

25th February 2020

CWU Response to Ofcom's Proposed Plan of Work 2020/21

Introduction

1. The Communication Workers Union (CWU) is the largest union in the communications sector in the UK, representing approximately 192,000 members in the postal, telecoms, financial services and related industries.
2. The CWU believes that postal and telecoms regulation should focus on promoting investment, protecting and improving universal service provision, and enhancing the quality of services. The CWU is seriously concerned about the threat to service and employment standards in the communications industry as operators compete on price whilst extracting maximum value for shareholders. In post, we believe the future of the six day universal service is under threat due to Royal Mail's cost cutting strategy and its failure to create a more ambitious growth agenda. In telecoms, the universal roll out of world class digital infrastructure is hampered by cherry picking and network duplication, which limits investment in harder to reach areas. We call on Ofcom to ensure the regulatory framework offers sufficient certainty and investment incentives to protect services, workers and consumers from these harmful outcomes.

Key Points

3. As the CWU has consistently argued, there is a connection between labour standards, productivity and service quality. Ofcom's pursuit of price competition has created a race to the bottom on employment and quality of service standards. This is particularly evident in the unregulated parcels sector, where false self-employment and poverty pay are the norm and many operators are failing customers because they are not subject to minimum standards. Unfair parcels competition also constrains Royal Mail's ability to generate the revenues it needs in growth areas to offset the decline in letters and secure the financial sustainability of the universal postal service. Ofcom should introduce regulations and incentives for the market to deliver a better customer experience which would level the playing field for competition, protect the universal service, and raise standards of employment and service quality across the sector as a whole.

4. As the UK leaves the EU, we face some important questions about what legislation will apply to the communications sector beyond the Brexit transition period. It is vital that protections currently in place for consumers and workers in the sector are at least maintained. They must not be weakened and ideally they should be improved on. The Prime Minister said after signing the EU Withdrawal Agreement that the Government will now focus on *“delivering better public services and unleashing the potential of every corner of the UK”*.¹ The Government has also stated its commitment to world-class digital infrastructure for the UK and to the long term sustainability of the postal sector and a universal postal service.² All of this will rely on a regulatory framework that encourages substantial long term investment in communications networks and services.
5. In the postal sector, the CWU believes that Royal Mail must find ways of growing the business through investment in new commercial opportunities and innovative services to help offset the decline in letter volumes. This should include more local and community targeted products and services which would leverage the full potential of the crucially important equality of provision and social inclusion that the universal service obligation brings, whilst supporting the Government’s objectives of improving public services and boosting regional development. Ofcom must assist with this by ensuring a supportive regulatory environment that promotes investment and innovation. The CWU is currently in dispute with Royal Mail for failing to honour our agreements and unilaterally pressing on with creating a separate parcels operation. We believe this strategy will accelerate letter decline and put the future of the universal postal service at risk. Royal Mail must take a different approach that maximises the potential of the core network to defend letters, grow parcels and help secure the six day universal service.
6. In the telecoms sector, competition has brought lower prices, but 2% of homes and businesses (578,000 premises) still cannot access a 10Mbit/s broadband connection³, 9% of the UK has no 4G mobile coverage at all, and only 10% of premises have full-fibre coverage. There is fibre network duplication and cherry picking in profitable urban areas whilst other parts of the country are being left behind. Properly allocated Government funding will be essential to address this gap, but Ofcom also has an important role to play by giving operators the pricing flexibility and regulatory stability they need to justify long term network investment, especially in harder to reach areas. Regulation must also fully account for the costs of the additional jobs, skills and training needed to build and maintain a world class digital network for the UK.

¹ Boris Johnson heralds ‘new chapter in UK history’ after signing EU Withdrawal Agreement, Politics Home, 24th January 2020, accessed at: <https://politicshome.com/news/uk/foreign-affairs/brexit/news/109363/boris-johnson-heralds-%E2%80%99new-chapter-uk-history%E2%80%99-after>

² Statement of strategic priorities for telecommunications, the management of radio spectrum, and postal services, DCMS, designated on 29th October 2019, accessed at: <https://www.gov.uk/government/publications/statement-of-strategic-priorities>

³ Connected Nations Update, Ofcom, 17 September 2019, https://www.ofcom.org.uk/data/assets/pdf_file/0024/166650/connected-nations-update-summer-2019.pdf

7. The CWU repeats our call for Ofcom to introduce a fundamental shift in emphasis away from price competition, towards raising minimum quality standards and incentivising investment for the benefit of all stakeholders. This includes workers in the sector and users of communication services with less market power, such as those living in hard to serve areas. There should be a clear strategy to improve services in rural areas which are less well served than urban areas; and in Wales, Scotland and Northern Ireland, all of which are less well served than England.

