



Royal Mail's Response to Postcomm's Compensation Proposals

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Main Response

Foreword

Royal Mail is pleased to respond to this proposals document from Postcomm, relating to Royal Mail's Compensation Schemes for Delay and Loss and Damage. Since its response to the Postcomm November 2006 consultation, in which Royal Mail set out its package of proposals, the dynamics of the postal market have been much in evidence and as was made clear at that time, Royal Mail believes it imperative that our compensation arrangements reflect the changing dynamics and increasingly competitive market place.

Postcomm is aware that this dynamism has been substantiated through much greater access volumes than forecast, significant product downtrading and the overall decline in mails volumes, providing unequivocal evidence that post is competing in the much wider communications market. The changing nature of the market has had a major impact on Royal Mail's financial position with the profit of £779m that Postcomm forecast for the price control products turning out, in 2006/07, to be a loss of £12m.

In its response to the previous consultation Royal Mail stated that any compensation arrangements should recognise and be proportionate to the way in which customers access the Royal Mail network and the low price of postage. With the growth of other operators transporting and delivering items of value to addresses in the UK it can no longer be assumed Royal Mail was the carrier. Where Royal Mail has been established as the chosen postal operator and has lost, damaged or delayed an item then it is accepted there should be some redress for the Customer. Customers claiming compensation up to the current maximum of £34 should be required to provide satisfactory evidence that the item was posted with Royal Mail and met the conditions of posting. These are key principles that must be adhered to and reflected in any compensation arrangements.

Royal Mail is therefore pleased that Postcomm is supportive of its package of proposals for loss, damage and delay retail compensation and Royal Mail believes that the withdrawal of the bulk compensation scheme for delay in April 2009 is the right regulatory response to this part of the market that is so obviously competitive. Moreover, such a response should also lead to the conclusion that the bulk mail products should be deregulated with immediate effect. In doing so, Postcomm will demonstrate its expressed commitment to lighter touch regulation, provide the right market signals and enable Royal Mail to innovate much more quickly than it is able to at present. The overall postal market will benefit.

Royal Mail believes that its proposal to introduce revised voluntary compensation arrangements for loss of and damage to retail items as part of a package with its proposals for a revised retail delay compensation scheme, as put forward by Postcomm in this consultation will provide fair recompense to customers.

Alex Batchelor

Marketing Director, Royal Mail

Executive Summary

1. Royal Mail welcomes the opportunity to comment upon Postcomm's proposals for loss, damage and delay compensation. Royal Mail believes that it is important for customers to be fairly recompensed where Royal Mail has lost, damaged or delayed their mail.
2. Royal Mail is pleased that Postcomm is supportive of Royal Mail's package of proposals for loss, damage and delay retail compensation. Royal Mail believes these proposals represent a fair deal for customers of these products and will provide consistency across the different complaint categories.
3. Royal Mail does not believe that Postcomm has the power to direct Royal Mail in the making and application of any section 89 scheme in relation to compensation arrangements for loss and damage. Compensation is already payable for loss of or damage to postal packets. However, Royal Mail is prepared to introduce revised voluntary compensation arrangements for loss of and damage to retail items as part of a package with its proposals for a revised retail delay compensation scheme, as put forward by Postcomm in its consultation document. Royal Mail will amend its section 89 schemes to deploy these proposals if the package is accepted in its entirety.
4. Postcomm aims to publish its final decision by 30 April 2008. Provided that this timescale is met and the decision is acceptable to Royal Mail, the intention is to deploy the new arrangements for retail compensation for introduction in early August 2008. This will allow two months for the changes to bed in before the redress scheme to be introduced under the Consumer, Estate Agents and Redress Act 2007 begins in October 2008.
5. Royal Mail also supports Postcomm's proposal to withdraw the bulk compensation scheme for delay in April 2009. It believes this is the appropriate regulatory response to changing market conditions. In recent years the market has changed significantly from what was expected by all parties. The mail market is in an unprecedented decline of 2-3% p.a., i.e., over 500 million fewer items a year. One in five of addressed items is now posted with a competitor. Two competitors, DX and TNT, have begun or are about to begin end to end delivery. In 2006-07 Royal Mail made a £12m loss on its price controlled products against a predicted profit of £779m. Royal Mail believes that lighter touch regulation is required straight away, with immediate deregulation of all bulk mail, PPI and heavy weight products. These are products that service competitive markets, where market forces provide incentives in relation to service quality and compensation.

