
ROYAL MAIL'S QUALITY OF SERVICE PERFORMANCE

**Report on Investigation by Postcomm into Performance
in Seven Postcode Areas**

Representations by Royal Mail

9 March 2006

1 Summary

- 1.1 Postcomm's published report (the "Report") concludes that Royal Mail should be fined £271,000 for failing to use all reasonable endeavours to meet its quality of service targets in the East London, South East London and West Central London postcode areas ("PCA"s) under Condition 4 of its postal services licence (the "Licence").
- 1.2 Royal Mail believes that there is no justification for the finding of Licence breach and the imposition of a financial penalty in this case. This is because the scope and thoroughness of Postcomm's investigation fell significantly short, in its examination and assessment of the steps Royal Mail took to discharge its Licence obligation, of the standard required to justify a finding of Licence contravention and a financial penalty (see paragraph 1.6 below).

Financial penalty

- 1.3 Royal Mail believes that Postcomm has not discharged its duty to have regard to its Statement of Policy in relation to Financial Penalties (the "Statement of Policy") in this case. Had it paid such regard, it could not have resolved to impose a penalty. Therefore the imposition of a financial penalty is not justified and unlawful.

Procedure

- 1.4 Postcomm also failed to have regard to its Statement of Policy because, as the record shows, it appeared to have made up its mind to fine Royal Mail before it had allowed Royal Mail the opportunity for a hearing on the facts that it was minded to rely on and the conclusion that it was minded to reach as to the occurrence of a Licence contravention. This is a serious procedural error which prejudiced Royal Mail's position.

Conduct

- 1.5 Royal Mail rejects Postcomm's unfounded and grossly unfair allegations that Royal Mail failed to exercise sufficient care regarding the accuracy of the information supplied and tended to provide unhelpful and evasive answers in response to Requests for Information issued by Postcomm under Condition 16 of the Licence ("RFI"s).

Substance

- 1.6 Royal Mail believes that Postcomm's substantive analysis in this case is incorrect. Postcomm failed to take due account of a sufficiently wide range of measures implemented by Royal Mail to improve quality of service performance. Postcomm also failed to assess whether Royal Mail's endeavours (to the limited extent considered by Postcomm) were reasonable.

2 **Financial penalty**

- 2.1 The approach adopted by Postcomm in this investigation (see section 5) failed to assess the steps Royal Mail took to discharge its obligation to use all reasonable endeavours to meet its PCA Licence targets to anywhere near as comprehensive an extent as is demanded to support a finding of Licence contravention and a financial penalty proposal. Therefore there is no foundation for a financial penalty in this case.
- 2.2 In addition Postcomm has not discharged its statutory duty to have regard to its Statement of Policy in deciding whether to impose a penalty or in determining the amount of any penalty.¹

Financial penalty not appropriate

- 2.3 According to its Statement of Policy (paragraph 13) Postcomm must consider whether it is appropriate to impose a penalty. Royal Mail submits that a financial penalty is not appropriate in circumstances where Royal Mail made all reasonable endeavours to meet its Licence targets, where this is corroborated by the fact that quality of service performance in each of the PCAs concerned is now above the relevant target level in the year to date, and where Postcomm considers that it does not need to impose an enforcement order on Royal Mail.
- 2.4 Royal Mail notes that in its March 2005 report on Quality of Service Performance Postcomm stated “...*Royal Mail personnel had come through a period of extensive change in which, taking the year as a whole, significant progress had been made. To be found not to have used all reasonable endeavours in those circumstances, and to face the possibility of a financial penalty, would be de-motivating.*”² The imposition of a financial penalty on Royal Mail in this case would be similarly de-motivating and unnecessary.

Starting point

- 2.5 Postcomm’s Statement of Policy (paragraph 14) provides that the starting point for determining the amount of any penalty is the financial benefit accruing to Royal Mail or the burden imposed on others, with a view to ensuring that Royal Mail does not benefit from breaching its Licence either in terms of profit to itself or costs imposed on its competitors.
- 2.6 No costs were imposed on competitors. Postcomm does not seek to argue that any costs were imposed on competitors.

¹ Postal Services Act 2000, section 31(2)