Ofcom's goals and priorities for 2020/21

Sustaining the universal postal service

8. Ofcom's primary statutory duty in post is to secure the provision of the universal postal service. In carrying out this role, the CWU recognises the need for Ofcom to monitor the needs of postal users, Royal Mail's performance, and competition in parcels and letters. In setting the current and future framework for postal regulation, we believe Ofcom must focus on ensuring a supportive regulatory environment that promotes investment and supports innovation.

The need for incentives for Royal Mail to invest and protect the universal service

9. The CWU calls on Ofcom to prioritise the financial sustainability of the universal postal service. This should include doing everything in its power to encourage and incentivise Royal Mail to invest in the business and compete for new and existing revenue streams. The CWU has serious concerns about the impact that Royal Mail's current strategy will have on the future of the business and the sustainability of the universal postal service. Instead of working with the CWU on a growth agenda to identify new revenue streams as agreed last year, the business has taken a unilateral approach to developing its future strategy. This involves a plan to build a number of parcel hubs around the country and to set up Parcelforce as a separate limited company. The CWU believes this separation of parcels from letters will accelerate letter volume decline, rather than maximising the potential of Royal Mail's core network to defend letters, grow parcels and secure the six day a week universal service. As a consequence, the CWU is now balloting for industrial action over the future of the service and the managerial breach of our 2018 Agreement.⁴
10. Royal Mail's decision to unilaterally move ahead with changes to its pipeline are inconsistent with our 2018 Agreement on a joint approach to change. The current pipeline does not allow the business to expand which makes it difficult to grow, and this must be addressed. We believe the pipeline must meet the objectives of protecting the six day USO and it must maximise the product offerings being delivered with the core, including parcels. It is essential for the protection of the USO that full product deliveries are in place from 7am to 7pm. If core delivery is made later in the day, this is likely to increase the rate of letter decline.

⁴ Four Pillars of Security and Pay National Agreement between CWU and Royal Mail Group, CWU, 2018, available at: <https://www.cwu.org/wp-content/uploads/2018/03/0555118-royal-mail-national-consultative-ballot-low-res.pdf>

11. We believe that Royal Mail must look to invest in a diversified portfolio of offerings beyond parcels, which could include social care related services, warehousing and stock holding services. There should be more local and community targeted products and services to leverage the reach and potential of the USO more effectively. The business must also get in front of the 'green agenda' including by offering delivery services to other companies via its fleet of electric vehicles.
12. Given the increasing importance of customer convenience, Royal Mail should explore the scope for alternative delivery points such as locker banks and community centres, as well as improving products and services at the doorstep. The business should also look to invest in a unified retail and delivery postal service and establish a high street presence with a flagship network of Post Shops. This should include expansion into a new public Post Banking system with social aims, which is a successful and profitable feature of other postal administrations around the world.

Royal Mail's performance on efficiency

13. We continue to call on Ofcom not to set unreasonable efficiency expectations for Royal Mail, and to recognise that Royal Mail already faces sufficient market challenges that will spur efficiency. Shareholder scrutiny, intense competition in parcels and rapid e-substitution in letters all mean that the role of Ofcom in promoting efficiency is not necessary and can be reduced or removed. As we have stated in previous submissions, we are concerned that the combined effects of pressure for ever-greater cost-cutting and competition are putting us on a path that threatens future provision of the universal service.
14. We are particularly concerned that Ofcom should not benchmark Royal Mail's cost efficiency against unregulated, low cost parcel delivery operators who are not subject to minimum quality of service standards or the high fixed costs of delivering the Universal Postal Service. Ofcom has previously suggested that secure, full time jobs or the payment of a decent wage are an obstacle to efficiency at Royal Mail.⁵ We reject this position and assert that the opposite is in fact the case, with secure well paid jobs creating a more efficient, productive workforce.
15. CWU members in Royal Mail are under growing pressure to work harder and faster as the business seeks to cut costs and extract maximum value for shareholders. However, there is a limit to the extent to which Royal Mail can take costs out of delivery functions, given the fixed costs of the USO. If the business goes too far in reducing the number of working hours or full time equivalent employees, this will inevitably impact on service quality and threaten the sustainability of the universal service.

