

Reporting Guidelines for “Serious Incidents”

A Decision Statement

11 April 2006

SUMMARY

- S1 This document explains the basis of the decision made by Postcomm on the reporting guidelines for 'Serious Incidents' under the terms of the Code of Practice for Mail Integrity. The overall purpose of the Incident Guidelines is to ensure that where a mail integrity incident has occurred that is serious, Postcomm is made aware of this and can take appropriate action (in consultation with the relevant Licensee) including prosecuting where it is not the Licensee's practice to do so.
- S2 In March 2005, Postcomm published a consultation document seeking views on the introduction of an industry Code of Practice for Mail Integrity ("the Code") in time for the full opening of the postal market on 1 January 2006. This covered amongst other things, the proposed information and reporting requirements to be included in the Code. The Consultation Document required different reporting requirements for serious incidents and included proposals on how a serious incident should be defined. The views from respondents to these proposals varied and Postcomm concluded that further discussion with the industry was needed.
- S3 In August 2005 Postcomm published its Decision Document, "Protecting the Integrity of the Mail – A Code of Practice". This contained amendments to its original information and reporting requirements, having taken account of respondents' views. It acknowledged that further discussion was required on the Incident Guidelines which set out guidance on what constitutes a serious incident.
- S4 On 21 November 2005, Postcomm issued a Consultation Paper to facilitate further discussion on the Incident Guidelines and asked for responses by 13 December 2005.
- S5 A draft of the Incident Guidelines was sent out to stakeholders on 23 December 2005 with these revisions from the Consultation Paper. The proposal asked for responses by 6 January 2006.
- S7 Postcomm proposed that, where a Licensee does not prosecute its employees (including under sections 83 and 84 of the Postal Services Act), certain incidents would qualify as a 'serious incident' and would therefore need to be reported to Postcomm in accordance with paragraph 7.3 of the Code and in support of Postcomm's prosecution policy.
- S8 Postcomm has given careful consideration to the representations received to its November consultation paper and is grateful for the responses received. Respondents' views have been fully considered in drafting the final version of the Guidelines. Responses have been particularly helpful in highlighting where Postcomm's proposals needed further explanation or where alterations to the draft Guidelines were required.
- S9 Postcomm proposes that the Guidelines will take immediate effect. Postcomm intends to review the reporting criteria for serious incidents in June 2007. This will give sufficient time for the reporting processes to be introduced and operated by Licensees and enable Postcomm to better assess the effectiveness of the reporting

criteria based upon a reasonable period of data capture. Postcomm would, however, consider any requests from licensees for changes to the Incident Guidelines prior to this date in order for the Incident Guidelines to remain fit for purpose.

- S10 If you would like to discuss any aspect of this document please contact Stephen Green by telephone (020 7593 2161) or email stephen.green@psc.gov.uk. Postcomm is always happy to meet stakeholders to discuss policies and listen to stakeholder views.

INTRODUCTION

The Postal Services Act 2000 (“the Act”) established the Postal Services Commission (“Postcomm”) as the regulatory body for the postal services industry in the United Kingdom. Postcomm’s business plan, which can be found on its website www.psc.gov.uk, gives details of its duties, functions, objectives and work programme.

Postal services play a vital role in modern commercial and social life, providing communications between individuals, businesses, organisations and government. Within the UK, in 2004/05, approximately 24 billion items were handled in the addressed mail market with associated revenue of £6.5 billion.

In the discharge of its duties under the Act, Postcomm’s vision for the market is “a range of reliable, innovative and efficient postal services, including the universal postal service, valued by customers, and delivered through a competitive market”.

Postcomm’s statutory duties

Postcomm’s must exercise its functions in the manner which it considers is best calculated to ensure the provision of a universal postal service. The universal postal service consists of the delivery and collection of mail (not exceeding 20 kilograms in weight) at least once every working day and the provision of a registered postal service, all at affordable prices that are geographically uniform throughout the UK.

Subject to this, Postcomm is also charged with furthering the interests of users of postal services, wherever appropriate by promoting effective competition between postal operators. In doing so, Postcomm must have regard to the interests of those who are disabled or chronically sick, are of pensionable age, are on low incomes or who reside in rural areas.

