

**POSTCOMM**

The Postal Services Commission

**POSTAL SERVICES ACT 2000**

**DETERMINATION UNDER SECTION 58(6)**

**Postwatch Information Notice – 26 July 2001**

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## Determination

### Request for determination

1. Postcomm has been requested by Consignia plc ("Consignia") to determine, pursuant to section 58(6) of the Postal Services Act 2000 ("the Act"), that Consignia need not comply with a notice ("the Notice") served on it under section 58(1) of the Act on 26 July 2001 by the Consumer Council for Postal Services ("Postwatch")<sup>1</sup>.
2. Notices issued by Postwatch under section 58(1) of the Act are to require the supply of information. Postcomm may make a determination under section 58(6) if it considers that the information required by the notice is not reasonably required by Postwatch in the exercise of its functions<sup>2</sup>.
3. The information required to be supplied by the Notice comprises –
  - (a) the number of walks (a single daily round for delivery of postal packets) scheduled and the number of those walks which have not been undertaken during each week in respect of fourteen postcode areas<sup>3</sup>, and
  - (b) any reports or action plans by Consignia in respect of its failures to meet its universal service obligation or difficulties in doing so.

### Determination

4. Postcomm considers that the information required from Consignia by the Notice is not reasonably required by Postwatch in the exercise of its functions to the extent that it relates to the postcode areas other than PO, RG, SN, and BA.
5. Accordingly, Postcomm, under section 58(6) of the Act, determines that Consignia need not comply with the Notice.

### Recommendations

6. Postcomm notes that, if Postcomm determines that Consignia need not comply with the Notice, section 58(6) of the Act gives Consignia the option of declining to comply with the Notice but does not require it not to comply.

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<sup>1</sup> Copy at Attachment A

<sup>2</sup> Section 58(7)(a) of the Act. Sections 58(7)(b) and (c) provide for other criteria when Postcomm may so determine but they are not relevant to this decision as they apply where an order specifies the information concerned or other matters and no such order has been made

<sup>3</sup> The areas comprise the whole of Postwatch's South and West regional division.

Postcomm recommends that Consignia complies fully with the Notice at the earliest possible date, and in any event no later than in relation to the week ending 14 days after the date of this determination, in relation to the postcode areas PO, RG, SN and BA.

7. Postcomm makes these recommendations in the expectation that –
  - (a) if they are not followed, Postwatch will reconsider the matter in the light of this determination and any information it may have received subsequent to the issue of the Notice, and
  - (b) that this determination will present no bar to the issue of a further notice under section 58 of the Act which avoids the difficulties that Postcomm perceives in the Notice.
8. Postcomm also recommends that if complaints lead to a reasonable view that there may be an on-going problem with achieving daily deliveries in a particular postcode area, Consignia should be recording whether daily deliveries are being made in that area and if requested should provide that information to Postwatch.

#### **Background, submissions, reasons and other issues**

9. The background to this matter and an explanation of the process adopted by Postcomm in making this determination are set out in Part 2. A summary of the representations of Consignia is set out in Part 3. A summary of the representations of Postwatch is set out in Part 4. The reasons for Postcomm's decision are set out in Part 5. Postcomm's comments on other matters raised in the representations made by Consignia and Postwatch are set out in Part 6.

