

Criteria for the approval of redress schemes in postal services

A decision document

April 2008

Summary

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1. Under the Consumers, Estate Agents and Redress Act 2007 (“the CEAR Act”) Postcomm has a formal role in approving redress schemes in the postal sector. This document sets out Postcomm’s final criteria for approval of redress schemes following its consultation in January 2008¹.
2. The final approval criteria seek to provide for effective redress while maintaining the principle that the primary responsibility for resolving consumer complaints sits with the licensed postal operator.
3. The final approval criteria have changed from those proposed in the January consultation document. Respondents were broadly supportive of the proposed criteria but also made helpful recommendations for amendments and additions. Postcomm has made changes to the criteria to take account of respondents’ comments and recommendations, suggestions from the industry working group for licensed postal operators (which Postcomm has facilitated) and best practice in relation to redress schemes. The key changes to the criteria include:
 - amendment to the scheme’s governance, monitoring and reporting criteria in relation to the governance arrangements and fee structure to ensure there is no disproportionate effect on any particular group of members;
 - additional requirement for the scheme to reallocate the cost of any case to another scheme member where the fault is found to lie with it;
 - amendment to the requirement for publicising the redress scheme to prevent premature referral to the scheme. The requirement now states that appropriate steps must be taken to ensure consumer awareness of the scheme²;

¹ Criteria for the approval of redress schemes in postal services – a consultation document, January 2008. Available at www.postcomm.gov.uk

² Postcomm anticipates setting out in the complaint handling regulations, to be published in due course, that a licensed postal operator’s complaint handling process must include reference to the redress scheme and that the complaint process must be drawn to a consumer’s attention.

Summary

- clarifying the complaints which the redress scheme must consider, drawing from the BERR decision document³, and
 - clarifying that the case handling will be free of charge but that a complainant may incur a cost in the form of telephone call charges etc. to contact the redress scheme (but that this should be kept as low as reasonably practicable).
4. It is now for redress schemes to apply to Postcomm for approval. Postcomm's preference is to approve a single scheme. It will only approve more than one scheme if it considers that their approval is consistent with section 49⁴ of the CEAR Act, including that the approval of more than one scheme is in consumers' interests. Postcomm will assess redress scheme applications against the criteria for approval set out in this decision document. Once a scheme is approved, the Department for Business, Enterprise and Regulatory Reform (BERR) may make an order requiring licensed postal operators to be members of it.
 5. Postcomm will review the redress scheme's annual reports and formally review the scheme (or schemes) in quarter 4 of 2010/2011.
 6. Consultation on the criteria for approval of redress schemes was run in tandem with Postcomm's consultation on complaint handling regulations for licensed postal operators⁵. Postcomm has received responses to that consultation and aims to publish its proposals notice in June 2008 setting out the standards it proposes to prescribe together with the proposed complaint handling standards.

³ Consumer redress schemes in gas, electricity and postal services: Government response to consultation, BERR, December 2007.

⁴ See paragraphs 2.1 and 2.2 for more detail.

⁵ Under section 43 of the CEAR Act, Postcomm is required to prescribe by regulations standards for the handling by its regulated providers of consumer complaints made to them. Accordingly Postcomm consulted on proposals for complaint handling standards. See www.psc.gov.uk.

Table of contents

Table of contents

1. Introduction	1
Purpose of this document	1
Structure of this document	1
Background.....	1
Related work areas	2
Process and timetable	2
Contact details	3
Confidentiality of applications	3
2. Redress schemes	5
Approval of redress scheme – legal framework	5
Procedures for refusing to give or withdrawing approval of redress schemes ..	6
Postcomm’s enforcement powers	7
Principles of the scheme	8
Proposed approval criteria	9
3. Main changes to approval criteria.....	11
Approval of multiple schemes and avoiding inefficiencies with a single scheme 11	
Accessibility	13
Fairness, proportionality and levels of financial award.....	14
Vulnerable consumers	16
Other issues and minor changes	16
Appendix 1 – Approval criteria for redress schemes in the postal sector 19	
Appendix 2 – Sources of information	28

1. Introduction

Purpose of this document

1.1. This document:

- summarises the comments received in response to Postcomm's consultation on proposals for the approval criteria for redress schemes of licensed postal operators⁶ and explains Postcomm's decisions; and
- sets out the final approval criteria for redress schemes.