² Paragraph 5.19

- 2.7 As regards profit to Royal Mail, Postcomm's statement at paragraph 6.8 of the Report that it "*considers that there is a financial benefit to Royal Mail...*" is mere assertion; it is not substantiated by any evidence. Nor is there any relationship between it and the starting point for deciding the amount of any penalty.
- 2.8 Royal Mail does not make profit or save money on mail which fails to meet quality of service targets. Such mail is likely to represent an increased cost to the business because of the additional work involved in processing it. In addition, the availability of customer compensation and the regulatory cost of non-compliance give Royal Mail a strong financial incentive to meet these targets. Royal Mail has therefore incurred significant expenditure specifically to improve quality of service. For example:
- many PCAs, including those involved in this investigation, have a quality of service improvement team, led by a senior manager, which is dedicated to identifying causes of quality of service underperformance, analysing quality of service data and driving quality of service improvement. These teams input into Royal Mail's quality of service performance management regime (described in section 5 below). The annual estimated costs of these teams in 2005/06 for the PCAs concerned in this investigation are £306,000 for West (includes West Central London), £220,000 for South (includes South East London) and £141,000 for East (includes East London);
 - Royal Mail has invested resource in the PCAs concerned to deal with the challenge of maintaining and improving quality of service at a time of continuing growth in delivery points. For example, in South London the additional estimated costs of servicing the increased number of delivery points in the Area since 2001/02 are £710,000 in terms of extra resource and £280,000 in terms of extra equipment; and
 - Royal Mail has invested significant sums in new buildings in South and East London to combat space constraints which were impacting on quality of service. Royal Mail spent £38 million on a new mail centre at Bromley by Bow (East London) in 2002/03 and £8 million on a new delivery office at Victoria (South London) in 2005/06.
- 2.9 Postcomm asserts that there is a clear detriment to customers (paragraph 6.8), but this is not a relevant consideration for determining Postcomm's starting point within the terms of Postcomm's Statement of Policy. To the extent that customers are affected, compensation is available in appropriate circumstances under Royal Mail's compensation schemes (see below).
- 2.10 Nor has Postcomm considered whether the penalty will provide a realistic, reasonable and proportional incentive to continuing compliance as it is required to do under its Statement of Policy (paragraph 14). For the reasons set out above, Royal Mail submits that the penalty will not provide a realistic, reasonable and proportional incentive to continuing compliance.
- 2.11 Thus Postcomm has established merely an arbitrary or token starting point for financial penalty.

Double counting

- 2.12 In setting its starting point Postcomm has double-counted the traffic assumptions for South East London in respect of the volumes which failed both targets (i.e. intra and posted). Royal Mail has calculated that the penalty is overstated by £4,000.

Aggravating and mitigating factors

- 2.13 Compensation for delayed mail is available in appropriate circumstances under Royal Mail's compensation schemes. Postcomm should have taken this into account in line with its Statement of Policy (paragraph 16). The total amount paid to customers in the PCAs concerned under the compensation scheme in 2004/5 was approximately £9,000.
- 2.14 For the reasons set out in section 4 below Royal Mail does not accept that its conduct should be considered as an aggravating factor.

3 Procedure

- 3.1 In making a finding that Royal Mail has infringed its Licence Postcomm is exercising significant powers which require it to observe a high standard of due process.
- 3.2 Royal Mail has limited rights to appeal the substantive decision made by the Commissioners. Postcomm therefore has a duty to ensure due process prior to a finding of infringement or the imposition of a penalty. Postcomm did not discharge this duty in the present case.
- 3.3 Postcomm's Statement of Policy says (at paragraph 10) that Postcomm will give the Licence holder an opportunity for a hearing on the facts Postcomm is minded to rely on and the conclusion Postcomm is minded to reach as to the occurrence of a Licence contravention before a decision is taken to propose a penalty. The purpose is to allow the Licence holder to make oral representations before Postcomm's mind is made up.
- 3.4 In this case Postcomm did not offer Royal Mail the opportunity for a hearing before it took the decision to propose a penalty. Postcomm sent a draft of its decision document to Royal Mail on 27 September 2005. This draft stated (at paragraph 9 of the Executive Summary) that Postcomm was minded to consider that it was appropriate to impose a financial penalty on Royal Mail. Postcomm did not offer Royal Mail the opportunity for a hearing until 27 October 2005, when it sent Royal Mail a further draft of the document, the day after Royal Mail had reminded it of this obligation in the context of Postcomm's report on Zonal Downstream Access. Therefore, although the letter refers to the offer of a hearing in accordance with the Statement of Policy, that policy had clearly already been breached. Even then, the accompanying draft of the document stated (at paragraph 2.4) that Postcomm had decided to impose a penalty of £250,000 on Royal Mail.
- 3.5 Postcomm had clearly made up its mind to fine Royal Mail before it had allowed Royal Mail the opportunity for a hearing on the facts that Postcomm was minded to rely on and the conclusion that Postcomm was minded to reach as to the occurrence of a Licence contravention. This is a serious procedural error which prejudiced Royal Mail's position. It also meant that it was difficult for Postcomm to withdraw or scale down its findings of Licence breach or proposal for a financial penalty in light of representations from Royal Mail as to do so would have amounted to admitting to procedural error.