### BACKGROUND AND PROCESS

#### Background

1. Postwatch received complaints in the beginning of June 2001 that daily postal deliveries were not being made by Consignia in and around Bognor Regis, which is in the PO postcode area, and another 7 towns which are also in the PO postcode area or in the BA, RG and SN postcode areas.
2. Postwatch raised these complaints with Consignia as they occurred. The responses received from Consignia suggested that there were occasions when it could not cover deliveries, that these difficulties were due to labour shortage and that this problem was not unique to Bognor Regis.
3. Postwatch regarded these complaints as extremely important because daily delivery is an element of the universal postal service. Postwatch formed the view from the complaints and Consignia's responses to them that universal service failure was widespread throughout the South and West and was systemic.
4. Postwatch thought it needed to obtain information about the extent of Consignia's problems in the South and West and asked for it. Consignia declined to respond to the request because of the administrative effort. On 26 July 2001 Postwatch served the Notice on Consignia under section 58(1) of the Act formally requiring Consignia to supply information specified in Part A of the Notice at the time and places specified in Part B of it.
5. On 21 September 2001, Wragge & Co, solicitors acting on behalf of Postwatch indicated to Consignia that they had been instructed to commence proceedings against Consignia for breach of the Notice<sup>1</sup>.
6. On 26 September 2001 Consignia submitted its request for a determination to Postcomm, with representations as to why it considered that the determination should be made<sup>2</sup>. On 22 October 2001 Postwatch submitted representations to Postcomm on the matter<sup>3</sup>. Those representations included comments on the Consignia submission. On 1 November 2001 Consignia submitted further representations commenting on Postwatch's representations<sup>4</sup>. Postcomm copied these to Postwatch 1 November 2001.
7. Further background is given at paragraphs 6 - 9 of the Consignia submission and paragraphs 3 - 8 of Consignia's further representations.

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<sup>1</sup> Copy at Attachment B.

<sup>2</sup> Copy at Attachment C.

<sup>3</sup> Copy at Attachment D.

<sup>4</sup> Copy at Attachment E

## Process

8. On 12 October 2001 Postcomm wrote to Consignia and Postwatch outlining the process Postcomm intended to adopt in relation to its determination. The proposed process gave each of the parties the opportunity to see and comment on each others' submissions and indicated that if Postcomm considered it necessary it would hold an oral hearing. By fax dated 25 October 2001 Wragge and Co, on behalf of Postwatch, wrote to Postcomm requesting clarification of that process. On 30 October 2001 Postcomm responded to that request and copied the request and its response to Consignia.

9. Given the representations made to Postcomm and the copies of the relevant correspondence, Postcomm decided that an oral hearing was not required. However, on 13 November 2001 staff from Postcomm visited Consignia's Slough Mail Centre to clarify the procedures by which Consignia obtained information on service delivery in its Delivery Offices. A Postwatch staff member was present throughout that visit with a solicitor from Wragge & Co.

### CONSIGNIA'S REPRESENTATIONS - A SUMMARY

#### The submission dated 26 September 2001

1. Consignia's initial submission was quite brief in its analysis of why Postwatch's notice was for information not reasonably required by Postwatch. The key points that it makes include –

- the cost of producing the information referred to in the Notice is excessive,
- the appropriate process to use where performance in a postcode district presented problems is that set out in its Scheduled Service Compliance Code,
- there should not be micro management of regulated companies by regulators,
- requests for information need to be structured and geared towards a particular purpose,
- regulators should not "hoover up" information, and
- the breadth of the request.

#### The submission dated 1 November 2001

2. Consignia's second submission is more detailed than its first submission. Its key points are –

- a request for ongoing information from 343 delivery offices is a disproportionate response to a reported problem in Bognor
- Postwatch's vires was limited to referring the matter to Postcomm and did not extend to commencing further investigations,
- the requirement for information is unreasonable because –
  - it is based on conclusions drawn from misunderstandings,
  - the information in the form requested is not available, and
  - Postwatch has not correctly considered the issue of costs,
- Consignia is concerned about "micro management" of its affairs,
- Postwatch has not fully appreciated what Consignia has offered in relation to its Code of Practice<sup>1</sup>.

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<sup>1</sup> It appears that this is a reference to Consignia's Scheduled Service Compliance Code.

## POSTWATCH'S REPRESENTATIONS – A SUMMARY

1. Postwatch received complaints and had informal evidence that there was a failure to provide universal service daily deliveries in Bognor Regis and in up to four Postcode areas. The explanations from Consignia for these failures led Postwatch to believe that these failures had a systemic element, namely the apparent problem of labour shortage.
2. Because the failures were systemic Postwatch believed there may be a problem across the whole of the South and West region. It wished to explore the extent of the problem so as to exercise its functions under the Act, not only to resolve the particular complaints, but also to investigate and report on matters relating to the interests of users of postal services.
3. Postwatch submitted that the information it sought could be made available without the need for unreasonable time or resource commitment by Consignia. The element of the Notice that referred to action plans was not asking for documents that did not exist. Postwatch said that its Notice was focussed and specific in its requirements and was for something that Consignia management should want to see. Postwatch argued that the costs of compiling information cannot be considered in isolation but must be weighed against the significance of the information.
4. Postwatch made a number of points in relation to Consignia's submission and outlined its reading of sections 58(6) and (7) of the Act.
5. Postwatch concluded that the Notice was within the reasonable range of responses to the situation it had become aware of, that it was a legitimate exercise of Postwatch's functions, consistent with its duties and took account of compliance costs.

