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Communications Regulation

Terms and conditions of the universal postal service – Single Piece and Bulk Mail

Publication of submissions to Consultation
15/37

Information Notice

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland

Telephone +353 1 804 9600 Fax +353 1 804 9680 Email info@comreg.ie Web www.comreg.ie

This Information Notice contains non-confidential submissions by respondents to ComReg's consultation regarding 'Terms and conditions of the universal postal service - Single Piece and Bulk Mail' (ComReg 15/37¹) which ran from 20 April 2015 until 10 June 2015.

Responses were received from the following respondents:

Respondent	
1	An Post
2	Barnardos
3	Communications Workers Union (CWU)
4	Consumers' Association of Ireland
5	National Disability Authority

¹ http://www.comreg.ie/_fileupload/publications/ComReg1537.pdf

1. An Post:

Terms and conditions of the universal postal service

Single Piece and Bulk Mail

REFERENCE: CONSULTATION 15/37

**An Post Response
10 June 2015**

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1. Introduction

An Post welcomes the opportunity to submit its views on ComReg's proposals on Terms and Conditions of the universal postal service.

The ultimate objective of the Consultation is to produce a set of Terms and Conditions that explain the legal relationship between An Post and postal users when using regulated USO services.

We have to draw the postal user's attention to matters which they might not be aware of that could affect our ability to provide the postal service they have chosen and we need to be clear about what they can expect in terms of service. In addition to clarifying both An Post's and our customer's rights and obligations we need to explain how we will deal with problems that can arise.

The An Post Terms and Conditions as currently published on the An Post website comprise of two simple documents: (1) terms and conditions for users using single piece USO postal services and (2) terms and conditions for bulk mailers using bulk mail USO services. Both sets of Terms and Conditions are in single-document form, easily accessible and represent the first formal attempt by An Post to 'consolidate' all of the laws and legal obligations that apply in the interests both of An Post and of our customers.

An Post has always been mindful of the difficulties that result when the terms and conditions of services are laid down in specific postal legislation spanning more than a hundred years and with that in mind and, without requirement or assistance, we voluntarily attempted to consolidate all older terms and conditions which were known as 'schemes' or 'warrants' and presented these to ComReg for review in 2007.

While this project was not progressed by ComReg at the time and the consolidated Terms and Conditions we had produced remained in draft, the current Terms and Conditions under review, which are the subject of this consultation, derive from that large body of work already carried out by An Post. Since presenting previous drafts of these Terms and Conditions to ComReg for their review very little has changed in the legal environment in that An Post and its services are still subject to postal but also importantly other forms of regulation such as customs, transport, aviation, health and safety in domestic, EU and International law. In addition, many customs and practices which pre-date An Post and regulation still apply by way of inter-governmental agreements such as the agreement between national governments to enable the delivery of mail internationally which is known as the Universal Postal Convention of the Universal Postal Union.

We welcome the opportunity to develop Terms and Conditions that represent the 21st century services we provide while ensuring that all applicable laws, even those originating from earlier decades are respected. Consultation document 15/37 indicates a number of "preliminary views" of ComReg that represent significant changes to An Post's current service offering to customers and its operating model. It is important to understand the function

of the Terms and Conditions which are under review at the moment: they represent the terms on which the services will be provided by An Post to the customer and both An Post's and the customer's legal obligations and rights subject to all other laws that apply. The Terms and Conditions document is not a manual as to how An Post provides its services nor should it be confused with being an explanatory booklet similar to the many brochures and booklets An Post produces every year for all of its services to assist customers in understanding the services we offer.

An Post notes ComReg's concerns in Section 3.1 regarding the user friendliness, references to conditions contained in documents external to the proposed Terms and Conditions and other general issues regarding the proposed Terms and Conditions. It proposes to have the final Terms and Conditions documentation, subject to the output from the consultation, presented in an updated format after engagement of a copywriting professional to address ComReg's concerns as far as practically possible. The many questions related to drafting should not deflect attention from reaching an understanding on the core substantive issues.

While ComReg has emphasised the importance of USO services meeting the reasonable needs of consumers, we note that it is essential that ComReg considers the financial sustainability of An Post's Universal Service Obligation when reviewing this response from An Post. In particular, ComReg should be mindful of any proposals to change the Terms and Conditions of Universal Services that may increase the financial costs of providing the Universal Service.

2. Background

An Post has engaged with ComReg in a lengthy iterative process where views on various aspects of Terms and Conditions were shared. An Post does not agree with ComReg's assessment that this "*this intervention did not prove fruitful*". Both parties expressed their views on elements of the Terms and Conditions and this was a useful engagement even if agreement was not reached on some points. In addition, it appears that a number of new changes to the An Post draft Terms and Conditions have been proposed by ComReg. An Post was not made aware of these issues during the iterative engagement process with ComReg. An example of such a new proposal includes but is not limited to the proposal to have access points open for a minimum of 8 hours per working day (Section 3.2.11.5).

3. Response to consultation questions

Q. 1 Do you agree / disagree with ComReg's preliminary views? Please explain your response.

Please see response from An Post below in relation to each of the preliminary views put forward by ComReg.

3.1 General issues regarding the proposed Terms and Conditions

3.1.1 User friendliness

An Post agrees that there are certain additional improvements An Post can consider, in its review, to produce a user-friendly set of Terms and Conditions. There are limits however, to what can be achieved as has been noted by ComReg's qualifying statement that the Terms and Conditions document is a legal document. As both An Post and ComReg accept, as a legal document, it is therefore difficult to avoid all legal terms and phrases which are required to be included in any set of Terms and Conditions.

An Post, agrees with ComReg that the USO Terms and Conditions should be as clear as possible, easy to use and easy to find while respecting the formal requirements of drafting a legal document.

In response to Section 3.1.1, para. 23 (i) of the Consultation Paper concerning "*Amendments to ensure that the Terms and Conditions are in plain and intelligible language*" An Post, in keeping with the work it has been undertaking since 2007, will continue to simplify further the content of the Terms and Conditions while respecting standard legal drafting requirements to ensure that the Terms and Conditions are in plain and intelligible language.

In response to Section 3.1.1, para. 23 (ii) of the Consultation Paper concerning "*The numbering in the proposed Terms and Conditions must be simplified in order to ensure consistency and also ease of reference for postal service users*" An Post agrees that the numbering can be simplified and will undertake to achieve more user-friendly numbering in its Terms and Conditions.

In response to ComReg's further requirement in Section 3.1.1, para. 23 (ii) of the Consultation Paper concerning "*A graphical presentation of what can be posted, what will be compensated for in case of damage, and what needs to be insured must be included in the Terms and Conditions*", An Post notes that An Post already provides a vast array of complementary hardcopy and electronically-available documentation for postal users containing exactly the type of images, graphical representations and comparative tables that ComReg has required to be included. Examples of such documents include:

- Guide to Postal Services including useful information e.g.
 - Packing guidance
 - Essential Documentation for Customs and Export
[www.anpost.ie/AnPost/Downloads/Anpost/Guide to Postal Services.pdf](http://www.anpost.ie/AnPost/Downloads/Anpost/Guide%20to%20Postal%20Services.pdf)
- Guide to Postal Rates
www.anpost.ie/AnPost/MainContent/About+An+Post/Media+Centre/Press+Releases/2014/Rates+2014.htm
- Marketing brochures for specific services
- Consumer-specific manuals such as:
 - Getting it sorted -
<http://www.anpost.ie/AnPost/MainContent/Customer+Service/Our+Commitment+to+You/Our+commitment+to+you.htm>
 - Customer Charter -
<http://www.anpost.ie/AnPost/MainContent/Customer+Service/Customer+Charter/>

We have reviewed ComReg's preferred models for Terms and Conditions as drafted by postal operators in Australia and New Zealand, and note that in many cases no such comparison tables are included within the body of the legal Terms and Conditions and where such tables are included they are specifically identified on separate pages as being part of a 'summary of key features'.

The purpose of the Terms and Conditions is to provide a written statement of the legal relationship between An Post and postal users with regard to USO postal services used by postal users. An Post will produce summary sheets of our services where possible but such summary sheets will not form part of the Terms and Conditions which constitute the legal relationship between An Post and the postal user.

An Post agrees that a small selected number of graphical representations could be considered for inclusion but that such inclusion would be strictly subject to the express caveat in the Terms and Conditions that in the event of a dispute over the meaning of (a) the written Terms and Conditions and (b) the graphical representations of summaries of the key features of a USO service in a comparison table, the written Terms and Conditions will always take precedence.

As An Post has already invested in simple, user-friendly, readily available complementary documents, such as those listed above, we do not accept ComReg's statements in Sections 3.1.1 para. 23 (iii) and (iv) that it is a legal requirement to include pictorial content in a written set of legal Terms and Conditions in order to produce an acceptable set of written Terms and Conditions for applicable USO postal services. Reproducing content that already exists (and is readily available to postal users) including reproducing and restating extracts from legislation already published which is a further requirement of ComReg in the Consultation paper, is not only unnecessary and legally not required, but also serves to turn what should be a simple short statement of the Terms and Conditions into a very large and cumbersome document with both legal and non-legal content.

An Post accepts ComReg's statement in Sections 3.1.1 para. 23 (v) that *"Defined terms used in the Terms and Conditions to be consolidated into a single comprehensive listing. When defined terms are used for the first time, they should be highlighted (e.g. shown in bold print) and hyperlinked to the appropriate definition"*. – and agrees that these changes should be made.

3.1.2 References to conditions contained in documents external to the proposed Terms and Conditions

ComReg's preliminary view

27. ComReg is of the preliminary view that it is, in general, not appropriate to reference terms contained in documents external to the proposed Terms and Conditions. All relevant conditions should be contained in the proposed Terms and Conditions. Reference to external documents should be deleted.

An Post agrees that Terms and Conditions documentation should limit the number of references to external documentation.

We note that the phrase 'external documents' used by ComReg appears to include 'legislation'. Through its self-initiated consolidation exercise An Post has already minimised reference to more than a hundred years worth of external individual legislative acts, schemes, warrants, regulations and international treaties. While we agree with ComReg that it is beneficial to minimise external referencing, it is not correct to state that in order for the Terms and Conditions to be accepted as addressing the needs of postal users that all reference to every external document including legislation should be deleted.

We note ComReg's preference for Terms and Conditions in the style of Australia Post and New Zealand Post and we have reviewed them to see how they have achieved the complete removal of external document referencing. We found that both Australia Post's and New Zealand Post's Terms and Conditions refer quite frequently to 'external documents'. We checked their websites and in many cases, no hyperlink was provided to external documents referenced in any of their Terms and Conditions.

We are committed to considering any further consolidation we can make in our review of the draft Terms and Conditions. As ComReg has clearly stated, the Terms and Conditions is a legal document and for that reason some reference to external 'documents' may be required.

3.1.3 Drafting errors

ComReg's preliminary view

30. ComReg is therefore of the preliminary view that An Post should review the proposed Terms and Conditions to ensure that there are no drafting errors.

ComReg sets out in Annex 2 of this consultation a non-exhaustive list which illustrates the types of errors that ComReg has identified and which must be corrected.

An Post agrees to review all drafting errors. An Post does not believe that is appropriate to deal with typographical errors or formatting issues in a working document through the consultation process. As has been the case in all previous consultations, drafting issues have been addressed when An Post submitted a final document to ComReg for publication. All drafting errors in the draft An Post working document which was published by ComReg will be addressed by An Post.

3.1.4 Consistency between proposed SP T&Cs and proposed BM T&Cs

ComReg's preliminary view

34. ComReg is therefore of the preliminary view that An Post should review the proposed Terms and Conditions to ensure that there is consistency between the proposed SP T&Cs and proposed BM T&Cs (as appropriate). ComReg sets out in Annex 3 of this consultation a non-exhaustive list which illustrates the issues which ComReg has identified and which must be corrected prior to ComReg's approval of the Terms and Conditions.

