



Response to Consultation

**Complaints and Dispute Resolution Guidelines
for Postal Service Providers who provide postal
services within the scope of the universal service**

Guidelines

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1 Executive Summary

On the 25 September 2007, the Commission for Communications Regulation (“ComReg”) launched a consultation process on the proposed complaints and dispute resolution guidelines for postal service providers who provide postal services within the scope of the universal service.

ComReg is obliged under Regulation 15 (1) of the European Communities (Postal Services) Regulations, 2002 to lay down guidelines in consultation with the provider for dealing with users complaints.

The main objective of these legally enforceable guidelines is to assist postal service providers who provide postal services within the scope of the universal service, to draw up transparent, simple and inexpensive procedures for dealing with user¹ complaints and to ensure an appropriate form of redress is available to the user in the event of loss and substantial delay², theft, damage or non-compliance with service quality standards.

Having considered the views of interested parties, ComReg, following publication of this “Response to Consultation”, will issue legally enforceable guidelines that clearly outline the requirements which focus on the following:

1. Relevant and appropriate Information on the Complaints and Dispute Resolution Procedures;
2. Minimum requirements regarding communication to complainants that include internal and external appeals mechanisms, response times to deal with complaints and maximum times for complaint resolution;
3. Retention of records relating to a complaint until any appeals process is exhausted;
4. Publication of a Code of Practice and ensuring customers are aware of the code by publicising it through the usual communication and advertising mediums;
5. The provision of a compensatory principle in the event of service failure. The scheme for compensation in these cases can be in the form of a number of stamps and/or a cash amount, provided that the claim is in proportion to the cost of the mailing.

These guidelines are to be fully implemented by all relevant service providers no later than 18 March 2008.

ComReg would like to thank those who responded to the consultation paper and welcomes the industry wide consistency these guidelines will bring to the handling of complaints regarding postal services in the universal service area.

¹ Any natural or legal person benefiting from universal service provision as a sender or an addressee.

² Substantial delay for domestic mail is defined as any item that has not been received within 7 calendar days and for cross border mail within 10 calendar days.

2 Introduction

In May 2003, following a previous consultation³, ComReg set out guidelines to be advised to An Post and other service providers.

An Post was required to submit its Code of Practice for approval no later than 13 August 2003, and to include its proposals for compensation / re-imbusement. A number of drafts were submitted by An Post between August 2003 and November 2006. In all drafts An Post neglected to deal with compensation measures for lost or delayed standard mail but did make incremental improvements to the other items listed in the Code of Practice.

On the other hand other postal service providers (who provide postal services within the scope of the universal service), being commercial organisations of varying size and level of turnover, almost without exception appear to have procedures in place that meet the requirements of the compensatory principle as part of their customer care policies.

2.1 Consultation

When considering the proposed guidelines, ComReg must act in accordance with law and operate in a transparent manner, giving all interested parties the opportunity to comment on the proposals under consideration.

In September 2007 consultation paper ComReg 07/71 was published requesting views of interested parties with regard to complaints and dispute resolution guidelines.

Four submissions were received by the closing date. The respondents were:

- (a) An Post;
- (b) DX Network Services Ireland Ltd (DX);
- (c) Irish Charities Postal Users' Forum (Charities Forum); and
- (d) TICo Group Ltd and TICo Postal Services Ltd (TICo).

The responses received by ComReg to the consultation paper have been of great assistance in informing ComReg as to the level of detail, timeframes and overall content that is required in the guidelines.

ComReg would like to express its gratitude to all who contributed to this consultation. While all points raised by respondents have been considered, readers will appreciate that it is not feasible to refer to every point made by every respondent in a document of this nature.

³ ComReg 02/95 Postal Services - Universal Service Obligation, Tariff Principles and miscellaneous issues'

2.2 Legal Basis

2.2.1 Irish Legislation

Regulation 15 (1) of the European Communities (Postal Services) Regulations, 2002 (the “Postal Regulations”) provides:

“A universal service provider and a postal service provider with an annual turnover of €500,000, exclusive of VAT, shall, in accordance with guidelines laid down by the Regulator in consultation with the provider, draw up transparent, simple and inexpensive procedures for dealing with users complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved). These procedures shall enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement or compensation or both.”

2.2.2 European Legislation

1997/67/EC (the “First Postal Directive”), as amended, provides:

“Member States shall ensure that transparent, simple and inexpensive procedures are drawn up for dealing with users' complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved).