6. Royal Mail is considering options for the development of a voluntary compensation scheme for compensating posters of bulk mail products for delay. This will take account of a number of factors, including customer requirements, current and future product development, and the costs of administering any new scheme.
7. Any changes to the compensation arrangements for Access mail are a matter for Royal Mail and its Access customers. Royal Mail Wholesale cannot change the terms of its contract without agreement from its contract holders.

1 Introduction

- 1.1 Royal Mail welcomes the opportunity to comment upon Postcomm's proposals for loss, damage and delay compensation.
- 1.2 Royal Mail maintains its position that Postcomm would be acting outside of its legal remit if it issued a Direction purporting to instruct Royal Mail as to the content of s89 schemes, or to create a new scheme. As such any Decision or Direction which is made by Postcomm at the conclusion of this consultation which purports to instruct Royal Mail to make changes to the schemes made under s89 will have no legally binding effect.
- 1.3 Royal Mail is pleased that Postcomm is supportive of Royal Mail's package of proposals for loss, damage and delay retail¹ compensation. Royal Mail also supports Postcomm's proposal to withdraw the bulk compensation scheme for delay in April 2009. Royal Mail makes further comments on retail compensation and bulk compensation in chapters 2 and 3 respectively of this response. Issues relating to deployment are discussed in chapter 4. The appendices contain points of detail.

2 Retail compensation

- 2.1 This chapter gives Royal Mail's views on the proposed compensation arrangements for retail loss, damage and delay, as discussed in chapters 2, 3 and 4 of Postcomm's document.

Royal Mail's proposals

- 2.2 Condition 4 paragraph 19 of Royal Mail's Licence does not give Postcomm the ability to create a section 89 scheme nor a regulatory compensation scheme for loss and damage. Furthermore Royal Mail does not accept that Postcomm has the power under Condition 4 paragraph 19 to direct Royal Mail to exercise its discretion under

¹ Here and elsewhere within this response, retail items in the context of compensation are: stamped and metered mail, standard parcels with and without enhanced compensation, Recorded Signed For items sent using the above products, Articles for the Blind and Special Delivery Next Day not posted on account

section 89 of the Postal Services Act 2000 (PSA) to make a new scheme, absent a decision by Royal Mail itself to make a new scheme. The right granted by section 89 of the PSA to make schemes is exclusive to Royal Mail and there can be no regulatory interference in this. The Secretary of State has power under section 93 of the PSA to modify section 89. The Secretary of State has to consult with Postcomm before making such an amendment but there is no provision under the Act permitting Postcomm to make such an amendment itself.

