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Manipulation of Postcomm's QoS Relief Application Process *(REVISED)*

By granting Royal Mail unconditional Quality of Service (QoS) relief in 2007, Postcomm set the precedence for QoS relief anytime Royal Mail suffers QoS failures related to its modernisation effort (i.e., what Postcomm calls transformation activity), especially where Industrial Action (the "IA") is concerned. Furthermore, the aforementioned precedence, along with the methodology Postcomm uses to pre-screen and evaluate a QoS Relief Application (the "QoSRA"), opens the door to potential manipulation and abuse of the process by applicants.

This article demonstrates the potential manipulation and abuse using a couple of claims found in Royal Mail's 2009-10 QoSRA, and offers solutions to combat the risks mentioned, as well as ensuring QoS penalties remain an effective deterrent to QoS failures even for applicants with adverse situations, especially financial adverse situations.

QoS07Effect:

The QoS relief Royal Mail received in 2007 has led to disruptions in the normal labour-management counterbalance, what is hereafter referred to as the Postcomm QoS 2007 Effect (the "QoS07Effect"). That is, Royal Mail management normally has an incentive to resolve all potential IA disputes as soon as possible in order to avoid QoS failures, and their associated penalties. However, the QoS07Effect subsequently removed or greatly reduced Royal Mail's incentive to early resolution to workforce and labour union issues, while the union gained no counterbalancing effect or incentive. The imbalance has led to delayed resolution of disputes, rolling IAs, disruptions to Royal Mail's business and its customer's businesses, and eventual QoS failures.

Repeat Royal Mail QoSRA's:

Every year since 2007, Royal Mail has written to Postcomm requesting suspension for QoS targets, comprising the Bulk Mail Compensation Scheme (the "BMCS") and Customer Service Quality Factor (the "C-Factor"). For the 2007-08 year, Postcomm granted Royal Mail's application for unconditional QoS relief. For the year 2008-09, Royal Mail received provisional agreement for relief, but did not complete the year-end application. Like 2009, Royal Mail received provisional agreement for relief. In Royal Mail's 2009-10 year-end QoSRA(local copy), they estimated the relief at roughly £36.5m in compensation payable to impacted customers under the BMCS and £50.8m in adjustment to the C-Factor (revenue limiting penalty), resulting in a maximum combined penalty relief of £87.3 million.

Relief Criteria and Open Issues:

In 2007, Postcomm largely accepted Royal Mail's QoSRA and agreed IA during the year both "*arose from transformation activity and had a direct causal link to QoS failures.*" For the

year 2009-10, Postcomm has yet to release its decision on Royal Mail's QoSRA, but has stated it shall consider the following factors in its decision: Royal Mail's (a) financial position, (b) risk of strike action (or IA) in relation to transforming its business, and (c) financial impact due to QoS failures.

Postcomm's provisional decision(local copy) was to grant relief, stating its final decision would consider Royal Mail's reasonable efforts to (i) avert or mitigate effects of strike action, (ii) demonstration of progress made in transforming its business, (iii) appropriate link between employee incentive payments (bonuses), and (iv) QoS during the year, among others.

First, every issue potentially resulting in IA against Royal Mail is, or can be, linked to the modernisation effort in one or more ways. Second, IA will impact QoS, maybe not always to levels that result in QoS failures, but certainly IA causes QoS declines. Therefore, excluding IA due to event(s) beyond the control of Royal Mail, if every issue causing IA can be linked to Royal Mail's modernisation effort, and IA results in QoS declines, then Royal Mail can always argue IA is due to modernisation efforts (i.e., transformation activity) resulting in QoS declines, thus seeking unconditional QoS relief when QoS declines result in QoS failures.

Furthermore, the unconditional relief creates the undesirable QoS⁷Effect, which an observant reader will correctly recognise as a causality loop. That is, an expected future outcome (the QoS relief) due to a failure (the QoS failure from IA) influences the applicant's pre-outcome decisions (apathy towards immediate resolution) increasing the probability of the failure itself (IA leading to QoS failures) that leads to the need for an outcome decision (QoS relief). Financial position and financial impact are valid decision considerations in how to apply an "innovative" penalty remedy, but not valid decision considerations for waiving a penalty if an applicant is at fault in whole or in part. The same applies for risk of strike considerations.