Subject to both the duties above, Postcomm has a further duty to exercise its functions in a manner which it considers is best calculated to promote efficiency and economy on the part of postal operators.

Finally, in performing all its functions, Postcomm must have regard to the need to ensure that licensees are able to finance the activities authorised or required by their licences.

Postcomm believes that introducing Guidelines for the reporting of ‘serious’ incidents to Postcomm is consistent with its statutory duties.

Background

1. Sections 83 and 84 of the Act create offences for the intentional delay to or opening of a postal packet, without reasonable excuse, while it is being conveyed. These offences not only relate to mail which is conveyed under a licence but any ‘postal packet’. Penalties for such offences can include custodial sentences. The presence of these offences in the Act reinforces the importance of the integrity of mail.

2. Ensuring mail integrity is central to Postcomm's duty to protect the interests of mail users since it underpins the requirement in any postal market that as far as possible, mail posted by the sender reaches the intended recipient without being lost, stolen, damaged or interfered with.
3. Postcomm has taken on the role of taking action in the case of mail interference offences committed under sections 83 and 84 of the Act in relation to postal packets carried by licensees other than Royal Mail. Royal Mail has taken responsibility for taking action in respect of these offences for the postal packets it carries. Royal Mail does not have any special powers to carry out prosecutions; it does so on the same basis as Postcomm. Other operators can, if they want to, also carry out prosecutions on this basis.
4. The Code of Practice for Mail Integrity came into force on 1 January 2006. It established a licence requirement governing the reporting of information to Postcomm which will enable it to take action under the Act.
5. In its March 2005 Consultation Document, "Protecting the Integrity of the Mail – A Code of Practice", Postcomm set out, amongst other things, the proposed information and reporting requirements to be included in the Code. The Consultation Document required different reporting requirements for "serious incidents" and included proposals on how a "serious incident" should be defined. The views from respondents to these proposals varied and Postcomm concluded that further discussion with the industry was needed.
6. In August 2005 Postcomm published its Decision Document, "Protecting the Integrity of the Mail – A Code of Practice". This contained amendments to its original information and reporting requirements, having taken account of respondents' views. It acknowledged that further discussion was required on the Incident Guidelines which set out guidance on what constitutes a serious incident.

Consultation Paper – Incident Guidelines

Initial consultation

7. On 21 November 2005, Postcomm issued a Consultation Paper to facilitate further discussion on the Incident Guidelines and asked for responses by 13 December 2005.
8. The overall purpose of the Guidelines is to ensure that where a mail integrity incident has occurred that is serious, Postcomm is made aware of this and can take appropriate action (in consultation with Licensees) including prosecuting where it is not the Licensee's practice to do so.
9. Postcomm proposed that, where a Licensee does not prosecute (including under sections 83 and 84 of the Act), the following incidents would qualify as a 'serious incident' and would therefore need reporting to Postcomm in accordance with paragraph 7.3 of the Code and in support of Postcomm's prosecution policy:

- 15 % of total volume of mail lost, stolen, damaged or interfered with in one incident;
- multiple incidents which do not exceed the 10% threshold but where the same person is involved;
- single or multiple incident likely to constitute significant breach of licence;
- single or multiple incident involving arrest of an employee;
- single or multiple incident likely to lead to dismissal of an employee; or
- single or multiple incident involving mail of a "sensitive" nature e.g. debit or credit cards issued by financial institutions, passports etc.

Second consultation

10. After considering consultees' responses, Postcomm made some amendments to the definitions including:

- reducing the threshold for the number of items that are lost, stolen, damaged or interfered with in one incident to qualify as a "serious incident" from 15% to 10%. Postcomm lowered the percentage level for reporting in order to better tailor the requirements so that they are not only volume related but address incidents which may not involve high volumes of mail but which have other sensitivities;
- removing the requirement to report incidents "likely to constitute" a significant breach of licence. Postcomm considered that it would be difficult for licensees to determine what circumstances would constitute a significant licence breach. Postcomm monitors when incidents occur and can take action if it considers that a licensee may be in breach of its licence; and
- altering the requirement to report where the incident leads to a Relevant Employee being dismissed to a requirement to report where such person is subject to disciplinary proceedings. Postcomm made this amendment in order for it to comply with current employment legislation. It also allows a more proactive and consultative approach to be adopted in determining with Licensees if further action by Postcomm was necessary prior to individuals being dismissed.

