publicising the complaint handling procedures on a company’s website. The MCF suggested this would mean a ‘contact us’ link or similar on its home page which then led to a more detailed page with the complaints handling procedure on it.
- Postcomm considers that a customer should easily be able to find the complaints handling procedure and it is sufficient for the company’s website homepage to have a clear link to ‘how to complain’ or ‘contact us’ which then leads to the complaints handling procedure. The complaints handling procedure should also be easily found via the search function of the website. If a company does not have a website Postcomm considers that company should publicise its complaints handling procedure through whatever communication channel it uses in place of a website.

#### Business premises accessible to the public

- The MCF asked for clarification around having details of ‘how to make a

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<sup>4</sup> The term “vulnerable consumer” is defined by Section 12 of the CEAR Act; therefore Postcomm has used this terminology throughout this document.

consumer complaint' available at its business premises which are accessible to the public.

- Postcomm considers a business premise to be accessible to the public if a consumer can purchase or collect postal services from that licensed postal operator there. The information that should be available at such premises does not have to be the complaints handling procedure itself. Instead it should include details of how a consumer can complain, for example by providing a contact number and information on where a copy of the complaints handling procedure can be found.

**September 2008**