Structure of this document

1.2. This document is structured as follows:

- Chapter 1 sets out the background, related work areas and what will happen going forward;
- Chapter 2 summarises the legal framework and the principles of the approval criteria;
- Chapter 3 sets out the main changes to the approval criteria taking account of respondents' comments;
- Appendix 1 sets out the final criteria for approval of redress schemes; and
- Appendix 2 sets out sources of information used by Postcomm in putting together the final approval criteria.

Background

1.3. The CEAR Act enables the Secretary of State to make an order to require licensed postal operators to belong to an approved redress scheme⁷, providing resolution and redress for their consumers and to award compensation where necessary. The CEAR Act places a duty on Postcomm to approve redress scheme(s) for the postal sector.

⁶ Postcomm consultation 'Criteria for the approval of redress schemes in postal services' was published in January 2008 and is available at www.postcomm.gov.uk

⁷ Section 47(1)

- 1.4. BERR has consulted and issued a decision⁸ on the description of complainants who should be covered by the redress schemes and the subject matter of the complaints which should be dealt with by the schemes.
- 1.5. The CEAR Act provides for any redress scheme to be approved by the relevant regulator in accordance with the provisions of that Act or the scheme can be administered by the Secretary of State (or a person appointed by the Secretary of State) and designated by the Secretary of State as an appropriate scheme in relation to them⁹.
- 1.6. Postcomm received 11 responses to the January 2008 consultation, all of which were generally supportive of the proposals with many making helpful suggestions which have been incorporated into the criteria or are otherwise addressed in this document. Primarily licensed postal operators want the scheme to be proportionate and most respondents want the scheme to be well-governed with some specific requirements. All non-confidential responses can be viewed on Postcomm's website (www.postcomm.gov.uk).

Related work areas

- 1.7. The CEAR Act also requires Postcomm to make complaint handling regulations which licensed postal operators must comply with. The complaint handling standards consultation document was published in January 2008 and Postcomm has received 10 responses. Postcomm aims to publish a proposals notice setting out the standards it proposes to prescribe together with the proposed complaint handling standards in June 2008.

Process and timetable

- 1.8. Applications for approval of a redress scheme must be sent to Kiera Bower (contact details below). Applications will be published on

⁸ Consumer redress schemes in gas, electricity and postal services: Government response to consultation, BERR, December 2007

⁹ Section 47(1)

Postcomm's website (see note on confidentiality of applications below).
Postcomm will consider all applications as quickly as possible.

- 1.9. Once a scheme has been approved by Postcomm, BERR may make an order requiring licensed postal operators to be members of an approved redress scheme. The order will set out the scope of the redress schemes in terms of the types of consumer and complaint to be considered. BERR has set out in its decision document the proposed scope of the redress scheme and Postcomm's approval criteria are based on those proposals. The order made by the Secretary of State cannot come into force unless the Secretary of State is satisfied that there is, or will be, an approved scheme in place. BERR has indicated that it will not make the order until Postcomm has approved a scheme.

Contact details

- 1.10. Completed applications and supporting documents should be sent to:

Kiera Bower

Manager, Universal Service and Customer Protection

Postcomm

Hercules House

6 Hercules Road

London

SE1 7DB

Fax: 020 7 921 8754

Email: kiera.bower@psc.gov.uk

Confidentiality of applications

- 1.11. Postcomm will publish any applications received on its website. If you do not want part of your application read by anyone outside Postcomm, please ensure that your response clearly indicates which parts are confidential. If you are happy for the substance of your application to be made public but do not want the name of the individual who signed it to be revealed, please indicate this by adding 'name of sender not to be published'. However, Postcomm is a 'public authority' for the purposes

of the Freedom of Information Act 2000, and must act at all times in accordance with applicable law.

2. Redress schemes

Approval of redress scheme – legal framework

2.1 The CEAR Act provisions relating to approval of redress schemes are largely general and provide a broad discretion for Postcomm to decide whether or not to approve a particular scheme. The CEAR Act does specify various matters which Postcomm must have regard to in its consideration of whether to approve a redress scheme¹⁰. These include:

- the provisions of the scheme;
- the manner in which the scheme will be operated;
- the interests of relevant consumers, and
- principles which, in the opinion of the regulator, constitute generally accepted best practice in relation to redress schemes.

