



Commission for
Communications Regulation

Section 43(3) Dispute Resolution Procedures

Consultation

Reference: ComReg 14/87

Date: 21/08/14

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Content

Section	Page
1 Introduction	5
2 Background	6
3 Issues for consultation	8
3.1 Proposed Section 43(3) dispute resolution procedures	8
3.2 Informing postal service users of the Section 43(3) dispute resolution procedures	8
3.3 Information required to resolve Section 43(3) disputes	8
3.4 Compensation	9
4 Regulatory Impact Assessment (RIA)	10
5 Conclusion and Next Steps	11
5.1 Conclusion	11
5.2 Submitting comments	11
Appendix: 1 Proposed Section 43(3) dispute resolution procedures	13
Step 1 – Complainant submits dispute for Section 43(3) dispute resolution	13
Step 2 - Consideration of whether to accept dispute	14
Step 3 – Postal Service Provider responds	15
Step 4 - Resolution of a Section 43(3) dispute	15
Appendix: 2 Application form for submitting a dispute for Section 43(3) dispute resolution	17
Appendix: 3 Guidance note on completing application form for submitting a dispute for Section 43(3) dispute resolution	21
Appendix: 4 Legal Background	24

Appendices

Section	Page
Appendix: 1 Proposed Section 43(3) dispute resolution procedures.....	13
Appendix: 2 Application form for submitting a dispute for Section 43(3) dispute resolution	17
Appendix: 3 Guidance note on completing application form for submitting a dispute for Section 43(3) dispute resolution	21
Appendix: 4 Legal Background.....	24

1 Introduction

- 1 Section 43(3) of the Communications Regulation (Postal Services) Act 2011 (the “2011 Act”) gives the Commission for Communications Regulation (“ComReg”), or an appointee of ComReg¹, a discretionary power to resolve disputes which remain unresolved after due completion of all the procedures of a postal service provider’s code of practice. This type of dispute resolution is referred to in this paper as “Section 43(3) dispute resolution”.
- 2 Section 43(3) of the 2011 Act also provides that dispute resolution procedures be established and maintained by ComReg.
- 3 This consultation seeks views on the Section 43(3) dispute resolution procedures which ComReg proposes to establish and maintain. These Section 43(3) dispute resolution procedures will apply to disputes between (1) postal services users² and (2) postal service providers³.

¹ The power pursuant to Section 43(3) of the 2011 Act can be exercised by a person appointed by ComReg possessing, “...*in the opinion of the Commission, the requisite degree of independence from the postal service provider concerned...*”

² Postal service user means any person benefiting from postal service provision as a sender or as an addressee.

³ Postal service provider means any person providing one or more than one postal service. A register of Postal Service Providers authorised in accordance with Section 38 (1) of the 2011 Act is available on ComReg’s website: http://www.comreg.ie/postal/regulation_of_authorized_providers.545.html

2 Background

- 4 On 28 January 2014 ComReg published guidelines for all postal service providers⁴. These guidelines were to assist postal service providers in drawing up and implementing a code of practice setting out the procedures, standards and policies with respect to the postal service provider's handling of complaints from postal service users, in accordance with section 43(1) of the 2011 Act.
- 5 In accordance with section 43(1)(d) of the 2011 Act, all postal service providers, not just the universal service provider⁵, must include '*procedures for resolving disputes*' within their codes of practice. This provides an opportunity for complainants to submit their complaint for further consideration and review by the postal service provider, by means of an internal dispute resolution process.
- 6 While it is a matter for individual postal service providers to determine how they will make provision for internal dispute resolution, ComReg suggested in its guidelines⁴ the provision of a postal service user advocate mechanism, whose role is to independently assess the previous actions and decisions taken by the postal service provider regarding the complaint and to thereafter confirm its determination to the complainant.
- 7 Dispute resolution, as provided for in section 43(3) of the 2011 Act, is fundamentally different to a dispute resolution process as provided by the postal service provider themselves, as section 43(3) disputes are to be resolved by a party independent from the postal service provider.
- 8 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..."