An Post agrees with ComReg that consistency between the SP T&Cs and proposed BM T&Cs (as appropriate) is essential. Only one issue identified by ComReg in Annex 3 cannot be amended by An Post and this relates to B.7(1)(d). ComReg notes that this inconsistency should exclude references to 'Ceadúnas' as they are not appropriate for inclusion in the SP T&Cs. Ceadúnas is a method of payment available only to and arising only in the context of large volume mailers and therefore this inconsistency is required.

3.1.5 Consistency with Terms and Conditions published in other An Post material

ComReg's preliminary view

35. ComReg is concerned that where conditions of the Terms and Conditions are reproduced in other An Post materials (e.g. on An Post's website, printed notices and printed guides) they are often incorrectly paraphrased. This is confusing for postal service users and not appropriate having regard to their reasonable needs. All An Post material must be reviewed to ensure consistency.

An Post agrees with ComReg that it is in everyone's interests that consistency is achieved to the greatest extent possible in documentation and we constantly strive to achieve a uniform approach to our communications with the general public.

However, in order for the USO Terms and Conditions to be approved and to address the reasonable needs of postal users, the text of general non-legal

brochures and guides such as An Post marketing and advertising materials issued by An Post is not subject to review. We do not accept, that the requirement to issue USO Terms and Conditions under the 2011 Act and ComReg's powers in connection with approving those Terms and Conditions, gives ComReg the power through the consultation process to determine the content of An Post's marketing and advertising output in "all An Post material".

The texts of An Post's customer guides and marketing materials are not legal documents. As ComReg notes, the Terms and Conditions represent the legal relationship between An Post and postal users. Therefore, we have invested in complementary brochures and documents in the form of guides and they are marketing and advertising materials designed by An Post to allow the customer have a simple, non-legalistic understanding of the services offered by An Post. It is not correct for ComReg to state that our marketing and advertising material contains messages that are incorrectly paraphrased on the basis that such materials deliberately do not use the legal language required by legal documents such as terms and conditions.

3.2 Content of the proposed Terms and Conditions

3.2.1 Introduction

3.2.1.1 Accessing Postal Services

ComReg's preliminary view

38. Accordingly it is ComReg's preliminary view, it is necessary that the section "How to Access An Post's Universal Services" in the "Introduction" of the proposed SP T&Cs be amended to include DSUs and rural post persons as access points for postal service users.

An Post agrees to add DSUs which currently act either as an induction point or have a collection box at the office to the SP T&Cs - published LTOPs (Latest Time of Posting) will apply and DSUs will act as an acceptance point for SP mail but not as an acceptance point for standard meter mail or discount meter mail.

An Post does not agree to including rural postpersons as access points for postal service users as this is currently not the case and it is not required under the 2011 Act. Requiring rural postpersons to act as access points for postal service users will drive up the cost of the provision of the USO and will place an additional burden on An Post for the following non-exhaustive list of reasons:

- Delays of varying periods in completing the daily delivery round resulting in customers not knowing with any degree of certainty when they will receive their mail;
- Health and safety/security issues arising from postpersons being obliged to handle cash;

- Non return of the postperson to DSU at end of route requiring either that a detour be made to the nearest collection box or that the postal packets be held at the postperson's home until the next working day – giving rise to quality of service issues, associated costs and/or security issues;
- Requirement of the postperson to carry a scales and an item sizer to ensure the correct postage is paid and the ability to print receipts for registered services;
- Unavoidable pressure to expand role of the postperson to embrace full retail service; and
- It could undermine the provision of these services at retail offices run by An Post and it's agents in these regions.

3.2.2 Definitions

3.2.2.1 Terms not defined

ComReg's preliminary view

41. It is ComReg's preliminary view that An Post should amend the proposed Terms and Conditions to define terms for which definitions have been omitted including:

(i) Common Carrier;

(ii) MailMinder;

(iii) Poste Restante;

(iv) Bulk Mail; and

(v) Force Majeure.

Common carrier will not be capitalised in An Post's Terms and Conditions and therefore does not require a definition.

An Post agrees to include definitions for each of the phrases identified by ComReg in Section 3.2.2.1 para 41 parts (ii)-(v). Where terms are defined by law which is in an 'external document', we will apply the standard practice as mentioned earlier of providing the reference to the specific piece of legislation where the term is defined. In the interests of postal users however, we propose to go further than New Zealand and Australia and we propose to provide a hyperlink. With respect to the reasonable needs of postal users An Post believes that postal users should not be limited to only that specific section of a separate Act or a statutory instrument which provides for a definition of a term used in these Terms and Conditions especially where the definition contains other defined terms defined by reference to other legislation. We note that our approach and our proposal is standard practice for drafting terms and conditions

and follows examples in terms and conditions recommended by ComReg and follows ComReg's own approach to referencing terms defined in other legislation.

We reference Page 5 of Australia Post Terms and Conditions which notes as follows:

"In the Australia Post Terms and Conditions unless the contrary intention appears – Act means the Australian Postal Corporation Act 1989 (as amended) and includes any statute, ordinance, code or other law, any regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements of any of them".

We note that Australia Post has not provided links to each and every amendment of each and every legal instrument which makes up the Act which provides for definitions which are referenced in the Australia Post Terms and Conditions

We note also the definition of 'dangerous goods' which Australia Post defines as meaning:

"those goods which meet the criteria of one or more of the nine United Nations hazard classes as prescribed in the current Technical Instruction of the Civil Aviation Organisation as reflected in the Dangerous Goods Regulations of the International Air Transport Association"

None of these laws, regulations and terms are reproduced although ComReg, while recommending the approach taken by Australia Post as the template for An Post, is requiring An Post to carry out amendments to our Terms and Conditions consisting of reproduction of tracts of laws and providing explanations of third parties' legal obligations and rights, none of which are included in Australia Post's Terms and Conditions.

An Post notes ComReg's own approach to the reasonable needs of consumers on its website referencing terms defined in other legislation: For example, when describing how ComReg will process personal data, ComReg's Privacy Policy references only the Data Protection Acts 1988-2003 but does not explain the rights of consumers nor provide links to the Acts referenced by ComReg: www.comreg.ie/home/privacy_statement.288.privacy.html

ComReg's preliminary view

42. It is ComReg's preliminary view that An Post should amend the proposed Terms and Conditions to ensure that capital letters are only used for defined terms (or where it is grammatically appropriate).

An Post agrees to amend the Terms and Conditions in this regard.

ComReg's preliminary view

43. It is ComReg's preliminary view that An Post should amend the proposed Terms and Conditions to ensure that defined terms are used properly and consistently. A non-exhaustive list of the issues that ComReg has identified in this regard is attached at Annex 4 of this consultation.

An Post agrees to review Annex 4 and to amend the Terms and Conditions where necessary.

3.2.2.2 Unclear Definitions

ComReg's preliminary view

46. ComReg is of the preliminary view that a definition of "Postal Packets for the Blind" should be inserted in the definitions section. This defined term should then be used consistently throughout the Terms and Conditions. ComReg is of the preliminary view that this definition should reference or reflect the universal postal union ("UPU") description of "items for the blind", which is contained at Article 7(3) of the UPU Letter Post Manual.

An Post agrees to insert a definition of "Postal Packets for the Blind" in the Terms and Conditions.

An Post agrees to ensure consistency in use of defined terms and terminology and will define by reference to the 2011 Act but will not use definitions from an "external document" which is not readily accessible such as the UPU, as recommended by ComReg.

ComReg's preliminary view

50. ComReg is of the preliminary view that the proposed Terms and Conditions require amendment to ensure the definitions of "Fragile" and "Exceptionally Fragile Articles" are made clearer so that postal service users are in no doubt as to what the distinction between the terms is.

An Post agrees to amend the definition for 'exceptionally fragile' based on international best practice. We note that the inclusion of a draft definition of 'exceptionally fragile' was made by An Post in its draft working document at the behest of ComReg for both An Post and ComReg to consider whether such a definition was feasible and workable. We have previously explained to ComReg and provided evidence of the fact that this phrase is not ordinarily defined and have referred to the practice of other jurisdictions including referencing the practice of New Zealand whose model of Terms and Conditions is preferred by ComReg as a template for Ireland's USP USO Terms and Conditions.

The New Zealand Postal Users' Guide (March 2015) on Page 12 declares that fragile items:

"....can be sent only if packaged to withstand transport and handling".

An Post will consider the definition of "fragile" to determine how best to deal with the issues raised by ComReg and its own operational needs in light of the reasonable needs of the consumers.

ComReg's preliminary view

57. ComReg is of the preliminary view that the definitions of "Liquid" and "Flammable or Corrosive solids (sic) or Liquids" require amendment to ensure that postal service users are clear as to what the distinction between the terms is

and whether it is, in fact, permitted to send any “Liquids” in domestic postal packets.

An Post agrees to review the wording in the Terms and Conditions to determine what amendments need to be made.

For the sake of clarification, we note that liquids can be sent in postal packets in the domestic service. This is subject to the general proviso in B.2(1) that:
“Every Postal Packet shall be made up and secured to prevent injury to any other Postal Packet in the course of transmission by post or to any receptacle in which the same is conveyed, or to an officer of An Post or other person who may deal with such Postal Packet or to postal equipment or to third party property”.

3.2.3 Proposed conditions which give An Post the unilateral right to change the terms of its contract with a postal service user in individual cases

ComReg’s preliminary view

62. ComReg is of the preliminary view that condition B.6(3) requires amendment to supply such specification or alternatively condition B.6(3) should be deleted.

We believe that Condition B.6(3) already meets ComReg’s requirements in the Consultation Paper in that the variation right can only be used by An Post in two specified limited circumstances and even then can only be exercised strictly to meet the reasonable needs of consumers or where the use of the variation is applied to increase the use of a USO service by any person or group of persons. Contrary to ComReg’s understanding of Condition B.(6)(3), An Post does not have a general unilateral right to vary Terms and Conditions.

Condition B.6(3) provides An Post with a limited amount of necessary flexibility to adapt to particular situations that don’t normally arise and that cannot be specified exhaustively. This is a standard provision and is included in terms and conditions generally and specifically in terms and conditions for other USO postal service providers in Europe. It allows for operational flexibility in unusual circumstances. We do not believe it is in the reasonable needs of consumers that they could be prejudiced by the rigid application of specific exhaustive rules.

An example of how this ‘unilateral right’ has been used by An Post is where a customer whose adult child is unable, due to illness or due to cognitive impairment, to provide his or her signature for the initiation of a service they unexpectedly require such as redirection of their mail. By insisting on the Terms and Conditions with no ability or flexibility to try and deal with the reasonable needs of the consumer in this case, the individual may lose out on important mail such as hospital appointments or social welfare correspondence because An Post is prevented from meeting their reasonable needs.

In such real-life circumstances, An Post has managed to find a way to provide the service for the individual which we believe is in the reasonable needs of consumers without in any way diminishing or detracting from the USO service we provide to every other postal user. We try to meet the reasonable needs of postal users, users whose postal needs come in all shapes and sizes, those with the greatest need to access postal services are often those who for one reason or another are isolated or unwell or poor or disabled or have suffered a mishap or loss and some level of flexibility is needed in dealing with them. An Post questions whether an over rigid set of Terms and Conditions would meet the needs of users. The inability of An Post to deal with unexpected and unusual circumstances by removing operational flexibility from An Post, as preferred by ComReg, is, we believe, a disservice to the postal user, is not in their reasonable interests or needs, is not practical and is wholly inconsistent with the practices of other USO postal service providers similar to An Post in other EU jurisdictions providing similar services.

ComReg's preliminary view

65. ComReg is of the preliminary view that condition B.6(4)(a) needs to be amended to make it clear when An Post will refund a "Charge" and the types of conditions An Post will attach to refunds in specific circumstances. ComReg considers that An Post should indicate that it will, in general, provide full refunds. In the event that limited refunds are proposed, limits should be outlined that fairly balance the interests of the parties.

An Post agrees to review this condition and to determine the details of other instances in which a Charge may be refunded. Examples of limits proposed are set out below and will be included in the Terms and Conditions. These limits are taken from current standard practice with regard to refunds documented in the 'Spoiled Franks'/Unused Stamps Refund form.