2.2 The CEAR Act¹¹ also states that a regulator must not approve a redress scheme unless:

- membership of the scheme is open to all licensed postal operators and they may not be expelled from membership of the scheme;
- at the time approval is given, the scheme covers all the consumer complaints as defined in any order issued under section 47 of the CEAR Act;
- the redress scheme may require the licensed postal operator to provide complainants with an apology or explanation or compensation payment, and to take such other action in the interests of the complainant that the redress scheme may specify, whether or not other types of redress are available;
- the scheme makes satisfactory provision for the matters about which complaints may be made;
- the redress scheme's duties and powers make satisfactory provision for the investigation and determination of complaints

¹⁰ section 49(1) of the CEAR Act

¹¹ sections 49(3) and 49(7)

(which may include the power not to investigate or determine a complaint);

- it makes satisfactory provision for enforcing any requirements to provide redress imposed on licensed postal operators in accordance with the scheme;
- it makes satisfactory provision for the provision of information to Postcomm, the National Consumer Council, the Secretary of State, Consumer Direct and, any other body having regulatory functions in relation to licence holders and persons exercising functions under other redress schemes which apply to licensed postal operators, and
- it makes satisfactory provision for the acceptance and handling of complaints transferred from redress schemes which have had their approval withdrawn.

2.3 These principles will be considered when assessing applications from redress schemes for approval and have been included in the approval criteria.

Procedures for refusing to give or withdrawing approval of redress schemes

2.4 When Postcomm receives an application for the approval of a redress scheme, it will consider the application in accordance with its published approval criteria. Postcomm will then decide whether to approve or refuse approval of the redress scheme. The CEAR Act also allows Postcomm to withdraw its approval of a redress scheme at any time.¹²

2.5 Before refusing or withdrawing approval of a redress scheme, the CEAR Act¹² requires Postcomm to give notice to the scheme administrator stating its intention to refuse or withdraw approval. The notice must set out the reasons for refusal or withdrawal and specify a minimum of 30 days for the redress scheme to make representations to Postcomm.

¹² Section 51

- 2.6 Postcomm must give the scheme administrator notice of its decision on its proposal to refuse or withdraw approval and the reasons for that decision.

Postcomm's enforcement powers

- 2.7 Postcomm's January 2008 consultation document set out the CEAR Act¹³ provisions for enforcement of the new obligations imposed on regulators and licensed postal operators - particularly in relation to compliance with complaint handling regulations, membership of redress schemes and compliance with a redress scheme decision. The document set out that in addition to licence contraventions, the amendments to section 22 of the Postal Services Act would allow Postcomm to take enforcement action where it is satisfied that a licensee has failed to comply with the relevant provisions in the CEAR Act. The document said that a decision made by a redress scheme would essentially be an obligation imposed upon a licensed postal operator under the relevant section of the CEAR Act (section 47). Therefore, failure by a licensed postal operator to comply with a redress scheme decision may require Postcomm to take enforcement action in accordance with section 22 of the Act as amended.
- 2.8 One respondent questioned Postcomm's ability to take enforcement action if a licensed postal operator (as a member of a redress scheme) does not comply with a decision taken by a redress scheme. Some members of the licensed postal operators' working group were unclear what enforcement action Postcomm could take and whether this included licence revocation.
- 2.9 In response to these questions Postcomm has reflected more closely on how the CEAR Act envisages its provisions should be enforced. Postcomm's conclusion is that the drafting of sections 47 and 52 of the CEAR Act do not give Postcomm the power to take enforcement action for non-compliance with decisions made by the redress scheme.

¹³ Section 52(4)

- 2.10 The enforcement provisions in section 52 of the CEAR Act enable Postcomm to compel a licensed postal operator to belong to a redress scheme. However, they do not give Postcomm a role in ensuring, through enforcement proceedings under the Postal Services Act that the provisions of redress schemes are complied with.
- 2.11 The only obligation imposed by the CEAR Act on licensed postal operators is that they must be members of a redress scheme. There is no requirement to comply with the requirements of a redress scheme and a redress scheme can only be approved if licensed postal operators cannot be expelled from its membership.
- 2.12 Postcomm's role in relation to ensuring that the redress scheme(s) provisions are capable of being enforced is to ensure that scheme(s) are established on a basis which allows for them to be enforced by the scheme. For example, Ofgem has confirmed that the terms of reference for the Energy Supply Ombudsman (ESO) includes a number of requirements to ensure that its members comply with decisions made by it and that these have been adequate for the scheme to be effective. Therefore, Postcomm's approval criteria will require that the redress scheme has procedures in place to ensure its decisions and rules are complied with. It will then be up to the redress scheme and its members to agree to the terms by which decisions made by the redress scheme have to be complied with.