⁴ "Complaints and Redress Procedures: Guidelines for Postal Service Providers" ComReg Document 14/06, published 28 January 2014, and available on www.comreg.ie

⁵ Section 17(1) of the 2011 Act designates An Post as the universal postal service provider for a period of 12 years.

- 9 In drafting the proposed Section 43(3) dispute resolution procedures, ComReg was cognisant of its statutory functions and objectives and in particular the statutory requirement of section 43(5), which provides that these procedures “*shall be (a) transparent, (b) simple, (c) inexpensive, and (d) enable disputes to be settled fairly and promptly.*”
- 10 Following consideration of any responses to this consultation, ComReg will finalise its Section 43(3) dispute resolution procedures and publish same in accordance with its obligation pursuant to section 43(4) of the 2011 Act.

3 Issues for consultation

3.1 Proposed Section 43(3) dispute resolution procedures

- 11 The proposed Section 43(3) dispute resolution procedures are set out in Appendix: 1 of this consultation. ComReg is asking respondents to this consultation to comment on these.
- 12 The proposed Section 43(3) dispute resolution procedures, when implemented, will be followed in the event that ComReg (or a person appointed by ComReg possessing, in the opinion of ComReg, the requisite degree of independence from the postal service provider concerned) is resolving a dispute which remains unresolved after due completion of all the procedures of a code of practice drawn up by a postal service provider under section 43(1) of the 2011 Act.

3.2 Informing postal service users of the Section 43(3) dispute resolution procedures

- 13 ComReg proposes that all postal service providers inform postal service users of the possibility of applying for Section 43(3) dispute resolution.
- 14 ComReg proposes that postal service providers make available in a clear, comprehensible and easily accessible way information regarding the Section 43(3) dispute resolution procedures. In particular postal service providers should:
 - ensure that reference to where information on the Section 43(3) dispute resolution procedures (including the Application Form as set out in Appendix: 2) is available is clearly and prominently indicated on relevant customer service materials and on the postal service provider's website, and in the terms and conditions of the postal service providers service offering; and
 - ensure that information regarding the Section 43(3) dispute resolution procedures is contained in a postal service provider's final written response to a complainant regarding a complaint.

3.3 Information required to resolve Section 43(3) disputes

- 15 Accurate information, provided in a timely manner, is critical to efficient Section 43(3) dispute resolution. Delays in the provision of information have a significant impact on the overall timescales and could disadvantage one or both of the parties involved.

- 16 Section 43(1)(g) of the 2011 Act obliges postal service providers to make provision in their code of practice for the “*retention of records of complaints for such period, of not less than one year, as the Commission may specify following the resolution of the complaint, including— (i) copies of the complaint and any response thereto, and (ii) any determination in respect of the complaint and any documentation considered in the course of such determination*”. Accordingly it is not envisaged there will be any delay or difficulty in postal service providers ensuring the provision of records relating to complaints including records of complaints submitted for Section 43(3) dispute resolution⁶.
- 17 When appropriate, ComReg can utilise its formal powers to collect the information required, including, but not limited to, its powers under section 13F of the 2002 Act, as inserted by section 11 of the 2011 Act.

3.4 Reimbursement and Compensation

- 18 If in the final resolution of a dispute reimbursement and compensation are deemed appropriate, the postal service provider will be required to provide reimbursement, and compensation in accordance with the provisions of its code of practice, as is provided for in section 43(3) of the 2011 Act.

- Q. 1 Do you agree with ComReg’s proposed Section 43(3) dispute resolution procedures set out in Appendix: 1? Please give a detailed explanation for your answer.
- Q. 2 Do you agree with ComReg’s proposals in section 3.2 regarding how postal service users should be informed by their service provider of the availability of a Section 43(3) dispute resolution process? Please give a detailed explanation for your answer.
- Q. 3 Do you agree that the Application form for submitting a dispute for Section 43(3) dispute resolution (See Appendix: 2) is appropriate? Please give a detailed explanation for your answer.
- Q. 4 Do you agree that the Guidance note on completing the Application form for submitting a dispute for Section 43(3) dispute resolution (See Appendix: 3) provides adequate guidance to postal service users submitting a dispute for resolution? Please give a detailed explanation for your answer.