11. A draft of the Incident Guidelines was sent out to stakeholders on 23 December 2005 with these revisions from the Consultation Paper. The proposal asked for responses by 6 January 2006.

Consideration of responses

12. This document considers the responses to the consultation on the reporting criteria for serious incidents and sets out Postcomm's decision on the subject. Annex A sets out the Guidelines for reporting of serious incidents by which compliance with the relevant parts of the Code will be enforced.

13. Postcomm received responses from Postwatch (the Consumer Council for Postal Services), the Mail Competition Forum ("MCF"), Target Express and Royal Mail; none of which was confidential.

Note that all Postcomm publications referred to in this statement are available on its website www.psc.gov.uk. Hard copies can be requested from Dionne Maneh on 020 7593 2115 or dionne.maneh@psc.gov.uk.

14. Postcomm sets out below the *proposed* definitions of what would constitute a "Serious Incident" under the Incident Guidelines, indicates what views each consultee had and then outlines the decisions Postcomm has taken and the reasons for these decisions.

Proposed Definition (1)

"the percentage of Code Postal Packets lost, stolen, damaged or interfered with in one incident exceeds 10% of the total volume of Code Postal Packets conveyed, received, collected, sorted, delivered or otherwise handled by a Relevant Employee that day;"

Respondents' views

15. Postwatch welcomed Postcomm's proposal to reduce the threshold of 15% to 10%. However, Postwatch still had the following concerns:
 - it believed that this threshold should be lower for sensitive mail (e.g. cheque books, credit cards, passports) and for these items proposed the threshold should be reduced to 5%;
 - it also thought a distinction should be made between accidental loss or damage and deliberate theft or interference; and
 - in addition, Postwatch suggested that single incidents of theft should also be reported to Postcomm as a "serious incident" on the first occurrence rather than as defined.

Postcomm's views

16. Postcomm believes that definition (5) in the Incident Guidelines deals with Postwatch's concern regarding sensitive mail (see Annex A).
17. The Incident Guidelines should be interpreted in accordance with the Code and the terms "lost, stolen, damaged or interfered with" are defined in the Code to exclude accidental loss or damage so it is clear that such occurrences do not need reporting.
18. Postcomm acknowledges the concerns Postwatch raised relating to having to report theft as a serious incident on the first occurrence rather than as defined. Theft is a stand alone offence and falls outside of Section 83 and 84 of the Act and the Guidelines. However, Postcomm does recognise that mail interference can lead to offences of theft being committed and that it may need to consider prosecuting for theft in order to protect the interests of consumers and the industry as a whole. Incidents of reported theft would be dealt with on a case by case basis and in consultation with the relevant Licensee.
19. Postcomm has therefore introduced an amendment into explanatory notes immediately preceding the Guidelines by adding the word "including" before "under sections 83 and 84 of the Act" and after "where Licensees do not take out

prosecutions.” This will cater for incidents of theft being reported to Postcomm as well as section 83 and 84 mail interference offences.

20. Postcomm has therefore decided not to change this definition from that proposed. The Incident Guidelines appended to this statement reflect this.

Proposed Definition (2)

"there is reason to believe that the same Relevant Employee has stolen, damaged or interfered with Code Postal Packets on at least one previous occasion"

Respondents' views

21. SMS sought clarification in definition (2) around the time limit to be taken into account when considering 'at least one previous occasion'.

Postcomm's views

22. Postcomm does not consider it necessary to impose a time limit by way of definition. It considers that this would present practical problems, in particular there would be a risk that some deliberate previous acts of interference would not be reported simply because the time limit had been exceeded. This accords with the intention of the Incident Guidelines which is to ensure that Postcomm is able to take an informed decision as to whether or not it would be appropriate to take further action against Relevant Employees in conjunction with the relevant Licensee.
23. Postcomm also recognises that "loss" in itself is not an offence nor does it necessarily constitute a mail integrity incident that would require reporting to Postcomm immediately for action to be taken. Postcomm would in any such cases expect licensees to address any issues of loss as part of their internal compliance.

