

## **IDRS Ltd – Response to Points arising from IDRS’s Application for Approval**

### **Operation**

#### **Independence**

1. Postal services industry members council:

- The application states that the ‘council will comprise senior representatives from IDRS’ but does not say how many. It does specify that there will be two member companies and one MCF member.
  - Please confirm how many senior representatives from IDRS will be on the council and whether the two member companies will not be MCF members if non MCF members are available.

**IDRS Response:** There will be no more than 2 IDRS representatives on the Council. We will invite the initial group of council members to serve and expect there to be a representative from RMG, one from the MCF and one from a smaller operator which is not an MCF member but is a member of the scheme. In order to ensure that the Council has a majority of non-industry members, in addition to the IDRS representatives, we will seek to attract representatives from at least two stakeholder organisations with a consumer role, and one other lay member.

- Postcomm does not envisage having a role on the board

**IDRS Response:** Noted

2. Fees

- Please clarify whether the membership fee will be a one off or an annual fee.

**IDRS Response:** It will be an annual fee, which is required in order to cover the bulk of the core costs of providing the service (80% of the total cost is the current proposed share to be collected through the membership fee).

- Please clarify what ‘limited relevant turnover’ is and provide more detail on what the percentage of turnover will be? Does ‘relevant turnover’ refer to licensed turnover?

**IDRS Response:** Relevant turnover is the company’s total turnover from the provision of licensed services and or products, i.e. “licensed turnover”. We do not intend to base fees directly on a percentage of turnover. We will ask companies that apply for membership to declare their licensed turnover. The charge made for their annual membership fee will be based on a share of the cost that needs to be recovered (see above) based on a set scale of fees (see next answer).

- Please provide further detail on the allocation of costs (membership, annual fees and case fees) for big players such as Royal Mail, medium size players and smaller players with limited licensed turnover. This will allow Postcomm to determine whether the costs will have disproportionate effect on any particular member, in particular those operators who are likely to have no cases brought to the scheme.

IDRS Response: The biggest industry operators will pay the biggest share of the total annual membership fees. We intend to employ a scale based on the following model, which we use elsewhere, with the final number of bands and the boundaries of the bands being agreed after more discussions with the industry:

Licensed Turnover	Subscription
Band 1 - Turnover up to £1,000,000	£100 plus VAT
Band 2 - Turnover of £1,000,001 to £5,000,000	£300 plus VAT
Band 3 - Turnover of £5,000,001 to £10,000,000	£500 plus VAT
Band 4 - Turnover of £10,000,001 to £20,000,000	£750 plus VAT
Band 5 - Turnover in excess of £20,000,000	Contact IDRS for further information

The purpose of such a scale is to guarantee proportionality. It is inevitable that RMG as the company with the largest turnover will pay the largest share of the annual costs that are allocated to recovery through the membership fee. IDRS has proposed that the case fees should be as low as possible and set at two rates, as follows (assuming that 20% of the total annual costs of the scheme are to be recovered through case fees):

- For cases requiring total adjudicator time of less than 2 hours, a “simple” case, the currently proposed fee would be £41.50 (ex VAT); and
- For cases requiring total adjudicator time of more than 2 hours, a “complex” case, the currently proposed fee would be £78.50 (ex VAT)

Once again, as RMG is the largest operator it is likely to have the majority of complaints referred to the scheme. A company that has no claims made against it and has a “limited” turnover thus qualifying for Band 1, would pay only a small share of the costs of the scheme and would incur no case fees.

### 3. Reallocation of case fee

- The approval criteria require the scheme to allow for case fees and any compensation to be reallocated to another scheme member if the scheme finds that the fault lies with another scheme member. The application does not refer to the case fee being reallocated to the scheme member who was at fault. Please confirm that rule 5(g) will be amended to allow for that reallocation.