⁶ As noted in Document 14/06 ComReg has discretion to give directions in accordance with sections 43(6) and 43(8) of the 2011 Act to ensure compliance with the requirements of Section 43.

4 Regulatory Impact Assessment (RIA)

- 19 ComReg has published RIA Guidelines⁷ (Doc 07/56a), in accordance with a policy direction to ComReg⁸, which state that ComReg will conduct a RIA in any process that may result in the imposition of a regulatory obligation, or the amendment of an existing obligation to a significant degree, or which may otherwise significantly impact on any relevant market or any stakeholders or consumers. However, the Guidelines also note that in certain instances it may not be appropriate to conduct a RIA and, in particular, that a RIA is only considered mandatory or necessary in advance of a decision that could result in the imposition of an actual regulatory measure or obligation, and that where ComReg is merely charged with implementing a statutory obligation then it will assess each case individually and will determine whether a RIA is necessary and justified.
- 20 In this Consultation, ComReg is not imposing a regulatory obligation but is acting in accordance with the statutory obligation imposed by section 43(3) of the 2011 Act. Therefore, a RIA is not being undertaken on this occasion.

⁷ Which have regard to the RIA Guidelines issued by the Department of An Taoiseach in June 2009

⁸ Ministerial Policy Direction made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February, 2003

5 Conclusion and Next Steps

5.1 Conclusion

- 21 ComReg, in drafting the proposed Section 43(3) dispute resolution procedures, has attempted to balance the need of postal service users to have access to transparent, simple and inexpensive independent dispute resolution procedures with keeping the burden of regulatory compliance to a minimum.
- 22 In finalising its views, ComReg will consider all the views of respondents to this consultation.

5.2 Submitting comments

- 23 The consultation period will run until 5pm on 18 September 2014, during which time ComReg welcomes written comments on any of the issues raised in this consultation.
- 24 It is requested that comments be referenced to the relevant question numbers and/or paragraph numbers from this document. Where views are provided, please provide a supporting rationale for your comments, including if possible, an indication of the broader impact of any changes proposed.
- 25 As it is ComReg's policy to publish all responses in order to make them available for inspection, responses to consultations should be provided as non-confidential documents, with any information for which confidentiality is claimed (e.g. commercially sensitive information) supplied in a separate annex. In this respect, please refer to ComReg's Consultation Procedures (ComReg 11/34) and ComReg's guidelines on the Treatment of Confidential Information (ComReg 05/24).
- 26 We request that electronic submissions be submitted in an unprotected format so that they can be appended into the ComReg submissions document for publishing electronically.

- 27 All responses to this consultation should be clearly marked:- “Reference: Consultation 14/87”, and sent by post, facsimile or e-mail to arrive on or before 5pm, 18 September 2014, to:

Ms. Ciara O’Donovan
Commission for Communications Regulation
Irish Life Centre
Abbey Street
Freepost
Dublin 1
Ireland

Ph: +353-1-8049600 Fax: +353-1-804 9680
Email: marketframeworkconsult@comreg.ie

Appendix: 1 Proposed Section 43(3) dispute resolution procedures

- A 1.1 For the purposes of these procedures, a “dispute” is a conflict of claims or rights between a postal service user and a postal service provider (“the Parties”) that arises and remains unresolved after due completion of all the procedures of a postal service provider’s code of practice.
- A 1.2 For the purposes of these procedures, the “Complainant” is the postal service user who is in dispute with the postal service provider.
- A 1.3 For the purposes of these procedures, the “Postal Service Provider” is the postal service provider with whom the Complainant is in dispute with.
- A 1.4 Participation in the Section 43(3) dispute resolution procedures does not preclude the possibility of seeking redress through court proceedings (for example in the Small Claims Court).
- A 1.5 The Parties are not obliged to retain a lawyer or legal advisor, but they may seek independent advice or be represented by a third party at any stage of these procedures.
- A 1.6 The Complainant may withdraw from the Section 43(3) dispute resolution process at any stage, by giving notice in writing to ComReg and the Postal Service Provider.