## THE REASONS FOR POSTCOMM'S DETERMINATION AND RECOMMENDATIONS

### Postcomm's function under sections 58(6) and (7)(a)

#### Postcomm's general role

1. Postcomm's role is to consider whether the Notice requires information to be supplied which is not reasonably required by Postwatch in the exercise of its functions. If Postcomm decides that the information concerned is not reasonably required, then it should determine that Consignia need not comply with the Notice. It is not clear from the Act whether Postcomm may make a partial determination if Postcomm concludes that a part of the information referred to in the notice is not reasonably required.

2. However it is clear that nothing in sections 58(6) and (7)(a) prevents Postcomm from commenting generally on what it considers to be reasonable in the circumstances. Such comment from Postcomm should assist the parties to decide their future courses of action. Both would be aware of the likely decision if another notice were to be issued and referred to Postcomm under section 58(6).

#### Issues to be considered

3. Postcomm sees itself as having to consider the following questions –
- is the information referred to in the Notice required in the exercise of Postwatch's functions,
  - if so, is the information not reasonably so required, and
  - if the answer to either of these questions is no, is there any reason not to make a determination that Consignia need not comply with the Notice<sup>1</sup>?

### Required in the exercise of Postwatch's functions?

4. The Notice is framed as being for the purpose exercising Postwatch's functions under sections 52, 53, 54(3), 56 and 57 of the Act. It is issued under the power in section 58(1) of the Act.

5. Postwatch indicates that it received four complaints concerning non-delivery in Bognor Regis, which is in the PO postcode area, in the first week of June<sup>2</sup> and it believes that a complaint received is often representative of a wider number of

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<sup>1</sup> Whether this amounts to a discretion or not is discussed at paragraph 27 of Part 6

<sup>2</sup> Paragraph 2.2 of Attachment D

problems<sup>3</sup>. Postwatch also indicated that at about the same time it received further reports of delivery failures in seven other towns across the South and West<sup>4</sup> which are also in the PO postcode area or in the BA, RG and SN postcode areas. It indicates that these problems were acknowledged by Consignia<sup>5</sup>. Postwatch concluded that the failures were ongoing and widespread<sup>6</sup> and that it needed to monitor the situation across the region and consider whether to recommend some general action.<sup>7</sup>

6. Postcomm regards failure by Consignia to make daily deliveries as a serious issue. Daily delivery is an important element of universal service. This is an obligation under European law and it is a licence obligation of Consignia. Non-provision of the universal service or an element of it is a matter relating to the provision of a “relevant postal service”. It is a matter referred to Postwatch by users and Postwatch appears to Postcomm to have been bound to investigate it.

7. Postcomm therefore has no hesitation in concluding that the type of information referred to in the Notice is the type of information that may be required by Postwatch in the exercise of its functions<sup>8</sup>.

### **Not reasonably required?**

8. Postwatch’s submission states that it had four complaints in relation to deliveries in and around Bognor Regis, which is in the PO postcode area. Although it says that it had begun to receive a number of further reports of universal service failure across the South and West it particularizes complaints in relation to only four other Postcode areas, the furthest West of which is the BA area. Although Postwatch says that its correspondence with Consignia indicated that the failures were being experienced **across the region**<sup>9</sup> (emphasis added), the letter referred to indicates that the failure is in relation to **various areas across our region** (emphasis added) and refers specifically to 6 towns<sup>10</sup>.