Member States may provide that this principle is also applied to beneficiaries of services which are:

- outside the scope of the universal service as defined in Article 3, and*
- within the scope of the universal service as defined in Article 3, but which are not provided by the universal service provider.*

Member States shall adopt measures to ensure that the procedures referred to in the first subparagraph enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation.

Without prejudice to other possibilities of appeal under national and Community legislation, Member States shall ensure that users, acting individually or, where permitted by national law, jointly with organisations representing the interests of users and/or consumers, may bring before the competent national authority cases where users' complaints to the universal service provider have not been satisfactory resolved.”

[Article 19]

2.2.3 Other Relevant Legislation

Section 64 of the Postal and Telecommunications Services Act, 1983 (the “1983 Act”), as qualified⁴, provides that An Post is immune from all liability in respect of any loss or damage suffered by a person in the use of a universal postal service by reason of: (i) failure or delay in providing, operating or maintaining a postal service; or (ii) failure, interruption, suspension or restriction of a postal service.

Recital 34 of the First Postal Directive provides:

“ . . . Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (7) applies to postal operators;”

2.3 Format of document

This report summarises the main issues raised during the consultation; both in the consultation paper itself and by the respondents to the consultation.

Chapter 3 briefly summarises each issue, provides an analysis by ComReg of the consultation responses and the position adopted by ComReg in response to the consultation.

Chapter 4 notes the issues raised by respondents which are considered by ComReg outside the scope of the consultation.

The four submissions received are published separately as an annex (ComReg document 07/105 a) to this document, with confidential information excluded.

⁴ Regulation 4 (7) of the Postal Regulations.

3 Issues regarding the proposed guidelines

The consultation paper proposed a set of legally enforceable guidelines in the following areas:

3.1 Complaints and Dispute Resolution Procedures - information & minimum requirements for lodging and receiving complaints

3.1.1 Consultation Issue - Information (Ref sec 3.2 of the consultation paper)

A postal service provider (who provides postal services within the scope of the universal service) must provide and publish simple and inexpensive complaints and dispute resolution procedures for dealing with users complaints. The scope of the procedures must be clear.

Clear and up to date information should be available to users on how to contact the postal service provider.

The postal service provider must also ensure full flexibility for users to submit complaints.

The information sought from users in any complaint pro-forma must be relevant to the resolution of the complaint submitted.

3.1.2 Consultation Issue – Lodging and Receiving Complaints (Ref sec 3.3 of the consultation paper)

Written Procedures for the process to be followed by a complainant when lodging a complaint included minimum criteria such as:

- be easy to follow;
- the information communicated should be clear; and
- assistance in making a complaint should be available to all users, during normal business hours at a very minimum.

With regard to receiving complaints the proposed guidelines stated that all personnel should treat the complainant in a courteous manner and promptly respond to their complaints, or alternatively direct them to the appropriate individual or service in the organisation that is able to respond to the complaint. All personnel should also be aware of their roles, responsibilities and authorities in respect of complaints and be aware of what procedures to follow and what information to provide to complainants. Postal service providers (who provide postal services within the scope of the universal service) should take all reasonable steps to implement and maintain this level of awareness.

A set of timescales was proposed for the acceptance and handling of complaints as follows:

- for domestic mail one month from date of receipt of item and three months from date of posting of item;
- for international mail up to six months; and
- within one month for all non mail related complaints.

ComReg did however state its expectation that all reasonable attempts will be undertaken to resolve a complaint in cases where the appropriate timescale has elapsed.

Interested parties were asked the following question:

Q. 1. Do you agree with the guidelines as set out in 3.2 and 3.3 above? If not, what amendments would you consider appropriate?

3.1.3 Views of respondents – Combined for Information (Ref sec 3.2 of the consultation paper) and Lodging and Receiving complaints (Ref sec 3.3 of the consultation paper)

All respondents agreed with the principles as set out in the consultation paper at Section 3.2 which dealt with information and Sec 3.3 which dealt with lodging and receiving complaints.

An Post, whilst agreeing with the principles, added a number of qualifications including a reference to its procedures which direct all complainants to its Customer Service Centre and the provision of access to premises to be achieved by 2015 in accordance with the Disability Act 2005.

The Charities Forum added one caveat to its agreement with the guidelines set out at 3.2 and 3.3 in the consultation document, that all reasonable attempts will be undertaken by postal operators to resolve a complaint in cases where the appropriate timescale has elapsed.