An extract from the 'Spoiled Franks'/Unused Stamps Refund form is below:

Unused Stamps

- (a) €6.50 is the minimum value of unused postage stamps that will be accepted for refund.
- (b) Stamp refunds are subject to a 20% commission up to the postage value of €250 and 10% for amounts over €250.
- (c) Stamps must have been purchased at a Post Office/Post Office Stamp Vending Machine or from a person duly authorised to sell stamps within the previous two years.

Spoiled Franks

- (d) In the case of spoiled franks no charge is made for less than 20 items, a service charge equivalent to 10% of the postage value will be applied to more than 20 items.
- (e) The entire envelopes, wrappers or address labels must be submitted.
- (f) No refund will be given for frank submissions which are not surrendered within one month of the date of franking.

There are other examples of Charges that may be imposed but not “refunds” in the strict sense of the term. One illustration is where it is necessary for a postal operator to seek the cancellation of customs duty and other fees and it is unsuccessful in this.

Please also see 3.2.9.2 (Refund administrative charge) which is a related topic below.

ComReg’s preliminary view

68. ComReg is of the preliminary view that, prior to it approving the proposed Terms and Conditions, condition B.6(5) needs to be amended to make it clear what exactly the circumstances are that would cause doubt or dispute in establishing which service a postal packet is to be conveyed in.

We note ComReg’s preference for the removal of operational flexibility from An Post. The purpose of the Terms and Conditions is not to provide an exhaustive operational manual but to set out the Terms and Conditions on which the service is provided and the obligations and rights of each party to the Terms and Conditions - An Post and the postal user. We do not understand how removing operational flexibility from An Post, as ComReg is suggesting, is in the reasonable needs of consumers and/or consumer focused.

In ComReg’s preferred terms and conditions models from Australia Post and New Zealand Post the Terms and Conditions of Australia and New Zealand, do not set out exhaustive conditions, finite lists of events and purport to limit how a postal service provider will deal operationally with an unexpected event.

An Post prefer to try and deliver, even where there are operational issues caused by the postal packet rather than treating the item as being non-compliant with the Terms and Conditions. Without this standard operational flexibility the practical alternative is to always return the items to the sender in accordance with the powers provided to An Post by the legislature under Section 47 of the 2011 Act. An Post does not believe that this would be a customer friendly policy or in the reasonable needs of consumers. The approach taken by An Post is not unusual, in fact, it is similar those of other postal operators as illustrated by the examples from Royal Mail and Australia Post set out below:

Example 1; Practice in the UK

Section 4 of The Royal Mail United Kingdom Post Scheme, 12th January 2015, affords Royal Mail a reasonable degree of latitude on the way in which services are provided:

“4. Our ability to provide services

4.1 We will provide the services set out in this Scheme where the relevant terms & conditions contained in this Scheme for the service are complied with. We will provide the services in the manner that we deem to be most appropriate according to our operational requirements and an overarching need to secure the sustainability of the Universal Service.

4.2 We may decide to withdraw the provision of any of the services set out in this Scheme if the terms & conditions contained within this Scheme are not abided by, in the event of misuse or if providing the service may cause us reputational damage.”

Example 2: Practice in Australia

Australia Post's Terms and Conditions afford it a reasonable measure of operational flexibility:

“4. Carriage of Mail

4.1 Australia Post may at its absolute discretion and subject to any other provision contained herein, carry postal articles by the most convenient method subject to the operational requirements of Australia Post and may subcontract such carriage at its absolute discretion.

5. Right of Refusal

5.1 To the extent permitted by the Act, Australia Post is not a common carrier and reserves the right to refuse to provide postal and related services to any customer or to accept articles of any particular class, character or nature whatsoever at its sole discretion.”

3.2.4 Proposed conditions allowing An Post to refuse to provide certain universal services

ComReg's preliminary view

73. ComReg is of the preliminary view that condition E.9.1(3) must be amended by deleting it or by inserting text which indicates limits on An Post's right to refuse or discontinue, for example by limiting this right to circumstances where An Post has serious grounds for termination of the "PO Box Service" and indicating that An Post will provide the postal service user with reasonable notice of the discontinuation.

An Post agrees that it will consider how best to amend the Terms and Conditions to ensure that postal users are informed that a USO service can be terminated by An Post but only where An Post has serious grounds for termination and, where practicable and where not legally prohibited, provide reasonable notice for such termination.

For example, a PO Box service may prove to be unworkable and the service withheld or withdrawn for a variety of reasons such as:

- PO Box is being illegally/fraudulently used;
- Delivery Service Manager states that the customer is “gone away”;
- Delivery Service Manager is unable to confirm customer's identity and address;
- The applicant does not have a permanent address in Ireland (a very common reason for refusing to open a PO Box for a customer);
- Other serious grounds.

ComReg's preliminary view

76. ComReg is of the preliminary view that condition E.9.2A(12) must be amended by deleting it or by inserting text to indicate limits on An Post's right to refuse or discontinue, for example indicating that An Post will only discontinue the "Redirection Service" if there are serious grounds for this and that reasonable notice of the discontinuation of the "Redirection Service" will be given.

An Post agrees that it will consider how best to amend the Terms and Conditions to ensure that postal users are informed that a USO service can be terminated by An Post, but only where An Post has serious grounds for termination and, where practicable and where not legally prohibited, provide reasonable notice for such termination.

For example, the most common reason for refusing a redirection is non compliance with the Terms and Conditions of the service such as the furnishing of probate documentation etc. in the case of a death.

Royal Mail's T&Cs for its Consumer Redirection Service at Clause 15.2.1 declares that it will terminate the redirection service immediately if:

"we believe that you are not entitled to the Redirection or authorised to apply for it"

Clause 15.3 states that:

"Either you or we can end this agreement immediately by giving notice to the other if the other does not comply with any of its responsibilities under this agreement and:

15.3.1 they cannot do anything to put the matter right; or 15.3.2 they can put the matter right, but fail to do so within 14 days of being asked."

Clause 4.7 provides for a suspension of service:

"If there is any dispute as to who is entitled to apply for a Redirection, for example if more than one person makes an application relating to mail addressed to a particular person, we may hold the mail for a period of ten working days to enable the parties in dispute to resolve the matter or to obtain a Court order that confirms the identity of the person permitted to make the application."

Clause 9.7 of the same agreement declares that:

"We do not provide Redirections where the old address is a multi-occupied addressand does not have a unique delivery point. Such premises include boarding houses, university halls of residence, nursing homes, caravan sites, hospitals, mail boxes and hotels."

3.2.5 Prohibitions and restrictions on sending money in the post

ComReg's preliminary view

85. ComReg is of the preliminary view that amendment of the proposed Terms and Conditions is required in order to make the restrictions An Post is attaching to the sending of money by post, if any, clear. In particular:

(i) The position in relation to whether “Paper Money” can be transmitted by post, or not, must be explicitly set out for all universal postal services.

(ii) If postal service users need to avail of specific service in order to post money (such as the “Secure Post (Insured)” service) this must be clearly stated.

(iii) The position in relation to whether compensation is or is not available must be explicitly set out.

(iv) Section E.7 must be amended to give clarity as to whether it is possible to send “Paper Money” using the “Secure Post (Insured)” service to addresses outside the State.

An Post agrees to consider how best to revise the text to make it clear that the conveyance of postal packets in the domestic and international service of paper money, is permissible but can only be insured for domestic services.

An Post notes that current An Post practice ensures that Post Office counter receipts contain a notice drawing the customer’s attention to the exclusion of liability for postal packets containing cash etc. to international destinations. See an example of this in Mails Retail Receipt included on the next page:

An Post
Mails Retail Receipt

Post Office: 7707 Position: 1
Date: 01-May-2015 Time: 16:57:24

Trans. Ref. ID 77070100239672
Destination Germany
Weight (Packet) 0.150 kg
RegisteredPost 9.80 EUR

TRACKING NUMBER RL 406 160 874 IE

No Commercial Value

PLEASE NOTE that items containing
Cash, Jewellery or other restricted
items to international destinations
are not insured. See www.anpost.ie
for full list of restricted items.

Total Amount Paid 9.80 EUR
Payment Method Cash

This receipt is your proof of posting.

To track an item visit
<http://track.anpost.ie> and enter
the TRACKING NUMBER listed above.
Item tracking available up to despatch
from Ireland. Further tracking is not
available to every country.

An Post Customer Services
Phone: 1850 57 58 59
Email: customer.services@anpost.ie
Write: An Post Customer Services, GPO,
O'Connell Street Lower, Dublin 1
Terms & Conditions at your local Post
Office or www.anpost.ie

3.2.6 Packing

ComReg's preliminary view

88. ComReg is of the preliminary view that condition B.2(1) needs to be amended to provide details of the "special rules in relation to the packing of any particular Postal Packet or article".

An Post agrees to consider how to amend this condition to generally identify categories of postal packets which may have specific packing requirements. We note the practice of New Zealand Post whose Terms and Conditions were recommended by ComReg as being suitable in format and content for Ireland's USO Terms and Conditions.

On the issue of packaging instructions we note, for example, that New Zealand refers to "external documents" which set out these requirements but that the New Zealand Post Terms and Conditions recommended by ComReg do not in fact include exhaustive lists of packing requirements.

Currently, An Post adopts the same approach as New Zealand and provides a list of packing instructions in the An Post Guide to Postal Services including packing requirements and prohibited contents. Packing requirements for biological and infectious substances will also be included.

[www.anpost.ie/AnPost/Downloads/Anpost/Guide to Postal Services.pdf](http://www.anpost.ie/AnPost/Downloads/Anpost/Guide%20to%20Postal%20Services.pdf)

3.2.7 Cancellation of stamps and dating of postal packets

ComReg's preliminary view

92. ComReg is of the preliminary view that in order to provide clarity to postal service users regarding whether the pre-payment of the postal packet has been accepted and how to identify the date of acceptance of postal packets, condition B.7(4) of the proposed SP T&Cs must be amended to state:

"Postage stamps on Postal Packets presented at a Post Office counter or posted at a collection box are cancelled by means of automated processing and a cancellation stamp will apply the date of acceptance of the postal packet. Where this has not occurred the postage stamps shall be cancelled by means of a hand stamp, ink pen or marker and the date of acceptance of the postal packet will be applied."

An Post's proposed wording is the following:

"Postage stamps on Postal Packets presented at a Post Office counter or posted at a collection box are cancelled by means of automated processing or manual cancellation. Where automated cancellation has not occurred and is noted, the postage stamps shall be cancelled by means of a hand stamp, ink pen or marker."

It is not practical to cancel postal packets in order to signify the date of actual acceptance into the postal system as proposed by ComReg. There is no legal basis for such a requirement contained in the 2011 Act or elsewhere.

Implementation of the proposal from ComReg would add undue costs to the provision of services which may impact An Post's ability to sustain the provision of the Universal Service.

3.2.8 Universal postal services

3.2.8.1 Schedules containing overviews of universal postal services

ComReg's preliminary view

98. ComReg is of the preliminary view that "Section E – Universal Postal Service" of the proposed Terms and Conditions must be amended to include comprehensive user-friendly schedules for each universal postal service with all applicable provisions related to each service, to include:

- Summary of key features;

- *Prohibitions and restrictions;*
- *Reference to the relevant charges;*
- *Service requirements; and*
- *Applicable compensation.*

While there is no legal obligation on An Post to provide summary sheets in the style of New Zealand Post's Terms and Conditions, An Post's approach to consumer matters to date has demonstrated a commitment to the production of simple short documents to aid postal users. To this end, An Post invested in and produced a wide variety of documentation of the type identified by ComReg.

An Post agrees to consider separately the creation of summary sheets as an addition to our current offering of guides and marketing materials to complement the Terms and Condition document.

It is not appropriate to include such brochures in the T&Cs. See An Post's previous response in Section 3.1.1 User Friendliness.

