



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Postal Dispute Resolution Procedures

Response to Consultation 24/81 and Decision

Response to Consultation and Decision

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Commission for Communications Regulation

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Additional Information

Related Publications	Document Number
'Postal Dispute Resolution Procedures'	ComReg 24/102a
'Postal Dispute Resolution Procedures' Submissions to Consultation 24/81	ComReg 24/102s
Postal Dispute Resolution Procedures Consultation and draft procedures	ComReg 24/81

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Chapter 1

1 Executive Summary

- 1.1 The Commission for Communications Regulation ("**ComReg**") has a statutory function to resolve disputes which remain unresolved after due completion of all the procedures of a postal service provider's code of practice.
- 1.2 ComReg specified procedures, following public consultation¹, for the resolution of disputes between postal service users and postal service providers in ComReg Document 15/07a² (the "**2015 procedures**"). ComReg has gained experience in the application of these procedures since they were commenced.
- 1.3 On 27 September 2024 ComReg set out proposed revisions to the 2015 procedures and the reasons for them, in its consultation entitled "Postal Dispute Resolution Procedures" (ComReg 24/81)³ (the "**consultation**").
- 1.4 One respondent, An Post, submitted comments to the consultation.
- 1.5 This Response to Consultation paper sets out ComReg's consideration of this response and ComReg's final position is set out in Chapter 2.
- 1.6 The final procedures ComReg Document 24/102a are published with this Response to Consultation and Decision. The response received to the consultation is also published in ComReg Document 24/102s.
- 1.7 All references to procedures in this document refer to the final procedures, unless otherwise stated. The procedures will be titled "Postal Dispute Resolution Procedures" (ComReg Document 24/102a).
- 1.8 The procedures will take effect three (3) months from the date of the publication of this Response to Consultation and will be applied to applications for postal dispute resolution accepted after that date. The procedures shall remain in full force unless otherwise amended by ComReg.

¹ Consultation Document 14/87

² Section 43(3) Dispute Resolution Procedures (ComReg Document 15/07a) published 29 January 2015 <https://www.comreg.ie/csv/downloads/ComReg1507a.pdf>

³ Postal Dispute Resolution Procedures (ComReg Document 24/81) published 27 September 2024 <ComReg-2481.pdf>

Chapter 2

2 Respondents' views – summary, analysis and ComReg's position

- 2.1 In the consultation, ComReg set out the proposed changes and the reasons for them and sought the views of respondents on them.
- 2.2 Comments on the draft procedures are addressed under the following headings:
- Interpretation;
 - Compensation;
 - Publication of resolution summaries;
 - Additional technical information and opinion; and
 - Direct contact with users.
- 2.3 All legislative references in this chapter are to the Communications Regulation (Postal Services) Act 2011 ("**2011 Act**")⁴ Act unless otherwise stated.

⁴ S.I. No. 337/2011 European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011.

2.1 Interpretation

- 2.4 In section 3.1 of its consultation ComReg proposed to add an interpretation section to include the definitions within the 2011 Act.

Respondents' views:

- 2.5 Referring to paragraphs 1-3 of the draft procedures, An Post sought clarity regarding their scope and application, specifically regarding whether the draft Procedures were intended to apply to all authorised postal service providers in accordance with section 39 of the 2011 Act.

ComReg's position:

- 2.6 Paragraph 1 of the procedures states that:

“Unless the context otherwise suggests, the definitions in the Communications Regulation (Postal Services) Act 2011 (the “2011 Act”) apply in the Postal Dispute Resolution Procedures (the “procedures”).”

- 2.7 Paragraph 2 of the procedures states that if there is any difference between the procedures and the relevant provisions of the 2011 Act, the 2011 Act takes precedence.
- 2.8 Paragraph 3.2 of the procedures states that (for the purposes of the procedures) a “provider” is a postal service provider that the user is in dispute with. It references in the footnote⁵ section 6(1) of the 2011 Act, which defines “postal service provider” as meaning “any person providing one or more than one postal service”. Therefore, the procedures apply to any postal service provider (within the meaning of the 2011 Act) who is in a dispute with a postal service user⁶.