Step 1 – Submission of a dispute for Section 43(3) dispute resolution

- A 1.7 When submitting a dispute for Section 43(3) dispute resolution the Complainant must use the application form provided which is attached to these procedures⁹ (“the Application Form”). All information requested in the Application Form should be provided where possible, and should be presented in a clear and concise manner.
- A 1.8 The Application Form must be accompanied by a nominal fee of €15 (“Application Fee”).
- A 1.9 A dispute must be submitted for Section 43(3) dispute resolution no later than thirteen months from the date upon which the Complainant first submitted the complaint to the Postal Service Provider. This limitation may be waived in exceptional circumstances and at ComReg’s discretion.

⁹ Appendix: 2 Application Form for submitting a dispute for Section 43(3) dispute resolution

A 1.10 The day on which the Application Form is received is known as the “Date of Notification”.

Step 2 - Consideration of whether to accept dispute

A 1.11 On receipt of an application for Section 43(3) dispute resolution the application will be reviewed to determine whether the dispute is a ‘*valid dispute*’.

A 1.12 A dispute is a ‘valid dispute’ when:

- it is a conflict of claims or rights between a postal service user (as Complainant) and a Postal Service Provider;
- the Complainant has duly completed all the procedures of the Postal Service Provider’s code of practice;
- it is not frivolous or vexatious;
- it is not being nor has previously been considered, by another dispute resolution entity or by a court;
- all required information has been provided¹⁰;
- it was submitted within thirteen months¹¹ from the date upon which the Complainant first submitted the complaint to the Postal Service Provider;
- it was submitted accompanied by the Application Fee;
- the nature of the dispute is material to the Complainant;
- the dispute relates to a matter which is within the regulatory remit of ComReg; and
- dealing with the dispute does not seriously impair the effective operation of ComReg.

A 1.13 There may be reasons other than those cited (in A 1.12) why an application for Section 43(3) dispute resolution does not relate to a valid dispute.

A 1.14 If it is determined that the application for Section 43(3) dispute resolution does not relate to a valid dispute, the dispute will be declined. A reasoned explanation of this will always be provided to the complainant.

¹⁰ See Appendix: 2 Application Form for submitting a dispute for Section 43(3) dispute resolution

¹¹ Complaints outside this timeframe will only be considered if exceptional circumstances are demonstrated

A 1.15 The determination of whether an application for Section 43(3) dispute resolution is in respect of a valid dispute or not will be completed within 14 calendar days of the Date of Notification.

A 1.16 When it is decided not to consider a dispute which has been submitted pursuant to section 43(3) of the 2011 Act, the Parties will be provided with a reasoned explanation of the grounds for not considering the dispute for Section 43(3) dispute resolution within 21 calendar days of the Date of Notification.

Step 3 – Response by the Postal Service Provider

A 1.17 The Postal Service Provider will be formally notified of the Section 43(3) dispute resolution process, and a copy of the completed Application form will be provided to it within 21 calendar days of the Date of Notification.

A 1.18 The Postal Service Provider must respond within 14 calendar days of the date of communication of the decision to commence resolution of the dispute. This response should be sufficiently detailed and comprehensive to enable a full assessment of the substance of the dispute.

A 1.19 Following receipt of the Postal Service Provider's response and a detailed analysis of all submissions, more information may be requested, in writing, from the Parties if deemed necessary.

A 1.20 If the Complainant does not respond or fails to provide requested information, it will be assumed that the Complainant does not want to proceed with the dispute. In this event the Complainant will be notified that the dispute has been closed.

Step 4 - Resolution of a Section 43(3) dispute

A 1.21 Following consideration of all the information before it (including but not limited to the Application Form, the response of the Postal Service Provider and any other relevant information before the decision maker) a draft resolution will be prepared.

A 1.22 The draft resolution will be sent to the Parties within 56 calendar days of the Date of Notification.

A 1.23 The Parties will have 14 calendar days from the date of the draft resolution to submit comments on the draft resolution.

