

House of Lords Constitution Committee Inquiry: Accountability of Government appointed regulators

Submission from the Postal Services Commission (Postcomm)

Postcomm's role and duties

1. The Postal Services Act 2000 (the Act) established the Postal Services Commission (Postcomm) as the independent regulator for postal services with powers to license postal operators. It is thus the most recently established sector regulator, having acquired its main functions 2 years ago. The Act lays down Postcomm's four key statutory duties. **Postcomm's primary duty is to exercise its functions in the manner which it considers is best calculated to ensure the provision of a universal postal service.** Therefore Postcomm's further key duties are to:

- Further the interests of users and disadvantaged customers, wherever appropriate by promoting competition between postal operators;
- Promote the efficiency and economy of postal operators; and
- Have regard to the need to ensure that licence holders are able to finance activities authorised or required by their licences.

In addition, Postcomm has a role to provide advice to the Secretary of State for Trade and Industry about the network of public post offices.

2. The Act requires Postcomm to publish a *Code of Practice* setting out how it will exercise its functions. Postcomm's Code¹ explains Postcomm's licensing, information and advisory functions and identifies eight over-arching principles that it follows:

- to act in accordance with its statutory duties;
- to act in accordance with its duties as a public body;
- to act independently;
- to act in an open consultative manner, subject to confidentiality obligations;
- to seek to establish a firm factual basis for its decisions and advice;
- to apply sound governance and decision making structures;
- to act in accordance with good regulatory practice; and
- to coordinate its activities with other regulatory bodies.

This Code is intended to provide users of postal services with an explanation of how they should expect to benefit from the regulation of the industry and to

¹ The Code of Practice is available at www.psc.gov.uk

provide postal operators with a greater degree of regulatory certainty.

3. Postcomm summarises its purpose and its vision in the following terms:

“Postcomm’s purpose is to help the UK postal industry provide the best possible postal services for its customers.

Postcomm’s vision is ...

- *a range of reliable, innovative and efficient postal services, including a universal postal service,*
- *valued by customers, and*
- *delivered through a competitive postal market.”*

4. Postcomm is a non-ministerial government department and is thus subject to all of the ethical and other constraints that apply to Departments of State and the Civil Service. Postcomm’s staff are civil servants.

5. From the outset Postcomm has had a corporate structure with policy being determined by a college of seven commissioners: a Chairman who works part-time, five non-executive members who are each contracted to work about forty days a year and a full time Chief Executive. The chairman and the five non-executive members, are appointed by the Secretary of State for Trade and Industry and come from a wide range of backgrounds bringing a variety of experience to the business of Postcomm. The Act requires that the roles of Postcomm’s Chairman and Chief Executive are separate. The Chief Executive is appointed by the Commission after consulting the Secretary of State.

6. Postcomm’s corporate structure² means that key decisions in pursuance of its statutory duties are taken by the full Commission which contributes both to accountability and informed decision-making. The structure is also intended to de-personalise the regulatory process and to increase the scope for continuity and consistency when new members are appointed.

7. The Commission’s annual expenditure, including its annual pay settlement, are subject to the approval of HM Treasury. Postcomm recovers its costs through the licence fees it charges to postal operators (principally Royal Mail).

Independence

8. As is the case with other sector regulators, Postcomm is independent of Government and is required to carry out its functions in accordance with its statutory duties. Whilst the Secretary of State for Trade and Industry is responsible for the appointment of the Chairman and members of the

² “The Constitution and Procedures of the Commission” which lays down its internal decision making process are available at www.psc.gov.uk

Commission (except the Chief Executive), she does not have responsibility for the work of the Commission and has only limited powers to give directions to the Commission (for example, in the interests of national security and in order to ensure that the UK complies with European law). Postcomm can also be asked by the Secretary of State to provide advice and information both generally and in relation to the post office network.

9. Under the Act, the Secretary of State has given guidance to Postcomm about the Commission's contribution towards the attainment of the Government's social and environmental policies. Postcomm must have regard to this guidance in carrying out its functions.³

10. The postal services market is different from most other regulated sectors, in that the principal postal operator (Royal Mail) is a company which is owned by the Government. Accordingly, the Secretary of State is responsible for overseeing the regulatory framework, including the appointment of the members of Postcomm, and, as shareholder, also appoints or approves the members of the Board of the company that under the terms of its licence must provide the universal postal service. This combination of responsibilities means that it is especially important that the respective roles of the Secretary of State and Postcomm are clearly understood and respected, including Postcomm's independence and direct accountability to Parliament.