⁵ See footnote 27 in the consultation document (ComReg 24/81).

⁶ See footnote 26 in the consultation document (ComReg 24/81).

2.2 Compensation

- 2.9 In section 3.2.3 of its consultation ComReg proposed to amend the 2015 procedures to set a maximum amount of compensation that may be awarded under the dispute resolution procedures of €5,000.

Respondents' views:

- 2.10 In its response, and referring to paragraph 12 of the draft procedures which provides for this maximum, An Post highlighted Conditions 15 and 21 of its own Terms and Conditions which address compensation for loss and damage for ordinary post and registered postal respectively, and which An Post said *“clearly set out when compensation for loss or damage may be available for both ordinary post...and registered post...”*

- 2.11 An Post stated that:

“These Terms & Conditions set out maximum compensation amounts payable in cases where one of those postal items is lost, damaged or delayed.”

- 2.12 An Post sought clarity as to whether the proposed €5,000 maximum compensation amount was applicable to ordinary and registered postal items. An Post cited international benchmarking research in support of its assertion that *“only 8 out of the 21 countries surveyed regulate the level of compensation to be paid by the USP for late, damaged and lost postal items.”* It submitted that ComReg’s proposal in relation to compensation *“ignores the differentiated nature of the universal postal service and its current obligation to provide a “standard” and untracked services”,* and consequently is *“discriminatory”*.

ComReg's position:

- 2.13 An Post is designated as the universal postal service provider (“USP”) under section 17 of the 2011 Act with an obligation to provide a universal postal service in accordance with section 16 of the 2011 Act.
- 2.14 ComReg notes that dispute resolution is provided for in section 43 of the 2011 Act, which transposes requirements of Article 19 of Directive 97/67/EC (as amended) (**“the Postal Services Directive”**)⁷. Article 19 requires that providers’ procedures for dealing with users’ complaints are transparent, simple, inexpensive and that they enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation and these requirements are transposed in section 43(5) of the 2011 Act.

- 2.15 Neither the Postal Services Directive nor the transposing provision directly link compensation and/or reimbursement to a provider's Terms and Conditions. In this regard, the practices in Member States vary in terms of whether the level of compensation is regulated or set by the provider.⁸ It is important to note however, that ComReg is not making proposals regarding the level of compensation to be paid by providers, and is only proposing an upper threshold for compensation.
- 2.16 While the procedures are in respect of dealing with all postal service user complaints, Article 19(1) of the Postal Services Directive emphasises cases involving loss, theft, damage or non-compliance with service quality standards. Section 43(3) of the 2011 Act similarly emphasises these types of complaints.
- 2.17 The Terms and Conditions of a postal service provide information on the details of the service provided and among other things includes information on liability and compensatory terms should things go wrong.
- 2.18 An Post publishes its Terms and Conditions on its website⁹.
- 2.19 ComReg has considered Condition 15 of An Post's Terms and Conditions headed "*Compensation for Loss or Damage*". Condition 15 addresses in detail circumstances in which An Post will not be liable to pay compensation but also addresses circumstances in which compensation will be paid.
- 2.20 Condition 15(2) states that subject to Condition 15(7)¹⁰:

"...[i]f any Postal Packet is lost, damaged or delayed by at least seven (7) days if for delivery within the State or by at least ten (10) days if for delivery outside the State, whilst in the custody of An Post, An Post shall pay compensation to any person or persons who establish a reasonable claim to compensation. Compensation shall include the cost of the Charges, cost of the cover of the Postal Packet, the cost of replacement or reproduction of the packaging and a small sum in respect of any other costs."

⁷ The harmonised EU framework for the regulation of postal services under Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive No. 2002/39/EC, and Directive No. 2008/6/EC. The 2011 Act transposed the Postal Directive in the State.

⁸ "Compensation for late, damaged and lost postal items"; Cullen benchmark 13 September 2024.