3.1.4 ComReg Position

As all respondents are broadly in agreement with the principles as stated in the consultation paper at Section 3.2, (which dealt with information), and Sec 3.3 (which dealt with lodging and receiving complaints), the guidelines will be issued as previously outlined and will also refer to the understanding that all reasonable attempts will be undertaken to resolve a complaint in cases where the appropriate timescale has elapsed.

In addition, all personnel representing postal operators should be familiar with the procedures to be followed, including the information to be provided to customers who wish to make a complaint.

3.2 Minimum requirement for communicating and responding to complaints

3.2.1 Consultation Issue - Communication to Complainant

The consultation stated that receipt of each complaint should be acknowledged to the complainant within 7 calendar days. Best practice should result in users' records remaining current and complainants being updated of any progress in respect of their complaint when a resolution is not immediate.

An appeals mechanism was also put forward identifying the need for an internal appeals mechanism and also communication to the complainant of any available external appeals mechanisms. The following consultation question was posed:

Q. 2. Are the guidelines for communication with the user sufficient in your view? If not, please give reasons for your answer.

3.2.2 Views of respondents

Whilst An Post and the Charities Forum both agreed with these guidelines, TICO proposed a reduction in the time to acknowledge a complaint from 7 calendar days to 1 working day.

With regard to the external appeals mechanism An Post proposed to add the National Consumer Agency (NCA), ComReg and NSAI together with Ombudsman as escalation points. An Post also claims that

“it is an accepted principle that customers must have exhausted the An Post complaints procedures before approaching these bodies”.

DX was not convinced that it is really necessary to include a list of contact details and suggested that ComReg should nominate one of the authorities to handle unresolved complaints about operators other than An Post.

3.2.3 ComReg Position

3.2.3.1 Timing

ComReg, having considered responses received, will issue guidelines providing a maximum of 3 working days to acknowledge customer complaints received.

3.2.3.2 Appeals Mechanism

Internal appeals mechanism - the procedures must contain an internal appeals mechanism.

External appeals mechanism - the procedures must contain contact details for those organisations to whom complainants may choose to go as part of the external appeals mechanism.

The first and second Postal Directives do not permit ComReg, An Post or other postal service providers to restrict customers' remedies. That said, and in line with best practice, ComReg will advise all customers to contact the Operator directly

and encourage the customer to exhaust all avenues for resolving the issues directly with the operator in the first instance before contacting any other organisations.

3.2.4 Consultation Issue - Response Times

ComReg proposed response timescales whilst acknowledging that times will vary depending on the nature of the complaint, complexity, level of investigation, number and location of other operators involved, other regulations etc.

The requirement for written procedures was clearly stated.

The times proposed for universal services were 20 days, depending on the complaint category for the domestic market and up to 40 days for international within industrialised countries and up to 60 days for all other countries.

Q. 3. Are the maximum handling times for treatment of complaints acceptable? If not, please give reasons for your answer.

3.2.5 Views of respondents

Whilst the Charities Forum considered the maximum handling times for treatment of complaints as acceptable, TICo proposed a reduction to the time to resolve a domestic complaint from 20 to 5 calendar days, in the case of an international complaint from 40 to 10 calendar days and in the case of international claims (industrialised countries) and 60 to 30 calendar days for all other countries.

An Post on the other hand suggested 30 calendar days for domestic complaints in accordance with the EN14012 standard. An Post also stated

“ . . in respect of international claims (Industrialised Countries) there is no requirement to respect the 40 day timeline for non-European members e.g. USA, Canada, Australia, New Zealand etc. Furthermore, in respect of the 40 and the 60 day periods, it is necessary to add the time that has elapsed between receipt of the customer’s enquiry and the completion and despatch of the relevant document (CN08) to the PPO.”

3.2.6 ComReg Position

ComReg has considered the diverse views expressed by TICo and An Post with regard to the maximum times for complaints handling. The UPU Congress notes that electronic mail transfer facilitates faster and more efficient resolution of disputes and complaints and as such ComReg considers that complaint handling for postal operators should be progressed faster, taking into account developments in communications technology.

ComReg, taking into account that a full and complete investigation of a complaint must be undertaken and that some complaints are more complex, has decided that it is best to allow:

- up to 30 calendar days for domestic complaints;
- up to 40 calendar days for complaints covering Europe, Canada, New Zealand, Australia and USA and all other countries where the matters can be dealt with by fax and any other electronic means; and
- up to 60 calendar days for all other international complaints.

ComReg reminds operators that these are maximum timeframes and encourages all to endeavour to meet customer needs in the shortest time possible. It should also be noted that a postal service provider (who provides postal services within the scope of the universal service) must retain all records relating to a complaint until any appeals process is exhausted.