⁵ Review of the Regulation of Royal Mail, Ofcom, 25th May 2016, see in particular paragraphs 4.66, 4.67 and 4.70

Regulating the parcels market

16. We consider that Ofcom's failure to introduce minimum quality standards in the unregulated parcels market is very damaging for the postal industry. The absence of quality standards in this market is detrimental to consumers, and it creates unfair competition that threatens a race to the bottom on price, delivery standards and employment conditions across the postal sector as a whole. Unfair parcels competition also reduces the revenues Royal Mail needs in growth areas to offset the decline in letters and to ensure the ongoing financial sustainability of the universal postal service.
17. It is welcome that Ofcom has now committed to review access and parcels competition and consider whether additional consumer protections are required. We believe this is long overdue. We repeat our previous calls for Ofcom to raise consumer standards in this market which is notorious for quality of service failures. The act of levelling up quality of service standards in parcels through regulation would create better labour standards, and these two factors would be mutually reinforcing.
18. Research has found that service levels from some firms are dire, with Citizens Advice recently reporting that problems with parcel deliveries cost consumers at least £85 million a year. Problems include parcels being left in an insecure location, delivery instructions being ignored, damaged contents, and parcels arriving late or not at all. Citizens Advice says the scale of the problem with parcels is a sign of a broken market, rather than simply isolated bad practice.⁶ The CWU has responded to the Citizens Advice Draft Consumer Work Plan 2020/21 welcoming its proposal to push for a Competition and Markets Authority (CMA) review of the parcel market.
19. The surge in demand for parcel delivery in recent years has seen the emergence of many new and expanding courier companies. Unlike Royal Mail, these companies do not have to comply with standards of service or consumer protection, and so they are able to operate using very low cost employment models. The majority rely on self-employed 'Owner-Drivers' who are denied basic employment rights and are responsible for their own taxes, insurance, and vehicle maintenance. This business model has been exposed as highly exploitative and unlawful. Tribunals have ruled against City Sprint, Excel, and Addison Lee on employment status, finding their couriers should be classed as workers.⁷ The poor labour standards that exist in the unregulated postal sector also threaten jobs, pay and conditions in the regulated postal sector.

⁶ Citizens Advice says problems with parcels cost consumers at least £85m a year, Citizens Advice, 5th December 2019, accessed at: <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/citizens-advice-says-problems-with-parcels-cost-consumers-at-least-85-million-a-year/>

⁷ Another development for the gig economy: CitySprint courier establishes "worker" status, DAC Beachcroft, 12th January 2017, accessed at: <https://www.dacbeachcroft.com/es/gb/articles/2017/january/another-development-for-the-gig-economy-citysprint-courier-establishes-worker-status/> ; Excel cycle courier was worker, Personnel Today, 24th March 2017, <https://www.personneltoday.com/hr/employment-status-excel-cycle-courier-worker/> ; Addison Lee refused permission to appeal worker status ruling, Personnel Today, 1st April 2019, <https://www.personneltoday.com/hr/addison-lee-appeal-worker-status/>

Better broadband and mobile networks

20. We welcome Ofcom's objective to support investment in network infrastructure, but we are concerned that the focus on promoting competition will limit the scope for investment, especially in harder to reach areas. This is because competition leads to the cherry picking of profitable urban areas, exerts downward pressure on price and undermines the potential for cross subsidisation.
21. It is encouraging that Openreach has announced its intention to roll out a fibre to the premises (FTTP) connection to 4 million UK homes and businesses by March 2021, with an ambition for 15 million by around 2025 and then beyond if the right government support and investment conditions are in place.⁸ Ofcom has a crucial role to play here, because the success of these plans will depend on a regulatory framework that encourages long term network investment. Ofcom's recently launched Wholesale Fixed Telecoms Market Review 2021-26 (FTMR) will be central to this and must achieve its goal of helping to boost investment in full fibre broadband.⁹
22. Most of Openreach's fibre rollout is focused on profitable urban areas, but Openreach is rolling out some FTTP into remote rural areas through the 'Building Digital UK' linked state aid schemes.¹⁰ This demonstrates that Openreach is willing and capable of delivering networks to less economic areas where public funding makes this viable. It is welcome that Ofcom plans to support investment by Openreach in more sparsely populated areas where there is no prospect of multiple networks being built, recognising that Openreach is the only operator with a large scale rural network.¹¹
23. It is also welcome that Ofcom will work closely with the Government on its plans to invest £5 billion of public money to support the rollout of gigabit-capable broadband in the hardest to reach 20 per cent of the country.¹² It is vital that this commitment from Government is carried through if we are to rebalance the regions of the UK economically and avoid leaving rural and remote areas the wrong side of a growing digital divide. It is a concern, therefore, that the new Conservative Government is already being criticised by the Industrial Strategy Council for neglecting its industrial strategy.¹³