9. Postwatch’s rationale for requiring information across the South and West areas of England is that it was evident that Consignia’s service failures were widespread throughout the South and West and systemic. The systemic element

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<sup>3</sup> Paragraph 2.3 of Attachment D

<sup>4</sup> Paragraph 2.10 of Attachment D

<sup>5</sup> Paragraphs 2.12-15 of Attachment D

<sup>6</sup> Paragraph 2.16 of Attachment D

<sup>7</sup> Paragraph 2.18 of Attachment D

<sup>8</sup> Further issues raised by Consignia relating to Postwatch’s exercise of functions are considered at paragraphs 2 to 4 of Part 6

<sup>9</sup> Paragraph 6.1.4 of Attachment D

<sup>10</sup> Copy at Attachment F. Postcomm notes that two of these towns are not the same as the towns referred to in the Postwatch representations (Attachment D) and that 2 of them fall outside the 4 postcode areas in which the representations say that failures arose. Postcomm has relied on the information contained in the representations as this discrepancy does not affect the underlying reasons for the determination.

was “at least one common factor” by which Postwatch means the regional labour market in which it was difficult for Consignia to recruit staff.

10. In reaching this view, Postwatch was relying on information provided relatively informally by Consignia. That information made reference to the labour market in Bognor Regis being similar to other areas in the South and South East<sup>11</sup>.

11. Given the factual background as it was known to Postwatch when the Notice was served it appears to Postcomm to be not reasonable of Postwatch in the exercise of its functions to have included in the Notice a requirement for information that extended far to the West, into Devon and beyond to the Isles of Scilly, without apparently having complaints from those areas and without apparently considering whether the basis of Postwatch’s assumption of systemic failure applied in those areas.

12. Accordingly Postcomm considers that the information required from Consignia by the Notice was not reasonably required by Postwatch in the exercise of its functions to the extent that it related to the Postcode areas outside the areas in which it had received complaints and where the subsequent discussions with Consignia indicated that there may be a systemic problem<sup>12</sup>.

### **A determination?**

13. In the light of the last paragraph it is open to Postcomm to consider making a determination that Consignia need not comply with the Notice. Given that Postcomm has found that the Notice was unreasonable in relation to a significant element of its requirements, Postcomm thinks that it is appropriate to determine that Consignia need not comply with it.

### **Reasons for Postcomm’s recommendation**

14. Although Postcomm has given a determination that the Notice need not be complied with because it is unreasonable in part, Postcomm is of the view that it clearly is reasonable in relation to certain areas, namely the postcode areas PO, BA, SN and RG. Postcomm thinks that, depending on labour market conditions, the Notice may be reasonable in relation to other areas, but expresses no view on which these are.

15. Postcomm is unimpressed by Consignia’s arguments about the cost of compliance with the Notice. Consignia has not attempted to put a figure on the costs that it has referred to. From its staff visit to Slough, Postcomm notes that the information sought by Postwatch could be gathered with relatively minor modification to just one of the reporting forms that Consignia uses. Training and

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<sup>11</sup> Paragraph 2.9 of Attachment D

<sup>12</sup> Further consideration of this issue, having regard to Consignia’s views on the issue, is contained in Part 6.

collation costs would be incurred. However these costs should be a marginal addition to the costs already incurred in training and collation costs in relation to the forms as they presently are used.<sup>13</sup>

16. Postcomm is pleased to note that Consignia is introducing a nationwide system to monitor its universal service delivery performance. However Postcomm notes that this system will not be in place for some months. Universal service is a very important matter and Postwatch's concern at the apparent failure on the part of Consignia to provide the daily delivery element of it is a very legitimate one which should not be left unexamined until Consignia gets its new system working.

17. Postcomm therefore is of the view that the information required by Postwatch should be made available in respect of the postcode areas PO, RG, SN and BA. Postcomm also believes that if Postwatch receives complaints in relation to other postcode areas and, after raising the matters with Consignia, reasonably concludes that there may be on-going problems in that postcode area Consignia should record whether daily walks are being performed and if requested should make those records available to Postwatch. Postcomm has recommended accordingly.

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<sup>13</sup> See also paragraphs 23 –25 of Part 6.