Postcomm's views

24. Postcomm has therefore decided to amend the definition in (2) by removing "lost" from the definition from that proposed in the Incident Guidelines appended to this statement. However all licensees will have to report incidents of loss as part of the reporting requirements in the Code.

Proposed Definition (3)

"the incident or incidents involves a Relevant Employee being arrested for an offence or offences relating to interference with the mail"

Respondents' views

25. No substantive issues were raised regarding this definition but respondents did point out that there were drafting inconsistencies between this definition and definitions (1) and (2).

Postcomm's views

26. Postcomm has decided to maintain this definition but has taken the opportunity to clarify the precise wording by adding, “theft of, damage to” before “interference” and removing “mail” and adding “Code Postal Packets”.

Proposed Definition (4)

"the incident or incidents leads to a Relevant Employee being subject to disciplinary proceedings relating to interference with Code Postal Packets"

Respondents' views

27. The MCF raised a number of concerns relating to the reporting requirement in definition (4) of the Incident Guidelines. They thought that Postcomm would not have a balanced view of "serious incidents" involving mail interference offences occurring across the industry.
28. The MCF also felt that whilst they are required to report all "serious incidents" to Postcomm, there is no reporting requirement for Royal Mail to report "serious incidents" that do not result in prosecution and where disciplinary action for mail interference offences is taken.
29. The MCF believes Postcomm is imposing a disproportionate regulatory burden on Licensed Operators other than Royal Mail.
30. Respondents also pointed out that there were drafting inconsistencies between this definition and definitions (1) and (2).

Postcomm's views

31. The overall purpose of the Guidelines is to ensure that where a mail integrity incident has occurred that is serious, Postcomm is made aware of this and can take appropriate action (in consultation with the relevant Licensee) including gathering evidence as soon as possible and taking out prosecutions where it is not the Licensee's practice to do so. This would typically comprise a Licensee instigating its internal discipline procedures and/or Postcomm pursuing a prosecution on behalf of the Licensee in line with its prosecution policy and procedures. Customers can therefore have confidence that all incidents involving interference with the mail will be dealt with in an appropriate manner, taking account of the offence.
32. Postcomm does not believe that the reporting requirement on other licensed operators is unduly burdensome. The reporting requirements set out in paragraph 7.1 of the Code are that “all incidents of loss or theft of, damage to, or interference with Code Postal Packets must be recorded in reasonable detail”. Licensees (including Royal Mail) are obliged to comply with this requirement so the only additional action required is for those incidents that are “serious incidents” to be reported to Postcomm.
33. Any licensed operator is entitled to undertake its own criminal investigations and pursue its own private prosecution for offences under the Act and for theft. This

would exempt it from having to report "serious incidents" to Postcomm. However it would have to report prosecutions undertaken on the same quarterly basis as Royal Mail.

34. The Code of Practice requires all licensees to provide Postcomm with an annual report detailing actual or estimated numbers of Code Postal Packets lost, stolen or interfered with and detail any trends or patterns in relation to such incidents. Licensees who undertake their own prosecutions are required to report on prosecutions they have instigated on a quarterly basis. Postcomm has decided to maintain this definition but has taken the opportunity to clarify the precise wording by adding "loss, theft, damage or" before "interference".

Proposed Definition (5)

"the incident or incidents involves Code Postal Packets that the Licensee is aware contains sensitive items—for example: debit and credit cards issued by financial institutions, passports, driving licences and items of a similar nature"

Respondents' views

35. One operator thought the reporting requirement for sensitive items in Definition (5) was unrealistic as all of its products fell into the category of 'sensitive mail' and it would therefore have to report on all items of mail which had been interfered with. In addition, the point was made that it was not always possible for Licensees to establish where interference may have occurred, especially those Licensees with downstream access arrangements with Royal Mail.
36. It was also suggested that 'sensitive items' was a matter of interpretation and that a definition should be based upon tradable items of value or those likely to be systematically targeted by criminals. It was also suggested that trends or patterns should inform the reporting requirement.

