

Approval criteria for redress schemes in the postal sector

Application notes:

- Applicants should ensure that their application sets out the full name and address of their organisation and the key contact details.
- Make sure you have read the full criteria before you make your application. This will help you avoid repeating the same information for different criteria.
- Applicants should be aware that all completed applications and supporting documents will be placed on Postcomm's website. Therefore, if there is any information (particularly in the supporting documents) that you do not wish to be made public, you should highlight this along with the reasons why. Postcomm will consider whether it is appropriate to publish the information.
- Any supporting information should have the name of your organisation on it. Clearly mark any supporting information so Postcomm can see how it relates to your application.

Criteria for approval

Postcomm has divided its proposed criteria into 3 categories:

1. The operation of a redress scheme;
2. The information that a redress scheme must make available to the public and/or other bodies; and
3. The enforcement procedures of a redress scheme.

1) OPERATION

Independence - The redress scheme must be independent from Postcomm and from the licensed postal operator to which it applies¹. Independence means that the approved redress scheme must be, and be seen to be, independent from those whose disputes it is resolving, i.e. both complainants and the licensed

¹ Section 48(2) of the CEAR Act requires that a redress scheme is independent.

postal operators. This is essential to ensure that consumers and the industry have confidence in the scheme, it is seen to be credible and that disputes are considered without bias. Independence does not mean that the redress scheme cannot be appointed or chosen by the licensed postal operator or that it should not pay for the redress scheme. It means that there must be sufficient safeguards in place to demonstrate impartiality.

Requirements to meet this criterion:

- rule-setting, investigation, and the resolution processes of the redress scheme must be and be seen to be impartial, free from bias and independent of Postcomm and the scheme members;
- the governing board or council of the redress scheme must not be appointed by those who are subject to investigation by the redress scheme;
- there must always be a majority of independent members on any governing board or council which appoints or terminates the decision makers(s) of the scheme;
- the jurisdiction, powers, and method of appointment of the decision maker(s) of the redress scheme must be publicised;
- the decision maker(s) for the scheme must be appointed for a period of office of sufficient (but limited) duration to ensure the independence of their actions and must not be removed from their duties without just cause;
- the governance arrangements and fee structure of the scheme must not have a disproportionate effect on any particular member or group of members;
- the decision maker(s) for the scheme alone must have the power to decide whether or not a complaint is within the scheme's jurisdiction;
- there must be provision for the decision maker(s) of the scheme to reallocate the case fee and compensation to another scheme member if, as a result of the decision of the person responsible for scheme, fault lies with that other scheme member, and

- if there is more than one redress scheme in place, each redress scheme must cooperate with the other schemes in place including satisfactory provision for the acceptance and handling of complaints transferred from redress schemes which have had their approval withdrawn.

Accessibility - The redress scheme must be easily accessible to all those entitled to use it. It is essential that the scheme is, and is seen to be, easily accessible to consumers. Several factors are capable of impeding access, including a lack of awareness of the scheme, processes and procedures that prevent timely access to the scheme and its ease of use (or perceived ease of use) across all groups of consumers.

Requirements to meet this criterion:

- the consumer must be able to have their complaint investigated by the scheme free of charge. The scheme must also ensure that the cost to the consumer of accessing the scheme, such as the cost of making a telephone call, is kept as low as reasonably practicable;
- there must be appropriate steps to ensure consumer awareness of the redress scheme;
- the scheme must give decision makers the discretion to refer a complaint back to a licensed postal operator to attempt to resolve it. The time allowed for this process must be reasonable for the consumer and the operator;
- the procedures and processes to raise a complaint with the scheme must be easy to understand and use and must not be overly bureaucratic;
- the scheme must adopt processes that allow for additional help in accessing the scheme to be given to those consumers that need it. For example, this may include allowing other people to act on behalf of

the relevant consumer, help with completing forms or a translation service if needed, and

- the scheme's procedures must allow the consumer to progress their complaint via a range of methods, including telephone, email and post.

Resources – The scheme must be adequately staffed and funded. In order for a dispute procedure to be effective, it has to be prompt and cost effective.

Requirements to meet this criterion:

- the scheme must be adequately staffed and funded in such a way that complaints can be effectively and expeditiously investigated and resolved and to allow the decision maker(s) to function impartially, efficiently and appropriately;
- the scheme must have, or have within a short period of time, the appropriate expertise to resolve postal disputes, and
- the scheme must demonstrate how it will achieve good value for money for licensed postal operators and consumers.

Fairness – The redress scheme must consider complaints fairly and in accordance with the principles of natural justice. This means that it must be impartial and allow both parties to present their views. All representations, whether general enquiries or cases, must be dealt with on a fair and equitable basis. The scheme's dispute procedures and processes must facilitate the achievement of this objective.

Requirements to meet this criterion:

- the redress scheme is required to make reasoned decisions based on what is fair in all the circumstances, having regard to principles of law, good practice and whether there has been inequitable conduct or maladministration on the part of licensed postal operators. This must also include having regard to any regulatory requirements and codes of practice. All evidence must be clearly documented and analysed by the decision maker(s). All parties concerned must be given an

opportunity to present their viewpoint and any supporting evidence. Conclusions must be evidence based and decisions and recommendations must flow clearly from the analysis, and

- in all cases investigated, the decision must be notified in writing and the reasons for it communicated to the parties concerned.