If you understand the causality loop, you understand half of the issue. The other half of the issue deals directly with Postcomm and its provisional decisions, unconditional relief and the disclosure of specific decision considerations in provisional decisions. The issues undermine enforcement and the deterrent penalties are meant to create.

Reasonable Efforts:

Royal Mail applied for QoS relief in February of 2009 for the 2009-10 year, and although Postcomm granted Royal Mail provisional unconditional relief in August of 2009, Postcomm requested Royal Mail to complete a year-end application. With the request, Postcomm provided Royal Mail with specifics as to what it would consider in any final decision—a reasonable efforts list. Knowing exactly what Postcomm was using to determine its final decision, Royal Mail's application was tailored to the items in the reasonable efforts list, to include reasonable efforts to avert strike action.

Regarding Royal Mail, efforts to avert strike action never really began until 2010, leaving the dispute open and festering a full year or more. Although both parties decided in November 2009 to temporarily end IA, just a day before full national IA was to begin, the decision was just a cooling off period that avoided any interruption in business operations during the busy, financially lucrative end-of-year holiday season.

Evidence does not support Royal Mail's assertion that reasonable efforts were employed to avert IA. For example, on the eve of negotiations to avert a national postal strike in October 2009, then CEO Adam Crozier told union leaders to "shut up" and return to work. Neither firm's top official participated directly in the meetings, but both top officials were never camera shy to voice their displeasure or disapproval with the other side, basically claiming their position is valid and the opposition's invalid. Only immediate and continuous action on the part of Royal Mail demonstrates reasonable efforts to avert strike action, something all the evidence does not support.

Immediate and Continuous Action:

A violation of certain postal rules and regulations is easy to assess when specific conditions are defined and results show or demonstrate one or more conditions were not properly met or satisfied. Difficulty arises when conditions take on a subjective nature as to assessing if a violation occurred, or when a violation occurred beyond the control of the party or parties involved, in whole or in part, where in part infers the party or parties acted immediately and continuously to avoid or minimise events that ultimately led to a violation. The key is not what is said, and certainly not just intent, but immediate and continuous action is required, for these two together must exist if one can successfully argue a case for doing everything reasonable.

Think about it, your vehicle is on fire, somebody is inside, and the doors will not open and the electric windows are not working. If you look around and then sit down, and do nothing, immediate is not satisfied. Likewise, if you just try one or two things—checking your pockets for keys and try to open the door closest to the person—and then do little more, continuous is not satisfied. To bystanders, and especially the person inside your burning vehicle, your claim of doing everything reasonable does not match what they saw or experienced, which was a lack of immediate and continuous action.

Extraneous arguments:

In Royal Mail's 2009-10 QoSRA, the overview section stated, "*Currently Royal Mail faces severe cash constraints, such that without relief from the effects of quality of service failures caused by IA, it [Royal Mail] would be unlikely to be able to continue with its planned transformational changes.*" In the conclusion section, "unlikely to continue" suddenly became "unable to continue." That is, "*Without this relief, Royal Mail will be unable to continue to implement transformational change in the way envisaged and as now reflected in the Agreement reached with the CWU following the IA which took place in 2009.*"

First, there are no statements in the referenced Agreement that would prohibit Royal Mail from continuing transformational change relative to Postcomm's decision to impose the penalty for QoS failures (i.e., reject Royal Mail's QoS relief request). It is an absurd argument for relief.

Second, although cash constraints at Royal Mail do exist, Royal Mail certainly has the means to pay the penalty. Besides, nobody desires penalties and penalties generally cause cash constraints, meaning something of value is sacrificed in order to pay the penalty, which is the intended purpose of imposing a penalty—create a result (i.e., penalty) that inhibits a repeat of the action that caused the penalty to begin with.