- 2.3 Without prejudice to these views, Royal Mail is however prepared to deploy its proposals for retail loss, damage and delay compensation on a voluntary basis. Postcomm has included these proposals in its consultation document. Royal Mail has put forward these proposals to Postcomm as a package. For the avoidance of doubt, Royal Mail is not prepared to deploy elements of its proposals in isolation.
- 2.4 Royal Mail believes its proposals for loss, damage and delay compensation for retail items represent a fair deal for customers of these products and provide consistency across the different complaint categories. In particular these proposals:
- offer some compensation for lost and damaged items to customers with basic evidence but no proof of posting, who would currently have no entitlement;
 - refund postage for valid loss and damage claims, in addition to paying for actual loss even if by doing so such additional payment would exceed the statutory maximum for the service selected;
 - pay compensation for delay a day sooner;
 - extend compensation for delay to officially redirected retail items;
 - provide loss, damage and delay compensation for Articles for the Blind on the same basis as for stamped and metered mail.
- 2.5 The levels of compensation offered for these items are generous compared with the price paid for the service and with average household spend on postal services of 50 pence a week. The minimum payment of 6 first class letter stamps means that some customers will receive compensation of at least 6 times the cost of sending the item concerned. The maximum compensation to the monetary value of 100 first class letter stamps allows for compensation of up to £34 plus postage if the evidence requirements are met, even for items which cost as little as 22 pence to send. Customers sending items of value or requiring additional compensation can purchase Special Delivery or Standard Parcels with enhanced compensation.
- 2.6 Royal Mail's proposals are set out in Appendices 1 and 2 of Postcomm's document. As a point of clarification on the discussion of these proposals in chapters 2, 3 and 4 of Postcomm's document, there is no entitlement to 6 first class letter stamps or postage refund without the basic evidence set out in note (ii) of Appendix 1 paragraph 6. This applies regardless of whether it is a first time claim or not.

Similarly, claims for items of intrinsic value are subject to satisfactory provision of the additional evidence set out in notes (iv) to (vii) of Appendix 1 paragraph 6. Some detailed points are made at Appendix 2.

Other comments

- 2.7 Royal Mail notes the response from LOVEFILM International quoted at paragraphs 2.32 and 2.42 of Postcomm's document. Royal Mail does not believe that the products used by this customer are relevant to Postcomm's consultation on retail compensation or by Royal Mail's proposals for retail loss, damage and delay compensation.
- 2.8 With regard to the comments at paragraph 2.42 and 2.45 of Postcomm's document Royal Mail agrees that items with a cost to the customer in excess of £34 should be sent using a service that provides a higher level of compensation. Customers can purchase additional compensation for loss and damage of up to £2,500 using Royal Mail's Special Delivery products. Customers should also use Special Delivery for items requiring greater security or assurance of delivery.
- 2.9 The provisions of the Act limit the maximum amount of compensation available for loss and damage to the actual loss, capped at the lesser of the market value of the item and the maximum amount set under the section 89 schemes.² In relation to Royal Mail's interpretation of the provisions of the Act on this point, Royal Mail notes Postcomm's comments at paragraph 2.39 of its document that any doubt about the interpretation of these provisions would be a matter for the courts. The matter has of course been looked at by the Court on numerous occasions and Royal Mail's interpretation has been accepted.
- 2.10 Royal Mail notes Postcomm's comments about market value and actual loss in paragraphs 2.51 and 2.52 of its document. Royal Mail has set out its definition of actual loss in the table at Appendix 1 paragraph 8 of Postcomm's document, and this will be used in the section 89 schemes and elsewhere. Royal Mail will also use examples in its literature and website to help customers understand what this means for them.

² See comment on paragraph 2.34 in Appendix 2.

3 Bulk compensation

- 3.1 This chapter sets out Royal Mail's views on Postcomm's proposal to withdraw the bulk delay compensation scheme and other issues discussed in chapter 5 of the consultation document.