Membership – Membership requirements to join the redress scheme must be fair and ensure that all those who are required to be members can do so.²

Requirements to meet this criterion:

- the redress scheme must be open to all licensed postal operators, and
- a licensed postal operator cannot be expelled from membership of a redress scheme.

2) INFORMATION

Transparency – The scheme's operation and its procedures must be open and transparent. Demonstrating that a scheme is publicly accountable is an important step in ensuring that consumers have confidence in the decision-making processes of the scheme. To achieve this it is important that the scheme is transparent about all aspects of its operations, including its decisions and any statistical information that informs the public about the performance of the scheme. The scheme must also inform relevant organisations of the generic and systematic issues that it has identified. Reports and external documents must be easily understood by their target audience, including licensed postal operators, consumers, regulators and the general public.

Requirements to meet this criterion:

The scheme must:

- publish what complaints are eligible for redress, the rules governing how a matter may be investigated by the redress scheme and how the

² Section 49(3)(a) of the CEAR Act requires a regulator to approve a redress scheme that is open to all of its regulated providers. The provision also states that regulated providers may not be expelled from membership of the scheme.

redress scheme makes a decision, the legal force of a decision made by the redress scheme and the scheme's performance, and

- prepare and publish an annual report to Postcomm. This will include details about the scheme's investigations and decisions, including the nature of the complaint and the outcome. The names of the complainants need not be published and the cases may be summarised.

The scheme must also:

- be able to consider all types of complaint indicated in BERR's decision document on consumer redress schemes dated 21 December 2007, including those complaints which:
 - have been considered by the licensed postal operator and not resolved to the satisfaction of the complainant, or
 - relate to sustained difficulty by the consumer in registering a complaint with the licensed postal operator, where the decision maker is satisfied that reasonable attempts have been made to contact the licensed postal operator; and
 - relate to the regulated products and services of the licensed postal operator;
- have reasonable deadlines for bringing a complaint to the redress scheme which allow for flexibility taking into account the circumstances of the case and the complainant, and must not unnecessarily limit access to the scheme;
- have transitional arrangements in place (subject to BERR's order) to investigate complaints that arose prior to the commencement date of the order;
- ensure that complainants are provided with clear, comprehensible, and accurate information on the procedure including the process for

initiating a complaint, likely duration of the procedure, possible outcomes, avenues for appeal or review of the decision, and whether the decision is binding;

- periodically assess and publish information about consumer satisfaction with the scheme;
- notify Postcomm about and publish any changes to the scheme (including changes to its rules or procedures, terms of reference or governance arrangements) before the end of the period of 14 days beginning with the day on which the change is made. The NCC must also be informed of the changes;
- provide information requested by Postcomm or the NCC where the information is required to assess the performance of the redress scheme, its ongoing compliance with the criteria it has been approved against or the performance of licensed postal operators, and
- have procedures in place to consider and resolve complaints by consumers or licensed postal operators about the service provided by the scheme. The final decision on the complaint must be made by a person not previously involved in the determination of the complaint and with sufficient authority to direct how the issue may be resolved.

Redress available – The redress scheme must be able to offer a range of remedies based on the individual complaint which takes into account the level and type of detriment and/or inconvenience caused³. The level and applicability of awards must be published.

Requirements to meet this criterion:

The range of awards must include the following:

- providing an apology or explanation;
- paying compensation; and

³ Sections 49(3)(c) and 49(6) sets out the types of redress that a scheme may require regulated providers to provide to complainants.

- taking such other actions in the interests of the complainant as the redress scheme may specify.

Any maximum limit on financial awards must be determined by the governing board or council, but otherwise the discretion must lie fully with the decision maker(s).

Provision of information - There must be appropriate exchange of information between all parties relating to a complaint and information provided to appropriate bodies⁴:

Requirements to meet this criterion:

- the redress scheme must have the authority to request and receive all relevant information, documents and other materials from those being investigated subject to parties' rights to refuse to disclose information on legal grounds where the matter involves proceedings in a court;
- a redress scheme must signpost complainants to the correct redress scheme if there is more than one redress scheme in operation;
- the redress scheme must effectively signpost a consumer to alternative organisations or sources of advice if a complaint is outside its remit; and
- agreements such as a Memorandum of Understanding or similar may be entered into with other organisations as appropriate.

3) ENFORCEMENT

Decisions – The redress scheme must ensure that decisions are implemented and that procedures are in place to deal with non-compliance with its decision and/or the scheme's rules⁵.

Requirements to meet this criterion:

⁴ Sections 49(7)(d) and 49(8) set out the requirements for the provision of information to the regulator and other people..

⁵ Section 49(7)(c).

- the redress scheme must have procedures in place to ensure that its decisions and the scheme's rules are complied with;
- the scheme must have objective targets for reaching decisions and dealing with enquiries against which it and others can assess its performance and put in place arrangements for assessing its performance against these targets;
- it must be made clear to the complainant that the scheme's decisions are binding on the licensed postal operator but not on the complainant;
- the scheme should suggest changes to licensed postal operators' processes and/or policies where systemic failures are identified, in order to promote improved service. This must include a referral process for informing Postcomm and the new NCC that recommendations have been made, and
- the scheme must notify Postcomm and the new NCC of any systemic problems within the industry.