## POSTCOMM'S COMMENTS ON OTHER MATTERS RAISED IN THE REPRESENTATIONS MADE BY CONSIGNIA AND POSTWATCH

### Introduction

1. Consignia's request for a determination and Postwatch's response to it raised a number of arguments on whether the Notice concerned information which is not reasonably required by Postwatch. Postcomm has considered these arguments but for the reasons set out below does not believe that those arguments add any support to Postcomm's decision to make a determination under section 58(6) of the Act. Postcomm thinks that it would be helpful, nevertheless, to let Consignia and Postwatch have its comments on these matters. Postcomm's view on whether it has a discretion to give the determination is also considered.

### Relevant Postwatch functions

2. Consignia expresses the view that in a particular case Postwatch may exercise functions under either section 56 or 57 but not both<sup>1</sup>. No reasons seem to be given for this view. Postcomm considers that Postwatch does have the power to exercise both its section 56 and 57 functions at the same time. Under section 57 Postwatch has a discretion to investigate any matter which it considers to be a matter relating to the interests of users of relevant postal services. Section 57(1)(a) indicates that that discretion does not apply to matters which it must investigate under section 56, but that does not preclude it from investigating a widespread problem, part of which may be the individual complaint. That is, it is the discretion which does not apply, not the section.

3. Consignia further states that it considers that the Notice can only be valid if it was issued in accordance with Postwatch's powers under section 56<sup>2</sup>. For the reasons set out above Postcomm believes it could also have been issued in the exercise of functions under section 57. Postcomm believes that the type of information sought may also relate to Postwatch's functions in section 52, 53 or 54(3).

4. Postwatch considers that Postcomm may only decide if the decision to issue a notice fell within the range of reasonable decisions which Postwatch could have made<sup>3</sup>. In Postcomm's view the determination by Postcomm is not an appeal against Postwatch's decision. It is an administrative determination by Postcomm which must be made having regard to its statutory duties<sup>4</sup>. The basis for that

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<sup>1</sup> Para 10 of Attachment E

<sup>2</sup> Paragraph 10 of Attachment E. See also paragraphs 7 – 9 of Part 6

<sup>3</sup> Para 7.2 of Attachment D

<sup>4</sup> Which is recognized by Postwatch at paragraph 7.3 of Attachment D

determination is set out in section 58(7). It must have regard to whether the information concerned is not reasonably required by Postwatch in the exercise of its functions. To do this Postcomm must reach a view on the functions which Postwatch is exercising<sup>5</sup>. It must then determine whether it is not reasonable to demand the information in the exercise of those functions. If so Postcomm may determine that the person on whom the order is made need not comply with it.

### **Details of complaints not forwarded to Consignia**

5. Consignia says it has not received details of the complaints in relation to 5 delivery offices in the south and west.<sup>6</sup> Postwatch says it received complaints in relation to seven other towns<sup>7</sup> and that it reported each complaint to Consignia and requested observations.<sup>8</sup>

6. In letters of 15 June and 25 June and e-mail of 4 July 2001, Consignia acknowledged that there were problems related to walk performance that area of the country<sup>9</sup>. Postcomm believes that this indicates that the matter was discussed in sufficient detail with Consignia to give Postwatch grounds to consider that the problem is a matter which has not been satisfactorily resolved and a matter relating to the interests of users of relevant postal services in those areas and thus a matter which it should investigate under sections 56 and 57 of the Act.

### **Ultra vires s56**

7. Consignia says that the Notice is ultra vires Postwatch's powers under section 56. Consignia's view is that Postwatch should have concluded its investigation under section 56 when it formed the view that there had been a breach of the USO condition in Consignia's licence.<sup>10</sup> It believes this because section 56 requires Postwatch to refer any investigation it is conducting under section 56 to Postcomm where it considers a condition of a licence may have been contravened. Consignia are saying that referral in this context also means stop investigating and let Postcomm investigate.

8. However Postwatch has a statutory role in consumer representations and investigating matters relevant to consumers. Postcomm relies on Postwatch to provide information on the state of the postal system. It is true that once a breach of a licence has been identified only Postcomm may take enforcement action under a licence. That is why there must be a referral. However this does not mean that Postwatch must desist from investigating whether there are any continuing breaches.

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<sup>5</sup> This appears not to amount to the formal determination of what Postwatch's functions are that Consignia suggests is necessary – see paragraph 33 of Attachment E.