Accountability to Parliament

11. Postcomm must act in accordance with its statutory duties and is accountable to Parliament for its decisions and its activities. This accountability to Parliament is in practice achieved through the specific scrutiny of the Trade and Industry Select Committee and the general oversight of the Public Accounts Committee.

12. Over the last year, Postcomm appeared before both the Trade and Industry Select Committee (TISC) and the Public Accounts Committee (PAC):

March 2002	PAC hearing on NAO report "Opening the post"
April 2002	TISC hearing on Postcomm's market opening proposals
February 2003	TISC hearing on Postcomm's proposals on the regulation of Royal Mail's prices and service quality

Postcomm has also held a number of informal meetings with other Parliamentary bodies, including members of the devolved administrations.

13. The Commission is also held accountable to Parliament through its *Expenditure Plans Report* and *Annual Report*. The Chief Executive is

³ "Social and Environmental Guidance" issued to Postcomm by the Secretary of State

Postcomm's Accounting Officer and as such is personally accountable to Parliament for the propriety and regularity of Postcomm's finances. Postcomm is subject to examination by the National Audit Office (NAO) whilst suspected injustices (and suspected failures to comply with the Code of Practice on Access to Official Information) can also be investigated by the Parliamentary Ombudsman.

Accountability of Postcomm for its decisions and actions

14. Postcomm can also be called to account in other ways. Postcomm gives effect to many of its decisions through the provisions of its licences. Once Postcomm has issued a licence, it can only modify the licence with the agreement of the licence holder. If the licence holder does not agree the proposed change, and Postcomm wishes to proceed with the modification, Postcomm must refer the matter to the Competition Commission. More generally, as a public body, Postcomm's decisions can be challenged by any interested party under the judicial review process.

15. The involvement of interested parties in influencing the terms of Postcomm's work is provided for under the Act which requires Postcomm annually to prepare and consult on a Forward Work Programme setting out how it proposes to carry out its work. Postcomm's final *Forward Work Programme and Business Plan*⁴ summarises its aims, strategy, objectives, projects and workstreams and takes account of comments received. The outcome of the Forward Work Programme is described in an *Annual Report* which Postcomm is required to publish.

Public consultation

16. Commissioners have adopted a consultative and transparent approach to their procedures, activities and proposals. In the interest of openness Postcomm always publishes the reasons for its decisions and has developed a consultative culture which complements the collegiate nature of its decision making processes. Postcomm recognises the value of being open in its work. The disciplines that accompany openness, explaining decisions and publishing the evidence and analysis that underlies them, contribute to good and consistent decision taking. Consistent decision taking helps give regulatory certainty. Postcomm therefore aims to consult everyone likely to be affected by, or having a role in, significant decisions it takes on the development of its policy and in the application of policy.

17. In October 2000, Postcomm published its approach to conducting its public consultations⁵. Postcomm's procedures are based on a number of key principles:

⁴ Forward Work Programme and Business Plan, and Annual Report are available at www.psc.gov.uk

⁵ Postcomm's consultation procedure "How should Postcomm consult" is available at www.psc.gov.uk

- **Building consultation into the planning process.** This is done right from the start of a policy proposal so that sufficient time is allowed for responses from all those affected.
- **Using the most appropriate approach to reach people.** Written consultation is not always sufficient to canvas views. Postcomm has therefore also used less traditional methods such as workshops and road-shows around the country to invite views and inform its approach.
- **Being clear and focussed.** Postcomm seeks to ensure that all consultations are clear, concise and focussed with a summary of the key questions and options on which views are sought.
- **Consulting in a user-friendly way.** Postcomm is committed to ensuring that consultation is accessible and easy to respond to, for example by electronic means.

18. Postcomm believes that the end result is a more informed understanding of the issues and better decisions based on the views of all stakeholders. Since it was established, Postcomm has issued consultation documents on a range of different issues including: Royal Mail's initial licence, Postcomm's approach to competition, its standard licences, the Postcode Address File, Royal Mail's price control and quality of service standards and compensation arrangements. All of Postcomm's consultations are available on the website at www.psc.gov.uk together with its decisions.

