



Commission for
Communications Regulation

Section 43(3) Dispute Resolution Procedures

The Procedures, Application Form, and
Application Guidelines

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**An Coimisiún um Rialáil Cumarsáide
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Additional Information

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14/87	Consultation Document	21 August 2014
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1 Section 43(3) Dispute Resolution Procedures

1. Section 43(3) of the Communications Regulation (Postal Services) Act 2011 (the "2011 Act") gives the Commission for Communications Regulation ("ComReg"), or an appointee of ComReg, a discretionary power to resolve disputes which remain unresolved after due completion of all the procedures of a postal service provider's code of practice. This type of dispute resolution is referred to in these procedures as "Section 43(3) dispute resolution".
2. For the purposes of these procedures, a "dispute" is a conflict of claims or rights between a postal service user and a postal service provider ("the Parties") that arises and remains unresolved after due completion of all the procedures of a postal service provider's code of practice.
3. For the purposes of these procedures, the "Complainant" is the postal service user who is in dispute with the postal service provider.
4. For the purposes of these procedures, the "Postal Service Provider" is the postal service provider with whom the Complainant is in dispute with.
5. Participation in the Section 43(3) dispute resolution procedures does not preclude the possibility of seeking redress through court proceedings (for example in the Small Claims Court), on conclusion of the procedures.
6. The Parties are not obliged to retain a lawyer or legal advisor, but they may seek independent advice or be represented by a third party at any stage of these procedures.
7. The Complainant may withdraw from the Section 43(3) dispute resolution process at any stage, by giving notice in writing to ComReg and the Postal Service Provider.

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

8. When submitting a dispute for Section 43(3) dispute resolution the Complainant must use the 'Application Form for submitting a dispute for Section 43(3) dispute resolution'¹ ("the Application Form"). All information requested in the Application Form should be provided where possible, and should be presented in a clear and concise manner.
9. The Application Form must be accompanied by a fee of €15 ("Application Fee").
10. A dispute must be submitted for Section 43(3) dispute resolution no later than thirteen months from the date upon which the Complainant first submitted the complaint to the Postal Service Provider. This limitation may be waived in exceptional circumstances and at the ComReg's discretion.
11. The day on which an application for Section 43(3) dispute resolution is received, is known as the "Date of Application".

Step 2 - Consideration of whether to accept dispute

12. On receipt of an application for Section 43(3) dispute resolution the application will be reviewed to determine whether the dispute is a '*valid dispute*'.
13. A dispute is a 'valid dispute' when:
 - it is a conflict of claims or rights between a postal service user (as Complainant) and a Postal Service Provider;
 - the Complainant has duly completed all the procedures of the Postal Service Provider's code of practice;
 - it is not frivolous or vexatious;
 - it is not being, nor has previously been, considered by another dispute resolution entity or by a court;
 - all required information has been provided¹;

¹ See Section 2 of this document

- it was submitted within thirteen months² from the date upon which the Complainant first submitted the complaint to the Postal Service Provider;
 - it was submitted accompanied by the Application Fee;
 - the nature of the dispute is material to the Complainant;
 - the dispute relates to a matter which is within the regulatory remit of ComReg; and
 - dealing with the dispute does not seriously impair the effective operation of ComReg.
14. There may be reasons other than those cited (in paragraph 13) why an application for Section 43(3) dispute resolution does not relate to a valid dispute.
 15. If it is determined that the application for Section 43(3) dispute resolution does not relate to a valid dispute, the dispute application will be declined. The determination of whether an application for Section 43(3) dispute resolution is in respect of a valid dispute, or not, will be completed as soon as possible following the Date of Application. The Complainant will be provided with a reasoned explanation of the grounds for not accepting the dispute for Section 43(3) dispute resolution.
 16. The day on which an application for Section 43(3) dispute resolution is determined to be a valid dispute, is known as the “Date of Notification”.
 17. The Complainant will be advised of the determination of a valid dispute within 7 calendar days of the Date of Notification.