Principles of the scheme

- 2.13 The CEAR Act requires all licensed postal operators to be a member of a redress scheme to cover complaints about licensed products and services provided by them. Licensed postal operators can include non-licensed products and services within the remit of a redress scheme if they wish although Postcomm's criteria will not apply to them. Licensed postal operators should clearly set out which of their products and services are covered by the redress scheme.
- 2.14 The redress scheme should be a scheme under which consumer complaints may be made to, and investigated and determined by, an

independent person. It is considered to be a form of alternative dispute resolution (ADR) used as a means to settle disputes without going to court. Redress schemes can take different forms such as an ombudsman or an adjudicator as long as they meet the criteria for approval.

- 2.15 A redress scheme will not replace a licensed postal operator's own complaint handling process nor will it provide a back-up service for postal operators who are unable to provide an adequate complaints handling service themselves.
- 2.16 A redress scheme will only be able to investigate complaints that are within its remit. The scheme will be required to make clear the types of complaints it is able to investigate and the process for investigation. The scheme may investigate complaints outside the minimum scope with the agreement of the licensed postal operators. .
- 2.17 The redress scheme will 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.

Proposed approval criteria

- 2.18 Postcomm's final criteria for approving a redress scheme are set out in Annex 1. Further explanation is provided under each criteria heading to assist applicants. In determining the final approval criteria, Postcomm has taken into account:
- comments and suggestions made by respondents to the January consultation¹⁴;
 - issues discussed at the licensed postal operators' working group meetings, and
 - best practice from recognised redress handling bodies or other regulatory bodies.

¹⁴ Non-confidential responses are available on Postcomm's website www.postcomm.gov.uk

2.19 Chapter 3 sets out the main changes to the approval criteria from the January consultation.

3. Main changes to approval criteria

Introduction

3.1 Postcomm received 11 responses to the January consultation document from:

- Royal Mail;
- Mail Competition Forum (MCF);
- Postwatch;
- new National Consumer Council (NCC);
- British and Irish Ombudsman Association (BIOA);
- The Ombudsman Service Ltd (tOSL);
- Trading Standards Institute (TSI);
- HM Revenue and Customs (HMRC);
- Welsh Language Board;
- Consumer Direct, and
- Mail Users Association (MUA).

3.2 The key issues raised by respondents and the decisions made by Postcomm to amend the approval criteria are set out below.

Approval of multiple schemes and avoiding inefficiencies with a single scheme

3.3 The January consultation document asked if there should be more than one redress scheme. The CEAR Act does not restrict the number of redress schemes that Postcomm could approve. Therefore, Postcomm could approve more than one redress scheme for postal services.

3.4 Nine respondents stated that there should only be one scheme and two respondents did not comment. However, respondents did recognise it might be unavoidable to approve more than one scheme, for example if licensed postal operators cannot agree on a scheme or the approved scheme is not meeting their requirements. Respondents such as Postwatch and tOSL recommended that the approval criteria should include criteria to ensure that if more than one scheme was approved,

each scheme would have to cooperate with and signpost consumers to each other.

- 3.5 To prevent the need for more than one scheme, licensed postal operators and BIOA recommended that funding and governance arrangements should be clarified.
- 3.6 To reduce any potential inefficiency with having only one redress scheme, tOSL and HMRC recommended that the criteria should set enforceable response targets and publish quarterly performance statistics measured against set key performance indicators. Postwatch, HMRC, new NCC and tOSL suggested that firm guidelines on monitoring and measuring effectiveness of a redress scheme should be in place.

Postcomm decision

- 3.7 Postcomm's strong preference is to approve only one scheme. The redress industry itself tends to recommend a single scheme for a sector and BERR, in its decision document on redress schemes, stated that the Government considers that consumer benefit is best served by only having one redress scheme for a sector. However, Postcomm recognises that there may be circumstances where more than one scheme is unavoidable. Therefore, Postcomm has added criteria which state that if more than one scheme is approved they must cooperate with, and signpost consumers to, each other.
- 3.8 To minimise the need for more than one redress scheme Postcomm needs to ensure that a scheme is suitable for all licensed postal operators. Postcomm has included and clarified criteria which state that:
 - governance and funding arrangements of a redress scheme must not have a disproportionate effect on any particular member or group of members of the scheme, and

- case fees and any compensation can be reallocated to another scheme member if the scheme finds that the fault lies with another scheme member.
- 3.9 To ensure the scheme has targeted performance measures, Postcomm has included a criterion to state that ‘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’. Postcomm has also retained the need for the scheme to demonstrate how it will achieve good value for money for licensed postal operators and consumers. Postcomm has also amended the existing requirements relating to annual reports, consumer satisfaction assessments, notification of changes to the scheme and provision of information requested by the new NCC or Postcomm.