A 1.24 Following consideration of all comments on the draft resolution, a final resolution will be prepared and issued to the Parties.

- A 1.25 The final resolution will be issued within 90 calendar days from the Date of Notification. ComReg may, at its own discretion, extend the 90 calendar days' time period. The Parties will be informed of any extension of that period and of the expected length of time that will be needed to conclude the dispute resolution.
- A 1.26 The final resolution may specify measures for the resolution of the dispute including payment of costs in the case where an independent person is appointed, and reimbursement of payments or compensation, or both reimbursement of payments and compensation, as appropriate in accordance with the provisions of the code of practice relating to the matters, specified in section 43(1)(e) of the 2011 Act.
- A 1.27 If the final resolution finds in favour of the Complainant, the Application Fee will be reimbursed.
- A 1.28 A Postal Service Provider must comply with any measures specified in the final resolution within 14 calendar days of the issuing of the final resolution.
- A 1.29 ComReg notes the power afforded to it under section 43(8) of the 2011 Act to issue directions to postal service providers to ensure compliance with the requirements of section 43.
- A 1.30 The final resolution completes the procedures of the Section 43(3) dispute resolution procedures.

Appendix: 2 Application Form for submitting a dispute for Section 43(3) dispute resolution

1 Details of individual submitting dispute

- 1.1 Name:
- 1.2 Postal address
(for written correspondence):
- 1.3 Phone:
- 1.4 E-mail:
- 1.5 Are you submitting this dispute as a private individual? Yes No
- 1.6 Are you submitting this dispute as a business? Yes No
- Registered Business Name:
- Registered Business Number:
- 1.7 If you have contacted ComReg Consumer Care previously about this issue please provide the ComReg reference number here (if applicable):

2 Postal Service Provider's details

- 2.1 Postal Service Provider's name¹²:
- 2.2 Please confirm that you have complained to the Postal Service Provider about the issue which has resulted in this dispute: Yes No
- 2.3 Please confirm that you have exhausted the procedures for resolving disputes of your Postal Service Provider? Yes No
- 2.4 Please confirm whether this dispute is the subject of legal proceedings Yes No

¹² A register of Postal Service Providers authorised in accordance with Section 38 (1) of the 2011 Act is available on ComReg's website: http://www.comreg.ie/postal/regulation_of_authorised_providers.545.html

4 Remedies and redress

4.1 What do you want the Postal Service Provider to do in order to resolve this dispute? Please provide details in the space below.

4.2 Do you want reimbursement of payments?

- Yes
- No

If yes please indicate below how much and provide an explanation justifying the reimbursement of payments amounts claimed

How much?

€

Explanation:

4.3 Do you want compensation?

- Yes
- No

If yes please indicate below how much and provide an explanation justifying the compensation amounts claimed

How much?

€

Explanation:

5 Documentary evidence

I enclose, with this form, all documentation¹³ I have available to support my dispute, including the final response from the Postal Service Provider.

6 Confidentiality of the application

I confirm that my application is non-confidential

OR

I confirm that my application includes a non-confidential version.

7 Declaration

I understand and accept all of the conditions in the attached “Guidance note on completing application form for submitting a dispute for independent resolution”.

I have read and understood these dispute resolution procedures and wish to proceed with submitting my dispute.

I have paid the Application fee (€15.00).

Your signature:

Date:.....

¹³ including letters, e-mails, and/or records of phone calls made or received

Appendix: 3 Guidance note on completing application form for submitting a dispute for Section 43(3) dispute resolution

1) Details of individual submitting dispute

Contact details of the postal service user (“the Complainant”) who is in dispute with the postal service provider (“Postal Service Provider”). This is the person to whom correspondence and contact in respect of the dispute will be directed.

2) Postal Service Provider’s details

Name of the Postal Service Provider that the Complainant is in dispute with.