Withdrawal of the bulk compensation scheme for delay

- 3.2 Royal Mail supports Postcomm's proposal to withdraw the regulatory compensation scheme for delay to bulk mail for all products. In recent years the market has changed significantly from what was expected by all parties. The mail market is in an unprecedented decline of 2-3% p.a., i.e., over 500 million fewer items a year. One in five of addressed items is now posted with a competitor. Two competitors, DX and TNT, have begun or are about to begin end to end delivery. In 2006-07 Royal Mail made a £12m loss on its price controlled products against a predicted profit of £779m. As set out in its response to Postcomm's Strategy Review Emerging Themes³, Royal Mail believes that lighter touch regulation is required straight away, with immediate deregulation of all bulk mail, PPI and heavy weight products. These are products that service competitive markets, where market forces provide incentives in relation to service quality and compensation.
- 3.3 Royal Mail also supports Postcomm's proposal that the bulk delay scheme be withdrawn in April 2009. In view of the way the postal market is developing, it is vital that Royal Mail is free to compete on equal terms with other providers in respect of compensation arrangements for bulk mail. Having decided that a regulatory scheme is no longer appropriate for these products Postcomm should withdraw it as soon as possible. The proposed date will allow Royal Mail to consider and deploy any replacement arrangements for customers posting bulk mail.
- 3.4 Royal Mail has informed Postcomm as part of previous consultations that it considers it impracticable to implement compensation arrangements for recipients of bulk mail products, in particular as it is not possible to establish when an individual item was posted with Royal Mail. Royal Mail strongly agrees that recipients of bulk mail items should continue to be excluded from claiming compensation for delay, as proposed by Postcomm in paragraph 5.62 of its document. Therefore Royal Mail does not intend to develop compensation arrangements for recipients of bulk

³ Royal Mail's Position on the Strategy Review Emerging Themes, Royal Mail, November 2007

mail items as part of any replacement scheme for delay of bulk mail, or to include claims for such items in the retail delay scheme.

- 3.5 Royal Mail notes the discussion of exclusion clauses in paragraphs 5.46 to 5.3 of Postcomm's consultation document. Royal Mail's proposed amendments to the bulk compensation scheme for delay are set out in Appendix 2 of Postcomm's consultation document. These proposed amendments presume that the scheme will cease in April 2009. Royal Mail reserves its position on any further amendments to the bulk scheme, including but not confined to the payment to terms exclusion, in the event that the bulk scheme is not withdrawn in April 2009.
- 3.6 Royal Mail notes Postcomm's comments at paragraph 5.39 of its document concerning changes to the Access Agreement in respect of quality of service and compensation. The original basis of the Access Service quality of service and compensation arrangements has been agreed with all Access Customers. It may be, depending on the Mailsort 1 performance, that the current arrangements are more advantageous to Access Customers than any re-negotiated arrangement: Royal Mail Wholesale cannot change the terms of its contract without agreement from its contract holders.
- 3.7 Further, with respect to Access postings, Royal Mail is exposed to other carriers' network failings prior to Royal Mail receiving an item. Royal Mail has experienced examples of claims being made, only for it to be demonstrated on investigation that the fault lay with others involved elsewhere in the end-to-end process. Therefore Royal Mail Wholesale would not accept a claim against it for loss or damage unless there was both proof that Royal Mail was responsible and not the other party/parties, and proof of handover to Royal Mail.

Other comments

- 3.8 Royal Mail is considering options for the development of a voluntary compensation scheme for compensating posters of bulk mail products for delay. This will consider a number of factors, including customer requirements, current and future product development, and the costs of administering any new scheme.
- 3.9 Royal Mail notes the cross section of views expressed by Lovefilms, Redactive and Grolier Ltd, and will take these into account in its considerations.
- 3.10 The Consumers, Estate Agents and Redress Act 2007 ("CEAR Act") will not affect bulk mail compensation under either the regulatory or any future voluntary scheme, as the Redress Scheme will not be available to customers who have a written contract with the postal services provider.

4 Deployment

- 4.1 This chapter sets out Royal Mail's views on deployment of changes to the compensation arrangements and other issues discussed in chapter 6 of the consultation document.
- 4.2 Royal Mail's position on Postcomm's powers to make a direction in respect of loss and damage compensation is set out in 2.2 above. Royal Mail does not accept Postcomm's assertions in paragraphs 6.19, 6.20 and 6.27 of its document and elsewhere that it has the power to direct Royal Mail in the making and application of any section 89 scheme in relation to compensation arrangements for loss and damage. Royal Mail maintains that it would not be legally bound by any purported issue of a "Direction" in any event.
- 4.3 Royal Mail is prepared to introduce voluntary arrangements for loss of and damage to retail items as part of a package with its proposals for a revised retail delay compensation scheme, as put forward by Postcomm in its consultation document. Royal Mail will not deploy one without the other,