4 Royal Mail's conduct

- 4.1 Postcomm's allegations about Royal Mail's conduct are unfounded and grossly unfair. Royal Mail rejects them.
- 4.2 Royal Mail co-operated with Postcomm at all stages of the investigation and responded in good faith to all of Postcomm's informal and formal requests for information, documents, meetings and presentations. It has never frustrated Postcomm's investigation.
- 4.3 Royal Mail disputes the allegation that it failed to exercise sufficient care regarding the accuracy of the information supplied. Postcomm states (at paragraph 5.5) that "*...Royal Mail's responses to...RFIs revealed a number of contradictions and inconsistencies with information it had supplied voluntarily and in responses to other RFIs. Further contradictions arose when Postcomm sent Royal Mail a draft report to check for factual accuracy...*". This is not the case. In one instance Royal Mail inadvertently supplied incorrect information, in a response to the RFI dated 10 August 2005. Royal Mail incorrectly transposed the audit results for the West Central PCA into Postcomm's preferred format. The correct audit results were supplied in response to a further RFI dated 26 August 2005. Royal Mail realised that incorrect information had previously been supplied when Postcomm requested clarification of the discrepancy in a letter dated 14 October 2005. Royal Mail wrote to Postcomm on 27 October 2005 to apologise for its earlier mistake and confirmed that the correct audit results for West Central were those that had been submitted in response to the RFI dated 26 August 2005.
- 4.4 Royal Mail also disputes the allegation that it "tended" to provide unhelpful and evasive answers in response to requests for information. Both of the examples quoted by Postcomm in paragraph 5.8 of the Report are taken from a response in which Royal Mail was seeking to clarify a difference in terminology between Royal Mail and Postcomm, and relate to a period in which this was being undertaken in an attempt to help expedite the completion of Postcomm's report. Following protracted correspondence in which Royal Mail had sought to explain to Postcomm the deficiencies in the scope and methodology of its review, Royal Mail had orally proposed to Postcomm after the latter's letter of 27 October 2005 and draft report that, rather than pursue a fruitless quest for agreement on this, it would be preferable to draw the process to a close in a way that enabled both parties to move on without having to accept the other's position. Postcomm accepted this. It was to be done by Royal Mail indicating the terms on which it need not accept the report, but equally did not feel compelled formally to challenge it. However, in response to Royal Mail's mark-up of the draft report (which was produced by Royal Mail as part of the agreed solution), Postcomm issued a series of draft and other RFIs insisting in effect that Royal Mail accept in full the basis on which Postcomm's original findings were based. It was Royal Mail's attempts to reconcile Postcomm's terminology with its own in a way which did not wholly prejudice its position that Postcomm now sees fit to call unhelpful and evasive.
- 4.5 Postcomm had had numerous other opportunities to request clarification or further explanations on these points but had chosen not to do so.

5 **Substance**

- 5.1 Postcomm's substantive analysis in this case is incorrect. Royal Mail's key contentions are set out below.

Background

- 5.2 It is Royal Mail's principal contention that Postcomm was made aware of, and hence had access to, the full range of information available within Royal Mail on how it measures and assesses its performance in terms of quality of service and the measures it took to improve that performance; but that despite this, and despite continual reminders from Royal Mail to pay heed to this material, Postcomm persisted in restricting its assessment to just a few indicators which are not representative of Royal Mail's endeavours in this area.
- 5.3 Below we describe this information and the efforts made by Royal Mail to persuade Postcomm to focus on it; and then describe how in Royal Mail's view Postcomm nonetheless adopted a deficient scope and methodology based on its partial and increasingly selective observations. In the early stages of the investigation, it was unclear what hypothesis Postcomm was seeking to test, and by what mode of analysis it would proceed. It later became clear that Postcomm was focusing almost exclusively on limited aspects of Royal Mail's PCA action plans (see paragraph 5.5 below), which are themselves only one component of Royal Mail's endeavours and furthermore that Postcomm's analysis was not capable of assessing whether those endeavours were reasonable.

Information supplied to Postcomm during the investigation

- 5.4 Different types of quality of service action plans must be distinguished. Royal Mail's Licence requires it to submit a national quality of service action plan to Postcomm (and Postwatch) each year. This annual action plan sets out the actions Royal Mail intends to take to improve quality of service performance at a national level in the forthcoming year.³ The Licence also requires Royal Mail to produce quarterly reports on performance against quality of service targets in the previous quarter for Postcomm (and Postwatch).⁴
- 5.5 During the course of the investigation Postcomm asked Royal Mail to submit local (i.e. PCA level) action plans for 2005/06, 2004/05 and for 2001/02 to 2003/04. It also asked the Area General Managers (the "AGM"s) responsible for the PCAs concerned to present to Postcomm the main ongoing quality of service problems that they were tackling in their PCAs.

³ Condition 4(8)(b)

⁴ Condition 4(8)(a)

- 5.6 Postcomm also attended individual sessions with the AGMs responsible for the PCAs concerned at which each AGM gave a presentation on the management processes used to decide, implement, monitor and update quality of service improvement actions (see below).

Postcomm's sources of information outside the investigation

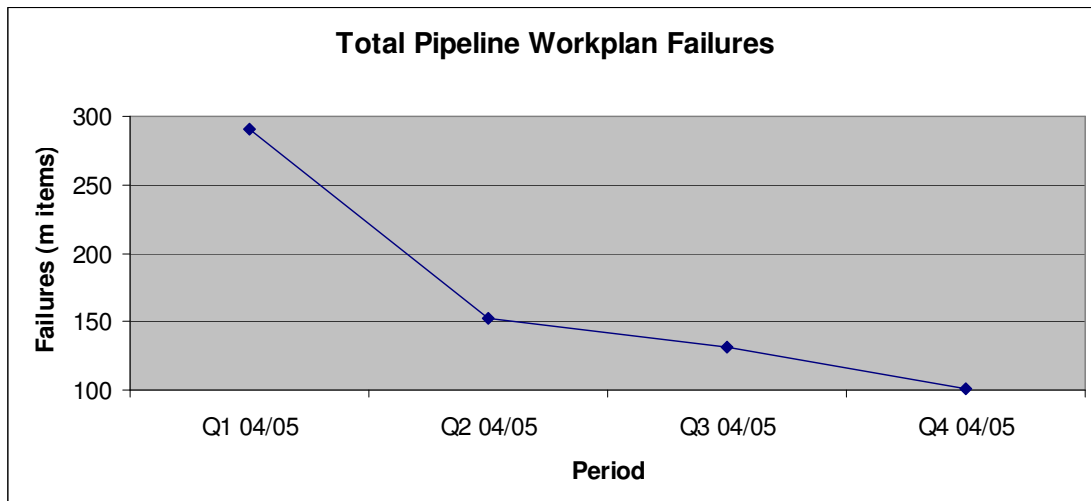
- 5.7 In addition to the information which Royal Mail supplied during the course of the investigation Postcomm had access to information on Royal Mail's quality of service performance from a range of sources. As noted above Postcomm receives the national quality of service action plan on an annual basis and detailed updates and reports on performance against the Licence targets on a quarterly basis. Postcomm also has monthly sessions with Royal Mail's Standards of Service Compliance Officer at which both national and PCA level quality of service performance over the previous month is reviewed. Postcomm (and Postwatch) also attend formal quality of service review sessions with Royal Mail every six months at which performance against all the quality of service targets, including PCA level targets, is discussed. The agenda for these twice yearly sessions is set by Postcomm and Postwatch. The sessions are led by Royal Mail's Chief Executive and Director of Operations. Postcomm did not consider the output of these sessions in its investigation.