Accessibility

- 3.10 Postwatch recommended that Postcomm should clarify, for the complainant that complaints investigated are free of charge but there might be a cost associated with contacting the redress scheme e.g. the cost of a phone call.
- 3.11 The MCF and Royal Mail, in relation to raising awareness of the redress scheme, wished to avoid as much as possible incorrect and early referrals to the scheme. They considered that not only could this cause consumer dissatisfaction but could increase the operational cost of the redress scheme.
- 3.12 The new NCC recommended that there should be a requirement for a time-bound backstop for allowing the redress scheme provider to consider a complaint if the consumer does not have a deadlock letter from their licensed postal operator and the operator has had more than the specified time period to resolve the complaint.

Postcomm decision

- 3.13 Postcomm has clarified in the criteria that there may be a cost to access the redress scheme but that these costs should be kept as low as reasonably practicable.
- 3.14 Postcomm has amended the requirement relating to raising awareness of the redress scheme to reflect comments from licensed postal operators. Postcomm anticipates that, when published, the complaint handling regulations will also specifically refer to raising awareness of the redress scheme.
- 3.15 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. The approval criterion sets out that the scheme can consider complaints that the licensed postal operator has considered but not resolved to the consumer's satisfaction and those which relate to sustained difficulty by the consumer in registering a complaint with the licensed postal operator (where the redress scheme is satisfied that reasonable attempts have been made).

Fairness, proportionality and levels of financial award

- 3.16 The January consultation document stated that a redress scheme must recognise that the costs associated with sending mail are relatively low and the redress scheme should, where possible, take account of the relatively small amount of money that most consumers spend on mail services¹⁵. The MUA wanted to ensure that redress costs were kept to a minimum to avoid it becoming a barrier to entry or drive business away from the postal services market. The MUA and Royal Mail felt that the scheme should be proportionate in terms of the cost of the

¹⁵ A survey on family spending by the Office for National Statistics (ONS) in 2005-06 states that the average weekly expenditure of all households on postal services is 50p.

service that a consumer is seeking redress for and the value consumers get from the service.

- 3.17 The MCF raised concerns regarding Royal Mail's ability to make schemes under the Postal Services Act 2000, which then limits its liability for compensation. The MCF felt that the redress scheme should provide equivalent protection for all members.

Postcomm decision

- 3.18 Postcomm agrees that redress schemes should be proportionate to the costs of the service provided. As mentioned above, the approval criteria will require fees to be allocated so as not to have a disproportionate effect on its members and the scheme must demonstrate how it will achieve value for money for consumers and licensed postal operators.
- 3.19 There are fairness criteria setting out that decisions must be reasoned and based on what is fair in all the circumstances having regard to any inequitable conduct or maladministration by licensed postal operators.
- 3.20 Postcomm agrees that the schemes for universal service products, which the Postal Services Act 2000 enables Royal Mail (as the universal service provider) to make, set out compensation levels for specific services. However, 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. As stated above, the liability of the licensed postal operator (as a member of the redress scheme) will be limited in that the redress scheme must make judgements which are fair and based on how a complaint was handled by the operator.
- 3.21 Following internal review and consideration of other approval criteria, Postcomm has also added a requirement that any maximum limit on financial awards must be determined by the governing board or council of the redress scheme, but otherwise the discretion would lie fully with

the decision maker(s) of the redress scheme. This will allow liability to be limited but prevent the redress scheme from being overly constrained in its ability to set redress levels.

Vulnerable consumers¹⁶

3.22 Postcomm's proposals included requirements to ensure that vulnerable consumers have access to redress schemes and the schemes provide them with appropriate assistance when handling their complaint. Although respondents agreed that appropriate assistance should be given to vulnerable consumers there was some confusion with the wording of the proposed criteria in terms of access to the redress scheme. Consumer representatives also recommended that translation services, help for vulnerable consumers in accessing the redress scheme and third party access were essential.

Postcomm decision

3.23 Postcomm has amended the accessibility criteria to ensure that the scheme has processes to allow for additional help to be given to those consumers that need it. For example, allowing other people to act on behalf of the complainant, help with completing forms or a translation service. Postcomm has also added a requirement to allow consumers to progress a complaint via a range of methods.