⁹ <https://www.anpost.com/Terms-Conditions>

¹⁰ Condition 15(7) provides that: "*An Post shall be immune from all liability in respect of any loss or damage suffered by a postal service user because of (a) any failure or delay in providing, operating or maintaining a universal postal service or (b) any failure, interruption, suspension or restriction of a universal postal service.*"

- 2.21 The postal service user must establish a “reasonable claim” to compensation, and in addition to compensation payable in respect of Charges¹¹, the Packet¹² cover and replacement packaging, a “small sum” in respect of “any other costs” is also payable. Condition 15 addresses compensation for loss, damage or delay in any service provided pursuant to the Terms and Conditions.¹³ ComReg notes that these underlined terms may be ambiguous and therefore open to interpretation.
- 2.22 ComReg has considered Condition 21 of the Terms and Conditions which concerns compensation for loss or damage to registered Postal Packets. It provides for compensation to be paid to a person who establishes a “reasonable claim” to such compensation “(having regard to the nature of the article, the care with which it was packed, the Charges¹⁴ paid by the sender, and other circumstances)”, subject to specified limits. An “article of pecuniary value” enclosed in, or forming part of, a registered Postal Packet must be lost or damaged whilst in the custody of An Post for Condition 21 compensation to be payable by An Post. ComReg notes that these underlined terms may be ambiguous and therefore open to interpretation.
- 2.23 The amount of compensation payable will not be greater than the declared value by the sender or €25 in the absence of any declared value, and “*in no event may the amount of compensation exceed €350 plus charges paid in aggregate.*”¹⁵ It will not exceed the least of the replacement value or the amount of damage sustained or the value of the contents as shown in the Certificate of Posting (if applicable).
- 2.24 As the level of compensation payable by providers for ordinary and registered post is not regulated, ComReg will continue to have regard to the compensation levels set by providers themselves in their terms and conditions (if any) when resolving disputes, subject to the overriding requirement (which derives from Article 19 of the Postal Services Directive and is transposed in section 43(5)(d) of the 2011 Act) that providers’ procedures enable disputes to be settled fairly and promptly.

¹¹ A “Charge” is defined as including postage, postage amount, price, tariff, fee or rate of postage.

¹² “Packet” has a very specific definition that focusses on the particular dimensions of the postal packet.

¹³ Recital 35 to the Postal Services Directive states that: “*Whereas the need for improvement of quality of service means that disputes have to be settled quickly and efficiently; whereas, in addition to the forms of legal redress available under national and Community law, a procedure dealing with complaints should be provided, which should be transparent, simple and inexpensive and should enable all relevant parties to participate*”. The aims of improved quality of service and dispute resolution are therefore linked.

¹⁴ Section 2 of An Post’s USO Single Piece Terms of Conditions addresses Charges.

¹⁵ <https://www.anpost.com/Terms-Conditions#single-piece-mail-terms-conditions>; there are lower thresholds for registered postal packets posted to the UK (€320 plus charges paid), to Europe (excluding UK - €150 plus charges paid), and outside of Europe (€35 for Postal Packets other than Parcels plus charges paid, and €100 plus charges paid for Parcels).

- 2.25 An Post submitted that ComReg’s “*proposal in relation to compensation*” is discriminatory as it ignores the “*differentiated nature of the universal postal service and its current obligation to provide a “standard” and untracked service*”. It is uncertain what proposal is being referred to here, however ComReg approaches its response on the basis that it is the proposal to have a generally applicable maximum compensation cap of €5,000 for all postal service providers. As that maximum applies to all postal service providers it is not discriminatory. Insofar as An Post’s submission relates to a lower maximum amount that might have been proposed for the universal postal service provider to take account of its specific circumstances, An Post has not in fact articulated any alternative maximum. Without prejudice to that position, An Post, like every authorised provider, is required by section 43 of the 2011 Act to have procedures for resolving complaints. These procedures are required to make provision for compensation. Postal service users may refer disputes to ComReg for resolution if their complaints are not resolved by their postal service provider. Section 43 does not make any distinction as between the universal postal service provider and any other postal service provider. The focus is on fair and prompt redress for postal service users and not on the limits of any obligations on particular providers to pay compensation based on the services they provide. This is reflected in the varying practices in Member States on this issue (referred to above). ComReg does not, therefore, consider that its proposed maximum compensation threshold discriminates between postal service providers.
- 2.26 An Post seeks clarification regarding whether the proposed maximum is applicable to international post. In this regard, An Post has stated that as the designated operator to fulfil Ireland’s obligations under the Universal Postal Union (“**UPU**”)¹⁶ Convention, it is bound by the associated UPU Regulations¹⁷ which set out the indemnities for the loss of, total theft from or total damage to, a registered item. An Post states that the proposed maximum “*is in excess of the amount of compensation payable for letters and most parcels under these international Regulations*”. An Post asserts that section 77 of the Consumer Rights Act 2022 clearly recognises that UPU norms and standards should be taken into account in the provision of services.