IDRS Response: We acknowledge the requirement and had intended that this should be accomplished as part of our administrative procedures rather than specified in the rules, in order to avoid over-complex language. We have however modified Rule 5g to read:

“On the evidence, the adjudicator may determine that a claim made against one company arose from the actions or inactions of another company which is also a member of the scheme. Having made such a determination, the adjudicator can find the other company to be at fault and can order that company to take appropriate redress action, provide a product or service and to pay compensation, if relevant, to the customer. Before publishing such a finding the adjudicator must

give the company that is found to be at fault an opportunity to respond and must give consideration to that response before publishing their decision. If the adjudicator confirms the finding that the second company is at fault then, when publishing the decision, the adjudicator must tell us to transfer the charge for the case fee to that company.”

It should be noted that the final language of the rules may be subject to change once presented to the Plain English Campaign.

## Accessibility

4. The approval criteria state that the scheme’s procedures must allow the consumer to progress their complaint via a range of methods including telephone. This complements the complaint handling standards Postcomm intends to publish later this month which allow consumers to progress their complaints in oral or written format. Page 5 of the application refers to assistance offered, however Rule 3(a) seems to contradict this implying that consumers must apply in writing when this may not be possible for them. Please confirm that a customer will be able to progress their complaint via telephone and that redress scheme staff can assist customers to fill in the application form and pass it to them for signature.

IDRS Response: As above, we acknowledge the requirement and confirm that we already operate similar help and assistance procedures for other schemes. Once again, the intention was to have this in our administrative procedures and reflected in the guide to consumers that will be provided on the scheme website and on paper to every enquirer / applicant. This reflects our successful practice elsewhere. We have adopted that approach rather than specifying everything in the rules, in order to avoid over-complex language. We have however now modified Rule 3a to read:

“The customer who wants to put a dispute through the scheme must fill in and return an application form. These are available from us and on our website at **[insert web site address]** Customers can ask us by any means, including email or the telephone, for help to fill in the form. If we help to fill in the form, based on information that the customer gives us, then we will send it to the customer for checking, signature and return to us. Customers may also appoint a representative to make an application on their behalf. We shall independently confirm the authority of such representatives.

Again, it should be noted that the final language of the rules may be subject to change once presented to the Plain English Campaign.

5. It is important that the redress scheme is accessible to all customers including those whose first language is not English, such as Welsh speakers, and those with disabilities. We note that IDRS already provides redress schemes in other sectors. With economies of scale and scope, language services could be provided either by call centre staff or by use of telephone translation services such as Language Line. Additional services for the visually or hearing impaired could also be publicised in the scheme’s consumer information and on its website. Please confirm that the website and the scheme will be accessible to such customers and translation and additional services will be clearly offered.

IDRS Response: We confirm that the website and the scheme will be accessible to all customers regardless of their individual circumstances and abilities. Translation and additional services will be clearly offered. We currently provide a range of assistance services and comply with the Welsh Language Act. In July we will start a major project aimed at improving our websites, including enhancement of the accessibility aspects.

6. Please set out details of the training staff will be given to help them identify customers requiring extra assistance.

IDRS Response: All of our current staff members have received disability awareness training (delivered by the RNIB) and the scheme staff will also receive such training.

## Resource

7. What dialogue has IDRS had with those licensed postal operators outside of the MCF to ensure the financial and operational proposals can be considered by all potential members?

IDRS Response: To date our industry contacts have been confined to the industry grouping that set up the ITT and considered the responses thereto. We understand that all licensed operators had been invited to participate in that exercise but some did not reply. Postcomm has invited us to participate in a meeting on 8th July to which all operators have been invited to attend. We will take that opportunity to explain to all operators our proposals for the scheme, its operations and its finances.

## Information

### Transparency

8. Please confirm that the decision is binding on the company but not on the customer. This is stated on page 13 of the application however pages 8 & 9 imply that the decision is not binding on either party.