Third, if IA results in QoS failures, and QoS failures result in fines and penalties against Royal Mail, and those fines and penalties threaten transformational change such that it threatens Royal Mail's future itself (as stated in the application), then it is only logical that Royal Mail would have done whatever was necessary to resolve any potential IA immediately and early on (to avoid QoS failures, that result in fines, that threaten transformational change, which threatens Royal Mail's future itself).

Continuing, Royal Mail attempted to apply more pressure on Postcomm to grant QoS relief by implying Postcomm has the ability to stop or disallow Royal Mail from continuing with modernisation efforts. For example, "*...Royal Mail must be allowed to complete its transformational programme...whilst also safeguarding the future of...universal postal service....*" It is an absurd argument to claim Postcomm is in any way prohibiting Royal Mail from continuing transformation, and the inclusion of safeguarding universal postal service is yet another extraneous argument.

Nothing kept Royal Mail from resolving the dispute early on as opposed to agreeing to a

resolution a year later except Royal Mail. Keep in mind, when an individual or entity has little or no evidence to support their claim, they generally invent arguments, hoping the recipient of the irrelevant arguments is either intellectually challenged or overly sympathetic such that the invalid arguments pass for valid arguments. Has Postcomm been duped? Have you been duped?

Royal Mail's Ultimatum:

Royal Mail's extraneous arguments imposed an ultimatum on its regulator. *We [Royal Mail] are too fragile to have the rules applied to us, and although we are responsible for strike action along with the union by failing to reach an Agreement in a timely manner to avoid IA, if you [Postcomm] do not unconditionally waive the penalty and payment obligations (up to £87m) that we face as a result of our inaction, then you will ultimately be responsible for halting much needed transformation activities, and threatening the very future of Royal Mail and universal postal service in the UK.*

The ultimatum, like their extraneous arguments, is absurd. I have a library fine due, but it is absurd to claim my financial inability to pay the fine is reason enough to waive the fine, for what deterrent does the library then have to ensure future items are returned promptly? Furthermore, refusal to waive the fine in no way transfers my responsibilities onto the library simply because a rule exists that imposes a penalty for a violation, unless the library caused the violation that led to the fine. Clearly Postcomm did not cause Royal Mail to miss its QoS targets, so it is absurd for Royal Mail to try to claim Postcomm is responsible for the violation because a QoS rule exists with defined penalties for said violations.

Solution:

Once a violation is determined, and the penalty is assessed, there exists a penalty relief process. It is in this process that decision considerations must be properly applied by Postcomm, and unconditional relief only granted if the applicant was not connected to the events causing the violation (e.g., union calls national IA to protest government action to sell Royal Mail) or there is irrefutable evidence of realistic immediate and continued action to avoid the violation.

To follow are proposed changes to the processes (decision considerations, provisional decisions and unconditional relief), which if implemented, should eliminate any future QoS effect, manipulation and abuse by applicants, even applicants suffering from adverse situations.

Proposed changes:

Decision consideration (a) and (c): a firm's financial situation should never be a decision consideration to relieve a justified penalty, and the same applies to the financial impact on a firm due to imposing a penalty. If financial situation or financial impact are decision considerations, an applicant can (1) engage in activity that results in a violation, or (2) forego certain activities that would avoid a violation, knowing in advance they can appeal for relief on unrelated financial conditions, thus rendering the rule or regulation ineffective because the penalty is not imposed.

The solution: allow a firm to seek relief asking for alternate penalty considerations due to financial distress. If the financial distress exists, then there are ways to enforce a penalty without the penalty involving a financial exchange that weakens or threatens the firm's existence. For example, Postcomm can agree to waive the C-Factor penalty in exchange for Royal Mail agreeing to reduce the ColleagueShare program (bonuses) by an equal valuation of £50.8m (not reduce payments, but eliminate £50.8m in valuation). As for BMCS, it is unfair to void customer's legitimate compensation, so instead of the default 5%, agree to reduce the value to 2%, for example. If the applicant does not accept the offer, then enforce the full penalty. The point is, the enforcement or penalty must be sufficient to induce behaviours that avoid the violation, and unconditional relief does just the opposite when applicants are

contributory parties to a violation. *"If you can't do the time, then don't do the crime"* pretty much sums up the reasoning for not allowing unconditional relief in these special circumstances.