Measures taken by Royal Mail to improve quality of service at national level

- 5.8 Royal Mail has taken a number of measures at a national level which have also contributed to improvements in quality of service performance at PCA level in 2004/05. Postcomm did not consider these in its investigation.
- 5.9 Royal Mail reorganised its senior management following an earlier shortfall in meeting quality of service targets in 2003/04. As part of this reorganisation a new Director of Operations was appointed and the Chief Executive assumed responsibility for quality of service in the Letters business. They introduced a "24 hour fix logic" system specifically to improve quality of service performance at national and PCA level. Details of this system were made known to Postcomm through the national quality of service action plan for 2004/05 submitted to Postcomm on 28 May 2004 in which Royal Mail explained (at paragraph 36) that "*...Performance management and review will be further developed to introduce a daily in-process focus on the operations pipeline. The aim will be to ensure all operations units deliver to workplan with a primary focus placed on clearances within Outward Mail Centres, Network and Distribution Centres, Inward Mail Centres and Delivery Offices. This will involve all levels of operations management taking part in a hierarchy of daily conference calls and meetings. These meetings will focus on the root causes of any workplan failures and establishing single point accountability for delivering remedial actions on a timely basis. In addition, a weekly meeting will be held between the Chief Executive Officer and the Operations Directorate to review performance and agree urgent actions to address root causes of any performance shortfall.*" Postcomm was also made aware of the introduction of "24 hour fix logic" system through the quarterly quality of service performance reports submitted in August and November 2004 and February and May 2005, the monthly sessions with

the Standards of Service Compliance Officer and the sessions with Royal Mail's Chief Executive and Director of Operations in June and December 2004.

- 5.10 The "24 hour fix logic" system involves daily monitoring of the performance of sub-processes within the pipeline identified as having the biggest potential impact on quality of service (namely clearance on late and night shifts in mail centres, delivery office clear frame policy and clearances in the distribution network). Performance is recorded in delivery offices and mail centres on a daily basis in reports which are completed by delivery office managers (in delivery offices) and shift managers (in mail centres). These reports inform the daily reviews of pipeline performance which take place (in either conference calls or face to face meetings) between delivery office managers and delivery sector managers in relation to delivery offices and between shift managers and mail centre managers in relation to mail centres. The delivery sector and mail centre managers in turn report daily pipeline performance issues to their AGM who in turn reports them on a daily basis to his or her Territory Director. Where possible, remedial actions are immediately put in place for the following day in line with the business's aim to fix problems within 24 hours. These actions are followed up the following day. A similar process exists for monitoring the daily performance of the national distribution network (i.e. all transport links in the operational pipeline).
- 5.11 The summaries of daily performance against the key pipeline sub-processes is reviewed on a weekly basis at a meeting between the Chief Executive, the Director of Operations, the Territorial Directors and the Network Director. Actions arising from these meetings are cascaded down the operational line via the Territorial Directors.
- 5.12 The number of failures at key stages in the pipeline reduced significantly in 2004/05 after the "24 hour fix logic" was introduced:



- 5.13 Royal Mail regards the reductions in pipeline workplan failures that have been achieved since introduction of the "24 hour fix logic" as the key driver of quality of service performance in 2004/05. Royal Mail has made this clear to Postcomm on several occasions including in the quarterly quality of service performance reports submitted to Postcomm in August and November 2004 and February and May 2005, the monthly

performance review sessions with the Standards of Service Compliance Officer and the sessions with Royal Mail's Chief Executive and Director of Operations in June and December 2004.