¹⁶ With 192 member countries, the UPU is the primary international forum for cooperation between postal sector designated service providers from member countries. Ireland is a member country since 1923. An Post, as the designated universal postal service provider in Ireland under the 2011 Act, is responsible for fulfilling Ireland’s obligations with regard to UPU regulations and agreements, in particular with regard to how they relate to international inbound and outbound post.

¹⁷ The UPU Regulations and Convention manuals set out the rules and the processes to be followed by designated service providers in their interactions between each other. (Universal Postal Union – Regulations to the Convention – Final Protocol – Berne 2021 & Universal Postal Union – Convention Manual – Update 3 / May 2021 [online:] [UPU Convention Manual, Berne 2021 \(update 3\)](#))

2.27 ComReg notes that the UPU's threshold for 'insured items'¹⁸ aligns with the €5,000 maximum amount of compensation that may be awarded under the dispute resolution procedures. The UPU regulations provides that:

*“Every member country or designated operator may limit the insured value, so far as it is concerned, to an amount which may not be less than 4,000 SDR or to an amount at least equal to that adopted in its domestic service if that amount is less than 4,000 SDR....”*¹⁹

2.28 ComReg will continue to have regard to the provisions of the UPU Regulations where applicable in its resolution of disputes, subject to the overriding requirement (which derives from Article 19 of the Postal Services Directive and is transposed in section 43(5)(d) of the 2011 Act) that providers' procedures enable disputes to be settled fairly and promptly.

2.29 An Post submitted that the justification for the maximum amount of compensation was insufficient, citing ComReg's statement in its consultation that most compensation payments to date have not exceeded €500 in monetary terms. ComReg also noted in its consultation that a small number of cases had exceeded this amount. Some of these cases significantly exceeded the €500 amount. ComReg is not proposing to increase an existing maximum compensation amount as currently there is no maximum. In the circumstances, An Post's submission would appear to seek a lower maximum compensation amount, or none at all. ComReg remains of the view that having a maximum amount of compensation is appropriate and notes that no alternative maximum (with accompanying rationale) has been suggested by An Post.

2.30 An Post expressed concern that the proposed maximum could inadvertently set (inappropriate) expectations for postal service users. This was something ComReg clearly stated in its consultation should not occur. ComReg remains of the view that it is a benefit to all interested parties to have a maximum compensation amount. It provides certainty for postal service users and postal service providers alike in assessing their options / potential liability.

¹⁸ Article 18-001 Insured items [online:] see: [UPU Convention Manual, Berne 2021 \(update 3\)](#)

¹⁹ 4,000 SDR = €4,992.27 [Exchange calculated 09:50 UTC, 28 November 2024, 1 XDR = 1.24807 (xe.com)]

2.3 Publication of resolution summaries

2.31 In section 4.2 of its consultation ComReg proposed to issue a summary of its resolution to the parties in a dispute at the same time as it issues a final resolution. ComReg also proposed that the final summary, which would be produced *“Following analysis of all submissions and comments, including consideration of all comments on the draft summary and draft resolution”* would be issued to the parties and published by ComReg.