Working with the consumer watchdog

19. The Act also established a consumer body, the Consumer Council for Postal Services (Postwatch), which is independent of government, postal operators and Postcomm. Postcomm works with Postwatch consulting them on a wide range of issues. Whilst Postcomm and Postwatch have different roles, they are both responsible for promoting and protecting customer interests and, as provided for in the Act, have agreed a memorandum of understanding⁶ to help users understand how the two organisations work together.

Working with other regulators

20. Postcomm works with the other sector regulators to promote consistency in regulatory actions and to share best practice. A significant body of work has been developed by other sector regulators over time, and as a relatively new organisation Postcomm is keen to learn from this experience particularly in relation to issues such as consumer protection, communications, service delivery standards and price control.

22. Postcomm also works closely with the Office of Fair Trading (OFT) and

⁶ Memorandum of understanding between Postcomm and Postwatch is available at www.psc.gov.uk

has agreed and published a Memorandum of Understanding with the OFT⁷ to clarify and ensure consistency in the roles of the two bodies in considering complaints of anti-competitive behaviour in the postal sector.

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⁷ Memorandum of understanding between Postcomm and the OFT

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Further submission from the Postal Services Commission (Postcomm) in relation to written evidence submitted by the consumer council for postal services (Postwatch)

1. This further evidence is submitted by Postcomm, the regulator of postal services, in response to the written evidence that was submitted by Postwatch, the consumer council for postal services, and in advance of our own appearance before you on 11 June. This note deals separately with:-
 - a number of factual errors in the Postwatch submission,
 - Postwatch's criticisms of Postcomm's processes,
 - the steps Postcomm has taken to ensure its accountability, and
 - Postwatch's suggestion that it should be able to refer Postcomm's decisions to the Competition Commission.

Factual Errors

2. There were several factual errors in Postwatch's submission.
 - Sector regulation of the postal market is not simply a matter of UK law – it is a requirement of a European Directive (paras 2 and 3).
 - Users are at the heart of Postcomm's statutory duties: subject to ensuring the universal service, this is our principal duty (paras 4, 6 and 17).
 - Mr Corbett's appointment as Chairman did go through the full Nolan process, including advertisement (para 5).
 - In accordance with the provisions of schedule 1 of the Postal Services Act, the Chief Executive is appointed by the other Commissioners, not by the Secretary of State (para 5).
 - Postcomm's audited accounts have been published each year, as are the accounts of all Government departments (para 13).

Postwatch's criticisms of Postcomm' Processes

3. Postwatch accuses Postcomm of making poor decisions; inadequate and unsound consultation; reluctance to publish information; and providing an "inside track" in private negotiations with Royal Mail (paras 7, 17 and 18).

4. Postwatch's views stand in sharp contrast with those of the National Audit Office which has commended our processes ("Postcomm have been impressive in the transparency of their processes")⁸ and the views of stakeholders as reported in a review of Postcomm's operations conducted by an independent consultant ("[Postcomm is] considered to be ... professional, pragmatic and competent".)⁹
5. Concerning our general approach we make it clear in our Forward Work Programme that we will develop our policies "carefully, paying particular attention to the balance of risks and the existence of uncertainties.....where appropriate, major change is implemented in stages over several years".¹⁰ As it recognises in its submission, Postwatch has different responsibilities and a different culture to Postcomm. Postwatch undoubtedly feels that Postcomm could have moved further and faster to put Royal Mail under regulatory pressure, including imposing tighter price controls, but they fail to acknowledge the challenging political and business climate in which we are working. In brief:-
 - Postcomm is breaking new and difficult ground in applying the techniques of independent economic regulation to the postal industry.
 - We are introducing competition into a 350 year old monopoly where the effects, however carefully analysed, are bound to be somewhat unpredictable, while being obligated, as our primary duty, to preserve the universal service.
 - We are regulating a business (in Royal Mail) which
 - is state-owned,
 - is in clear need of renewal, in terms of investment and working practices,
 - is part of a holding group which, as a whole, has incurred heavy losses,
 - has daily personal contact with a high proportion of the population,
 - employs 200,000 people,
 - is the subject of significant media and political interest, and
 - has a uniform-price universal service obligation.
6. Postwatch also criticises Postcomm for some "unreasonably rushed" consultation. This criticism principally relates to the closing stages of the recent price control negotiations which needed, in our view, to be concluded by the end of March 2003. Postcomm understands Postwatch's concern but notes that this was the end of a three stage consultation process stretching over 17 months. Postcomm believes that

⁸ National Audit Office's report "Opening the Post: Postcomm and postal services – the risks and opportunities" January 2002.