- 5.14 The daily performance management regime is supplemented by other measures of sub-process performance including collections, weekly and monthly data from self-audits undertaken by the unit concerned, external audit by Royal Mail's central audit team, end to end pipeline survey data, and customer complaints. Problems which cannot be solved through application of the "24 hour fix logic", i.e. those that require longer term remedial action, are logged. The log is reviewed formally on a monthly basis by the area management team but is updated (if necessary) in light of the daily and weekly performance management data. Royal Mail made Postcomm aware of this in the presentations on performance management given by the AGMs in June 2005, the national quality of service plan for 2004/05, the quarterly reports on quality of service performance, monthly sessions with the Standards of Service Compliance Officer and the sessions with Royal Mail's Chief Executive and Director of Operations in June and December 2004.
- 5.15 Royal Mail has also taken other measures at a regional or national level which have contributed to improvements in performance at PCA level, including in the relevant PCAs, in 2004/05.
- Prioritisation of infrastructure investments in London. As noted above, Royal Mail invested £38 million in a new mail centre at Bromley by Bow (East) in 2002/03 and £8 million in a new delivery office in Victoria (South) in 2005/06.
 - Establishment of the Quality Excellence Task Force to provide a central resource of operational experts to the less well performing PCAs in order to assist AGMs to identify causes of performance shortfall and measures necessary to address them.
 - Deployment of mandatory standards for traffic forecasting and contingency staff in mail centres which are key to supporting mail centre clearance and hence the 24 hour fix logic.
 - Investment in new equipment to identify mail items that are stuck together as they pass through sorting machines.
 - Measures to anticipate vacancies and ensure they are filled quickly, changed resourcing policy to favour permanent rather than fixed term contracts, and reduced reliance on agency staff.
 - Renewed focus on reducing sick absence through rigorous application of attendance procedures and other means to incentivise 100% attendance.
 - Renewed efforts in induction training and support for new entrants.
 - More effective deployment of changes to working practices, taking advantage of an improved industrial relations climate.

- Continuing refinement and optimisation of the distribution network following the Transport Review in 2003/04.
- Introduction of new management in units that were identified as having a significant adverse impact on quality of service performance.

All of these measures were described to Postcomm in the national quality of service action plan for 2004/05, the quarterly quality of service performance reports, the monthly performance review sessions with the Standards of Service Compliance Officer and the sessions with Royal Mail's Chief Executive and Director of Operations in June and December 2004.

Measures taken by Royal Mail to improve quality of service in the PCAs concerned

- 5.16 As noted above, in January 2005 Postcomm asked Royal Mail to supply local action plans for each of the PCAs involved in the investigation. It also requested presentations from the AGMs responsible for the PCAs under investigation. Postcomm invited the AGMs *"...to present their analysis of the continuing nature of the failures and their remedial plans since 2001-02. The Action Plans should focus on providing an explanation of how the achievement of the PCA targets has been prioritised at territorial level, and also at area level along with an explanation of the continuing nature of the quality problems and why both the Territorial Head and AGM believe the targets have been consistently missed. The Action Plans should also include actions with associated timescales, Quality of Service outputs and accountabilities since 2001-02. Additionally these should also include assurances on plan deployment and expected timescales for achieving the targets along with details of the processes in place to be taken to secure compliance..."*⁵ [emphasis added].
- 5.17 In March 2005, in response to Postcomm's request, Royal Mail submitted PCA action plans that set out the causes of quality of service underperformance of a continuing nature that were being tackled in each PCA in 2004/05 and the key issues of a continuing nature which had been addressed in the period 2001/02 to 2003/04. By definition these PCA action plans did not include the numerous causes of quality of service underperformance that were successfully resolved in real time through application of the "24 hour fix logic". They only included causes of underperformance which required longer term attention.
- 5.18 In their presentations to Postcomm (which also took place in March 2005) the AGMs outlined the main causes of quality of service underperformance of a continuing nature in 2004/05 in their PCAs and the actions that had been put in place to tackle them.

⁵ Letter dated 4 February 2005 from Postcomm to Royal Mail

- 5.19 In April 2005 Postcomm asked Royal Mail to supply local action plans for 2005/06 for the PCAs involved in the investigation. It asked Royal Mail to “...provide updated 2005-05 Action Plans at the beginning of May for those PCAs currently under scrutiny. We would expect these Action Plans to provide a full update against the root causes identified and remedial actions planned for deployment as detailed in the original Action Plans submitted to Postcomm in March...”⁶ In early May 2005 Royal Mail submitted PCA action plans setting out the problems of a continuing nature that were being tackled in each PCA in 2005/06.
- 5.20 Later in May 2005 Postcomm wrote to Royal Mail seeking further information on how Royal Mail identifies causes of quality of service underperformance. It stated “...[the PCA action plans which Royal Mail submitted in March and May 2005] show the root causes, remedial actions and anticipated/actual outcomes. However they do not provide any information about how Royal Mail initially identified the root causes of poor performance, nor how decisions are made about which remedial actions are appropriate for each root cause of poor performance (and which are not) or what additional remedial actions may need to be implemented for consistently underperforming PCAs. When we spoke you explained that there is no one document that Royal Mail uses for this process. Rather, as I understand it, there are various different sources of information that AGMs use, as well as their own experience. It would therefore be helpful if, as you suggested, we could discuss with one or two of the AGMs the processes and information they use to develop and review their Action Plans.....”⁷
- 5.21 Following this request Royal Mail made arrangements for a senior Postcomm team to attend individual sessions with the AGMs in June 2005. At these sessions each AGM gave a presentation on the daily, weekly and monthly management processes, described in paragraphs 5.9 to 5.14 above, used to identify causes of quality of service underperformance and identify, implement, monitor and update remedial actions.