3.2.8.2 Single Piece - Letters

ComReg's preliminary view

101. ComReg is of the preliminary view that prior to it approving the proposed Terms and Conditions, condition E.2(1)(i) of the proposed SP T&Cs needs to be amended to state:

"has a transit time objective of

- *next working day delivery to a postal address within the State;*
- *three working days for delivery to addresses within the European Union;*
- *up to nine working days in respect of delivery to all other Foreign addresses."*

An Post agrees to state that the Single Piece Letters service is a service which has a transit time objective as specified in the published Statutory Instrument S.I. 280 of 2012, subject to the following exclusion: the objective should not include postal packets (i) inserted in collection boxes to addresses within the European Union, excluding Northern Ireland, which do not bear security declarations and (ii) those to addresses outside the European Union with incomplete or misleading customs declarations.

3.2.8.3 Single Piece - Large Envelopes

ComReg's preliminary view

104. ComReg is of the preliminary view that prior to it approving the proposed Terms and Conditions, condition E.3(i) of the proposed SP T&Cs needs to be amended to state:

"has a transit time objective of

- *next working day delivery to a postal address within the State;*
- *three working days for delivery to addresses within the European Union;*

- *up to nine working days in respect of delivery to all other Foreign addresses.”*

An Post agrees to state that the Single Piece Large Envelopes service is a service which has a transit time objective as specified in the published Statutory Instrument S.I. 280 of 2012, subject to the following exclusion: the objective should not include postal packets (i) inserted in collection boxes to addresses within the European Union, excluding Northern Ireland, which do not bear security declarations and (ii) those to addresses outside the European Union with incomplete or misleading customs declarations.

3.2.8.4 Single Piece - Packets

ComReg’s preliminary view

107. ComReg is of the preliminary view that prior to it approving the proposed Terms and Conditions, condition E.4(a) of the proposed SP T&Cs needs to be amended to state:

“has a transit time objective of

- *next working day delivery to a postal address within the State;*
- *three working days for delivery to addresses within the European Union;*
- *up to nine working days in respect of delivery to all other Foreign addresses.”*

An Post agrees to state that the Single Piece Packets service is a service which has a transit time objective as specified in the published Statutory Instrument S.I. 280 of 2012, subject to the following exclusion: the objective should not include postal packets (i) inserted in collection boxes to addresses within the European Union, excluding Northern Ireland, which do not bear security declarations and (ii) those to addresses outside the European Union with incomplete or misleading customs declarations.

3.2.8.5 Single Piece - Parcels

ComReg’s preliminary view

110. ComReg is of the preliminary view that prior to it approving the proposed Terms and Conditions, condition E.4(a) of the proposed SP T&Cs needs to be amended to state:

“has a transit time objective of

- *next working day delivery to a postal address within the State;*
- *three working days for delivery to addresses within the European Union;*
- *up to nine working days in respect of delivery to all other Foreign addresses.”*

An Post agrees to state that the Single Piece Parcels service is a service which has a transit time objective as specified in the published Statutory Instrument S.I. 280 of 2012, subject to the following exclusion: the objective

should not include postal parcels to addresses outside the European Union with incomplete or misleading customs declarations.

3.2.8.6 Single Piece - Secure Post (Insured)

ComReg's preliminary view

113. ComReg is of the preliminary view that Condition E.7 of the proposed SP T&Cs should be amended to provide clear information setting out the different levels of insurance cover and compensatory amounts applicable to each service.

An Post agrees with ComReg that clear information setting out the different levels of insurance cover and compensatory amounts applicable under each service should be set out. We have already set it out in a different section of the Terms and Conditions (Section D.3(4)) and agree that certain improvements can be made to produce a more user friendly set of Terms and Conditions.

3.2.8.7 Special Facilities – Private Boxes (also known as ‘PO Box’) and Bags and includes caller’s service

ComReg's preliminary view

116. ComReg is of the preliminary view that references to the “caller’s service” in condition E9.1 must be deleted.

An Post agrees to delete the reference to the ‘caller’s service’ as it is not a USO service.

3.2.9 Charges and Payment

3.2.9.1 Transmission of Underpaid Mail

ComReg's preliminary view

120. ComReg is of the preliminary view that the proposed Terms and Conditions must be amended by inserting reference to the handling charges for delivering underpaid postcards, letters, large letters, packets and incoming cross border postal packets, and for delivering underpaid parcels in the proposed Terms and Conditions in condition B.6 of the Terms and Conditions

Charges are set out in a separate document called the Schedule of Charges. The distinction between the Schedule of Charges and the Terms and Conditions as two independent, separate documents is a legislative distinction in the 2011 Act. An Post cannot agree to ComReg’s requirement to set out in the Terms and Conditions documents the Charges that appear in the Schedule of Charges.

For the sake of completeness we note that in other jurisdictions including New Zealand, Australia and the United Kingdom, Charges are not set out in the

Terms and Conditions. By way of example, we note that there is no explicit reference to actual charges anywhere in the Royal Mail General Terms and Conditions. In clause 5.1 Royal Mail declares that:

“.....you agree to pay the charges for the products you use in line with this clause”.

3.2.9.2 Refund administrative charge

ComReg’s preliminary view

124. ComReg is of the preliminary view that the Terms and Conditions should be amended by deleting condition B.6(4)(b) of the proposed Terms and Conditions.

The Terms and Conditions as previously noted reflect the basis on which An Post has provided services to the public for many years. There is nothing new in the application of administrative charges in the case of refunds. The concept of administrative charges is in and of itself not novel in industries where refunds are applied for.

For the sake of clarity, although not exhaustive, we have set out some examples of instances where administrative charges, have to be, as have always been, made:

- 1) Commission on refund of unused postage stamps and meter franks:
Stamps - 20% up to €250 and 10% over €250; Spoiled Franks – 10% of value for over 20 items.
- 2) Customs charges due on refused inbound international items:
This is where it is necessary for a postal operator to seek the cancellation of customs duty and other fees and it is unsuccessful in this (Article RC 153 UPU Parcel Post Regulations).
- 3) Lost postal packet or contents found after a claim is paid:
A customer who had received compensation for a lost postal packet which was subsequently found would be due to return all or part of the compensation paid.
- 4) Deductions from compensation where payments already made:
Under Condition D3.(8) compensation payable is to be in substitution for, and not in addition to, any compensation which would otherwise be payable.

Please also refer to Section 3.2.3 and An Post’s response to ComReg’s view on refunds expressed in para. 65 of the Consultation Paper.

3.2.9.3 Deposit payable by Consignor of Postal Packets

ComReg’s preliminary view

128. ComReg is of the preliminary view that An Post must either amend this term by deleting it or make amendments which clarify the condition. In particular, the services to which this condition is applicable and amount of the deposits required should be clearly stated.

An Post agrees to amend Condition B.6(6) to clarify the condition.

3.2.9.4 Collecting undelivered Registered (Proof of Delivery) postal packets charge

ComReg's preliminary view

132. ComReg is of the preliminary view that the Terms and Conditions should be amended by deleting condition E.6(5) of the proposed SP T&Cs.

An Post believe that ComReg has misinterpreted Condition E.6(5) which deals with the collection by a customer of an 'undeliverable' Registered (Proof of Delivery) Postal Packet.

Like any postal packet on which Charges might accrue, the fees outlined in Part VI Additional Charges of the Schedule of Charges relate to instances of underpayment of postage, oversized parcels and for presentation to customs. They are not therefore in the nature of additional charges but rather fees which customers are ultimately bound to pay either as part of a normal delivery or collection as a DIB ("Sorry We Missed You") postal packet at the local delivery office.

This may best be explained by way of an illustration. For example, if a postal packet attracts customs charges of €50, these charges are payable if the addressee accepts the item when delivered to their address. Alternatively, if the postal packet cannot be delivered because there is nobody at the delivery address to accept the postal packet and it enters the DIB process, the €50 customs charges are payable when the item is collected at the local delivery office. The customs charge payable at the local delivery office is identical to the fee payable at the delivery address. In this example there is no other charge.

3.2.10 Acceptance Issues

3.2.10.1 Provision of a return address on postal packets

ComReg's preliminary view – SP T&Cs

137. ComReg's preliminary view that An Post should amend condition B.4 to indicate that postal service users are not required to put a return address on the envelope (except in relation to a "Parcel addressed to a postal address outside the State").

An Post agrees to amend the wording of the last paragraph of Condition B.4(1) by expanding the condition, clarifying that in order to assist in the handling of Postal Packets which cannot be delivered, the return address *should* appear in top left hand corner on the address side of each Postal Packet or to the left of the address on a Postal Packet in roll form.

In relation to a *“Parcel addressed to a postal address outside the State”* the wording will remain unchanged:

“the return address shall appear in top left hand corner on the address side of each Postal Packet or to the left of the address on a Postal Packet in roll form”.

It should be noted that the non-inclusion of a return address on the cover of a mail piece effectively increases the costs for An Post to process and return the item to sender. Non-inclusion of a return address is also likely to reduce the quality of service achieved and result in a loss of confidentiality due to item being opened.

ComReg’s preliminary view – BM T&Cs

138. ComReg is of the preliminary view that the requirements of condition B.4 and condition E.2.5 in relation to return addresses should be consistent. This will increase transparency and be appropriate having regard to the reasonable needs of postal service users. Therefore the identified text in both condition B.4 and condition E.2.5 of the BM T&Cs should be amended to state:

“Every Postal Packet should bear a return postal address”

An Post agrees that the Bulk Mail Terms and Conditions should also ideally mirror the text in the single piece T&Cs where this is possible and practicable. In this instance it is not possible and An Post would like to draw ComReg’s attention to the mandatory nature of one rule in the UPU Parcel Post Manual.

Article RC 117.2.1 states that

“To be admitted to the Post, every parcel shall bear, in roman letters and in arabic figures on the parcel itself or on a label firmly attached to it, the complete addresses of the addressee and the sender.....” (emphasis added)

In relation to bulk letter post Article RL 125.10 of the UPU Letter Post Manual should be noted:

“The envelope or wrapping may bear only one sender’s address and one addressee’s address. In the case of bulk postings, the sender’s address must be visible on the outside of the item and located in the country of posting of the item”.

ComReg has stated its preference for Terms and Conditions for USO Services to reflect those of New Zealand Post and Australia Post. We reviewed, for example New Zealand’s approach to this matter and we note that New Zealand has determined it is obligatory to have a return address on all bulk mail products.

“All items must have a valid New Zealand Post return address, including the correct New Zealand Post postcode” (New Zealand Post Users Guide, March 2015).

3.2.11 Delivery Issues

3.2.11.1 Undelivered and undeliverable Postal Packets

ComReg's preliminary view

141. ComReg is of the preliminary view that the typographical error "to be returned" should be corrected and that the text "for whatever reason" in condition C.3(3) must be deleted.

An Post agrees to correct all typographical errors when it is finalising its final version of the agreed Terms and Conditions for USO services including the typographical error cited by ComReg in para. 141.

ComReg also notes in para. 140 that it:

"is concerned that the text "for whatever reason" appears to indicate that postpersons have full discretion as to the reasons which would result in them being "unable to deliver". This is not appropriate having regard to An Post's universal service obligations and the reasonable needs of postal service users."

To address ComReg's concern's we propose to use the language from Section 47(4) of the 2011 Act which provides for the type of operational flexibility recognised by the Oireachtas which is needed for a USP when handling mail and we agree to consider deleting reference to "or whatever reason" and using "for any other sufficient reason". As can be seen from Section 47 of the 2011 Act, the legislature does not provide an exhaustive list of instances defining what events may or may not constitute 'sufficient reason'. We believe that this addresses ComReg's issue directly.

Section 47(4) of the 2011 Act provides:

"For the purposes of subsection (3)(a), a postal packet is considered to be undeliverable if it cannot be delivered through want of a true direction, or by reason that the addressee is dead, or cannot be found, or has refused the same, or has refused or neglected to pay any charges thereon, or for any other sufficient reason."