⁸ Openreach add 227 rural UK areas to FTTP broadband rollout update, ISP Review, 26th January 2020, accessed at: <https://www.ispreview.co.uk/index.php/2020/01/openreach-add-227-rural-uk-areas-to-ftp-broadband-rollout.html>

⁹ Ofcom start major review to boost UK full fibre broadband market, ISP Review, 8th January 2020, accessed at: <https://www.ispreview.co.uk/index.php/2020/01/ofcom-start-major-review-to-boost-uk-full-fibre-broadband-market.html>

¹⁰ ISP Review, 26th January, ibid

¹¹ ISP Review, 8th January 2020, ibid

¹² 2019 Queen's speech sets out UK gigabit broadband plans update, 14th October 2019, ISP Review, <https://www.ispreview.co.uk/index.php/2019/10/2019-queens-speech-sets-out-uk-gigabit-broadband-plans.html>

¹³ Watchdog attacks Tories for neglecting industrial strategy, Guardian, 19th February 2020, accessed at: <https://www.theguardian.com/politics/2020/feb/19/watchdog-attacks-tories-for-neglecting-industrial-strategy-boris-johnson-uk-economy>

24. We call on Ofcom to help ensure that Government funding for broadband is allocated efficiently to those areas genuinely in need of support. Public money must not end up contributing to network duplication and overbuild in profitable areas, which is happening as a result of cherry picking by fibre network operators such as CityFibre and Hyperoptic. This issue was brought to Ofcom's attention in an open letter last year when politicians from 20 Northern towns and cities wrote to Ofcom highlighting the lack of coordination in deploying FTTP networks which is acting against the interests of customers. It said "*We are seeing the needless duplication of full-fibre networks, whilst short distances away other Northern towns and cities with no planned investment risk being left behind.*"¹⁴
25. CityFibre is concentrating on 37 UK towns and cities, whilst Hyperoptic is rolling out its network in 39 UK towns and cities. It comes as no surprise that they are building their networks in many of the same places, such as Manchester, Bristol, Coventry and Cambridge. At the same time, these operators have no plans for full-fibre networks in smaller towns and less affluent areas.

Regulating for high service and employment standards in telecoms

26. Openreach has recruited and trained 3,000 field engineers during 2019 to help deliver its fibre network ambitions.¹⁵ It is crucial that the additional resources needed for these network upgrades and service improvements are fully reflected in Ofcom's charge control modelling. This must include the costs of secure jobs, decent labour standards and proper training, all of which are fundamental to delivering high quality services. Any weakening of pay and conditions for employees will inevitably be detrimental to recruitment, retention, productivity and service quality.
27. The CWU is concerned about poor employment standards in some commercial network operators. Much of the investment for rollout by new operators such as CityFibre and Hyperoptic is from foreign commercial investment funds who are likely to seek a swift return at the lowest possible price. This will almost certainly impact negatively on labour standards and quality of service in the UK telecoms sector.
28. We already know that companies that build fibre networks typically use subcontractors at least to some extent to carry out service provision work, as well as the construction, build and commissioning of networks. These subcontractors tend to be in insecure employment, on low rates of pay, and often work on a day rate or a piece rate according to the number of jobs they carry out. We call on Ofcom to address this by building in the cost of secure jobs, decent employment standards and training when setting the regulatory mechanisms, such as charge controls, which are key to investment decisions.