⁹ W S Atkins "Efficiency review of the Postal Services Commission" January 2002.

¹⁰ Postcomm's Forward Work Programme is available on Postcomm's website (www.psc.gov.uk).

formal submissions by Postwatch, plus considerable contact over the whole of that period, meant that we took our final decisions based on a very good understanding of Postwatch's views.¹¹ Indeed, it is possible that Postwatch underestimates its own influence. Postcomm has been greatly encouraged to know that Postwatch supports competition, limited price re-balancing (to ensure that prices better reflect costs) and price rises in return for improved service quality.

Postcomm's Accountability

7. Postwatch asserted that "Postcomm is not accountable to postal users". We disagree and believe that we have recognised the need to do everything possible to account for our decisions, both formally and informally. Our written evidence submitted on 31 March 2003 describes the accountability arrangements. In summary, we account for ourselves in the following ways:
 - in our formal decision documents, which are detailed and carefully argued, and deal with all key points raised in consultations,
 - in our forward work programmes (S.61 Postal Services Act),
 - in our annual reports (S.45 Postal Services Act),
 - in our appearances before the Public Accounts and the Trade and Industry Committees,
 - through discussions and correspondence with Parliamentarians not only in Westminster but also in Scotland, Wales and Northern Ireland,
 - in innumerable meetings and exchanges with users of postal services and their representative organisations, consumer organisations, private operators, Royal Mail managers, and trade union representatives,
 - through our website,
 - through press notices, appearances on TV and radio, and interviews with journalists, and
 - in public meetings throughout the UK.

The suggestion that Postwatch should be able to refer Postcomm's decisions to the Competition Commission

8. Postwatch's submission reflects the frustration felt by most consumer councils at not being directly involved in regulators' decision making, including settling licence conditions with regulated companies. But Parliament has consistently made it clear that this responsibility lies with regulators who have more comprehensive and onerous statutory duties and are subject to appeal by the regulated company to the Competition Commission.

¹¹ For a full rebuttal of Postwatch's criticisms of the process followed by Postcomm in setting the Royal Mail price control see Appendix 3 of "Review of Royal Mail Group plc's Price and Service Quality Regulation, Second Price Control, Quality Service Targets and Compensation – Licence Modification and Decision Document", Postcomm, March 2003 available on Postcomm's website (www.psc.gov.uk).

9. Postcomm does not consider that Postwatch's proposal would be likely to contribute to the effective and fair reconciliation of the varied interests that are at large. The task of setting a price control for a regulated company, which has an information advantage and an incentive to take discussions to the wire, is already fraught with difficulties and involves complex judgments. It would be very difficult indeed to have to conduct this process with a consumer council, which has distinctly different statutory duties, but which also had the power to refer the matter to the Competition Commission. This would risk reducing the regulator's role to that of simply arbitrating between the regulated company and the consumer council.
10. Moreover, there are already checks on the ability of regulators and companies to do any deal which is not in the public interest. In addition to the remedy of judicial review available to all stakeholders, the Secretary of State has the power (in our case under S.14(5) of the Postal Services Act) to reject licence modification proposals reached by agreement between a regulator and a regulated company, and to force a reference to the Competition Commission. A further check, by a body with different statutory duties to the regulator, could result in operators seeing the environment in which they work as so uncertain that they are disinclined to invest. That would be against the consumer interest.

Conclusion

11. It is regrettable that Postwatch appears to be unable to acknowledge the successes of the postal regulatory regime. Again in brief:-
 - Royal Mail's service quality has improved,
 - Royal Mail has accepted a price control under which prices will, by 2006, be on average 5% lower in real terms than in 2001, and
 - the bulk mail market has been opened to competition since 1 January this year, despite all of which,
 - Royal Mail's letters business was profitable last year and is more profitable this year. (The well publicised losses were incurred on Parcelforce, the Post Office network and other areas of its wider business.)

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