While we understand that ComReg is of the view that the reasonable needs of postal users can only be met by specificity and/or exhaustive lists, we note that in addition to the Terms and Conditions of other USPs in the EU, other postal service providers internationally, such as New Zealand and Australia, that the Oireachtas itself has provided on many occasions within the 2011 Act and postal legislation for the flexibility of the operator to provide the service within limits. We believe that the rigid strict stance preferred by ComReg for the Terms and Conditions is not in keeping with postal legislation and the standard practices of postal operators.

3.2.11.2 Underpaid postage to be paid by addressee

ComReg's preliminary view

144. ComReg is of the preliminary view that condition C.3(4) of the proposed Terms and Conditions must be amended by deleting the following text:

"or may be refused, detained, deferred, withheld, returned or disposed as prescribed under Section 47 of the 2011 Act."

Section 47 of the 2011 Act provides An Post with powers as to the transmission of postal packets. Under Section 47(1) An Post:

"may refuse, detain, defer, withhold, return or dispose of any postal packet (a) which does not comply with -

- (i) its terms and conditions as to the transmission of postal packets, or*
- (ii) with the provisions of this Part, or*

(b) if the postal service providers knows or reasonably suspects that such postal packet is being sent in contravention of section 55"

A postal packet which is underpaid does not comply with Section 47(1)(a)(i) of the 2011 Act in that the Terms and Conditions require payment of the charges specified in the Schedule of Charges. A postal user is not offered the choice of full or part payment. The Charge, that is the full amount of the charge, must be paid. Failure to comply with this requirement means that An Post can take any of the actions which the legislature provided to it under Section 47(1) of the 2011 Act.

The requirement to pay in full for a service is not a new concept nor is the treatment of underpaid mail by An Post under these Terms and Conditions any different to treatment of underpaid mail under, for example, the 1983 Act or earlier postal schemes and warrants which provides for essentially the same powers as An Post has under the 2011 Act.

This power is provided for by the legislature, not by An Post. The concern ComReg has seems to be stated in the following extract from para. 143 of the Consultation paper wherein ComReg states that:

"This [set of powers] is not provided for in section 47 of the 2011 Act."

ComReg's statement is factually and legally incorrect. ComReg is also not correct in stating that:

"This text would in essence allow An Post the right to treat underpaid mail as it wished and disregard its universal service obligation to deliver postal packets."

Section 47(1) of the Act limits An Post's actions to those specified and not as ComReg suggests *'to treat underpaid mail as it wished and disregard its universal service obligation...'*

While we understand ComReg does not consider that such a provision is appropriate having regard to the reasonable needs of users and in respect of the provision of the universal service we must point out that An Post is following its legal obligations under the 2011 Act.

From an operations point of view we note that collecting deficient postage exclusively from the addressee is an unworkable proposition for the following reasons:

- Currently not carried out by An Post – therefore likely to be resisted;
- Unavailability of addressee at delivery address;
- Health and safety issues arising from the postperson carrying cash;
- Increased administration costs to administer the proposal and the potential introduction of a surcharge to cover such costs;
- Storage and collection costs where the addressee refuses to collect the postal packet and determination of the retention period before return to sender (5 days for standard, 16 days from abroad);
- The proposal shifts the responsibility for applying the correct postage from the sender to the addressee and may result in a longer time period elapsing before the sender is notified of non-delivery of mail;
- It would result in two processes for dealing with underpaid mail where we currently have one process: (i) process when the addressee pays and (ii) return to sender process if item is refused by addressee. The introduction of an additional process will bring with it associated costs; and
- Unworkable for international outbound postal packets as under UPU rules the operator in the destination country is not obliged to collect the charge nor is there any robust mechanism in place to reimburse the administration in the country of origin.

In addition, we note that ComReg does not appear to have had any regard to the impact of their requirements on the costs of providing the USO. Were the implementation of the proposal from ComReg legally required and legally sound it would add undue costs to the provision of services which may impact An Post's ability to sustain the provision of the Universal Service. An Post believe ComReg should give further consideration to the possible consequences of this proposal as it has the potential to increase the cost to postal users and increase risks to postperson safety.

In accordance with long-standing practice and based on its legal obligations, the Terms and Conditions will be amended to reflect that An Post will treat underpaid mail as not being in compliance with the Terms and Conditions for failure to have the correct Charges applied.

A review of the practice in other jurisdictions reveals that the approach taken by An Post to this and the Irish legislature is consistent with the approach taken in other countries. For example:

- (i) The New Zealand Postal Users Guide (March 2015) on Page 3 declares
"If an item does not have enough postage for delivery, we are not obliged to deliver it. We may, at our discretion, return the item to the sender, delay it, or deliver it. If we deliver the item, we may charge a handling fee in addition to the postage owing. If we return the item to the sender, then we will not refund the postage

previously paid, and full postage may need to be re-applied to resend the item.....” (emphasis added)

- (ii) In some other countries the PPO has discretion to collect the deficient postage either from the sender or the addressee. In the UK, under Regulation 13.2 of The Royal Mail United Kingdom Post Scheme 12th January 2015, Royal Mail in circumstances where:

“.....insufficient (or no) postage and/or service fee has been paid for the service requested, we may decide at our discretion to do one of the following things set out below within a reasonable period of time.

13.2.1 Deliver the item to the address shown by the service requested.

13.3 In each case set out in section 13.2 we may require the addressee or you to pay an amount (to be fixed by us in order to cover additional costs) before the item is delivered or released for collection.

13.3.1 In the event of underpaid or unpaid postage and/or service fees the amount due may include a surcharge in addition to the underpaid or unpaid postage to cover administrative costs.

13.3.2 Where the amount due is not paid the item may be dealt with or disposed of at our discretion.”

3.2.11.3 An Post’s powers to open postal packets

ComReg’s preliminary view

158. ComReg is of the preliminary view that condition C.3(5) of the proposed Terms and Conditions should be amended so as to quote directly from section 47 of the 2011 Act. ComReg is of the preliminary view that An Post should not reference section 53 of the 2011 Act in the manner which it does and that it should delete this reference.

Condition C3(5) is one of the conditions under the heading “*If An Post can’t deliver*”. ComReg states in para. 155 that:

“Condition C.3(5) would represent a fundamental change to how post has always been treated in Ireland and in commonwealth countries i.e. as the property of the addressee.”

An Post does not agree. There is no legal principle or precedent in Ireland or in the unspecified commonwealth countries referenced by ComReg providing that post has always been the property of the addressee. Under Irish law, the 1983 Act changed the legal relationship in that An Post and the sender become parties to a contract. This was implied in Section 64(3) of the 1983 Act and continued in the 2011 Act under Section 26(3). Title in a postal packet remains vested in the sender until it is delivered to the addressee. For criminal law purposes the postal packet is deemed to be in the possession of the postal service provider while in the course of transmission. Condition C.3(5) does not represent a fundamental change to what we currently do.

We note that Section C.3 deals with delivery of postal packets where they '*cannot be delivered*' and Condition C.3(5) deals with An Post's powers which includes the right to open a postal packet where that postal packet is undeliverable.

We wish to confirm that there is no suggestion nor has there ever been a practice within An Post that just because a postal packet posted within the State to an address within the State does not contain a return address on the face of a postal packet that an attempt to deliver that postal packet will not be made. For clarity, when reading Condition C.3 the return scenario applies where there is:

- no external return address;
- no return address on the contents; and
- no claim within one, three or six month periods.

3.2.11.4 Postal Packet with no Return Address

ComReg's preliminary view

161. ComReg is of the preliminary view that Condition C.3(6) should be deleted

An Post believe that ComReg has misinterpreted Section C.3 and that it may not have appreciated that the actions referenced in Condition C.3(6) apply ONLY in the situation where a postal packet is initially not capable of being delivered at all.

Section C.3 deals with delivery of postal packets where they '*cannot be delivered*' and Condition C.3(6) deals with undeliverable postal packets which also have no return address and how we will try and deal with them.

We wish to confirm that there is no suggestion nor has there ever been a practice within An Post that just because a postal packet posted within the State to an address within the State does not contain a return address on the face of a postal packet that an attempt to deliver that postal packet will not be made. For clarity, when reading Condition C.3 the return scenario applies where there is:

- no external return address;
- no return address on the contents; and
- no claim within one, three or six month periods.

Where there is no external address an attempt will still be made to deliver if an address on the contents is found on opening the postal packet. For the above reasons, there is no need to amend the current drafting as the current drafting already achieves the result we understand ComReg wants to achieve.

3.2.11.5 Retention periods and access points to collect undeliverable mail

ComReg's preliminary view

165. ComReg considers the text in condition C.3(2) of An Post's SP T&Cs must be amended to indicate that Registered (Proof of Delivery) Postal Packets, Secure Post (Insured) Postal Packets, and Standard Postal Packets will be held

and available for collection for a minimum of 8 hours on each "Working Day" from each local office where undelivered postal packets are held

An Post cannot agree to ComReg's requested amendment. Further there is no legal requirement for An Post to keep open its operations for a minimum of 8 hours every working day. We note also that while ComReg has noted that this would be in the interests of the reasonable needs of consumers, the actions requested by ComReg would result in an increase in the costs of operating the USO and our ability to continue to provide the USO on a sustainable basis.

We also note that ComReg's position fails to comply with its own 03/50 Decision which we note was intended by ComReg, as ComReg itself states, to be a codification of practice at the time. An Post notes the following statement in ComReg 03/50 of 13 May 2003 ¹ :

*"It is therefore recommended that mail should be made available for collection on six days at least between the hours of 9am and 1pm, not including the day of attempted delivery, if there is a facility to collect mail on a Saturday, or for five days if there is the facility to collect mail between the hours of 7am and 9 am in the morning. **The Commission's Position is broadly aimed at codifying present arrangements while giving addressees who are at work during the week an opportunity to collect in the early morning or on Saturday. Similarly, there is flexibility to provide the collection facility at a delivery office (which will generally be staffed early in the morning, but not on Saturdays or in the afternoon) or at a post office (which will normally be open only during office hours, but also on Saturdays).**" (emphasis added)*

An Post's work practices have not changed and these existing arrangements are adequate and meet customer expectations. Implementation of the proposal from ComReg will add undue costs to the provision of services which may impact An Post's ability to sustain the provision of the Universal Service.

3.2.11.6 Return to Sender

ComReg's preliminary view

170. ComReg is of the preliminary view that section C of the proposed Terms and Conditions should must be amended to include the following condition:

"Where the name of the sender cannot be ascertained from the cover of a Postal Packet or its contents it will be returned to sender within 10 days of the date on which the Postal Packet was accepted for transmission by post."

¹ Postal Services - Universal Service Obligation, Tariff Principles and miscellaneous issues; Directions to An Post under the European Communities (Postal Services) Regulations 2002, S.I. No. 616 of 2002

An Post cannot agree to amending its Terms and Conditions to provide for a detailed description of a particular internal operational process outlining handling procedures for An Post staff as to how mail is treated when it has to be returned to sender because it cannot be delivered. The purpose of the Terms and Conditions is to set out the legal relationship consisting of rights and obligations between An Post and the postal user when using USO services.

ComReg's request for a detailed Return to Sender Procedure to be set out in the Terms and Conditions is not appropriate to the purpose of the Terms and Conditions and we stress again that this is not an operations manual. We have always ensured we provide customers with as much detail as possible in complementary brochures and documentation.

We note also that ComReg's requests are out of keeping with the Terms and Conditions of other postal administrations Terms and Conditions including those preferred and favoured by ComReg - New Zealand Post and Australia Post.

By way of example, we note the Terms and Conditions in New Zealand Post for return to sender:

In New Zealand, Section 16 (4) of the Postal Services Act 1998 stipulates that:

"If the postal operator does not know who sent the postal article, the postal operator must keep the postal article in safe custody for at least 3 months or until it is claimed, whichever happens first."

Section 17 of the Act provides that

"If a postal operator has kept a postal article to which section 16 applies in safe custody for at least 3 months but the postal article remains unclaimed, the postal operator may destroy or otherwise dispose of the postal article as the postal operator thinks fit."

