



# **Royal Mail's Response to Postcomm's Consultation on**

## **Criteria for the approval of redress schemes in postal services**

March 2008



# Redress Scheme Consultation Response

## 1. Introduction

- 1.1 This note sets out responses to the Postcomm consultations issued in January 2008, which now close on 21 March 2008<sup>1</sup> ( the timetable extension was announced by Postcomm at the workshop with industry members on 14 March).

## 2. Response to *Criteria for the Approval of Redress Schemes in Postal Services*

### A. General Comments

- 2.1 Royal Mail welcomes the opportunity to respond to Postcomm's consultation on the proposed redress scheme, which is intended to provide a form of alternative dispute resolution to customers and licensed postal operators.
- 2.2 Royal Mail has read Postcomm's consultation document with interest and would like to take the opportunity to make some general observations before responding to the specific questions.
- 2.3 *The treatment of recipient complaints about access mail* – For a redress scheme to be effective within the industry and to meet the intent behind the Consumer, Estate Agents and Redress Act 2007 (the “**CEAR Act**”) it has to be applicable to all licensed operators within the industry who handle mail that is covered by the scheme. This creates particular complexities with respect to access mail, currently estimated at 20% of all mail. Royal Mail is of the view that the ‘indicia holder’ / primary operator (i.e. the party holding the contract with Royal Mail Wholesale) who can be identified by the indicia on the mail item) of access mail bears the responsibility for handling complaints with respect to their access mail. This would be consistent with the position agreed under the Common Operational Procedures (set out in Condition 14 of Royal Mail's licence (Schedule 2 paragraph 6)). Royal Mail submits that clear complaint procedures for recipients of access mail to follow would allow the redress scheme operator, as part of its investigations, to decide whether those procedures have been adhered to. Overall Royal Mail considers that the reference points that the redress scheme operator would have regard to in respect of recipients of access mail should include:

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<sup>1</sup> The consultations are entitled: *Criteria for the Approval of Redress Schemes in Postal Services*, and *Complaint Handling Standards for Licensed Postal Operators*.

- any terms and conditions for compensation for the recipients of the operator in question's mail<sup>2</sup>;
- whether complaints about such mail have been handled correctly in adherence with complaint handling standards; and
- where necessary, identify who is the appropriate party to deal with customer claims under the Common Operational Procedures

- Therefore, in the event that an access mail recipient raises a complaint regarding the access service with Royal Mail which is not clearly a delivery matter and which should be raised directly with the licensed access mail provider, Royal Mail would deal with the complaint quickly and effectively. This would be through explaining to the complainant that it is not the correct person to complain to and why, whilst referring the complainant where possible directly to the access mail provider or the poster of the item in question.

2.4 Therefore, redress determinations about complaints from recipients of access mail would typically be related to whether the complaint was handled properly utilising the criteria set out above. To ensure the right incentives exist upon all companies within the industry, the prime responsibility for handling a complaint from an access mail recipient must be with the indicia holder. The indicia holder should then ensure that suitable arrangements have been made with downstream operators to ensure the complaint has been effectively handled as appropriate.

2.5 ***The definition of Licence Holders*** – BERR have stated that redress schemes should cover licensed mail and licensed operators in order to meet the overall intent of the CEAR legislation. This arrangement puts an onus on Postcomm to be very clear about the requirements for an operator to have a licence and which mail is regarded as covered by a licence, as the coverage of the scheme and the level playing field amongst operators will be determined by such a decision. Any Postcomm advice about the need for a licence by an operator needs to take into account the implications on the redress arrangements.

2.6 ***The proportionality of the scheme*** – A redress scheme which is consistent with the legislation and the Department of Business, Enterprise and Regulatory Reform (“**DBERR**”) guidance<sup>3</sup> can be achieved through high level criteria and a light touch approach in establishing the criteria for the scheme(s) that is proportionate to the value of consumer expenditure in the

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<sup>2</sup> There is typically no provision for compensation for loss, damage and delay by access mail operators or by Royal Mail – the Section 92 Postal Services Act 2000 schemes do not apply and the regulatory delay compensation scheme excludes liability for mail posted with or handled by other operators.

<sup>3</sup> Available online at: <http://www.berr.gov.uk/consultations/page40282.html>.

industry and which is applied equally to all operators within the industry. The approval criteria must ensure that the scheme is proportionate to, and tailored to, an industry where the average household spends 50p a week on mail, where recipients are unlikely to have directly paid for the product that is the subject of their complaint and where there are billions of individual items which each could conceivably represent a complaint (whether justified or not) to a postal operator. The British and Irish Ombudsman Association (BIOA) has a range of high level criteria which determine whether a particular redress provider is suitable for membership. These high level criteria should be sufficient for a scheme to gain Postcomm approval. It should then be for the scheme members to design the scheme in such a way that its practical operation is tailored and proportionate to the industry.