<sup>6</sup> Paragraph 3 of Attachment E.

<sup>7</sup> Paragraph 2.10 of Attachment D

<sup>8</sup> Paragraph 2.12 of Attachment D

<sup>9</sup> Paragraph 2.6, 2.8 and 2.13 of Attachment D

<sup>10</sup> Paragraph 11 of Attachment E

Postcomm may wish it to perform that function. In many circumstances Postcomm may rely on Postwatch to monitor on-going compliance.

9. Consignia's argument is predicated on the assumption that the only exercise of function under which the order can have been made is section 56. For the reasons given above Postcomm believes it could also have been made for the purpose of the exercise of the other functions cited in the Notice and thus even if Consignia is right on this point it would not invalidate the information being sought for those purposes.

### **Dual regulation**

10. Consignia indicates that the Notice is inappropriate in that it amounts to dual regulation which is not in accord with the intention of the Act<sup>11</sup>. This argument is based on section 56(3) and section 60 of the Act. Postcomm does not agree with Consignia in relation to whether the Notice could be made in relation only to the exercise of Postwatch's section 56 functions and that Postwatch may not continue to investigate a matter under section 56 after it has been referred to Postcomm. Accordingly Postcomm does not accept this argument in relation to section 56(3).

11. In relation to section 60, Postcomm agrees that there should not be an overlap of information gathering by Postwatch and itself. Although it is true that an MOU does not yet exist it is difficult in this case to identify dual regulation<sup>12</sup>. There is currently no monitoring of compliance with condition 2 and 3 of Consignia's licence (its USO). There is monitoring of delivery standards under condition 4 but it has not been argued, nor does Postcomm consider, that this monitors delivery of the USO.

### **Micro management**

12. Consignia says that the acceptance of the proposed Scheduled Services Compliance Code (the "SSCC") indicates that POSTCOMM recognises that the cost of continuously measuring compliance in all postcode areas would be disproportionate to the benefit<sup>13</sup>. It also argues that Postwatch agreed the SSCC and thus accepted this process is the practical means of addressing Postwatch's need for information on delivery performance<sup>14</sup>. Postcomm does not see these arguments as at all persuasive. The SSCC is intended to deal with localised failure to meet the standard of service obligations established under licence condition 4. The universal service delivery obligation stands apart from that condition. Moreover in substituting the SSCC provisions in Consignia's licence for the detailed monitoring

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<sup>11</sup> Paragraph 13 of Attachment E

<sup>12</sup> this is distinct from the argument that it is unreasonable information gathering which is dealt with at paragraphs 8 to 12 of part 5 above.

<sup>13</sup> Paragraph 11 of Attachment C

<sup>14</sup> Paragraph 12 of Attachment C

provisions Postcomm previously had suggested, Postcomm was responding as much to a point on regulatory certainty and discretion as to an argument on costs. It may be unnecessarily burdensome to adopt expensive monitoring procedures when performance is good. But that burden becomes increasingly justified as evidence of poor performance emerges. It also becomes increasingly necessary for regulatory agencies to gather information.

### **Does the information exist**

13. In its first submission Consignia stated that it does not produce daily delivery performance data by postcode area.<sup>15</sup> Postwatch indicated that it believes that this statement is both inaccurate in its terms and is misleading. It believes that the data is already collated at area level (areas and postcode areas are sometimes corresponding) as well as nationally.<sup>16</sup> Postwatch indicated that a member of its Council, during a visit to the Slough mail centre, was informed that each local delivery office collects daily information as to its failures in mail processing, distribution and delivery. This is forwarded daily to the local mail centre where it is collated and e-mailed to Consignia Group Centre in London. At Group Centre it is collated still further into a national daily report which is available to all mail centre managers.<sup>17</sup> Consignia are of the view that these conclusions are based on a series of misunderstandings. In Consignia's view the information collated is for onward reporting that only relates to work plan conformance. Work plan conformance only seeks information as to whether the mail centres processed the collection/outward and arrival/inward waves of mail to plan and whether the delivery specification is being met.<sup>18</sup> Consignia firmly believe that the 09.30 compliance for first town delivery requirement is not an indication of whether the USO obligation is being met.