An Post's custom and practice to date is to include such information for example in customer brochures, web information and we continue to believe that this medium best serves our customers.

As the process to identify a sender may require additional work An Post proposes that the 10 day period be amended as follows:

"Where the name of the sender cannot be ascertained from the cover of a Postal Packet but the name of the sender can be determined from its contents An Post will make every effort to return such items to sender within 10 days of the date on which the Postal Packet was accepted for transmission by post."

ComReg should note that the 10 day period may not be met in circumstances where the mail item cannot be delivered and the item goes through the DIB (“Sorry We Missed You”) process.

3.2.11.7 Delivery

ComReg’s preliminary view

175. ComReg is of the preliminary view that in order to meet the reasonable needs of users the text of condition B.3 needs to be amended to read as follows:

“A Postal Packet shall be delivered in accordance with Section 6(3) of the 2011 Act, unless the addressee has requested an alternative service (e.g. Redirection Service or Mailminder Service) or alternative arrangements, that have been mutually agreed, are in place.”

ComReg is seeking the deletion from Condition B.3 of the text:

“provided the door aperture or delivery box is deemed to be a secure location”

and the insertion of:

“or alternative arrangements, that have been mutually agreed, are in place”.

This is not an attempt, as ComReg claim, by An Post to arbitrarily without good cause to ‘restrict’ deliveries to addressees who do not have a door aperture or delivery box which is a secure location. Without such provision An Post could be left in the position of having to leave mail exposed to the elements or in an unsecure location, where there was no box, or it is full, or where the property has been boarded up.

In practice An Post would have to treat such mail as undeliverable causing problems in DSUs. Such delivery points are manifestly not “*appropriate installations*” within the meaning of section 16 (1) (a) (ii) of the 2011 Act.

Under section 16 (1) (a) (ii) of the 2011 Act An Post as the universal service provider is obliged to ensure that there is at least:

“one delivery to the home or premises of every person in the State or, as the Commission considers appropriate, under such conditions as it may determine from time to time, to appropriate installations”.

In the UK, Section 15.3 of The Royal Mail United Kingdom Post Scheme, 12th January 2015 empowers Royal Mail to treat as undeliverable mail where a delivery point is unsafe, unsecure, boarded up or full:

“15.3 We may decide not to deliver an item which we consider impracticable or unreasonable to deliver. Such an item is referred to in this Scheme as undeliverable. We may consider an item to be undeliverable if we are of the opinion that:

15.3.3 the address is unsafe or unsecure or if no delivery point has been provided, or if access to the delivery point has been prevented or impeded,

&

*15.3.4 the address to which the item is to be delivered is not permanently occupied**

**For instance the landlord boards the property up or it becomes physically impossible to put any more mail through the letterbox or a relative makes contact with us to let us know that mail is no longer required for that address."*

For these reasons, An Post cannot agree to the deletion of the text proposed by ComReg in Condition B.3.

ComReg also proposes to amend Condition B.3 by insertion of the following text:

"or alternative arrangements, that have been mutually agreed, are in place".

This is a new issue not previously raised by ComReg during the iterative process. It is not clear from the Consultation document what ComReg means by *"alternative arrangements, that have been mutually agreed"*.

An Post believe that the status quo of delivery to the addressee should remain as per Condition B.3. ComReg should be mindful that any proposal to introduce any new conditions in connection with the delivery service is likely to increase the cost of the USO and affect its long term sustainability.

ComReg's preliminary view

176. ComReg is of the preliminary view that where An Post has been granted physical access by the owner or management company to a building and therefore has access to the bay of delivery boxes, An Post is under a legal obligation to deliver and accordingly the text of condition C.3(1) needs to be amended to indicate that delivery "shall" (not "may") be provided.

An Post agrees to consider amending the text of Condition C.3(1) by reference to Section 16 (7)(c) of the 2011 Act which provides that when ComReg itself is making determinations under Section 16(1)(a)(ii) of the 2011 Act concerning delivery to the home or premises, ComReg is obliged to have regard to the:

"...ease of access to homes or premises and the health and safety of the employees and agents of a universal postal service provider."

The right to the USO and to USO delivery is not, as ComReg suggests, absolute and is subject to a number of qualifying statements in law. However, An Post agrees to consider amending Condition C.3 (1) to propose that in apartment and office buildings, where a bay of delivery boxes is provided in the lobby, An Post shall deliver to each individual box. The address on the mail piece must match the address on the individual box. This delivery commitment will be subject to all of the standard legislative and regulatory caveats and will note that such delivery will be provided once An Post has been granted physical access by the owner or management company to the building and to each individual box provided that there is ease of access at

the time of delivery and that there is no risk posed to the health and safety of its employees and staff.

3.2.12 Complaints and Redress

3.2.12.1 Complaints procedures

ComReg's preliminary view

181. Accordingly ComReg is of the preliminary view that the text identified from condition D.2(1) needs to be amended to provide that:

“Any claim for complaints or claims for loss, damage or delay with regard to a postal packet can be made to An Post. Such complaints or claims can be made in person, by telephone, or in writing (regular post or email) and can be made to An Post’s dedicated customer service team, and to personnel in An Post offices where there are customer service facilities.”

An Post does not agree with ComReg’s requirements for amendment to the Terms and Conditions.

An Post has a number of concerns about ComReg’s proposals, including:

- (i) the centralisation of enquiry processing is a principle which should be retained as it ensures both uniformity in treatment and efficiency in operations; and
- (ii) in order to minimise errors in transcription and to provide effective service complaints which are made in person should not be encouraged. It would be preferable if they were restricted to those customers who have literacy problems or who are blind or visually impaired.

An Post has made every effort to make the complaints procedure accessible as possible, for example, the MP58 enquiry form for missing, damaged or delayed items is available at retail counters and can be completed online at:

www.anpost.ie/AnPost/MainContent/Customer+Service/OnlineEnquiryFormM58.htm

3.2.12.2 Compensation

ComReg's preliminary view

184. ComReg is of the preliminary view that the text “or the cost of replacement or reproduction of the packaging whichever is the lesser” should be deleted.

An Post agrees with ComReg’s proposal to delete the text:

“or the cost of replacement or reproduction of the packaging whichever is the lesser”.

ComReg’s preliminary view

186. ComReg is of the preliminary view condition D.3 (4) should be amended to provide that compensation for delay is also available.

ComReg is concerned that Condition D.3 (4) does not specify that compensation for delays is provided for.

An Post already pledge to equate instances of serious delay with actual loss of a postal packet. See Condition D.3(2) and the “Our commitment to you” section of the An Post website where it is stated that:

“An Post will pay compensation for items lost, damaged or substantially delayed in the post (7 days within Ireland; 10 days for international items). Proof of posting such as a certificate of posting, may be required to be eligible for such compensation.....”

www.anpost.ie/AnPost/MainContent/Custom+Service/Our+Commitment+to+You/

ComReg’s preliminary view

189. ComReg is of the preliminary view that condition D.3(6)(e) needs to be amended by deletion from the proposed SP T&Cs.

An Post agrees with ComReg’s proposal to delete condition D.3(6)(e) from the proposed SP T&Cs.

ComReg’s preliminary view

193. ComReg is of the preliminary view that condition D3(6)(c) of the SP T&Cs must be amended to remove the reference to “Documents” .

An Post agrees to consider amending condition D.3(6)(c) to read ‘Documents with no intrinsic value’. As a principle, compensation is not to be payable for documents which have no intrinsic value whether in physical or electronic form. In circumstances where documents constitute the only contents, the liability would be restricted to the cost of the stationery.

An Post agrees to amend condition D.3(6)(c) of the SP T&Cs to clarify that Compensation for damage to “Documents” forming part of a Secure Post (Insured) Postal Packet is subject to the limits set out in Condition D.3(4)(a).

Q. 2 Are there other amendments to the proposed SP T&Cs or the proposed BM T&Cs you think are required prior to ComReg approving these? Please provide a detailed explanation in your response.

An Post is of the view that, subject to amendments agreed in this response document, the proposed Single Piece Terms and Conditions and Bulk Mail Terms and Conditions are comprehensive documents.

4. Conclusion

An Post wishes to continue building on the significant progress made to date with ComReg in consolidating the Terms and Conditions, this has been a very positive engagement with the ultimate goal of providing clear Terms and Conditions for An Post's customers.

As indicated in our detailed response, An Post agrees with the vast majority of ComReg's comments and proposals. However, ComReg should be mindful of a small number of proposals that will increase the cost of providing the USO, placing the sustainability of the provision of this key service under threat, and have a negative impact on users needs. An Post does not accept that implementation of these proposals is in the general interest of the customer or An Post and requests that ComReg consider these proposals further:

- Delivery of all underpaid mail and collection of underpayment from addressee upon delivery.
- "Rural post persons" to act as access points and implicitly to carry stamps for sale.
- Removal of right of An Post to open postal packets under the 2011 Act where there is unpaid or underpaid postage.
- Cancellation of postage on all postal packets and application of the date of acceptance on all postal packets.
- No unilateral right to waiver or vary Terms and Conditions unless the circumstances justifying such action are exhaustively enumerated.
- Circumstances in which PO Box or Redirection Service need to be cancelled need to be specified - not sufficient to assert that there are 'serious grounds'.
- Return of undeliverable mail next working day and within 10 days where no external return address on the cover.
- Introduction of daily 8 hour minimum opening of collection points to facilitate collection of undeliverable mail.
- Restrict An Post's discretion in not delivering to unsecure locations and provide for 'alternative arrangements' which are 'mutually agreed' with customers.
- Allow complaints or claims to be made in multiple channels, including 'in person', not just through Customer Service.

An Post welcomes this opportunity to submit its views on ComReg's proposals on Terms and Conditions of the universal postal service. In considering this response An Post anticipates that ComReg will give due consideration to the issues raised and, in addition to meeting the reasonable needs of postal users, that ComReg is cognisant of the potential impact of any proposals on the financial sustainability of the USO.

2. Barnardos

Ms Ciara O' Donovan
Commission for Communications Regulation
Block DEF, Abbey Court
Abbey Street
Freepost
Dublin 1

9th June 2015

Reference: Consultation 15/37

Dear Ms O'Donovan,

Further to above, I would like to congratulate you on your consultation document on the proposed changes to the terms and conditions of the universal postal service and add our agreement to your recommendations.

Some areas of specific interest to Barnardos:

3.2.3 Proposed conditions which give An Post the unilateral right to change the terms of its contract with a postal service user in individual cases

We have a specific concern that that any conditions which give An Post the unilateral right to change the terms of its contract with a postal service user in individual cases could mean that some users of the universal postal service could receive different treatment to others. We support your concern that such conditions could have a significantly adverse effect on postal service users.

3.2.4 Proposed conditions allowing An Post to refuse to provide certain universal services

We share and echo your concern in relation to Condition E.9.2A(12) in relation to Redirection and consider that the right to 'absolute discretion' should be removed and replaced with your suggested approach of "serious grounds for this and that reasonable notice of the discontinuation of the "Redirection Service" will be given."

3.2.9.1 Transmission of Underpaid Mail

We share your concern at the lack of transparency in relation to charges and recommend that these should be included (similar to the current Royal Mail approach, which appears very clear).

Patron / Éarlámh: Michael D Higgins, President of Ireland / Uachtarán na hÉireann
Chairman / Cathaoirleach: Alan Wyley
Chief Executive / Príomhfheidhmeannach: Fergus Finlay

Barnardos Republic of Ireland is a company limited by guarantee, registered at Christchurch Square, Dublin 8.

Is comhlacht teoranta ag ráthaíocht é Barnardos Phoblacht na hÉireann, atá cláraithe ag Cearnóg Teampaill Chríost, Baile Átha Cliath 8.