Decision consideration (b): there is always a risk of strike when labour and management have irreconcilable differences; therefore, the risk of strike as a decision consideration should merely determine if the applicant is a contributory participant in the violation or not, and if so, penalties applied. It is inconceivable to expect the submitter of the relief application to provide a complete and unbiased report of events, and even more so when it comes to properly assessing fault. Reading Royal Mail's QoSRA, one could easily conclude the CWU (postal union) was completely at fault, making egregious and despicable demands, and executed a carefully planned cruel and hideous plot to subvert modernisation efforts wherever and whenever possible, while Royal Mail, the protectors of everything good and decent, did everything super-humanly possible to counter the evil union.

The solution: if an applicant, seeking relief from penalties resulting from violations, is partially at fault, then all parties to the dispute leading to a violation should be able to submit "formal material evidence" (just like the applicant does) to give regulators a more complete picture of events, especially those events the applicant will undoubtedly exclude. This is in addition to the "Open Meeting" Postcomm conducts. Case in point, Royal Mail's QoSRA had many articles appended which supported their claims, but no articles containing Mr. Crozier's infamous "shut up" incident even though FT, Guardian, BBC, Hellmail and presumable other news sources had prominent articles describing or detailing the incident.

Provisional decisions and offering decision conditions: granting a provisional decision during the course of an incident or before a violation has actually been recorded can be damaging with respect to the parties reaching an agreement that resolves the incident, as the QoS07Effect demonstrates. Furthermore, providing applicants with specifics on what Postcomm shall use to evaluate an application is tantamount to assisting the applicant in their pursuit to receive relief.

The solution: only grant a provisional decision if all participants have had an opportunity to provide input, and the existing data provides a clear, unambiguous determination regarding a violation, but by no means include criteria used in making the provisional decision, nor offer any decision criteria or guidance on what to include or not include in follow up applications. A regulator should remain neutral in the process, and require the applicant to provide what they view as important decision considerations, as this provides the regulator with insight into thought processes and decision making. In addition, without guidance, applicants are unable to customise their applications to what regulators are looking for and submissions are more likely to provide intent that guidance based submission will likely not have. Case in point, Royal Mail's 2009-10 year-end QoSRA is riddled with references, phrases and statements matching decision considerations provided in Postcomm's provisional decision, but without the guidance, the QoSRA would have likely had a much different read.

In summary, relative to relief from a violation, Postcomm should remain neutral, recognise enforcement ensures compliance, as well as the need to avoid the potential for a firm to impose an unwarranted and disruptive ultimatum in their application for relief. That is, Postcomm has broad authority to impose innovative and creative remedies to maintain the regulatory status quo even when a firm's situation calls for, or requires, special consideration relative to penalties imposed.

As I have repeatedly stated relative to postal reforms, distressed situations cannot be managed or resolved like normal situations if the expected outcome is to be a successful (speedy) one. Take the vehicle fire for example. Without the fire, the situation is no longer distressed. As such, a solution could be to use a slim-jimmy to unlock a door to release your passenger. When

normal no longer applies, the passenger inside the vehicle is not interested in the normal approach to the problem, as it may likely result in an unsuccessful outcome (burned to death). In the distressed situation, breaking the window is an appropriate action to rescue the passenger. Royal Mail is a distressed business operating in a distressed industry, but the solutions proposed or applied are far from distressed-based, so the outcome is unlikely to be successful.

About the Author: Timothy Nestved is founder and president of Nestved LLC, as well as a principal consultant, with expertise in turning around firms in the delivery services industry, including distressed firms facing similar challenges to those of national postal service providers like the Royal Mail and USPS. Inquiries for Timothy may be submitted through the [Contact Us](#) page at Nestved, LLC.

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