Respondents' views:

2.32 An Post stated that it sees *“no legal basis to publish summaries of dispute outcomes, other than the number of disputes settled on a purely statistical basis”*. It added that *“as the universal service postal provider [An Post] is obliged to offer and provide services on a basis and in a manner which is much broader than other service providers and which must be distinguished from other postal service providers... it would be discriminatory, disproportionate and prejudicial to An Post's interests as the universal postal service provider to publish such matters”*.

ComReg's position:

2.33 It is a function of ComReg to monitor and ensure compliance by postal service providers with the obligations imposed on them.²⁰ ComReg has all such powers as are necessary for or incidental to the performance of its functions, under the 2002 Act or any other Act.²¹ ComReg is required by section 43(3) of the 2011 Act to resolve disputes between postal service users and postal service providers in accordance with procedures established and maintained by it. ComReg is required to publish these procedures²² and they are required, amongst other things, to be transparent²³.

2.34 It is an objective of ComReg's²⁴ in exercising its functions in relation to the provision of postal services, to promote the interests of postal service users within the Community. ComReg is obliged to take all reasonable measures aimed at achieving this objective, including by ensuring a high level of protection for postal service users in their dealings with postal service providers.²⁵

²⁰ Section 10(1)(c) of the 2002 Act.

²¹ Section 10(3) of the 2002 Act.

²² Section 43(4) of the 2011 Act.

²³ Section 43(5)(a) of the 2011 Act.

²⁴ Section 12(1)(c)(ii) of the 2002 Act.

²⁵ Section 12(2A)(d)(i) of the 2002 Act.

- 2.35 ComReg is required²⁶ to ensure that in carrying out its functions it seeks to ensure that the measures it takes are proportionate having regard to its objectives. ComReg is satisfied that the publication of case summaries is a transparency measure that is proportionate to the objectives of promoting the interests of postal service users and ensuring a high level of protection for them in their dealings with postal service providers. ComReg's dispute resolution procedures are required by section 43(5) of the 2011 Act to be transparent.
- 2.36 The fact that the designated universal postal service provider is required to offer services on a basis and in a manner broader than non-universal postal service providers (and can thereby be distinguished from such other providers) is a consequence of the provisions of the Postal Services Directive. The Postal Services Directive envisages publication of information regarding the manner in which complaints to the universal postal service provider have been dealt with. Therefore, claims that publication of case summaries would be "*discriminatory, disproportionate and prejudicial*" to An Post's interests as the universal postal service provider, appear to conflict with the Postal Services Directive itself.
- 2.37 The procedures also contain a process by which the draft summary is provided to the postal service provider (and postal service user) for comment prior to publication (see paragraph 44 of the procedures). This process provides an opportunity for issues of confidentiality to be considered by the Decision Maker prior to the preparation and issuance of the final summary (see paragraph 48 of the procedures).
- 2.38 For the avoidance of doubt the publication of case summaries will only apply to case summaries of disputes commenced after the coming into effect of the procedures (see paragraph 1.8) and when a dispute has been finalised. ComReg has amended paragraph 51 of the procedures to reflect that a final summary will be issued for publication with the final resolution. ComReg may also publish reports using aggregated information from dispute summaries.

2.4 Additional technical information and opinion

Respondents' views:

- 2.39 An Post sought clarity regarding the circumstances in which ComReg will "*infer opinions*" and the criteria these will be based on. An Post also sought clarity on where ComReg will source information not supplied to it by the parties to a dispute.

²⁶ Section 12(3) of the Communications Regulation Act 2002.