Postcomm has not considered the totality of Royal Mail’s endeavours

- 5.22 In undertaking an investigation into whether Royal Mail used all reasonable endeavours to meet its PCA Licence targets, particularly in circumstances where a finding of Licence contravention and/or a financial penalty proposal might ensue, Postcomm has an obligation to take into account a sufficiently comprehensive and representative range of the measures taken by Royal Mail to meet its Licence obligation. Postcomm has not discharged this obligation in this case.

⁶ Letter dated 11 April 2005 from Postcomm to Royal Mail

⁷ Letter dated 12 May 2005 from Postcomm to Royal Mail

Postcomm's selection of "key" root causes

- 5.23 Postcomm's approach focused on the existence or otherwise at different times of certain "key" root causes of underperformance in each PCA. The nomenclature "key root cause" is one chosen by Postcomm. It represents Postcomm's belief that the root cause analysis set out in the PCA action plans is a comprehensive review of all causes of underperformance; that there are "key" root causes the addressing of which will resolve the majority of any underperformance; and that the existence of outstanding root causes implies the failure of measures taken to address them and thus a failure to use all reasonable endeavours to apply those measures.
- 5.24 Royal Mail has explained the defects of this logic on a number of occasions. For example, in its response to Postcomm's RFI dated 26 August 2005 Royal Mail explained: *"we have responded to the Condition 16 requirement, as stipulated, in respect of the specific issues you have identified (eg East London - missorts). However, we do not understand why you have limited the requirement to these particular issues nor, by implication, why you regard these as the key issues. Q of S performance is based on a highly complex set of issues and it would be wrong to reduce it to a simple, single issue process. The action plans you have received for 2004/5 and 2005/6, and the presentations you have heard from the Area Managers, have set out a number of issues which are being tackled with vigour which have directly influenced Q of S performance in the past (not least the cultural issues at, for example, South and East London) and our evidence of reasonable endeavours therefore is not confined to the limited issues which you have identified"*. Other occasions on which Royal Mail questioned Postcomm's focus on the "key" root causes include Royal Mail's response (dated 7 October 2005) to Postcomm's draft decision document (sent to Royal Mail on 27 September 2005), at a meeting between Royal Mail and Postcomm on 26 October 2005, and in a letter from Royal Mail's solicitors to Postcomm dated 17 November 2005.
- 5.25 Royal Mail cannot therefore understand why Postcomm focused on these particular "key" root causes.
- 5.26 Postcomm says that it decided to focus on these issues *"...using information from the presentations and discussions with Royal Mail."*⁸ This cannot be true. Royal Mail did not identify the root causes cited by Postcomm as the key, principal or main source of underperformance in the PCAs concerned in the presentations by the AGMs in March and June 2005, in the PCA action plans submitted in March and May 2005 or subsequently. Royal Mail has certainly never suggested that they should be used as the basis of Postcomm's assessment of whether Royal Mail used all reasonable endeavours to meet its Licence targets – quite the reverse, as noted above.

⁸ Paragraph 3.10

- 5.27 Postcomm says that its "...meeting notes show that Royal Mail identified the key root causes of performance problems in each Postcode Area...".⁹ This is not true. The notes of meetings supplied by Postcomm¹⁰ (attached in the Annex to these representations) clearly do not show that the root causes which Postcomm has chosen to identify as "key" were identified by Royal Mail as the key root causes of performance problems in each PCA.
- 5.28 Postcomm's belief that quality of service underperformance can be reduced to a single or handful of "key" root causes is simplistic and incorrect. As noted in the extract from Royal Mail's response to Postcomm's RFI dated 26 August 2005 (see paragraph 5.24 above), in any given PCA there will be a number of causes of quality of service underperformance at any one time.

Postcomm's focus on PCA action plans

- 5.29 Postcomm focused its investigation on the PCA action plans which Royal Mail submitted in March and May 2005. In doing so Postcomm ignored the introduction of the "24 hour fix logic" which, as noted above, was the biggest driver of quality of service performance in 2004/05. Postcomm also ignored the other national measures described above which had a positive impact on quality of service performance at PCA level. As noted above, Postcomm was aware of the introduction of "24 hour fix logic" and the additional measures through the national quality of service action plan for 2004/05, the quarterly quality of service performance reports, the monthly sessions with the Standards of Service Compliance Officer and the sessions with Royal Mail's Chief Executive and Director of Operations in June and December 2004.
- 5.30 The PCA action plans requested by Postcomm are not documents which are used as part of the performance problem identification and action planning process which happens on the ground in PCAs every day. As noted above they only include causes of quality of service underperformance that cannot be solved through application of the 24 hour fix logic and which as a result require some longer term remedial action. This format was consistent with Postcomm's request for action plans focusing on the "...continuing nature of the quality problems...", i.e. the problems requiring longer term remedial actions as opposed to the problems which had been identified and resolved in real time using the 24 hour fix logic approach. It was also consistent with the format of PCA action plans supplied by Royal Mail in response to requests from Postcomm in previous years. Postcomm has never before regarded them as the central or only basis on which to assess Royal Mail's quality of service performance.