3.3 Publication of a Code of Practice

3.3.1 Consultation Issue

Once ComReg has issued legally enforceable guidelines the postal service provider (who provides postal services within the scope of the universal service) is obliged to publish its code of practice using the usual communication and advertising mediums and ensure that it is readily available for viewing by all its users.

Q. 4. Is the proposal with regard to the requirement that postal service providers publicise what is on offer to customers in the form of complaints and redress code of practice sufficient in your view? If not, please give reasons for your answer.

3.3.2 Views of respondents

The Charities Forum claims that an adequate Code of Practice that is well publicised is an absolute essential. Similarly, TICo welcomes the recommendation, whereas DX has concerns regarding the obligation for operators to publish the code of practice and ensure it is readily available to users. DX contend that for smaller operators it would be acceptable to fulfil the obligation by publishing on the internet or by making it available on application. In addition DX also claim that operators who have individual contracts with their customers should be exempted from any requirement to comply with the guidelines and claim that it would be unnecessary duplication.

An Post plans to draw up and launch a Customer Charter in accordance with the guidelines issued by ComReg but contends that final approval is a matter for the An Post Board.

3.3.3 ComReg Position

The main purpose of the publication of a code of practice is that consumers are clearly informed of the complaints procedures available to them and have a readily available access to those procedures that have to be followed in the case of a complaint about the postal service. This right is guaranteed for consumers under law.

ComReg expects all operators to observe consumer rights and to publicise their Code of Practice for complaints and dispute resolution through the usual communication and advertising mediums. If some operators use the internet as the main means of communicating timely and relevant information to customers then this should be an acceptable medium. However this will not be the case for all operators covered by these guidelines.

Operators must also ensure that copies of the Code of Practice for Complaints and Dispute Resolution are available at all locations where customers have access to postal services offered by the operator.

Operators who hold a contract of service with customers must ensure the terms and conditions of the contract refer to accessibility to a Code of Practice for Complaints and Dispute. In the case of specific terms and conditions agreed by Operators on a customer by customer basis, these guidelines must be met at a minimum.

Finally, and regardless of the choice of terminology employed by operators when referring to its code of practice, the published document must meet, at a very minimum, these legally enforceable guidelines.

3.4 Compensation

3.4.1 Consultation Issue

In the consultation paper ComReg stated that except for registered⁵ and insured items postal service providers (who provide postal services within the scope of the universal service) must comply with the following principle:

*1. If the postal service provider (who provides postal services within the scope of the universal service) fails to provide the customer with the service in question, then subject to force majeure * and excluding consequential loss, the provider shall at a minimum put the customer in the position it would have been in had the service been satisfactorily provided.*

**“Force majeure” does not include any form of industrial action.*

By virtue of: (i) the exclusion of consequential loss; (ii) the common law position in respect of economic loss; (iii) the non-application of this principle to circumstances covered by the registered⁵ post and insurance universal services as defined in the Postal Regulations; and (iv) reasonable proof, ComReg does not anticipate an unreasonable or disproportionate level of compensation arising⁶.

Any natural or legal person benefiting from universal service provision as a sender or an addressee can initiate a claim.

⁵ Registered and insured items are outside the scope of this compensation and are covered by a separate scheme.

⁶ An Post Annual Report 2005; The total number of written complaints in 2005 (36,478) continues to represent a minute fraction of the total mail traffic handled during 2005, i.e. approximately 0.005%. The corresponding number of written complaints as stated in the An Post Annual Report 2006 was 33,811.

Postal service providers (who provide postal services within the scope of the universal service) should indicate the process for compensation they plan to implement in their formal Code of Practice when response / maximum handling times are not met.

Q. 5. Are the principles as outlined for compensation sufficiently clear? If not what amendments would you consider appropriate?

3.4.2 Views of respondents

Concern was expressed with regard to the high level of the compensatory principle as set out in the consultation. The Charities Forum state that the wording could lead to un-necessary disputes about the interpretation of what was intended by the service provider and what was understood by the user. TICo, whilst broadly welcoming the proposal, believes that the terms are too vague and open to interpretation.

Two specific problems with the operation of the compensatory system were identified by DX; one being fraudulent claims and the other being, who should be compensated as both the sender and/ or receiver can initiate a claim.