IDRS Response: We confirm that the consumer, and only the consumer, has the power to either accept or reject the adjudicator's decision. The consumer is at all times free to go to court with their complaint, if it is suitable for resolution by a court (thus the model is HRA compliant). The adjudicator's decision is binding on the company, once it has been accepted by the consumer. If the customer does not accept the decision it is not binding on the company. Rule 4I states:

"The adjudicator's decision is only binding if the customer accepts it within 4 weeks. The decision cannot be appealed against. It can only be accepted or rejected and only by the customer."

The description at the foot of page 8 / head of page 9 in our application was to show the actual legal standing of a decision (the question asked).

An adjudicator's decision does not have the legal force of either a court judgement or an arbitration award and thus is not **directly** enforceable. The decision does however have legal force by creating a contractual obligation on the parties (i.e. the consumer and the company) to give effect to the decision, once accepted by the consumer. If a consumer took the claim to a court after an adjudication, where they had rejected the decision (which, in 5 years and thousands of cases, has never happened), it is likely that the judge would take account of the decision as, in effect, an offer of settlement after receiving a third party view. If, having accepted a decision, the consumer found that the company did not comply, then the adjudicator's decision is likely to be given quite some weight by the judge and the consumer may even be granted summary judgement on that basis.

9. The approval criteria requires the scheme to 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. For example, Postcomm is likely to require details of the number, types and outcomes of cases for each company. The application states IDRS will comply with this requirement. However rule 8(a) seems to prevent

compliance. Please confirm IDRS will provide required information and that rule 8(a) will not prevent IDRS providing Postcomm and new NCC with the required information.

IDRS Response: IDRS will provide information to Postcomm and NCC as required for regulatory purposes, including concerns which arise about possible systemic failures in customer service by a company or the industry. Rule 8a has been modified to read:

“We, the company and the adjudicator will not give specific details of the procedure or the decision (including the reasons for it) to any person not involved in the procedure unless this is necessary in order to enforce the decision or is required by regulatory authorities.”

10. Timescales:

- IDRS has set out at rule 1(c) that companies will only have 8 weeks to complete a complaint.

IDRS Response: We have modified rule 1c, as follows:

“they have not been able to settle a complaint with the company after putting it through the company’s own formal complaints procedure;”

We have also modified the first bullet of rule 3b to read as follows:

“they have started a complaint through the company’s formal complaints procedure and the maximum time limit given by the company to complete the procedure, including any extension of that time limit that they have agreed to, has passed, without resolution;”

Again, it should be noted that the final language of the rules may be subject to change once presented to the Plain English Campaign.

These changes should accommodate Postcomm’s intended permission to allow licensed operators to set their own timescales for internal resolution of complaints, whilst still offering some clarity and protection to consumers about their right of access to the scheme.

Our experience across many sectors leads us to believe that when companies in a sector set out a clear, *common* timeframe for internal resolution it can offer the best levels of protection against consumer detriment that may arise from deliberately drawn-out internal processes or from abuse of such timelines. The 8 week timeframe we originally set out in the rules is becoming best practice in many sectors and was accepted by those members of the industry who were involved in creating and administering the ITT.

Whilst accepting the merit and authority of the statements below, in respect of the complaint handling regulations, we shall encourage as many operators as possible to use an 8 week timeframe, without being prescriptive in the context of our requirements for accepting members into the scheme.

- As set out in Postcomm’s decision document, ‘Postcomm anticipates setting out in the complaint handling regulations that a licensed postal operator must set out the timescale within which it will resolve a consumer’s complaint. If the licensed postal operator does not comply with its timescale and has not communicated a valid reason to the consumer for not doing so, the redress scheme can accept the complaint’. This allows companies flexibility in determining their timescales. Postcomm will be publishing its decision document on complaint handling standards

shortly and is likely to propose that the complaints handling procedure should set out the likely timescales for acknowledging a complaint and responding to a complaint. This still allows licensed postal operators flexibility for dealing with complaints which may take longer than the timescales set out in the complaints handling procedure, as long as the consumer is kept informed and agrees to the timescales specific to their complaint.