⁹ Paragraph 5.6

¹⁰ Postcomm supplied its meeting notes to Royal Mail at a meeting between Royal Mail and Postcomm on 26 October 2005

5.31 During the investigation Royal Mail reminded Postcomm that the PCA action plans were not suitable as the sole foundation for an assessment of whether Royal Mail used all reasonable endeavours. For example, in its response to Postcomm's Request for Information dated 26 August 2005 Royal Mail explained that: *"...it is important that [Postcomm] recognise – as has been described in the Quarterly Reports and explained in some detail by each of the Area Managers who you visited – that the QofS planning process is ongoing and iterative. The QofS plans for the PCAs under scrutiny which you called for in February and again in April this year were a summary document, at that point in time, of the principal QofS improvement activities; they were supported by a range of working documents and management processes. They were neither definitive nor tablets of stone. The sessions you held with the Area Managers clearly demonstrated that the performance management process which is rigorously followed at each Area ensures that the QofS plan is subject to weekly review and monthly refresh – based on the current, latest in process, audit and end to end diagnostic information....."*

Postcomm failed to assess whether Royal Mail's endeavours were reasonable

5.32 Postcomm also failed to assess whether Royal Mail's endeavours to meet its PCA targets (to the limited extent considered by Postcomm) were reasonable.

5.33 In order to assess the reasonableness of Royal Mail's endeavours to meet its PCA targets Postcomm should have considered whether, in the circumstances prevailing at the relevant time:

- Royal Mail had adequate processes in place to identify causes of, and measures to address, quality of service underperformance;
- those processes were effectively applied; and
- the steps which Royal Mail took to implement the measures to address quality of service underperformance were reasonable.

5.34 Postcomm abdicated this responsibility completely in this case. It considers that *"...it is reasonable to assume ... that the actions Royal Mail says it intends to take, to meet scheduled standards, can be expected to be effective in improving service quality"*¹¹ and instead assessed whether Royal Mail "resolved" the "key" root causes of underperformance applying the tests set out in paragraph 3.14 of the Report. This does not amount to an assessment of whether Royal Mail had adequate processes, applied them effectively or whether the steps taken by Royal Mail to implement those measures were reasonable. Whether Royal Mail resolved the "key" root causes of

¹¹ Paragraph 2.14

underperformance is not a valid proxy for whether it used all reasonable endeavours to meet its Licence targets.

Postcomm's tests are flawed

- 5.35 The tests used by Postcomm to determine whether Royal Mail resolved root causes of quality of service problems are wrong. They do not enable it to conclude that Royal Mail failed to resolve the key root causes even if (which Royal Mail does not accept) such an approach could be used to justify a finding of Licence breach. Royal Mail pointed this out to Postcomm on several occasions.¹²

No direct cause and effect relationship between root causes and audit failure

- 5.36 Postcomm repeatedly criticises Royal Mail on the basis that audit questions were failed in one year in respect of causes of quality of service underperformance identified in PCA action plans in previous years. Postcomm has assumed that audit failures in one year indicate that root causes of underperformance identified in previous years were not successfully resolved (otherwise the audit would have been passed) and that this is evidence of a lack reasonable endeavours on Royal Mail's part.
- 5.37 However, there is no direct cause and effect relationship between root causes and audit failure; failing an audit question does not mean that Royal Mail has failed to resolve the root cause of underperformance concerned.
- 5.38 Postcomm has applied a simplistic and erroneous correlation between root causes, audit questions and quality of service. The implication of Postcomm's test is that all reasonable endeavours can be found to have been used only where, across the entire pipeline, a totally flawless operation exists.
- 5.39 There are several further reasons why audit cannot in itself be a measure of reasonable endeavours to meet quality of service targets.
- 5.40 For example, audit does not quantify the impact on end to end quality of service. Failing an audit question does not correlate to an end to end quality of service failure. The audit process is a snapshot at one point in time of conformance to a standard of 100% achievement. The marking frame is binary, i.e. if 100% is not achieved a "fail" is recorded. Postcomm has not considered either the scale or impact on quality of service of the failed audit question nor recognised that audit is only one of several contributors to the process of identifying potential causes of quality of service underperformance and measures necessary to tackle them.

¹² See for example the email from Royal Mail to Postcomm dated 8 September 2005, Royal Mail's response (dated 7 October 2005) to Postcomm's draft decision document (sent to Royal Mail on 27 September 2005) and the letter from Royal Mail's solicitors to Postcomm dated 17 November 2005

- 5.41 Audits are shift- and unit-based and may not necessarily reflect quality of service at PCA level which will be dependent on all the other elements of the pipeline. Since quality of service concerns the whole pipeline, any measure of reasonable endeavours must take account of the whole pipeline and not merely an isolated element of it.