14. In order to understand this issue staff of Postcomm, together with representatives from Postwatch, visited the Slough mail centre for a presentation on the information which is collected at a delivery office level and how that information is collated.

15. At that meeting Consignia provided a "delivery office daily report"<sup>19</sup>. The first two pages of this report are completed in each delivery office at 0800. The third page is completed at 12.00 noon in each delivery office. The sections relevant to deliveries are contained in 2 sections – one headed delivery (today) and delivery (previous working day). For the purpose of this form deliveries are divided into first delivery "town walks", exempt first delivery "town walks" second delivery walks, and "rural walks". It was explained that Question 11, which asks for the number of

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<sup>15</sup> Para 11 of Attachment C

<sup>16</sup> Para 6.1.7 of Attachment D

<sup>17</sup> Paragraph 4.4 Attachment D

<sup>18</sup> Paragraph 20 of Attachment E

<sup>19</sup> Copy at attachment G

first delivery "town walks" not covered, is meant to elicit the number of "first town walks" which will not be covered that day<sup>20</sup>. Question 12 which asks for the number of first delivery belated "town walks", is meant to elicit the number of first delivery town walks which it is anticipated will be covered that day (because contingency plans have already been put in place) but which have not been covered by 8.00 am. Question 14 which asks for the number of town walks not out by scheduled time, is meant to elicit those first delivery town walks which are late, i.e. did not commence by 06.45.

16. The section relating to deliveries (previous working day) is also filled in at 0800 on a working day. The first five questions relate to whether the first delivery is on time. The last question is a direct question on the number of second delivery walks not covered on the previous day (Monday to Friday).

17. All delivery office daily reports are sent to a central point in the area for area wide collation. This is then forwarded on to central postal control in Old Street which consolidates a national situation report. An example copy of this national report was provided<sup>21</sup>.

18. Consignia stressed at the meeting that the local and area consolidations were done to measure how delivery is being achieved against Consignia's internal performance targets. One of the main drivers for this collation is the bonus scheme operated by Consignia. It is also used at the local level (that is the delivery office level) for contingency planning. The purpose of this is to enable the delivery office manager to be aware by 08.00 which walks are unlikely to be covered as scheduled and thus be able to put into place contingency plans to ensure that as much mail as possible is delivered. From this data it is not possible directly to determine whether a particular walk is achieved on any particular day.

19. At the meeting, Consignia also explained what other information is collected at area level. This relates to arrivals and dispatches of mail from sorting offices and is not directly relevant to whether postal rounds ("walks") are achieved. However it was appropriate and useful in that it put the reason for collection of data as currently carried out by Consignia into context.

20. Also relevant to this issue is correspondence between Consignia and Postwatch subsequent to the request for a determination and the resulting supply of information by Consignia. It appears that a meeting was held between Consignia and Postwatch on 12 October 2001 to discuss this matter. There is some dispute as to what was decided at the meeting. By letter dated 19 October 2001 Consignia claims that it was agreed that only historic data covering the period from July to September 2001 was the focus of the information "request" and it undertook to supply the information in relation to four postcodes consolidated in the form

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<sup>20</sup> Although it was stressed that through contingency measures post for those walks may still be delivered on that day, e.g. by a second delivery walk.

<sup>21</sup> Copy at Attachment H

Postwatch requested.<sup>22</sup> The information supplied with that letter indicates the number of delivery opportunities not covered in each postcode area in a 13 week period. Although this does not conform to the requirement of the Notice in that the delivery opportunities not covered are given by postcode area rather than delivery office level, it does show that Consignia must have some information relating to the number of walks not covered. If not it could not have made the collations in the information supplied.

21. Consignia states in its letter of 19 October 2001 that it is not satisfied as to the robustness of the data in that it may overstate the walks not covered. Postcomm has difficulty with this assertion. Given that the nature of the information collected relies on self certification, if anything it would under estimate the number of walks not covered. That is, a delivery office is highly unlikely to report a walk not covered when in fact it was but there is a possibility that it may neglect to report the fact that a walk had not been covered.