Company Registration Number: 141526. Registered Charity Number: 6015

**BARNARDOS
NATIONAL OFFICE**

Christchurch Square,
Dublin 8

T. 353 - 1 - 4530 355

F. 353 - 1 - 4530 300

E. info@barnardos.ie

www.barnardos.ie

3.2.10.1 Provision of a return address on postal packets

Barnardos have a specific concern in relation to the T&C which states that 'To assist in the handling of Postal Packets which cannot be delivered the return address *shall* therefore appear in the top left hand corner on the address side of each Postal' as we are aware of cases where the addressee does not want their name and address disclosed for reasons relating to the confidentiality of the correspondence. We are currently under contract to provide services where the funder (a State agency) has instructed us not to include our sender details on the post. We support your recommendation that the wording should be "Every Postal Packet should bear a return postal address".

3.2.11.1 Undelivered and undeliverable Postal Packets

We support your suggested change that 'for whatever reason' should be deleted from Condition C.3 (3) of the proposed Terms and Conditions.

3.2.11.2 Underpaid postage to be paid by addressee

Re Condition C.3(4) we agree with you that it is appropriate for An Post to levy charges for underpaid postal packets on the recipient of that postal packet and that it is not appropriate that An Post reserve to itself the right to refuse, detain, defer, withhold, return or dispose of underpaid postal packets, and we would like to see that sentence deleted.

3.2.11.3 An Post's powers to open postal packets

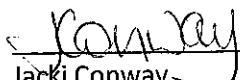
We strongly support the ComReg position in this entire section that An Post should not be entitled to open a postal packet simply because it is "unpaid or underpaid" and "has no external return postal address visible". In these circumstances An Post is still able (and still obliged under its universal service obligation) to deliver the postal packet to the addressee (and levy the appropriate charges, as referenced in condition C3.(4) of the proposed Terms and Conditions).

3.2.11.4 Postal Packet with no Return Address

In Condition C.3(6) An Post gives itself the power to retain a postal packet in circumstances where "the name of the sender cannot be ascertained from the cover of a Postal Packet or its contents". This power seems inappropriate as in these circumstances the postal packet could be delivered to the addressee. This condition is not appropriate having regard to the reasonable needs of postal service users. We agree that that Condition C.3(6) should be deleted.

Thank you for the opportunity to participate in the consultation. Please do not hesitate to contact me should any point require further clarification.

Yours Sincerely



Jacki Conway
Director of Support Services.

BARNARDOS
NATIONAL OFFICE

Christchurch Square,
Dublin 8

T. 353 - 1 - 4530 355
F. 353 - 1 - 4530 300
E. info@barnardos.ie

www.barnardos.ie

3. Communications Workers Union (CWU)

SUBMISSION RE:

ComReg 15/37

June 2015

submitted by

Ian McArdle

Head of Regulatory Affairs

**Communications Workers' Union
William Norton House
575-577 North Circular Road
Dublin 1**

Communications Workers' Union Submission:

ComReg 15/37

Introduction

The Communications Workers' Union (hereinafter referred to as "CWU" or the "Union") represents approximately 16,000 workers employed in the communications sector in the Republic of Ireland, of which over half are employed in the Postal & Courier Sectors. The CWU represents staff working in the following postal and courier companies:

- An Post
- UPS
- DPD
- PrintPost
- Data Ireland
- IO Systems

As the trade union representing a significant number of workers in the postal & courier markets, the CWU welcomes this opportunity to respond to the Consultation 15/37 (hereinafter referred to as the "Consultation") issued by the Commission for Communications Regulation (hereinafter referred to as "ComReg" or the "Regulator").

The format of this submission will feature the relevant section of the Consultation with the CWU response below that.

3.2.11.2 Underpaid postage to be paid by addressee

142. Condition C.3(4) of the proposed Terms and Conditions is titled “*An Post powers to include right to open Postal Packets*” and provides that:

“Underpaid Postal Packets shall on delivery, be subject to the Charges specified in the Schedule of Charges or may be refused, detained, deferred, withheld, returned or disposed as prescribed under Section 47 of the 2011 Act.”

143. ComReg agrees that it is appropriate for An Post to levy charges for underpaid postal packets on the recipient of that postal packet. ComReg does not consider it appropriate that An Post reserve to itself the right to refuse, detain, defer, withhold, return or dispose of underpaid postal packets. This is not provided for in section 47 of the 2011 Act. This text would in essence allow An Post the right to treat underpaid mail as it wished and disregard its universal service obligation to deliver postal packets. ComReg does not consider that such a provision is appropriate having regard to the reasonable needs of users and in respect of the provision of the universal service.

144. ComReg is of the preliminary view that condition C.3(4) of the proposed Terms and Conditions must be amended by deleting the following text:

“or may be refused, detained, deferred, withheld, returned or disposed as prescribed under Section 47 of the 2011 Act.”

CWU Response:

CWU is concerned that the ComReg consultation document suggests that An Post's terms and conditions should be amended to remove the company's ability to refuse, detain, defer, withhold, return or dispose Postal Packets that have been underpaid.

Alternatively, ComReg is stating that the company should *'levy charges for underpaid postal packets on the recipient of that postal packet.'*

This is a significant and substantial change to the current arrangements and the CWU is opposed to this change for the following reasons:

- It would impose a substantial cost burden on the company given the practical implications of post persons collecting and processing underpayments at the point of delivery
- Among the practical implications that have to be considered is the requirement for the post person to carry cash and/or have credit card facilities available as well as the ability to issue receipts
- The requirement for post persons to carry cash does highlight a health and safety question and potentially poses a security risk which the CWU would take very seriously
- In addition to this, the proposal fundamentally shifts the burden of payment away from the sender which is a cornerstone of the current postal market and this could be open to abuse
- In effect post persons are being asked to police a vital revenue stream for An Post and it ignores the fact that a Revenue Protections Section exists in An Post
- This activity was undertaken in the past but was discontinued because it was inoperable, impractical and the cost/benefit analysis did not make sense – the revenue stream was not sufficient to offset the costs
- In any event this approach did not discourage customers from trying to abuse the system and as such was not fit for purpose
- Introducing this system at this time will slow down the delivery route which could adversely impact mail which has been fully paid
- This could have a profound and adverse effect on the development of the e-commerce market which, vitally, represents the best opportunity for growth in the postal market and this runs contrary to serving the best interest of postal users

- The draft terms and conditions from An Post merely reflect Section 47 of the 2011 Act and as such it is not appropriate or necessary to alter them

3.2.1.1 Accessing Postal Services

37. In setting out “*How to Access An Post’s Universal Services*” within the “*Introduction*” of the proposed SP T&Cs, An Post indicates the ways postal service users can access its services including universal postal services. Delivery Sorting Units (“DSUs”) and rural post persons¹² are omitted in the proposed SP T&Cs as access points.

38. Accordingly it is ComReg’s preliminary view, it is necessary that the section “*How to Access An Post’s Universal Services*” in the “*Introduction*” of the proposed SP T&Cs be amended to include DSUs and rural post persons as access points for postal service users.

CWU Response:

The CWU is concerned as to the practical implications arising from insisting that post persons be included as ‘*access points for postal service users*’ in the terms and conditions.

Is it the case that post persons will be required to carry and sell stamps to customers on the delivery route? There are a number of issues arising from this:

- Post persons being required to carry cash and process transactions has obvious health and safety implications as well as the questions that arise in terms of the how the transactions might be processed
- It was the case in the past that post persons did sell stamps on route but this function ceased due to lack of demand and the introduction of alternative methods for customers to buy stamps

- Is it the case that the post person will be required to carry weighing scales and a measuring tape given that the postal cost is based on these factors?
- Currently, as well as buying stamps in the traditional ways, postal users can purchase stamps online and given the extensive and growing availability of broadband throughout the country this is a legitimate and much more efficient alternative to selling stamps via the post person
- Re-introducing the sale of stamps in this way would represent a cost burden for An Post as well as slowing down the delivery of mail on the route
- Delay in delivery could have implications for the company in terms of achieving its quality of service targets
- CWU is concerned that this proposal does not strike the right balance between the efficient and practical delivery of the post and the provision of a service which is not in demand among postal users

3.2.11.5 Retention periods and access points to collect undeliverable mail

163. ComReg is mindful that in setting these timelines it is necessary for An Post to balance the needs of all postal service users (in particular the needs of recipients who may be away on business or holiday and the needs of senders of postal packets who need to know whether a letter has been delivered or not) whilst also minimising the cost of handling and storage for An Post.

164. ComReg considers that the retention periods specified by An Post are reasonable, if on each “Working Day” the relevant local office is open for a minimum of 8 hours. ComReg considers that it would not be in the interests of the reasonable needs of postal service users if the postal packet were available for collection on the number of “Working Days” specified but for a period of less than 8 hours.

165. Therefore ComReg considers the text in condition C.3(2) of An Post's SP T&Cs must be amended to indicate that Registered (Proof of Delivery) Postal Packets, Secure Post (Insured) Postal Packets, and Standard Postal Packets will be held and available for collection for a minimum of 8 hours on each "Working Day" from each local office where undelivered postal packets are held.

CWU Response:

The CWU is concerned at the 'Working Day' being defined as a minimum of 8 hours and that this would be applied across all local offices for the following reasons:

- This proposal could represent a significant cost burden for An Post if the company is compelled to provide this level of service where it is not practical or commercially viable to do so in circumstances where the customer demand is not there
- CWU is supportive of expanding services where the demand is there and has worked with the company on this basis
- A one-size-fits-all approach is not sensible and will not serve the best interest of postal users where unnecessary costs are brought into the system
- It is unclear that there is a consumer demand for this 8 hour Working Day in circumstances where the vast bulk of 'DIB' packets are collected by customers on the way home from work
- CWU has worked closely with An Post to reduce the number of 'DIB' collections and good progress has been made with the introduction of the PRISM system
- An Post makes the best effort to make these deliveries in the first instance and this fulfils their obligation in that regard
- There are re-direction services available to customers where the demand is there

3.2.11.7 Delivery

171. Condition B.3 “*Postal Addressing*” of the proposed Terms and Conditions provides that:

“A Postal Packet shall be delivered in accordance with Section 6(3) of the 2011 Act, provided the door aperture or delivery box is deemed to be a secure location, unless the addressee has requested an alternative service (e.g. Redirection Service or Mailminder Service).”

172. Condition C.3(1) of An Post’s proposed SP T&Cs provides that:

*“...In apartment and office buildings, where a bay of delivery boxes is provided in the lobby, An Post **may** deliver to each individual box provided that it has been granted physical access by the owner or management company to the building...”* (emphasis added)

173. ComReg is of the view that the current text of condition B.3 should be amended to reflect the fact that postal service users can avail of alternative arrangements that have been mutually agreed, such as the collection from delivery offices, without the payment of a fee²⁷.

174. The current text of condition B.3 appears to attempt to restrict the delivery of postal packets to those addressees who have a door aperture or delivery box which An Post deems to be a secure location. ComReg considers that An Post cannot limit the statutory obligation to deliver in section 6(3) of the 2011 Act in this way.

175. As such ComReg is of the preliminary view that in order to meet the reasonable needs of users the text of condition B.3 needs to be amended to read as follows:

“A Postal Packet shall be delivered in accordance with Section 6(3) of the 2011 Act, unless the addressee has requested an alternative service (e.g. Redirection Service or Mailminder Service) or alternative arrangements, that have been mutually agreed, are in place.”

CWU Response:

Whilst the ComReg document is not entirely clear it appears to suggest that An Post might '*attempt to restrict the delivery of postal packets*'. Given the company's commitment to the highest standards of service and delivery this seems a fairly incredulous suggestion to make and it is unclear what evidence ComReg is drawing on in doing so. The CWU is concerned by the ComReg proposal for the following reasons:

- It is imperative that mail is delivered securely and An Post should be given discretion in that regard to protect the integrity of the postal system
- Allowing customers to make arrangements which might negate the need for the Redirection Service or Mailminder Service would serve only to deny the company important revenue
- In theory it would appear that ComReg's proposals would allow for customers to collect their post from delivery offices for free which would make a mockery of the existing systems which have been carefully developed over many years
- Delivery routes and parameters have been developed under the auspices of the Collection and Delivery Agreement which was designed to ensure an efficient and timely delivery of mail and to reflect the route a post person has in order to perform their duty
- The ComReg proposal would appear to allow customers to dictate the route to some degree and this could have serious implications for the entire delivery system and the USO if that is the case
- It is unclear how these proposals would fit with the introduction of postcodes

Conclusion:

In general terms the CWU is very concerned at some of the ComReg proposals in circumstances where the proposals appear either to add a significant cost burden to the company or deny them potential revenues. Given the very finely balanced nature of the finances of An Post and the continued loss making burden of the USO, it makes

no commercial sense to further inflate the losses the company has to endure in the USO area. To do so would run contrary to the best interests of postal users and indeed the obligations and statutory functions of ComReg to promote the development of the postal sector and the availability of the universal postal service.