Introduction of new arrangements for retail compensation

- 4.4 Once changes to the retail delay scheme are agreed, Royal Mail will need a minimum of three months in which to deploy the new arrangements for retail loss, damage and delay compensation. This will include retraining of customer service handlers, process and information systems changes, customer communications and changes to the section 89 post schemes.
- 4.5 Under the CEAR Act, Royal Mail and other postal operators will need to deploy a redress scheme or schemes by 1 October 2008. It is essential that the new compensation arrangements have had time to bed in before the redress scheme comes in.
- 4.6 Postcomm aims to publish its final decision by 30 April 2008. Provided that this timescale is met and the decision is acceptable to Royal Mail, the intention is to deploy the new arrangements for retail compensation for introduction on or around 1 August 2008. This will allow two months to bed in before the redress scheme begins.

- 4.7 Royal Mail is putting in place plans to begin deployment in early May 2008 to meet an early August 2008 introduction date. Should Postcomm's final decision be delayed or not be acceptable to Royal Mail, deployment will not be possible to these timescales.
- 4.8 In view of the proposed timescale for the deployment of Royal Mail's new compensation arrangements, Royal Mail would request that Postcomm waive the requirement under Condition 7(2)(a) of Royal Mail's licence for it to notify Postcomm in writing of any changes to compensation arrangements under which Royal Mail offers to provide licensed or non-licensed services, three months prior to any such changes come into effect. As Postcomm has been in discussions with Royal Mail on the detailed provisions of Royal Mail's compensation proposals for some time, it is already fully aware of the changes that will be made.
- 4.9 Should Royal Mail compensation arrangements for loss and damage need amendment as a result of changes which may arise as a consequence of the Redress Scheme this is a matter for Royal Mail alone to consider as amendment of existing Schemes is within its sole gift.

Customer communications for the retail compensation arrangements

- 4.10 Royal Mail notes Postcomm's expectation⁴ that Royal Mail will apply the proposed high level framework set out at paragraph 6.24 of its document where appropriate to any customer literature on the compensation arrangements for delay, loss and damage.
- 4.11 To deploy its proposals Royal Mail will be implementing certain necessary changes to the Schemes which it has made under section 89 of the Postal Services Act in any event, regardless of the outcome of this consultation. In general Royal Mail is not required to consult with customers about changes to its Schemes.
- 4.12 To ensure customers are clear about compensation arrangements and can find everything in one place Royal Mail will publish the compensation policies and the claims procedure for loss and damage alongside those for delay in a customer friendly format on its website. It will also highlight the key points of these policies and claims procedure in its customer literature.
- 4.13 As part of the deployment of its proposals Royal Mail will work with Postcomm and Postwatch to present this information in a clear and customer-friendly fashion.

⁴ Paragraph 6.28 of its document

- 4.14 Royal Mail expects the information to be deployed as set out below (although it reserves the right to restructure this in future).
- a. A new brochure for inland products combining the Mail Made Easy brochure and the Keeping Our Promise code of practice brochure will contain
 - information about posting and receiving mail, which services to use and the conditions of use, correct addressing and packaging, as well as prohibited and restricted items;
 - basic information on compensation entitlement for loss, damage and delay, conditions and exclusions, and how to make a claim, with the customer referred to the website for full details
 - b. The Royal Mail website will include detailed information including a single compensation policy document for loss, damage and delay, together with information about claim procedures. There will also be links to the s.89 schemes.
 - c. The s.89 schemes will continue to be available on the website (and on request to Royal Mail Customer Services for those with no internet access), as the ultimate reference point on conditions of posting, compensation, exclusions and the other areas covered above.
- 4.15 Royal Mail has advised Postcomm that, whilst the website will contain fully up-to-date information, the printed literature will not be updated for the new arrangements until October 2008, when the redress scheme comes in. The literature will make reference to being accurate at time of print and refer to the website for up to date information. Royal Mail does not intend to provide leaflets to all addresses in the UK, as suggested by Postwatch, but customer literature will be available at Post Offices™ or from customer services on request.