Remedial actions and audit control standards

- 5.42 Postcomm makes numerous findings that remedial actions were subject to audit control standards and so “should have been carried out anyway”, rather than being actions specifically developed to respond to problems in a PCA.
- 5.43 Postcomm appears to have construed the existence of mandatory operational standards in areas where Royal Mail identified remedial actions as implying that any quality of service underperformance is due to non-adherence to these mandatory operational standards and that in some sense these “failures” are somehow more grave than they otherwise might be. In fact, for the reasons set out above, it is not automatically deducible that evidence of an audit failure amounts to a breach of mandatory operational standards having an adverse impact on quality of service performance. Indeed breaches of mandatory operational standards could exist independently of whether any audit failure is recorded, and vice versa.
- 5.44 The inclusion in the PCA action plans of remedial actions that were mandatory operational standards therefore does not mean that Royal Mail was not doing things that it should have been doing. For example, remedial actions might be included in action plans in order to drive quality of service performance (rather than in response to an identified performance failure). Royal Mail does not set an upper limit on quality of service performance and for so long as something is thought to contribute to improvements in performance it is right that attention should continue to be focused on it as a continuous action in the improvement process.
- 5.45 In addition, in some cases Postcomm has wrongly concluded that remedial actions were mandatory operational standards. For example, in relation to West Central London Postcomm has stated that the remedial actions to educate customers about correct presentation of their mail (which were developed in response to poor customer presentation being identified as a root cause of performance shortfall) were actually mandatory audit control standards (namely that a process must be in place to record any customer non-compliance with presentation standards).¹³ The inclusion in the PCA action plan of remedial actions to educate customers about the required mail presentation standards does not indicate that Royal Mail had failed to implement the process to record customer non-compliance with presentation standards as required by the mandatory operational standards.

¹³ Appendix 3 (page 108)

Repeated root causes and remedial actions

- 5.46 Postcomm makes numerous findings that Royal Mail repeatedly identified the same root causes over a period of time and that this indicates that the original remedial actions were not wholly effective at resolving the issue. This is taken as evidence that Royal Mail did not use all reasonable endeavours.
- 5.47 Repeated identification of root causes or remedial actions over several years does not equate to a failure to resolve the underlying problem. Royal Mail has pointed out that there are a number of legitimate reasons why root causes or remedial actions may continue to appear on action plans in subsequent years. For example, as noted above Royal Mail does not set an upper limit on quality of service performance; the process of improvement is continuous and it is right that root causes or remedial actions should remain in focus for so long as they are thought to contribute to underperformance or further improvements. In addition a root cause might be resolved in one unit within a PCA in one year but occur in a different unit within the PCA in the following year. The same root cause might therefore appear in a PCA action plan but in relation to a different unit within the same PCA.

Postcomm has failed to apply its own tests

- 5.48 In addition, Postcomm has failed properly to apply its own tests (set out at paragraph 3.14) for determining whether Royal Mail resolved root causes of underperformance.
- 5.49 For example, Postcomm's second test asks "*...do the failures in meeting the audit control standards show that Royal Mail had not effectively resolved the key and/or outstanding root cause identified?*". However, there is no evidence in the Report that Postcomm considered whether an audit failure showed that Royal Mail had not effectively resolved the key and/or outstanding root cause identified. Postcomm has merely assumed this to be the case.
- 5.50 Postcomm's third test asks "*...do the audit control specifications show that remedial actions identified in Royal Mail's Action Plans to address the key and/or outstanding root cause should have been in place anyway (notwithstanding the fact that they may have been included in the Action Plans to ensure continued monitoring of potential areas of weakness)?*". However, there is no evidence in the Report that Postcomm considered whether remedial actions should have been in place anyway, as opposed to their having been included in the action plans to ensure sustained attention to potential areas of weakness.
- 5.51 Postcomm's fourth test asks "*...did Royal Mail repeat any of the remedial actions identified in its Action Plans to address the key and/or outstanding root cause...?*". However, there is no evidence in the Report that Postcomm considered whether the fact that a remedial action was repeated in successive years really meant that there was a failure or a material impact on quality of service.

Postcomm failed to demonstrate lack of all reasonable endeavours

- 5.52 Postcomm has not demonstrated to the required legal standard that Royal Mail failed to use all reasonable endeavours to meet its PCA targets.
- 5.53 The “all reasonable endeavours standard” affords Royal Mail a reasonable discretion to choose between alternative approaches to the issues that it faces. In order to conclude that Royal Mail did not use all reasonable endeavours Postcomm needs to demonstrate that the presence or absence of a specific step or measure has led to a specific and present risk (i.e. non achievement of Licence targets), and that this is not sufficiently mitigated by some other step. Postcomm has not done so in this case.
- 5.54 Postcomm makes various assertions that there were additional measures that Royal Mail could have taken that would have been likely to have had a positive impact on quality of service performance.¹⁴ This is insufficient. As noted above Postcomm must demonstrate that there were specific steps or measures that would have been likely to have had a positive impact on performance.
- 5.55 Postcomm also failed to make any assessment of whether the failures to resolve key root causes had any impact on quality of service. Postcomm says that it “... *does not consider it necessary to attach any weighting or prioritisation to the remedial actions that Royal Mail did not implement or failed to implement consistently, or to the audit control standards that were failed. Nor has [Postcomm] attempted to link these to any estimate of an impact on Quality of Service...*”¹⁵ This is inadequate. It is also inconsistent with Postcomm’s statement (at paragraph 2.15 of the Report) that “...*[i]n deciding whether Royal Mail has satisfied its licence obligation to use all reasonable endeavours to meet its Quality of Service targets Postcomm therefore seeks to.....consider, when Royal Mail identifies actions that appear reasonable but have not been taken, whether the failure to have taken them has contributed, in a manner that is material, to the failure to meet Quality of Service targets.*” [emphasis added]. As noted above, Postcomm must demonstrate that there was a specific and present risk of an adverse impact on quality of service leading to non achievement of the target concerned.

¹⁴ See for example paragraph 4.21

¹⁵ Paragraph 3.16