ComReg's position:

- 2.40 Firstly, paragraph 38 of the draft procedures does not state that ComReg will “*infer opinions*”. Rather, it states that it *may* be necessary to consider information not presented by the parties, such as technical information and opinion. ComReg understands the submissions made in respect of this point to concern An Post’s desire that a fair and transparent process is ensured.
- 2.41 With regard to where ComReg will source technical information, not supplied by the parties and the stated concern that ComReg may not provide reasons for seeking additional information not presented by the parties, it is not the case that ComReg is proposing to rely upon “*unknown assumptions or opinions*”.
- 2.42 Should ComReg need to have regard to the opinion or information of third parties (that is a party other than the postal service user and the postal service provider), the procedures detail that a copy will be provided to parties to the dispute and an opportunity for response provided²⁷. For the avoidance of doubt full disclosure of this opinion and information will also be outlined in the draft proposed resolution.
- 2.43 ComReg is permitted to engage such consultants or advisors as it may consider necessary to assist it in the discharge of its functions²⁸ and may have regard to such opinions or information as may be offered by them. It also remains the case that it is ComReg alone that is responsible for the discharge of its functions and the dispute resolution made will be made only by it. In this regard, ComReg is cognisant of its statutory obligation to be independent in the exercise of its functions²⁹.
- 2.44 Both the postal service user and the postal service provider will also have a further 10 working days to review the draft proposed resolution and to provide their response to it before any final proposed resolution is issued. It is ComReg’s view that this is an adequate amount of time for the postal service provider to review the case and to provide their response. As the procedures as drafted also provide (paragraph 47) ComReg may accept an application for further time by either party to provide a comprehensive response where it considers that there are good grounds for doing so.

²⁷ Paragraph 39 states: “As soon as ComReg has evaluated any third party information, both the provider and the user will be sent a copy and will be given 10-working days to provide a written detailed response to ComReg”.

²⁸ Section 22 of the 2002 Act

²⁹ Section 11 of the 2002 Act.

- 2.45 Given that ComReg is an expert regulatory body, it is not envisaged that recourse should often be required to third party information however, and as stated, in the discharge of its functions and in appropriate circumstances, ComReg may do so.

2.5 Direct contact with user

- 2.46 ComReg proposed in the consultation to include the following paragraph in its procedures:

“52 At any time, up to the issuance of the draft resolution, the provider is free to contact the user to resolve the dispute directly.

52.1 If agreement is reached, the provider must notify ComReg within 2-working days of the dispute being resolved, and evidence that the user has accepted the resolution in writing.”

Respondents' views:

- 2.47 An Post sought clarity on what is to happen where a postal service provider makes direct contact with a postal service user but is unsuccessful in resolving the dispute.
- 2.48 An Post also sought clarity regarding whether postal service providers will be obliged to inform ComReg of an intention to make direct contact with a user prior to doing so.

ComReg's position:

- 2.49 Postal service providers are not obliged to inform ComReg prior to making direct contact with a postal service user in respect of a dispute nor are they obliged to inform ComReg of direct contact that has been unsuccessful in resolving the dispute. A postal service provider may wish for its written communications with postal service users to form part of its dispute submissions and in general, subject to the requirements of the procedures and ensuring fairness of process, this may be permitted.

Annex: 1 Legal Basis

- 1 ComReg is obliged, pursuant to section 12(2A)(d) of the Communications Regulation Acts 2002 to 2011 (“the 2002 Act”) to take reasonable measures to promote the interests of postal service users, including:

“(i) ensuring a high level of protection for postal service users in their dealings with postal service providers, in particular by—

(l) ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved...

(ii) addressing the needs of specific social groups, in particular, disabled postal service users.”

- 2 The 2011 Act provides at Section 43(3):

“The Commission, or a person appointed by the Commission, possessing, in the opinion of the Commission, the requisite degree of independence from the postal service provider concerned, may, in accordance with procedures established and maintained by the Commission, resolve disputes which remain unresolved after due completion of all the procedures of a code of practice drawn up under subsection (1)...”

- 3 The 2011 Act provides at Section 43(4):

*“The Commission shall publish any procedures established by it pursuant to subsection (3) and **any amendments thereto**”. (emphasis added)*

- 4 The 2011 Act provides at Section 43(5):

“The procedures referred to in subsections (1) and (3) shall be—

(a) transparent,

(b) simple,

(c) inexpensive, and

(d) enable disputes to be settled fairly and promptly.

Appendix: 1 Postal Dispute Resolution Procedures

A 1.1 Published as ComReg Document 24/102a