Whilst An Post will introduce compensation where timelines in relation to response times and/or maximum handling times of complaints have not been met and also offers a gesture to customers that have experienced problems with standard postal service, in the response to consultation it referred to its legal position⁷ and stated as follows:

“ concerning compensation claims arising from the provision of the universal service, [An Post] is not required to offer compensation for items sent using the Standard Post service [Footnote reference – Please note that An Post does not accept that industrial action is never force majeure. There is no basis in law to exclude all forms of industrial action from the concept of force majeure].. . . Therefore, An Post does not consider that there is a legal requirement to offer any system of reimbursement and/or compensation, unless such a system is warranted.”

3.4.3 ComReg Position

ComReg in its consultation paper stated the following:

“..except for registered⁵ items and insured items postal service providers (who provide postal services within the scope of the universal service) must comply with the following principle:

1. If the postal service provider (who provides postal services within the scope of the universal service) fails to provide the customer with the service in question,

⁷ Section 64 of the Postal and Telecommunications Services Act 1983 (‘the Act’)

*then subject to force majeure * and excluding consequential loss, the provider shall at a minimum put the customer in the position it would have been in had the service been satisfactorily provided.*

**“Force majeure” does not include any form of industrial action.*

By virtue of: (i) the exclusion of consequential loss; (ii) the common law position in respect of economic loss; (iii) the non-application of this principle to circumstances covered by the registered⁵ post and insurance universal services as defined in the Postal Regulations; and (iv) reasonable proof⁸, ComReg does not anticipate an unreasonable or disproportionate level of compensation arising”.

Taking into account the views expressed by respondents, ComReg wishes to clarify that in cases where the postal service provider fails to provide the user with the service offered⁹, the user can expect to be put in the position he would have been in had the service been satisfactorily provided as follows:

Accordingly the compensation scheme will:

- Provide for the user to receive some compensation in the form of a number of stamps and/or a cash amount provided it is reasonable and in proportion to the full cost of the mailing.
- Cover the full cost of the mailing, which will include recompense¹⁰ for the following elements:
 - The cost of the postage fee paid;
 - The cost of the material in the mailing, which should reflect the current cost of the replacement / reproduction of the original packaging and contents; and
 - A small compensation to cover any other relevant and reasonable costs incurred.
- Exclude consequential loss, economic loss and circumstances covered by registered⁵ post and insured universal services as defined in the Postal Regulations;

⁸ Whilst a certificate of postage is available from An Post, ComReg would not anticipate that this is necessary for all claims, and would expect that the complaint details as submitted would be generally accepted by all parties. However, there may be some cases where reasonable proof is needed and the User is required to provide some form of evidence of posting.

⁹ Complaints about lost items will also cover items that are substantially delayed. Substantial delay for domestic mail is defined as any item that has not been received within 7 calendar days and for cross border mail within 10 calendar days.

¹⁰ ComReg notes that the contractual relationship between a Postal Service Provider and its bulk mail customers may refer to specific compensation terms equal to or in excess of these guidelines.

ComReg anticipates that:

- the largest estimated volume¹¹ of complaints and subsequent compensation claims, will relate to the smaller value category and as such will not prove financially onerous on the postal service provider and
- all customer claims will be dealt with in a full and satisfactory manner.

Postal service providers (who provide postal services within the scope of the universal service) should indicate the process for compensation they plan to implement in their formal Code of Practice when response times and /or maximum handling times are not met. In addition ComReg requires all postal service providers to communicate to their customers clearly and regularly the availability of the compensation scheme.

ComReg will revisit the guidelines in the event that customers experience difficulties in processing claims and receiving compensation from operators.

3.5 Additional Aspects of the Guidelines

3.5.1 Consultation Issue

In the consultation paper ComReg asked if there were any additional aspects of the guidelines that require consideration.

Q. 6. Are there any additional aspects of the Complaints and Dispute Resolution Guidelines for Postal Service Providers who provide postal services within the scope of the universal service within Regulation 15(1) SI No 616 of 2002 that require consideration in your view?

3.5.2 Other Issues raised by Respondents and ComReg responses

3.5.2.1 Principles of Quality Customer Service

The Charities Forum also state that An Post is

“currently obliged to comply with the Principles of quality Customer Service published by the government, but in reality it does not comply . . .”

The principles of Quality Customer Service was formally published on 9 May 1997, revised by the QCS Working Group and approved by Government in July 2000. It outlines twelve principles that Civil Service Departments and Public

¹¹ An Post Annual Report 2005; The total number of written complaints in 2005 (36,478) continues to represent a minute fraction of the total mail traffic handled during 2005, i.e. approximately 0.005%. The corresponding number of written complaints as stated in the An Post Annual Report 2006 was 33,811.