Other issues and minor changes

3.24 Eligibility: Following internal review and consideration of other approval criteria, Postcomm has included a reference to BERR's definitions of the type of complaints which must be considered by the redress scheme. This is to ensure clarity and reflects respondents' comments. Postcomm has also included that the redress scheme must have transitional arrangements for complaints which arose prior to the commencement date of the BERR order. The criteria also set out that the redress scheme must have reasonable deadlines for bringing

¹⁶ The term 'vulnerable' is used here as it is specified in the CEAR Act 2007 to which this document relates.

complaints to the scheme. Postcomm considers that all of these criteria seek to clarify the arrangements and do not impose a significant extra burden. The consultation document correctly stated that the redress scheme excludes those who have a written contract with licensed postal operators. However, as pointed out by TSI, if desired, those with written contracts could negotiate recourse to the redress scheme in their contract.

3.25 Decision making: The MCF, tOSL, BIOA, Royal Mail and the new NCC made various comments about the wording of the criteria relating to how a decision is made and the exchange of information between parties. After reviewing this and other regulators' approval criteria Postcomm has streamlined and clarified the criteria relating to decision making under the fairness criteria. Postcomm has also added the following requirements:

- to ensure the decision maker(s) of the redress scheme understands the licensed postal operator's complaint handling processes within a short period of time of the scheme starting;
- that any decision and the reasons for it is notified in writing to the parties concerned; and
- to clarify that decisions made by the redress scheme are binding on the licensed postal operator but not the complainant and that there should be a process by which complaints about the redress scheme itself can be considered.

3.26 Information: Following responses from Royal Mail, MCF and tOSL Postcomm has restructured the information criteria and clarified what information should be published in the scheme's annual report to it. This includes the ability to summarise cases and remove the name of the complainant. Postcomm has also amended the 'provision of information' section to streamline it in response to respondents' recommendations and the review of other approval criteria.

- 3.27 Enforcement: Postwatch and the new NCC recommended there should be a procedure in place for the redress scheme to recommend changes to licensed postal operators where systemic failure has been identified and notify Postcomm as well. Postcomm has added these to the criteria.
- 3.28 Review: tOSL recommended that Postcomm should review the scheme annually. TSI suggested that Postcomm should review the scheme regularly and MUA suggested that Postcomm should review the scheme at the end of its first year to identify and quickly deal with any immediate bedding-in issues and then review it every 3 years. Postcomm will review the annual reports submitted to it by the redress scheme. Postcomm will carry out a formal review of the scheme in quarter 4 of 2010/11. Any serious issues which arise before the formal review can be investigated as required.

Appendix 1 – 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 applies¹⁷. 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

¹⁷ Section 48(2) of the CEAR Act requires that a redress scheme is independent.

Appendix 1

and the licensed 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 maker(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 the scheme, fault lies with that other scheme member, and

Appendix 1

- 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:

- consumers 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 licensed postal 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

Appendix 1

- 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

Appendix 1

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 join.¹⁸

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 the 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

¹⁸ 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.

Appendix 1

the 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;

Appendix 1

- 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 caused¹⁹. 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
- taking such other actions in the interests of the complainant as the redress scheme may specify.

¹⁹ Sections 49(3)(c) and 49(6) sets out the types of redress that a scheme may require regulated providers to provide to complainants.

Appendix 1

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 bodies²⁰:

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;
- the 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 rules²¹.

Requirements to meet this criterion:

- the redress scheme must have procedures in place to ensure that its decisions and the scheme's rules are complied with;

²⁰ Sections 49(7)(d) and 49(8) set out the requirements for the provision of information to the regulator and other people..

²¹ Section 49(7)(c).

Appendix 1

- 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.

Appendix 2 – Sources of information

1. The Consumers, Estate Agents and Redress Act 2007
2. Consumer redress schemes in gas, electricity and postal services: Government response to consultation, BERR, December 2007
3. British and Irish Ombudsman (BIOA) criteria for the recognition of Ombudsman offices
4. The Chartered Institute of Arbitrators (CIArb) Code of Professional and Ethical Conduct for Members (January 2007)
5. OFT approval of estate agents and redress schemes – criteria- final (October 2007)
6. Developing a Telecommunications Ombudsman – Oftel consultation document (March 2001)
7. Implementation of a Telecommunications Ombudsman Scheme – Oftel (July 2001)
8. Ofcom review of alternative dispute resolution schemes – report and draft recommendations (27 July 2005)
9. Approval criteria for redress schemes in the energy sector – Ofgem decision document (14 March 2008)