Other comments

- 4.16 Royal Mail acknowledges Postcomm's important decision to suspend the bulk mail compensation and C factor arrangements relating to any industrial action resulting from implementation of Royal Mail's transformation plan. However Royal Mail remains concerned about the impact of industrial action upon its compensation payments, particularly for retail delay. Sealing boxes to prevent items being posted, as Postcomm suggests, may not be practicable or acceptable. Whilst Royal Mail can apply for an exemption for retail delay, the requirement to keep details of claims pending Postcomm's decision, together with the length of time that decision is likely to take, make this provision very difficult to use in practice.
- 4.17 Royal Mail intends to keep the new retail compensation arrangements under review as set out in paragraph 6.31 of Postcomm's document.

Appendices

Appendix 1 Questions raised in the Consultation

Ref	Postcomm Question	Addressed in
4.31	Postcomm would welcome respondent's views on the proposals for loss, the proposals for damage and the proposals for delay	Chapter 2
5.39	What are your views on the changes that may need to be made to the Access agreement?	3.6
5.39	Do you consider that there will be any difficulties in implementing these changes to the Access agreement? If so, please say what they are.	3.6
5.43	What are your views on Postcomm's proposal to remove a requirement for a bulk compensation scheme for delay from Royal Mail's licence?	3.2
5.43	What are your views on the date at which the bulk mail compensation scheme should be removed?	3.3
5.53	What are your views – should the Court of Appeal's interpretation stand for the remainder of the scheme or should the scheme be redrafted?	3.5

Appendix 2 Points of detail

Ref	Royal Mail comment
1.11	Should Royal Mail Compensation arrangements need amendment as a result of changes which may arise as a consequence of the Redress Scheme this is a matter for Royal Mail alone to consider as amendment of existing Schemes is within its sole gift.
2.16	All first time claimants for normal 1 st and 2 nd class items (including Recorded Signed For items sent using these services with no intrinsic value and/or without proof of posting will be entitled to a minimum book of 6 x first class stamps, <i>subject to them being able to supply basic evidence.</i> [Royal Mail amendment in bold] Only in the case of loss would there be an entitlement to more than 6 first class letter stamps.
2.33	If the entire compensation package proposed by RM is agreed then it will voluntarily amend its Schemes made under S89 for retail items to include a refund of postage paid in addition to the actual loss sustained by the claimant up to the statutory maximum for the service plus postage
2.34	The Postal Services Act 2000 ("the Act") limits the maximum amount recoverable in any court proceedings against Royal Mail for loss <i>of</i> and damage to an inland packet to <i>the actual loss up to:</i> <ul style="list-style-type: none"> • the market value of the packet at the time the loss or damage arises; or • the maximum amount of compensation payable (set by Royal Mail) under the schemes dealing with compensation for loss and damage. <i>which ever is the smaller sum.</i> [Royal Mail amendments in bold]
2.77 Table 2.0	Compensation for first time claimants without proof of posting is still subject to basic evidence
3.25	Payment of 6 stamps is subject to the claimant being able to supply the basic evidence.
4.29	'cost or repair' should read 'cost of repair'
5.20	Royal Mail has deployed robust independent measurement of the service it gives to Access products, in accordance with condition 4 paragraph 8(e) of its Licence. The measurement system is independently audited in accordance with Condition 4 paragraph 8(b) of its Licence.
5.63 and 5.68	The outcome of the DBERR consultation on the Consumers, Estate Agents and Redress Act is that this will not affect bulk mail compensation as the Redress Scheme will not be available to customers who have a written contract with the Postal Services Provider.
6.20	Royal Mail Group Ltd maintains that it would not be bound by any purported issue of a "Direction" in any event.

Ref	Royal Mail comment
6.27	Royal Mail Group Ltd strongly disagrees with the content of point 4 in this paragraph