Confirmation that the complaint has been made directly to the Postal Service Provider and that the Complainant has exhausted the Postal Service Provider’s procedures for resolving disputes in its code of practice. Section 43(3) dispute resolution cannot commence if complainants have not exhausted the procedures for resolving disputes of the Postal Service Provider

Confirmation that the issue in dispute is not or has not been the subject of legal proceedings (including arbitration). Matters that are the subject of legal proceedings will not be accepted for Section 43(3) dispute resolution

If it is possible the Complainant should provide details of the date the complaint was first made to the Postal Service Provider and the reference number given by the Postal Service Provider, if provided.

If it is possible for the Complainant to provide details of the main Postal Service Provider’s contact individual with whom they dealt then these details should also be provided.

3) Details of the dispute

This should set out the issue which the Complainant wishes to be resolved. It should be specific and properly describe the specific disagreement giving rise to the dispute.

4) Remedies and redress

The Complainant should outline the remedies and/or redress sought. Where relevant this should include any reasoning as to why the dispute should be resolved in the way suggested by the Complainant.

Where possible the Complainant should provide evidence of any payments made.

The complainant should take note of the limitations applicable - the amount that can be claimed here cannot be more than the maximum level of compensation set out in Postal Service Provider's code of practice.

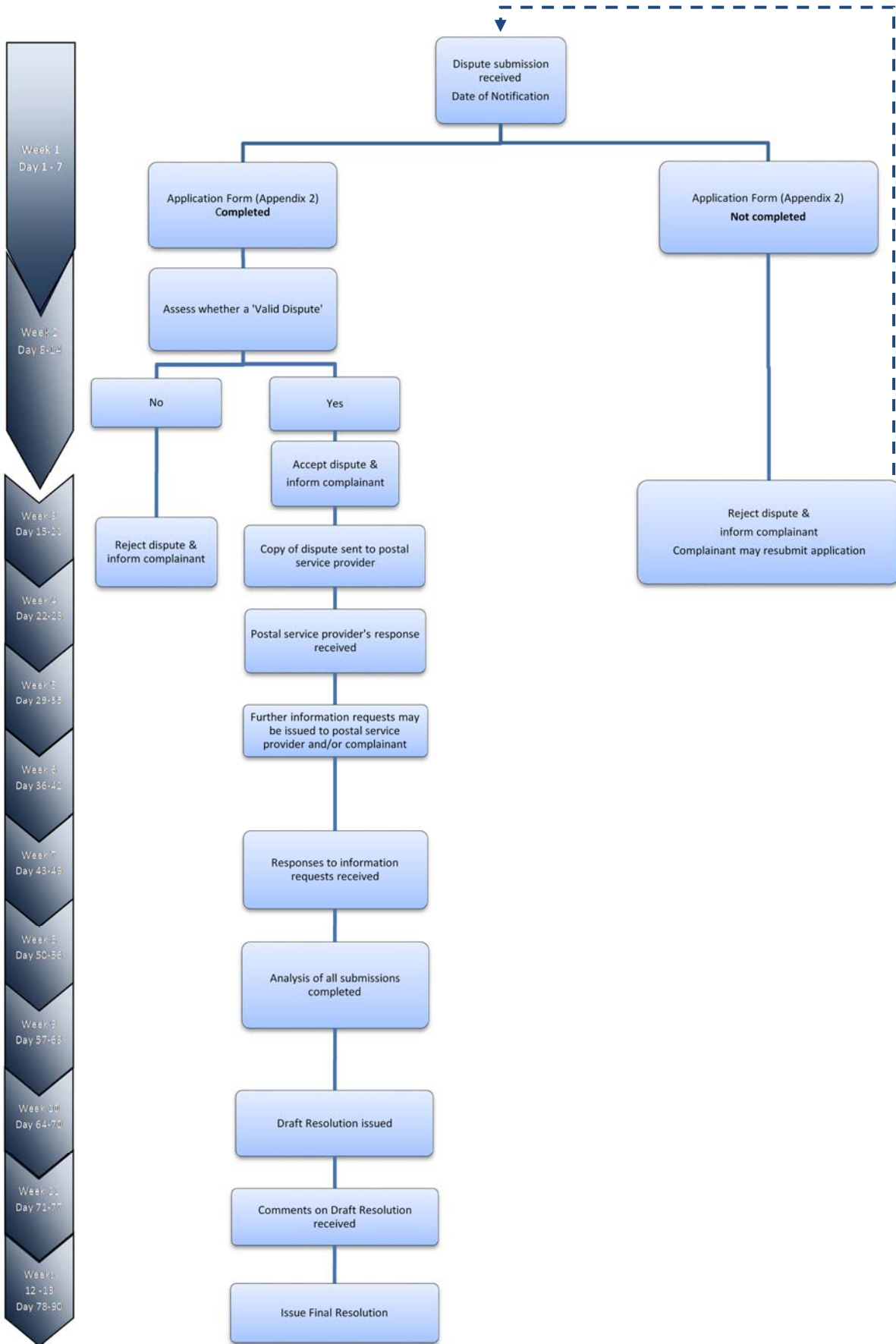
5) Documentary evidence.