Service offices will comply with in their dealings with the public but does not extend to An Post or any other operator encompassed by these guidelines.

Notwithstanding, ComReg is of the view that the details as outlined in the “Complaints and Dispute Resolution guidelines” are broadly in line with the theme of the principles approved by Government and indeed specify more detail in some instances.

3.5.2.2 Types of consumers and Operators

DX draw attention to the different types of consumers and operators that need to be treated differently in the postal market. DX also believe that it would not be unreasonable for ComReg to apply less onerous standards to Operators other than An Post.

ComReg proposed a set of high level guidelines in the consultation that should, at a minimum, be available to all customers from all operators. The guidelines offer assurance to customers that all operators maintain a consistent standard in complaints and redress procedures. In addition the legislation¹² that deals with complaints and dispute resolution does not differentiate among operators. The guidelines should benefit competition by assuring consumers that all operators within the postal industry maintain consistent standards in complaints and redress procedures. Whilst ComReg readily acknowledges that there are different types of postal consumers, we consider that the guidelines are pitched at an appropriate level to be relevant and fitting to all consumers.

3.5.2.3 Legislation

The Charities Forum believes that Section 64 of the 1983 Postal and Telecommunications Services Act needs to be repealed:

“. . . The unique immunity enjoyed by the USP is a very significant barrier to entry to the market by other service providers. We have asked the Minister to remove it, and if he fails to do so we consider that it would be appropriate for the Competition Authority to examine it.”

ComReg notes that the respondent has asked the Minister to review this matter. Whilst An Post claims that Section 64 of the Postal and Telecommunications Act 1983 was expressly included in the Regulations, and therefore An Post is protected from liability from compensation claims arising out of its provision of the universal service, ComReg holds that Regulation 15(1) of S.I. no 616 of 2002 implicitly amends section 64 of the 1983 Act.

3.5.2.4 Publication of Annual Number of complaints

An Post refer to what it is undertaking with regard to the publication of the annual number of complaints by category in its annual report and the intention to amend the complaint categories.

ComReg notes the information provided. However this consultation only refers to Regulation 15 (1). Where necessary, ComReg will deal directly with An Post with

¹² Regulation 15 S.I no 616 of 2002

regard to this matter which is dealt with under Regulation 15(2) of S.I. No 616 of 2002.

3.5.2.5 Situations where more than one operator is involved

An Post notes that procedures should cover situations where more than one operator is involved and in order to do this, there must be a relatively similar level of detail available from all service providers.

The ComReg guidelines will apply to all Postal Service Providers who provide postal services within the scope of the universal service. This is a step towards ensuring consistency. Further reviews with regard to the regulatory needs in a multi operator environment will be undertaken in preparation for Full Market Opening.

3.5.2.6 ComReg's role to deal with postal consumers' complaints

An Post state that

“ComReg has recognised that it has no specific powers to deal with postal consumers' complaints. As a matter of law the Ombudsman is the body charged with investigating complaints regarding An Post”.

ComReg has an inherent power under the Regulations and the 2002 Act to compel An Post to provide a particular service, where to do so is necessary, to ensure the quality of the universal service.

4 Issues outside the scope of the consultation

Certain interested parties, in responding to ComReg’s consultation, raised issues that are outside the scope of the consultation, which is confined to complaints and dispute resolution.

4.1 Government Policy ‘Regulating Better’

4.1.1 Views of Respondent

The Charities Forum claim that

“postal regulations once in place are very rarely if ever reviewed’ and ‘believe that many of these outdated rules and regulations are incompatible with a code of practice as now envisaged.”

4.1.2 Commission Position

ComReg is of the view that the details as outlined in the guidelines meet the specific requirement. The review of legislation is outside the scope of this consultation. ComReg notes that this is primarily a matter for the Minister and DCENR.

4.2 Consolidation of legislation

4.2.1 Views of Respondent

The Charities Forum claim there is a need to consolidate the postal legislation to make it meaningful and customer-friendly.

4.2.2 Commission Position

While there is some substance to this observation, the consolidation of legislation is outside the scope of this consultation. ComReg notes that this is a matter for the Minister and DCENR.

4.3 Co-operation Agreements between Agencies and ComReg

4.3.1 Views of Respondent

An Post refers to a request to view co-operation agreements that ComReg has with other agencies such as the NCA.

4.3.2 Commission Position

The purpose of the consultation is to set out complaints and dispute resolution guidelines only for use by Postal Service Providers. Co-operation agreements between ComReg and any other agency are not relevant to this .