- Therefore the 8 week limit is unlikely to complement the complaint handling standards and could be overly restrictive on licensed postal operators who may need to take longer for complex cases or if a customer has requested more time to respond. Postcomm is keen to have only one redress scheme and this is an area which could potentially lead to operators looking for another scheme provider.
- Postcomm therefore suggests that the timescale should be removed from the rules until such time as all members may wish to discuss and agree on a common timescale. Please also confirm the rule will be amended to allow for flexibility for those customers agreeing to longer timescales with the company, which currently it does not.

**IDRS Response:** Beyond our response to the first bullet point above, we have no other comment on this section.

#### Redress available

11. The application states that the compensation amount limit will be £75.

- Please confirm this is a guide figure which would have to be agreed by the board/council as specified in the approval criteria.

**IDRS Response:** We confirm that the figure of £75 is currently a guide that was proposed in order to generate feedback from the industry. The decision on the final figure will be made by the council, once formed.

- Postcomm's decision document stated that 'a redress scheme will assess whether the appropriate compensation within that limit was given, as well as assessing how the complaint was handled and whether there was any maladministration by the licensed postal operator. In addition, it can then levy a financial award if it is deemed appropriate'. Please confirm that the £75 limit is for payments in addition to the compensation available in a company scheme. For example, if a customer had paid for up to £1,000 compensation and had been given £500 by the company, the adjudicator could rule that the company should pay the maximum compensation of £1,000 and up to £75 on top of that.

**IDRS Response:** We confirm that the proposed £75 limit is for payments in addition to the compensation available in a company scheme. For clarity we have changed rule 5f to read:

"If the adjudicator agrees with the customer's claim, he or she can tell the company to do any or all of the following.

- give the customer an apology or explanation.
- give the customer a product or service, or take some practical action that will benefit the customer.
- pay the customer any compensation that is claimed on the application form,

up to the specified limits in the company's standard scheme.

- pay the customer an amount for inconvenience suffered, up to the amount claimed on the application form, which must be no more than [figure to be agreed].”
- Please be aware that standard compensation would not be payable under the relevant operator's licence conditions as set out in the application but schemes made or services offered for licensed products.

IDRS Response: Noted.

## Enforcement

### Decisions

12. Section 49 of the CEAR Act does not allow Postcomm to approve a redress scheme if members can be expelled from the scheme. Suspension may be viewed as expulsion as a customer would not be able to seek redress from a company which was suspended. Equally, Postcomm cannot approve a scheme unless satisfactory provisions are in place for enforcing compliance with the adjudicator's decision.

- Please provide further detail on how non compliance with the schemes decisions and rules will be handled.

IDRS Response: In our experience non-compliance by a company is unusual but when it occurs it does so for one or more of the following reasons:

- Incompetence, error or due to other failures in their processes. This is normally quickly addressed when elevated to an appropriate level of management;
- Inability to comply because of external or technical factors that were not previously identified when submitting their defence to the claim and thus the adjudicator was not aware of the constraint when publishing the decision. This is a rare event but when it does happen it can be difficult for the company to overcome; it is rarely a monetary issue. This very occasionally means that all concerned, including the customer, need to understand why compliance cannot be achieved.
- Cynical disregard for the process and thus the decision. This is extremely rare in sizeable companies and / or those organisations with integrity in their ethics and processes. However, it does happen from time to time, especially with new entrants and / or small companies within a sector, particularly where processes may be weak, or staff are poorly trained, or managers become overly-focused on the bottom line. Other types of organisation may agree to join a scheme only because it is compulsory under regulation but they recognise that the power of sanction available to any scheme is very limited, so they cynically disregard decisions.

Such organisations frequently become repeat offenders, leading to serious detriment for consumers and can damage the credibility of a scheme in the eyes of the consumer. Whilst they can sometimes be persuaded to modify their behaviour by discussion at the highest levels of their executive structure, even this does not always guarantee long-term improvement.

The power of effective sanction is necessary to address this latter situation.