All assertions should be supported by documentary evidence where possible, including, insofar as possible, all documentation relating to exchanges between the Complainant and the Postal Service Provider relating to the complaint in, including letters, e-mails, records of phone calls made or received, or other letters and contact between the Complainant and the Postal Service Provider.

6) Confidentiality of the dispute application

If the Complainant wishes to provide confidential information in relation to the dispute in the Application Form, a non-confidential version of the Application Form should be provided simultaneously. The non-confidential version of the Application Form should contain all the facts material to the case, so that the Postal Service Provider can properly respond. In the event that the completed Application Form contains confidential information, it should be clearly marked "confidential".

Summary of Section 43(3) Dispute Resolution process and timelines



Appendix: 4 Legal Background

A 4.1 Of particular relevance to this consultation are section 43(3) of the 2011 Act and sections 10 and 12 of the 2002 Act, as set out below.

A 4.2 Section 43(3) of the 2011 Act provides:

“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) and, in this regard, the Commission may issue directions to a postal service provider requiring the postal service provider to comply with such measures as it, or such person as may be appointed by the Commission under this subsection, may specify for the resolution of the dispute including payment of costs in the case where such a person is appointed, and reimbursement of payments or compensation, or both reimbursement of payments and compensation, as appropriate, in accordance with the provisions of the code of practice relating to the matters specified in subsection (1)(e)”

Subsection (1)(e) relates to *“remedies and redress, including reimbursement or compensation, or both, as appropriate”*

A 4.3 Section 10(1)(ba) and (c) provides that the functions of ComReg include:

“(ba) to ensure the provision of a universal postal service that meets the reasonable needs of postal service users,”

(c) to monitor and ensure compliance by postal service providers with the obligations imposed on them by or under the Communications Regulation Acts 2002 to 2011 in relation to the provision of postal services,”

A 4.4 Section 12(1)(c) of the 2002 Act provides that the objectives of ComReg in exercising its functions shall include :

“(c) in relation to the provision of postal services—

(i) to promote the development of the postal sector and, in particular, the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all postal service users,

(ii) to promote the interests of postal service users within the Community, and

(iii) subject to subparagraph (i), to facilitate the development of competition and innovation in the market for postal service provision,”

A 4.5 Section 12(2A)(d) of the 2002 Act provides:

“(2A) In relation to the objectives referred to in subsection (1)(c), the Commission shall take all reasonable measures aimed at achieving those objectives, including—

.....

(d) in so far as the promotion of the interests of postal service users within the Community is concerned—

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

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

(II) consulting and cooperating with the National Consumer Agency as appropriate,

and

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

Questions

Section	Page
Q. 1 Do you agree with ComReg’s proposed Section 43(3) dispute resolution procedures set out in Appendix: 1? Please give a detailed explanation for your answer.	9
Q. 2 Do you agree with ComReg’s proposals in section 3.2 regarding how postal service users should be informed by their service provider of the availability of a Section 43(3) dispute resolution process? Please give a detailed explanation for your answer.....	9
Q. 3 Do you agree that the Application form for submitting a dispute for Section 43(3) dispute resolution (See Appendix: 2) is appropriate? Please give a detailed explanation for your answer.	9
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