## ***B. Detailed comments on Postcomm's consultation document***

2.7 Royal Mail has the following specific comments on certain paragraphs of the consultation document:

- Paragraph 2.2 – As you note, the redress system will only be available to customers once the postal operator's own complaint procedures have been exhausted. This is a fair position as it enables the postal operator and the customer to work together to achieve a positive outcome from the complaint procedure without unnecessary interference from an external body. However, the existence of an independent redress scheme will, we believe, promote customer confidence that they will not merely be 'fobbed off' by the postal operator. Royal Mail considers that the redress scheme is likely to increase confidence in postal operators' complaint resolution processes, as no postal operator will want to appear before the redress scheme unless it is unavoidable.
- Paragraph 2.9 – Royal Mail believes that a single redress scheme would be most appropriate for the industry, in line with the expectation of BERR, and would represent the most comprehensible structure for consumers. Having a single redress provider would remove the real danger of duplication of tasks and jurisdiction that would attach to a multiple provider structure. This in turn is likely to keep costs down, to the benefit of postal operators and their customers. Moreover, we do not accept the view stated that "*a single redress provider may have a reduced incentive to handle complaints efficiently if it considers that its own position is secure from the threat of competition*". A single redress provider would still be required to meet minimum performance requirements and professional standards specified in the redress scheme. Additionally, a competitive procurement process for the redress provider should ensure that the selected provider operates efficiently.

Appropriate termination provisions within the contract appointing the Redress Scheme provider should ensure that the standards set out in the Scheme are adhered to.

- Paragraph 2.11 – Postcomm notes that “*Royal Mail is still the dominant operator in the liberalised postal markets and will most likely be the source of the vast majority of complaints that require referral to a redress scheme*”. While Royal Mail, as the legacy postal operator, is the leading player in the postal sector and therefore likely to be subject to a greater volume of complaints than rival operators, we reject the contention that we will “*most likely be the source of the vast majority of complaints that require referral*”. Royal Mail takes its obligations to its customers extremely seriously and this includes a strong desire to deal with any complaints that are received fairly, effectively and quickly. Consequently, we are confident that there will be less need for our customers to seek the support of the redress scheme and that, proportionately, Royal Mail will be involved in the redress scheme less than some of its competitors.  
Separately, this paragraph goes on to state that “*Postcomm will require a redress scheme to be able to demonstrate how it will achieve good value for money for licensed postal operators and customers*”. It is not the function of Postcomm to seek to micro-manage the details of the arrangements that the mails industry has with the selected redress provider, or the detail of the mechanisms through which industry members fund a redress scheme. The BERR guidance is that a scheme procured by a postal operator must be open to other postal operators. Provided that this condition is met, the precise funding terms for a mutual scheme must however remain a matter for the members of that scheme. In any event, a procurement process to select the redress scheme provider(s) will achieve “*good value for money*”.
- Paragraph 2.12 – The consultation document acknowledges that any redress scheme must recognise that the costs of sending mail are significantly lower than those of other regulated industries, such as gas, electricity and telecoms. Consequently, Royal Mail welcomes the realisation that “*the nature of the redress service provided and its costs should, where possible, take account of the lower cost that most customers spend on mail services*”. This will be particularly important in determining the maximum levels of award that are appropriate to the industry-wide redress scheme. Those levels must be clearly proportionate to an industry where the average weekly household spend is 50p. The redress service may not duplicate or extend the provisions of the Postal Services Act 2000, the compensation provisions of the S.89

Schemes made under it, or the terms and conditions of individual products.