IDRS will operate the following escalation procedure for non-compliance incidents:

“In the normal course of events, when the decision is accepted by the customer, the company is notified and given 4 weeks in which to comply. The company must also notify us when they have complied. When a company fails to comply with a decision made and accepted, the following procedure will be used:

### **Stage 1**

Should the company not notify us that they have complied with the decision within the 4 week time limit, the scheme administrator will write to the company giving them a 7 day deadline to confirm that they have complied. The consumer must be advised of the action being taken.

If the company has a previous record or other current incidence of non-compliance, both the Service Delivery Manager and the Customer Relations Manager should be alerted immediately.

### **Stage 2**

If the company still fails to respond to the 7 day deadline, the matter will be escalated to the Customer Relations Manager who will contact a senior member of the company concerned and give them a further 7 days in which to respond. The consumer must be advised of the action being taken.

If the company has a previous record or other current incidence of non-compliance the Managing Director should be alerted immediately.

The Customer Relations Manager must remind the company that the scheme will take a very serious view of the company's behaviour or circumstance given the previous or concurrent incidents of non-compliance. When dealing with concurrent incidents of non-compliance by the company, the Customer Relations Manager must seek to resolve all such incidents with the company, as quickly as possible

### **Stage 3**

If the company fails to respond to the Service Delivery Manager, or does not give a satisfactory rationale as to why they cannot comply, the matter will be escalated to the Managing Director (MD). The MD will further escalate the non-compliance incident to executive level within the company, seeking early compliance and an explanation. The consumer must be advised of the action being taken.

If the company has a previous record of non-compliance or has more than one current non-compliance incident the Managing Director must emphasise to the company the seriousness of such circumstances and seek clear and urgent action from the company to remedy the situation.

In the event of any continuing non-compliance the Managing Director must advise the consumer, the council and Postcomm.

In the event that the company's record for non-compliance has become “persistent” (i.e. it amounts to 3 or more instances of non-compliance) the MD must consider the need for action under Clause 7 of the Member Contract and advise the council accordingly if he considers that a period of suspension should be invoked.”

- If IDRS considers suspension as different from expulsion, please set out the reasons for that view.

IDRS Response: IDRS does consider that there is a difference between “suspension” and “expulsion”. “Suspension” is defined, in this context, by most legal dictionaries as being “temporary removal from a position, usually as a punishment”. The same sources normally define “expulsion”, in this context, as being “the act of depriving a member of a body corporate of his (its) membership for some violation of his (its) duties as such or for some offence which renders him (it) unworthy of any longer remaining a member of the same”. It may be helpful to regard “suspension” as a yellow card designed to allow for a “cooling-off period” or “moment of reflection” before returning to the field, as in rugby union. Expulsion would equate to the red card, bringing participation to an abrupt and permanent end.

The decision of Parliament to remove the right to expel a scheme member means there can be no effective sanction available to a scheme operator (or the regulator) for dealing with a company which persistently and cynically ignores its responsibilities to consumers through non-compliance with the scheme’s decisions.

The Act gives no statutory power to a scheme operator to operate a fines system thus the only remedies any scheme operator could deploy would be those that can be applied within a contractual regime, since the Act effectively hampers any scheme operator’s normal right under law to define termination rights in the membership contract. In theory, it may be possible to design a fining regime to operate within a set of membership rules backed by the contract, but the operators may take some persuading to accept such a system. To date, the concept of suspension, in the hands of the council, has been accepted by those operators who have been involved. It allows for a final stage of diplomacy, with the authority of council behind it, in an effort to persuade the company’s “controlling mind” to see the wisdom and purpose of compliance in the context of fair competition.

On a final note, on the question as to whether suspension would disadvantage consumers, what merit would there be in allowing consumers to continue to bring claims and adjudicators to continue to make adverse rulings against a company in the knowledge that the company will just ignore the outcome?

If, however, Postcomm decides that “suspension” as a precept is not acceptable, then we will remove the power from the contract regime and rely upon the escalation process alone. We would also discuss with the council, once formed, the prospects for developing a fining or other alternative sanctions regime.