4.4 Contractual Relationship between Operators and customers

4.4.1 Views of Respondent

DX states that it would

“welcome clarification of ComReg’s understanding of the respective contractual relationships between An Post and its customers and between other operators and their customers”.

4.4.2 Commission Position

The contractual relationship between Operators and customers is not a matter for this consultation.

Appendix A – Guidelines

The Secretary
Operator Name
Operator Address

Legally Enforceable Guidelines under Regulation 15(1) of the European Communities (Postal Services) Regulations, 2002

Dear Secretary

The Commission for Communications Regulation in accordance with Regulation 15(1) of the European Communities (Postal Services) Regulations, 2002 (“the Regulations”), having consulted with interested parties¹³ and having published its response to said consultation¹⁴, hereby issues legally enforceable guidelines to the above named Postal Service Provider who provides postal services within the scope of the universal service..

Legally Enforceable Guidelines

Postal Service Providers who provide postal services within the scope of the universal service shall draw up transparent, simple and inexpensive procedures for dealing with users complaints in accordance with the Guidelines as stated in Appendix 1.

Publication

Such Operators shall publicise, within 3 months from today, their “Complaints and Dispute Resolution” code of practice which must be, at a minimum, in compliance with the Guidelines in Appendix 1.

John Doherty
Chairperson
Commission for Communications Regulation

13 ComReg document No: 07/71 Consultation Paper: ‘Complaints and Dispute Resolution Guidelines for Postal Service Providers who provide postal services within the scope of the universal service’

14 ComReg document No: 07/105 Response to Consultation: ‘Complaints and Dispute Resolution Guidelines for Postal Service Providers who provide postal services within the scope of the universal service’

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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Appendix 1

Complaints and Dispute Resolution Procedures Information

A postal service provider (who provides postal services within the scope of the universal service) must provide and publish simple and inexpensive complaints and dispute resolution procedures for dealing with users complaints.

- The scope of the complaints and dispute resolution procedures must be clear.
- Clear and up to date information must be available to users on how to contact the postal service provider (who provides postal services within the scope of the universal service) in the event of complaints. Forms of contact will include for example contact telephone numbers, dedicated email addresses etc.
- The complaints and dispute resolution information should also be communicated on all product offerings and public notice material.
- The complaints and dispute resolution information on procedures for the submission of complaints (and all relevant forms) must be readily available to users and accessible at all physical points of contact (buildings), for example retail offices, mails offices, customer service areas etc. (and must be accessible to disabled users especially the blind and partially sighted).
- All employees and / or contractors of the organisation must be fully conversant on the company's complaint handling procedures and be able to effectively direct the complainant towards the proper complaints channel/contact.
- The postal service provider (who provides postal services within the scope of the universal service) must ensure full flexibility for users to submit complaints, for example complaints could be submitted verbally (visit to premises or telephone lo-call number), in writing (on-line customer service, dedicated email address, letter using FREEPOST), or by any other standard medium (including any future technological innovations).
- The information sought from users in any complaint pro-forma must be relevant to the resolution of the complaint submitted.

Lodging and Receiving Complaints

Written Procedures

- Postal service providers (who provide postal services within the scope of the universal service) must have written procedures for the process to be followed by a complainant when lodging a complaint and the process to be followed by the service provider thereafter.
- All such procedures should be easy to follow, the information communicated should be clear, and assistance in making a complaint should be available to all complainants, including those with disabilities, during normal business hours at a very minimum.

Receiving Complaints

- All personnel in contact with complainants should treat the complainant in a courteous manner and promptly respond to their complaints, or immediately direct them to the appropriate individual or service in the organisation that is able to respond to the complaint.
- In addition, at a minimum, all personnel representing the Operator should be familiar with the procedures to be followed including the information to be provided to complainants who want to make a complaint. For example all personnel should also be aware of their roles, responsibilities and authorities in respect of complaints and be aware of what procedures to follow and what information to provide to complainants.
- Postal service providers (who provide postal services within the scope of the universal service) should take all reasonable steps to implement and maintain this awareness.

Timescales

Users should be informed of the appropriate timescales for making a complaint. A postal service provider (who provides postal services within the scope of the universal service) must accept and handle complaints in line with the following timescales;

- for domestic mail one month from date of receipt of item and three months from date of posting of item.
- for international mail up to six months
- within one month for all non mail related complaints

Notwithstanding, ComReg expects postal service providers (who provide postal services within the scope of the universal service) to ensure that all reasonable attempts will be undertaken to resolve a complaint in cases where the appropriate timescale has elapsed.