22. From the foregoing it must be concluded that there is some doubt whether the information as requested by Postwatch is collated at the delivery office level. Even if it is there is some doubt as to its accuracy. Postcomm is not entirely convinced on this matter. However given the conclusions of the next section that even if the information does not currently exist it would be relatively simple for Consignia to obtain it, Postcomm does not believe that it is necessary for the purposes of its determination to establish this matter.

### **Cost of Collation**

23. Consignia has argued that providing the information would require significant administrative effort and expense.<sup>23</sup> However it has not quantified what that effort and expense would be other than being significant.<sup>24</sup> Postwatch, because it believes that the information already existed, did not believe that the level of administrative effort involved would be very high.<sup>25</sup>

24. At the meeting of 13 November at Slough mail centre, Postwatch asked Consignia whether it would be feasible to include a new question on the delivery office daily report requesting the number of first delivery walks not covered. This could be included in the section on previous working day deliveries. Consignia responded that it was not just as simple as inserting an extra question into an existing form. This is because of the size of the organization and the training required for persons to be able to answer the question. Consignia agreed that there was a gap in its information, especially since the introduction of the USO, and had agreed with Postwatch to introduce a new system of collection of performance data

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<sup>22</sup> Copy at Attachment I.

<sup>23</sup> Paragraph 4 of Attachment C

<sup>24</sup> Although at paragraph 5 of Attachment E it said it invested resources to construct historic reports for the 4 postcode areas but again did not quantify those resources.

<sup>25</sup> Paragraph 4.6 of Attachment D

which would highlight delivery failures on an exception basis. This new system was due to commence operation in March or April of next year. In light of the development of this system Consignia did not believe it was appropriate to amend its current delivery office daily report, especially in their busy lead up to Christmas.

25. Postcomm does not believe that there would be a great administrative burden in collecting the extra information, if in fact extra information is needed. During the visit to Slough, Consignia supplied an example of extra information that is collected at area level<sup>26</sup>. Although this form does not contain the information sought under the Notice, it does show that it is possible to request information from specific offices and that this is already done in some delivery offices. It also shows that collecting and collating additional information need not be onerous in relation to the costs already incurred.

### Referral under section 56

26. Postcomm notes that Postwatch states that it believes there may have been a breach of Consignia's licence<sup>27</sup>. If this is true it then under section 56(2) of the Act Postwatch should refer the matter **as soon as practicable** to Postcomm for consideration. Postcomm treats seriously the possibility that there may be a breach of a licence. However Postcomm recognises that where Postwatch only has unsubstantiated evidence of a potential licence breach it must first ascertain whether there is a clear appearance of a breach before referring it. Moreover, as indicated above<sup>28</sup>, Postwatch may investigate related matters even where it has made a referral under section 56. Therefore, even if the Notice concerns information about matters relating to a complaint which may be referable under section 56, the Notice may nonetheless concern information which is reasonably required by Postwatch.

### Is there a discretion to make the determination?

27. Postwatch is of the view that Postcomm has a discretion whether or not to make a determination if it considers that the information is not reasonably required.<sup>29</sup> Consignia disagrees with that view<sup>30</sup>. It is Postcomm's view that it may be considered to be perverse for Postcomm not to make a determination under section 58(6) if it reached the view that the information was not reasonably required. Although the word "may" is used in section 58(6), this does not automatically confer a discretion.<sup>31</sup> Accordingly Postcomm's approach is to presume that, if it makes a finding that information is not reasonably required under section 58(7) it ought to make the determination under section 58(6) unless there

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<sup>26</sup> Iver DO 08:00 Local Report – copy at Attachment J

<sup>27</sup> Paragraphs 2.4, 2.7 and 2.16 of Attachment D

<sup>28</sup> Paragraphs 7 – 8 of Part 6

<sup>29</sup> Paragraph 7.1.2 of Attachment D

<sup>30</sup> Paragraph 33 of Attachment E

<sup>31</sup> See for example *Padfield v Minister of Agriculture* [1968] AC 997.

are clear reasons not to do so. Postcomm does not believe that there are any such clear reasons in this case.

Signed on behalf of Postcomm

6 December 2001