- Paragraph 2.13 – Whilst the scope of a redress scheme with respect to complaints “*without an evidence base*” is recognised, it must also be borne in mind that there still needs to be a reasonable basis for the belief that a particular product and a particular postal operator was utilised. In particular there is a need to know with which licensed operator the item was posted. This is especially so where the claim is in respect of a lost item of mail if such a complaint is to be reasonably progressed.
- Paragraph 2.19 – Royal Mail does not agree that the amendments to Section 22 of the Postal Services Act 2000 introduced by the CEAR Act give Postcomm the ability to take enforcement action “*if a licensee does not comply with a decision taken by a redress scheme*”.
- Paragraph 2.20 – Royal Mail agrees that it is appropriate for the redress scheme provider to be able to request information from each licensed postal operator in respect of the facts of individual cases to enable it to reach a conclusion on individual matters.
- Paragraph 3.4 – Postcomm notes that it expects the redress scheme to have processes in place to identify and provide appropriate assistance to vulnerable consumers. Royal Mail is conscious of the unique challenges faced by vulnerable consumers in seeking to enforce their rights and believes that it is appropriate that special assistance measures are made available to them. However, it is unreasonable to require either the redress scheme or the postal operators to have processes in place for *identifying* vulnerable consumers; in many cases, identification of vulnerable consumers will be well beyond the experience and expertise of the redress scheme and postal operators. Consequently, Postcomm should clarify that the scheme ought to have access arrangements such that those who are in vulnerable groups can utilise the redress arrangement in a manner consistent with that available to non-vulnerable groups.
- Paragraph 3.8 – We believe that the redress scheme should be able to demonstrate its independence in accordance with British and Irish Ombudsman Association principles of good complaint handling<sup>4</sup> and that Postcomm’s criteria should not determine the precise nature by which it ensures such independence. Royal Mail agrees that “*The scheme must be and be seen to be impartial and free from bias – and be able to*

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<sup>4</sup> Published in 2007 and available online at: <http://www.bioa.org.uk/docs/BIOAGoodComplaintHandling.pdf>.

*demonstrate this as required*". However, once this principle is set out, the third and subsequent bullet points can be deleted. Postcomm should not micro-manage the precise constitution of an ombudsman scheme.

The second bullet point should, for the sake of clarity, state that "*Rule setting, investigation and resolution processes of the redress scheme must be and be seen to be independent of Postcomm and the scheme members subject to the parameters of the scheme once approved*". This serves to clarify that the redress operator must work within the specification under which it has been established (which in turn will need to meet the Postcomm criteria). The redress scheme should not have carte blanche to consider or process issues outside its remit.

- Paragraph 3.9 – The second bullet point states that "*the scheme must allow all complainants, including vulnerable customers and their representatives, to refer their complaint directly*". The overall principle of the scheme is that customers will only be able to refer to it after they have sought a resolution through the operators' complaints procedure and reached "deadlock" (paragraph 2.2). It is not clear from this section that complainants will be required to seek redress through the postal operator's complaint procedures before referring to the redress scheme. It is important that the ambiguity in the Consultation paper should be closed down. Such additional clarification would be consistent with the statement at eleventh bullet point of 3.13 (Transparency), which suggests that customers are required to utilise the licensed postal operators' complaints procedure before approaching the redress scheme ("*where the complaint is substantively covered by other, established, forms of redress, refer the complaint on to the appropriate body and inform the customer that it has done so and why*").

The fourth bullet of this section which covers publicity of the scheme should use the words '*at an appropriate stage*' to replace the words '*at an early stage*'. It is very important that communication is properly targeted and worded to avoid unnecessary calls and contacts with the redress scheme operator. Any premature contact with the redress service by the consumer is likely to delay the postal operators' own complaints resolution procedure to the detriment of the complainant. It also risks increasing the costs of the redress scheme through the imposition of an unnecessary administrative burden.

- Paragraph 3.10 – The issue of value for money of the scheme will be a matter for the scheme members. Where a scheme meets Postcomm's criteria, it is difficult to envisage what assessment Postcomm could

reasonably undertake in order to determine whether the scheme is 'value for money'.

- Paragraph 3.11 – It is unnecessary to state that the Redress Scheme should proceed in accordance with the principles of natural justice. It is adequate to say that it must proceed fairly.
- Paragraph 3.13 – The eighth bullet should reflect the point that we have made at 3.4 above (regarding vulnerable customers).

The ninth bullet should remove the phrases "*avenues for appeal*" and "*review of the decision*" as the legislation makes clear that the redress scheme decision is final, with any further activity on the part of the complainant being through the Courts (where appropriate).

The tenth bullet needs to be clarified. The concept of ensuring that vulnerable customers can readily access the scheme (see the comments relating to 3.4 above) covers the points about ensuring processes are straightforward and simple. As currently drafted, this bullet point implies an overly onerous requirement on the redress scheme operator to take on part of the burden which should reasonably fall to the complainant (with consequent cost implications on the operation of the scheme).

The thirteenth bullet should make clear that any report to Postcomm should cover "summaries" of complaints monitoring and decisions. This will avoid the implication that full details of all complaints are to be included.

Royal Mail considers that the principle outlined in the fourteenth bullet point would be met by way of the publication on the redress scheme website of an annual report, which could also be sent hard copy to parties on application. This is consistent with current redress scheme practice.