Minimum requirement for communicating and responding to complaints

- Receipt of each complaint should be acknowledged to the complainant within 3 working days.
- All users' records held by the Postal Service Provider should remain current and complainants must be updated of any progress in respect of their complaint when a resolution is not imminent.
- Internal appeals mechanism - procedures must contain an internal appeals mechanism.
- External appeals mechanism - Procedures must contain contact details for a number of organisations to whom complainants may choose to go as part of the external appeals mechanism.

Response Times

- The postal service providers (who provide postal services within the scope of the universal service) must have written procedures describing response times for each category of complaint thereby ensuring reasonable expectations are set and met. Users should be informed of the expected time for them to receive answers at all treatment stages of the complaint.

ComReg, taking into account that a full and complete investigation of a complaint must be undertaken and that some complaints are more complex, has decided that it is best to allow

- up to 30 calendar days for domestic complaints,
- up to 40 calendar days for complaints covering Europe, Canada, New Zealand, Australia and USA and all other countries where the matters can be dealt with by fax and any other electronic means, and
- up to 60 calendar days for all other international complaints.
- If the timescale for receiving a response is not met, the complainant should be provided with specific information about the time foreseen for the conclusion of investigations, the resolution of the complaint and the final response.

Retention of Records

A postal service provider (who provides postal services within the scope of the universal service) must retain all records relating to a complaint until any appeals process is exhausted

Publication of a Code of Practice

- All postal service providers (who provide postal services within the scope of the universal service) are obliged to publicise their Code of Practice for Complaints and Dispute Resolution through the usual communication and advertising mediums within 3 months of issue of the Guidelines. The published document must meet, at a very minimum, these legally enforceable guidelines.
- All postal service providers (who provide postal services within the scope of the universal service) must also ensure that copies of the Code of Practice for Complaints and Dispute Resolution are available at all locations where customers have access to postal services offered by the Operator.
- Operators who hold a contract of service with customers must ensure the terms and conditions of the contract refer to accessibility to a Code of Practice for Complaints and Dispute. In the case of specific terms and conditions agreed by Operators on a customer by customer basis, these guidelines must be met as a minimum requirement.

Compensation

Except in respect of services for registered¹⁵ items and insured items postal service providers (who provide postal services within the scope of the universal service) must comply with the following principle:

If the postal service provider (who provides postal services within the scope of the universal service) fails to provide the customer with the service in question, then subject to force majeure¹⁶ and excluding consequential loss, the provider shall at a minimum put the customer in the position it would have been in had the service been satisfactorily provided.

By virtue of: (i) the exclusion of consequential loss; (ii) the common law position in respect of economic loss; (iii) the non-application of this principle to circumstances covered by the registered post and insurance universal services as defined in the Postal Regulations; and (iv) reasonable proof¹⁷, ComReg does not anticipate an unreasonable or disproportionate level of compensation.

Postal service providers (who provide postal services within the scope of the universal service) must accept a claim from any natural or legal person benefiting from universal service provision as a sender or an addressee.

Postal service providers (who provide postal services within the scope of the universal service) must communicate to their customers:

- the availability of the compensation scheme clearly and regularly;
- the process to be followed to initiate a claim for compensation;
- compensation amounts when response times and /or maximum handling times are not met.

The compensation scheme must:

- Provide for the user to receive some compensation in the form of a number of stamps and/or a cash amount provided it is reasonable and in proportion to the full cost of the mailing;
- Cover the full cost of the mailing, which will include recompense¹⁸ for the following elements;
 - The cost of the postage fee paid;
 - The cost of the material in the mailing, which should reflect the current cost of the replacement / reproduction of the packaging and contents and
 - A small compensation to cover any other relevant and reasonable costs incurred.

¹⁵ Registered and insured items are outside the scope of this compensation and are covered by a separate scheme

¹⁶ "Force majeure" does not include any form of industrial action.

¹⁷ Whilst a certificate of postage is available from An Post, ComReg would not anticipate that this is necessary for all claims, and would expect that the complaint details as submitted would be generally accepted by all parties. However, there may be some cases where reasonable proof is needed and the User is required to provide some form of evidence of posting.

¹⁸ ComReg notes that the contractual relationship between a Postal Service Provider and its bulk mail customers may refer to specific compensation terms equal to or in excess of these guidelines.

- Exclude consequential loss, economic loss and circumstances covered by registered¹⁷ post and insured universal services as defined in the Postal Regulations.

ComReg will revisit the guidelines in the event that Users experience difficulties in processing claims and / or receiving appropriate compensation from Operators.