Postcomm's views

37. Postcomm accepts the concerns around not always being able to identify within whose operation mail interference may have occurred and has amended the Incident Guidelines to cater for this, introducing the qualification of "and occurs within the Licensee's own operation" to the requirement in definition (5).
38. Postcomm would expect Licensees who have downstream access arrangements with Royal Mail to have suitable arrangements in place for identifying and communicating incidents of mail interference that may occur in their respective operational pipelines.
39. Postcomm does not accept that the reporting requirement with regard to sensitive items is unrealistic for Licensees whose products predominantly fall within the 'sensitive item' category, given the requirements set out in paragraph 7.1 of the Code to record "all incidents of loss or theft of, damage to, or interference with Code Postal Packets" in reasonable detail.

40. Postcomm believes that the approach is a proportionate one in context of 'sensitive' mail items which are often systematically targeted by criminals and where customers expect security measures to be particularly comprehensive. Licensees' annual reports on losses will play an important role in helping to identify any trends or patterns in relation to mail integrity incidents and any adjustment required in the Guidelines.

Review of the Guidelines for Serious Incident Reporting

41. Postcomm intends to review the reporting criteria for 'Serious Incidents' in June 2007. This should give sufficient time for the reporting processes to be introduced and operated by Licensees and enable Postcomm to better assess the effectiveness of the reporting criteria based upon a reasonable period of data capture. Postcomm would, however, consider any requests from licensees for changes to the Incident Guidelines prior to this date in order for the Incident Guidelines to remain fit for purpose.

Other Issues

42. 48 Hour reporting period

There were some issues raised by the MCF around the 48 hour reporting requirement in 7.3 of the Code. As this falls outside of the 'Guidelines' and the Code was effective from the 1 January 2006, any amendments must be made through the change modification process.

43. Split Mailbags

Respondents raised the issue of whether incidents of split mailbags need to be reported as "serious incidents" if such splitting was a result of an accident and there is no evidence that the mailbag was split intentionally or as a result of negligence because of a failure of a Licensee's operational procedures.

Postcomm's views

44. Terms have the same meaning in the Incident Guidelines as in the Code. A mailbag is "damaged" for the purposes of the Code and the Incident Guidelines if postal packets within the bag to which the Code applies are physically damaged (other than if the damage has been caused by interference or by accident).
45. A mailbag is "interfered" with for the purposes of the Code and the Incident Guidelines if the mailbag (which contains postal packets to which the Code applies) if it is interfered with *contrary to sections 83 or 84 of the Act* i.e. the mailbags are intentionally delayed or opened.
46. Mailbags that are split by accident do not need to be reported as "serious incidents" but where there is evidence that the mailbag has been split intentionally or as a result of negligent operational procedures these do need to be reported (provided, of course, that one of the five definitions of "serious incident" applies).

“INCIDENT GUIDELINES”

The following reporting guidelines should be read in conjunction with paragraphs 7.2 and 7.3 of "Protecting the Integrity of Mail – A Code of Practice" (the Code). These are the Incident Guidelines referred to in the Code and are intended to set out the criteria for determining whether an incident should be regarded as "serious" for the purposes of paragraphs 7.2 and 7.3 of the Code.

The overall purpose of the Guidelines is to ensure that where a mail integrity incident has occurred that is serious, Postcomm is made aware of this and can take appropriate action including taking out prosecutions where it is not the Licensee's practice to do so.

Terms have the same meaning in these Incident Guidelines as in the Code and the rules of interpretation in the Code apply.

Where Licensees do not prosecute (including under sections 83 and 84 of the Act) in relation to an incident, that incident will qualify as a "serious incident" if:

- (1) the percentage of Code Postal Packets lost, stolen, damaged or interfered with in one incident exceeds 10% of the total volume of Code Postal Packets conveyed, received, collected, sorted, delivered or otherwise handled by a Relevant Employee that day; or
- (2) there is reason to believe that the same Relevant Employee has stolen, damaged or interfered with Code Postal Packets on at least one previous occasion; or
- (3) the incident or incidents involves a Relevant Employee being arrested for an offence or offences relating to theft of, damage to, or interference with Code Postal Packets; or
- (4) the incident or incidents leads to a Relevant Employee being subject to disciplinary proceedings relating to theft of, damage to, or interference with Code Postal Packets; or
- (5) the incident or incidents involves Code Postal Packets that the Licensee is aware contains sensitive items and occurs within the Licensee's own operation – for example: debit and credit cards issued by financial institutions, passports, driving licences and items of a similar nature.