4. Consumers' Association of Ireland

Ciara O Donovan

From: Dermott Jewell [REDACTED]
Sent: 08 June 2015 14:24
To: Market Framework Consult; Ciara O Donovan
Cc: [REDACTED]
Subject: REFERENCE: Consultation 15/37
Attachments: An Post - Delivering Ultimatums.htm; News Briefs - May 2015.pdf

Importance: High

Categories: T&Cs

For the Attention of:

Ms. Ciara O'Donovan
Commission for Communications Regulation
Block DEF, Abbey Court
Abbey Street
Dublin 1
Ireland

Q. 1

Do you agree / disagree with ComReg's preliminary views?

The Consumers' Association of Ireland (CAI) is in full agreement with the views of ComReg. In an attempt to highlight and create an awareness of the issues raised by ComReg the CAI produced an advisory article for its Members in the May issue of its magazine Consumer Choice. To further highlight our support of the anti-consumer and other matters raised in the consultation paper we issued a press release. Both the article and a copy of the Press Release content are attached here for reference in context.

Q. 2

Are there other amendments to the proposed SP T&Cs or the proposed BM T&Cs you think are required prior to ComReg approving these?

The Consumers' Association of Ireland (CAI) would content that there is an underlying issue of value in all that is proposed. We are of the opinion that consumers are not receiving good value for the prices they are required to pay. In fact, it was the unsustainable cost of posting the hard copy editions of Consumer Choice magazine that forced this non-profit organisation to move to place the magazine in online and digital format availability only. By so doing we both eliminated many Members who do not engage online from the independent educational support and awareness of consumer issues as well as losing vital revenue upon which we rely for continuity of our services and representation. We urge ComReg to require An Post to engage directly with the CAI and similar organisations in all requests for increases. We further request and urge that ComReg better consider the impact of these increases on all consumers with the view to revisiting increases allowed for consideration of their reduction.

For and on behalf of the Consumers' Association of Ireland

8th June 2015

Consumers' Association of Ireland (Regd. No. 29112)

Fitzwilliam Business Centre,

26 Upper Pembroke Street,

Dublin 2

ECCG (European Consumer Consultative group) representative for Ireland

Tel: 01 - 637 3961

Fax: 01 - 662 0365

www.thecai.ie

The Consumers' Association of Ireland, founded in 1966, is a wholly independent, non-profit, non-government organisation registered with charitable status. CHY No. 8559.

Hard To Swallow

Last weekend I visited a very well known and long established supermarket branch in Walkinstown in Dublin.

I was not on a mission to price check but did, as an average shopper and, I assume, valued customer, notice the following offers, which I found to be enlightening and annoying examples of how we are

manipulated on price through spin and the illusion of consumer choice. The product was Mouthwash. The 500ml bottle was displayed on the shelf to be €3.00. Immediately to the left of this 500ml offer were bottles of the same product but in packs of 2 x 250ml bottles. The shelf price indicated how these would individually normally cost €2.99 per

bottle (5.98 for 500ml). However, in bold red and white attention-grabbing print on the wrapper of the bottles was the announcement that these two could be purchased as a special offer for €4.00. So, a saving of 33% and a price increase of 25% in one simple transaction! Now that kind of 'super' value deserves to be highlighted. Down with that!!

AN POST – DELIVERING ULTIMATUMS

Dear Members,

In what you will all immediately note to be a first, I am using my news page to highlight a very significant and important Consultation that has been launched by the Commission for Communications Regulation (ComReg) regarding An Post's Terms and Conditions for Single Piece Mail and Bulk Mail.

I am also asking that you circulate this as widely as you can so that not only you, but your family, friends and other contacts can be made aware of it, its relevance to them and the importance that they respond in some way to the consultation by 5pm on the closing date of May 20th.

This can be done by clicking on: http://www.comreg.ie/publications/consultation_terms_conditions_of_the_universal_postal_service_single_piece_and_bulk_mail.583.104815.p.html

Why is it so important?

From the outset it becomes clear that the regulator is unhappy with

the manner in which An Post has set out its terms and conditions and also that certain of those terms and conditions are questionable. For example:

• *It is important that the Terms and Conditions are clearly drafted so that postal service users fully understand the basis on which they are availing of universal postal services.*

As noted by the Department of Jobs, Enterprise and Innovation ("the DJEI")

"If a contract document is to be intelligible, it must be capable of being readily understood by the group of consumers at which it is aimed. 'Intelligibility' in this context is usually understood to entail avoiding or minimising legal or technical jargon - or where such terms are unavoidable, explaining them clearly - along with the avoidance of other features that hinder comprehensibility such as long sentences, dense paragraphs, and

inadequate use of headings and signposting."

• *ComReg considers that, in general, the proposed Terms and Conditions may be difficult for postal service users to understand as the language used in many areas is not sufficiently clear and intelligible i.e. they are not in plain English. Unclear use of language in the Terms and Conditions will mean that they are difficult for postal service users to understand. This is clearly not appropriate having regard to the reasonable needs of postal service users.*

AND

• *ComReg is concerned that several of the conditions in the proposed Terms and Conditions give An Post the unilateral right to change the terms of its contract with a postal service user in individual cases. Such conditions are, in ComReg's view, significantly weighted against the postal service user in favour of An Post.*

Condition B.6(3) of the proposed Terms and Conditions provides that: "Any condition, term, standard or requirement in these Terms and Conditions which affects or relates either to:

(a) the eligibility, of a Postal Packet to be included in a service, or

(b) the eligibility or entitlement of a person to use, avail of or benefit from service, may be waived, dispensed with or varied by An Post in any individual case and as regards any person, or generally from time to time, provided that such waiver, dispensation or variation meets the reasonable needs of postal service users or is one which would or is calculated to increase the use of service by any person or group or class of persons" (CAI emphasis added)

AND

With regard to what An Post determines to be 'Paper Money'.

• "d) *exchequer bills, bank post bills, bills of exchange, promissory notes, vouchers, cheques, credit notes which entitle the holder to money or goods and all orders and authorities for the payment of money, whether negotiable or not;*

e) *bonds, coupons, and securities for money, whether negotiable or not*"

Which just about rules out anything and everything!

AND

Did you know that:

• "Part VI Additional Charges" of the Schedule of Charges provides

that there is a handling charge for delivering underpaid postcards, letters, large letters, packets and incoming cross border postal packets, and for delivering underpaid parcels

Yet the charges are not outlined anywhere in the Terms and Conditions.

AND

• Condition E.6 (5) of the proposed SP T&Cs provides that in the event an addressee needs to collect an undelivered "Registered (Proof of Delivery)" postal packet, he/she may do so "subject to payment of the Charges specified in the Schedule of Charges".

• ".....Where the postperson is unable to deliver **for whatever reason** a "Return to Sender" adhesive label is completed and attached to the Postal Packet prior to be (sic) returned" (emphasis added)

• "Underpaid Postal Packets shall on delivery, be subject to the Charges specified in the Schedule of Charges or may be refused, detained, deferred, withheld, returned or disposed as prescribed under Section 47 of the 2011 Act."

Try finding the charges.

AND - Last - but by no means least..... In the case of underpaid postage and

• "Where the name of the sender cannot be ascertained from the cover of a Postal Packet or its contents, the Postal Packet may be retained under Section 47 of the

2011 Act pending a claim from the sender or addressee. In the absence of any claim within

(a) a period of one (1) month of receipt of the Postal Packet; or

(b) three (3) months of posting the Postal Packet for delivery in the State; or

(c) six (6) months of posting for a delivery outside the State,

the Postal Packet may be disposed of by An Post." (CAI emphasis added)

So, Dear Member,

This is the case of An Post, whose letter volumes have fallen by 32% since 2007 and who are predicting further falls;

An Post, from whom you are likely to see many further unacceptable and poor value increases - as has been the case in recent years;

An Post who appear to be focussed upon determinedly offering what is an equally increasingly poor level of service for that money - but, with attitude!

I think you know what is required here.

Yours sincerely,



Dermott Jewell



5. National Disability Authority

Terms and conditions of the universal postal service: Single Piece and Bulk Mail

Background

This document presents the observations by the National Disability Authority on the ComReg Consultation Document 15/37: “Terms and conditions of the universal postal service: Single Piece and Bulk Mail”

Role of the National Disability Authority

As the statutory body on disability matters, the National Disability Authority provides evidence based information and advice to Government on policy and practice relevant to the lives of persons with disabilities, and promotes excellence in Universal Design to the benefit of the wider population.

The role of the National Disability Authority’s Centre for Excellence in Universal Design (CEUD) involves engagement with a wide range of stakeholders including industry, professional and educational bodies and standards bodies at national and international level.

The National Disability Authority has contributed to the development of national standards for a Universal Design approach to customer engagement in the tourism services and energy sectors. It has produced multiple guidance documents on web accessibility and Universal Design for the web.

As per instructions in Section 4.1 the National Disability Authority’s comments reference the relevant paragraph numbers from the document.

Summary of comments

The National Disability Authority’s comment below will focus on the main issues under discussion in the document, namely the obligations of an Post to publish the terms of conditions of the (1) single piece universal services and (2) bulk mail universal postal services. In addition to this, An Post is also required to:

- make the single piece universal postal services booklet containing the current Terms and Conditions and the Schedule of Charges readily available to postal service users at every post office;
-

- make printed copies of both sets of booklets containing the Terms and Conditions and the Schedule of Charges available to postal service users on request at no charge;
- publish both sets of the Terms and Conditions on the An Post website, in a clear and prominent position with a clear link to them from the An Post's 'home page', www.anpost.ie;
- publishing both sets of the Terms and Conditions and the Schedule of Charges in Iris Oifigiúil and to republish in Iris Oifigiúil.

The National Disability Authority has supported the development of Irish standards on Universal Design for customer engagement for both the energy sector and tourism industry in Ireland.

These are:

- SWiFT 9:2012 "Universal Design for Energy Suppliers"
- I.S. 373 "Universal Design for Customer Engagement in Tourism Services"

These standards set out the specifications necessary to ensure that written, web, telephone and face to face communications are usable and accessible to the widest range of users possible, regardless of this age, size, ability or disability. In addition, the National Disability Authority has published a series of "Universal Design for Customer Engagement Toolkits". Based on the specification contained in these standards, the National Disability Authority has published a series of Toolkits that show how these specifications can be met.

The National Disability Authority recommends that the single piece universal postal services booklet containing the current Terms and Conditions and the Schedule of Charges to be made available in all Post Offices should comply with Clause 4.2 "Written Communication" of the specifications set out in the SWiFT 9:2012 "Universal Design for Energy Suppliers" through following the guidance in the Universal Design for Written Communication Toolkit.

The National disability Authority recommends that the online version of the Booklet also comply with Clause 4.4.1 "Web based communication" of the specifications set out in the SWiFT 9:2012 "Universal Design for Energy

Suppliers” through following the guidance in the Universal Design for Web Communication Toolkit.

Both Toolkits are available for download at <http://universaldesign.ie/Products-Services/Customer-Engagement-in-Energy-Services/>

SWiFT 9:2012 "Universal Design for Energy Suppliers" is available to download at <http://shop.standards.ie/nsai/>

The National Disability Authority is available to both ComReg and An Post to advise on the steps necessary to ensure that the print and online versions of the Booklets will be accessible and usable to the widest range of people possible.