### **Other comments on the draft rules provided with the application**

13. Rule 2(g) states ‘except for those products or services for which the customer has a written contract with the member company’. After discussion with Royal Mail it has become evident that certain Royal Mail products such as redirections or Special Day Next Delivery may be deemed to be a contract. These products and services should be eligible for redress as the intention was to only exclude those senders of bulk mail. Therefore to avoid confusion, Postcomm recommends that the wording is amended along the lines of ‘except those customers who are senders of bulk mail. Bulk mail means a large number of mail items of the same format, posted by a single user, from a single site’. This would also complement the complaint handling standards which Postcomm intends to publish later this month.

IDRS Response: Rule 2g has been amended as suggested.

14. Rule 2(g) also does not seem to allow for complaints about the way in which their complaint was handled. As the decision document set out, ‘the redress scheme should consider whether the complaint was dealt with in accordance with the licensed postal operator’s complaint handling procedures as well as assessing how the complaint itself was dealt

with'. Please confirm these complaints will be dealt with by the scheme.

IDRS Response: Rule 1c, as currently drafted, explains who can use the scheme and for what, that is, in more formal language, "the scope of the jurisdiction", and it states:

"Customers can use the scheme if:

- they have not been able to settle a complaint with the company after putting it through the company's own formal complaints procedure; or
- they believe that the manner in which their complaint was addressed by the company did not comply with the accepted standard or code of practice; or
- the company has earlier agreed, in writing, that the dispute should be settled under the scheme; or
- the customer can show that they have been unable to make their complaint to the company because they have been unable to make contact despite reasonable and repeated attempts to do so."

As can be seen from the highlighted bullet, the scheme covers the requirement, so we can confirm that complaints about "how the company dealt with the complaint" are covered.

15. Rule 4(b) states the application form should not only consist of letters between the company and the customer. Postcomm recommends this is changed as for many complaints about post the only evidence will be telephone calls or letters between the company and customer. Equally complaints about how the complaint was handled would only likely have letters or records of phone calls between the customer and the company. As mentioned earlier in this document, Postcomm anticipates the complaint handling standards will require companies to allow complaints to be made and completed by telephone.

IDRS Response: We have modified the final sentence of rule 4b to read:

"The application should normally be supported by any documents relevant to the complaint including letters, emails, records of phone calls made or received or other correspondence and contacts between the company and the customer."

16. For the rules which have time limits set, please confirm that customers and companies will be informed of this time limit in advance and allow flexibility if extra time is required.

IDRS Response: The consumer guidance document that will be issued to every complainant alongside the rules will carry a flow chart which will show the steps in the process, including time frames. Each company will not only be supplied with copies of the rules but their complaints staff will be briefed by us on the rules and the procedures, including time limits, which are there to ensure timely resolution and to prevent abuse of process.

Rule 5e gives power to the adjudicator to amend time limits for both parties and reads:

"The adjudicator can do the following.

- change time limits for the customer and the company to provide their comments and set time limits in which the customer and the company must provide any extra information the adjudicator needs."

Rule 6a grants power to IDRS to give the customer reminders and extensions of time and

reads:

“If the customer does not provide anything that we need under these rules, and still does not supply it within seven days of getting a reminder from us, the following will apply:

- if the customer does not return the application or supporting documents, we will assume that the customer does not want to go ahead with the matter.
- if the customer fails to confirm to us that they have accepted the settlement, we will assume that the customer has accepted the settlement and does not want to go ahead with the matter. We will then close the case. If the customer later tells us that they did not accept the settlement and that they want to continue with the matter, we will open the case again.”

At each stage in the adjudication process letters are sent to the consumer and / or the company to acknowledge action, e.g. our receipt of an application or a statement of defence. Such letters always state the stage at which the case is at, what the timeframe is for that stage, what is to be done by the addressee or addressees and what will happen next.