- Paragraph 3.14 – In line with the statement of principle outlined in paragraph 2.12 (that a redress scheme should recognise that the costs of sending mail are significantly lower than those of other regulated industries, such as gas, electricity and telecoms), the redress available must be proportionate to the cost input of the consumer. The range of possible solutions appears to be sufficiently widely drawn to provide a suitable solution, but the principle regarding recognition of the relatively lower cost of postage should arguably be included in Postcomm's outlined criteria for approval of a redress scheme. Furthermore the bullet point which discusses paying compensation should make clear

that the arrangements should not duplicate or supersede any compensation measures due under the terms and conditions or scheme arrangements in place for the specific product. The bullet on 'taking other actions' should make clear that the redress scheme cannot require operational or product changes or actions which conflict with Royal Mail's duties under health and safety legislation etc.

- Paragraph 3.15(a) – The word “*free*” should be deleted and replaced by “an appropriate”. There may be cases where legal privilege, legislation or investigatory issues or other matters determine that exchange would be inappropriate.

The first bullet should end at the word 'scheme'. It should not be part of Postcomm's criteria to micro-manage the specific processes of the ombudsman scheme.

The second bullet should include the additional words '*or where other legislation applies which restricts or prevents disclosure*

- Paragraph 3.15(b) – Postcomm should make clear that it is only 'summary' information on complaints that need to be provided to these various parties. Further, Royal Mail does not accept that the CEAR Act (Sections 49(7) (d) and 49(8)) requires the provision of information to Consumer Direct. It is not clear that Consumer Direct would meet the definitions set out in the relevant sections. It is not a "*body having regulatory functions in relation to the regulated providers [i.e. the postal operators] to which the scheme applies*", nor does it seem to be a person "*exercising functions under other redress schemes which apply to the regulator [Postcomm]'s regulated providers*". Consequently, there is no obvious basis on which Postcomm is proposing to include it in the list of bodies to whom information must be provided

Royal Mail does not consider that Postcomm should specify how postal operators should comply with their statutory requirements to provide information to these bodies. The specification of the scheme itself should state the information provision arrangements and Postcomm can determine whether they meet the overarching criteria. Provisions must also be made to maintain confidentiality of this information and also ensure that any information is not supplied to such parties that is subject to legal privilege.

- Paragraph 3.15(c) – The phrase “in accordance with industry standards” should be added to the end of the paragraph.

### **C. Response to Consultation Questions**

- **What are your views on whether there should be one or more redress schemes in postal services? Please explain your answer.**

We believe that one redress scheme makes most sense to consumers and the industry and are prepared to work fully with other operators within the industry to create an effective redress scheme. It is important that the redress scheme applies equally to all postal operators, such that all operators in the industry are motivated to provide good customer service. Therefore Postcomm must make sure that all relevant operators are part of a scheme and are responsible for the conduct of complaint handling of mail which bears their indicia.

Please see our detailed responses at 2.7 above.

- **Do you agree with the proposed criteria for Postcomm's approval of redress schemes? If you do not agree with one or more of the criteria, please state which ones and why.**

The British and Irish Ombudsman Association has a range of high level criteria which determine whether a particular redress provider is suitable for membership. These high level criteria should be sufficient for a scheme to gain Postcomm approval with the scheme itself then ensuring that its practical operation is tailored and proportionate to the industry

Please see our detailed responses at 2.7 above.

- **Are any changes required to the wording of any of the criteria? Please explain any changes you would suggest.**

Please see our detailed responses at 2.7 above.

- **What, if any, other criteria should be included for Postcomm's approval of redress schemes? Please explain.**

We do not believe that any further criteria are warranted, other than Postcomm ensuring that all operators within the industry are put into a position whereby the redress arrangements provide the right incentives to promote effective complaint resolution procedures. Please see our comments at 2.3, 2.4 and 2.5 above

- **Do you agree with the requirements to meet each criterion? Please explain any changes you suggest.**

Postcomm need only establish high level criteria consistent with British and Irish Ombudsman Association standards. Additionally, please see our detailed responses at 2.7 above.

- **Do you agree with the requirements in relation to processes for vulnerable customers? Please explain any suggestions you suggest.**

The proposals seem to be proportionate with the aim that the most vulnerable customers are not disadvantaged when pursuing justified complaints to postal operators. However, it is essential that Postcomm clarifies that arrangements for vulnerable customers refer to their means of access to the redress arrangement, not that there is a different redress arrangement for vulnerable customers per se. Please see our comments at 2.7 above

- **Are the criteria clear and understandable? If not, please suggest how clarity and ease of use could be improved.**

Postcomm need only reference the British and Irish Ombudsman Association standards to have clear criteria. There is not a subsequent need to seek to define the precise manner in which those criteria are to be achieved within the postal industry as that will increase the risk of lack of clarity and understanding. Please see our comments at 2.7 above.