¹⁴ City leaders warn UK full fibre rollout is uncoordinated and inefficient, ISP Review UK, 25th March 2019, accessed at: <https://www.ispreview.co.uk/index.php/2019/03/city-leaders-warn-uk-full-fibre-rollout-is-uncoordinated-and-inefficient.html>

¹⁵ Openreach to hire 3,000 new engineers to boost full-fibre broadband rollout, City AM, 28th January 2019, accessed at: <https://www.cityam.com/openreach-hire-3000-new-engineers-boost-full-fibre/>

Improving mobile coverage

29. Mobile coverage in the UK is still far from satisfactory, with only 66% of the UK geographically has 4G coverage from all four operators and 9% having no mobile coverage at all.¹⁶ A recent analysis of Ofcom mobile coverage data by *Which?* uncovered that eight in 10 areas of the UK lack full 4G coverage.¹⁷
30. It is welcome that the mobile industry has developed its own proposals for a 'Shared Rural Network' that involves commitments from all four operators for good quality coverage in exchange for up to £500m funding from the UK Government. It is important that Ofcom does everything within its powers to encourage this project to go ahead and monitors its progress going forward.
31. 5G mobile networks promise to be significantly faster and more reliable than 4G services. Commercial deployment has now begun, but 5G currently has limited availability and is very expensive. More backhaul capacity will be needed to assist in the wider rollout of 5G mobile services, which means building new fibre networks. At present, the lack of fibre infrastructure is said to be a barrier to 5G rollout. This is another important reason why Ofcom must look to incentivise long term investment in fibre.¹⁸

Delivering Ofcom's goals across the UK

32. The problems of providing fixed broadband, mobile and postal services in rural and remote areas falls disproportionately within Wales, Scotland and Northern Ireland. For example, 5% of premises in Northern Ireland, 4% in Scotland and 3% in Wales cannot access 10Mbit/s broadband, compared with 2% of premises in England.¹⁹ It is also important to note that in rural areas of all nations, including England, mobile and fixed network coverage is lower than in towns and cities.
33. We call on Ofcom to set the optimum regulatory framework to support the delivery of universal, high quality broadband, mobile and postal services across all nations and regions of the UK. This should include a focus on extending mobile and full fibre broadband coverage; improving network speeds; and supporting network build, quality and resilience through skills, training and secure employment.

Support through Brexit and continued international relationships

34. There are some important questions about what legislation will apply to the UK communications sector beyond the Brexit transition period. It is vital that the minimum

¹⁶ Connected Nations Update, Ofcom, 17 September 2019, *ibid*

¹⁷ UK's biggest mobile operators agree to deal to tackle poor rural 4G coverage, *Which?*, 25th October 2019, accessed at: <https://www.which.co.uk/news/2019/10/uks-biggest-mobile-networks-agree-deal-to-tackle-poor-rural-4g-coverage/>

¹⁸ What's holding up the 5G utopia in Britain? Quit a lot, actually, *The Register*, 22 March 2019, accessed at: https://www.theregister.co.uk/2019/03/22/5g_obstacles/

¹⁹ Connected Nations 2017 Report, Ofcom, 15th December 2017

protections currently in place for consumers and workers in the sector are at least maintained. These include affordable and adequate access to broadband services²⁰, and the collection and delivery of letters and parcels on at least five working days each week, with a specified quality.²¹ UK legislation currently exceeds this EU legal minimum for postal services with a requirement to deliver letters six days each week.

35. We believe the UK Government should ensure the maintenance of the six day universal postal service and improve on the other legal requirements and protections for the communications sectors afforded by European legislation where there is scope to do so. The Prime Minister has voiced the Government's ambitions for UK infrastructure and services post Brexit, saying after signing the EU Withdrawal Agreement that the Government will now focus on "*delivering better public services and unleashing the potential of every corner of the UK*".²²
36. UK communications legislation will depend on our future trading relationship with the European Union. The closer our relationship, the closer we can expect to be bound by EU rules. We call on Ofcom to steer Government towards a legal framework for the UK communications sectors that will protect and where possible improve on the standards set by EU legislation. It is essential that these standards are not weakened or diminished if we are to achieve the objective of improving communications services on behalf of all stakeholders.

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²⁰ Under the European Electronic Communications Code, Directive (EU) 2018/1972 of the European Parliament and Council, 11 December 2018, establishing the European Electronic Communications Code, accessed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN>

²¹ Under the Postal Services Directive, EU Postal legislation, implementation and enforcement, European Commission, accessed on 20th February 2020 at: https://ec.europa.eu/growth/sectors/postal-services/legislation_en

²² Boris Johnson heralds 'new chapter in UK history' after signing EU Withdrawal Agreement, Politics Home, 24th January 2020, accessed at: <https://politicshome.com/news/uk/foreign-affairs/brexit/news/109363/boris-johnson-heralds-%E2%80%99new-chapter-uk-history%E2%80%99-after>