² Complaints outside this timeframe will only be considered if exceptional circumstances are demonstrated

Step 3 – Response by the Postal Service Provider

18. The Postal Service Provider will be formally advised of the Section 43(3) dispute resolution application, and a copy of the completed Application form will be provided to it within 7 calendar days of the Date of Notification.
19. The Postal Service Provider must respond within 14 calendar days of the date of communication of the decision to commence resolution of the dispute (or 21 calendar days if advised of the Section 43(3) dispute resolution commencing in the month of December). This response must be non-confidential. This response should be sufficiently detailed and comprehensive to enable a full assessment of the substance of the dispute between the parties.
20. Following receipt of the Postal Service Provider's response and a detailed analysis of all submissions, more information may be requested, in writing, from the Parties if deemed necessary. Parties will have 14 calendar days to submit further information should it be requested.
21. If the Complainant does not respond or fails to provide requested information, it will be assumed that the Complainant does not want to proceed with the dispute. In this event the Parties will be notified that the dispute has been closed.

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

22. Following consideration of all the information before it (including but not limited to the Application Form, the response of the Postal Service Provider and any other relevant information before the decision maker) a draft resolution will be prepared.
23. The draft resolution will be sent to the Parties within 56³ calendar days of the Date of Notification.
24. The Parties will have 14 calendar days from the date of the draft resolution to submit comments on the draft resolution.
25. Following consideration of all response comments to the draft resolution, a final resolution will be prepared and issued to the Parties.
26. If the Complainant gives notice that he/she wishes to withdraw from the dispute resolution process the Postal Service Provider will be advised of this fact within 14 calendar days from receipt of this notification from the Complainant.

³ Within 61 calendar days if the postal service provider given notification in the month of December.

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

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

1. Details of individual submitting dispute

1.1 Name:

1.2 Postal address

(for written correspondence):

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1.3 Phone:

1.4 E-mail:

1.5 Are you submitting this dispute as a private individual? Yes No

1.6 Are you submitting this dispute as a business? Yes No

Registered Business Name:

Registered Business Number:

1.7 If you have contacted ComReg Consumer Care previously about this issue please provide the ComReg reference number here (if applicable):

2. Postal Service Provider's details

2.1 Postal Service Provider's name:

2.2 Please confirm that you have complained to the Postal Service Provider about the issue which has resulted in this dispute: Yes No

2.3 Please confirm that you have exhausted the procedures for resolving disputes of your Postal Service Provider: Yes No

2.4 Please confirm whether this dispute is the subject of legal proceedings Yes No

2.5 On what date did you first complain to the Postal Service Provider? dd / mm / yyyy
____ / ____ / ____

2.6 If the Postal Service Provider gave you a reference number please write it here (if known):

2.7 What was the name of the Postal Service Provider main customer services contact person you dealt with? (if known):

3. Details of your dispute

3.1 In the space below, please provide details of your dispute and why you remain dissatisfied with the resolution of the dispute by your postal service provider. Please use additional pages if necessary.

Documentary evidence should be provided, where possible, to support the application

4. Remedies and redress

4.1 What do you want the Postal Service Provider to do in order to resolve this dispute?

Please provide details in the space below.

Please write clearly.

4.2 Do you want reimbursement of payments?

Yes

No

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

How much?

€

Explanation:

Please write clearly.

4.3 Do you want compensation?

Yes

No

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

How much?

€

Explanation:

Please write clearly.

5. Documentary evidence

5.1 I enclose, with this form, all documentation⁴ I have available to support my dispute, including the final response from the Postal Service Provider.

6. Confidentiality of the application

6.1 I confirm that my application is non-confidential

OR

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

7. Declaration

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

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

7.3 I have paid the Application fee (€15.00).

Your signature:

Date:

⁴ including letters, e-mails, and/or records of phone calls made or received

3 Guidelines for completing application form for submitting a dispute for Section 43(3) dispute resolution

1. Details of individual submitting dispute

Contact details of the Complainant who is in dispute with the Postal Service Provider. This is the person to whom correspondence and contact in respect of the dispute will be directed.

Details of who the complaint is being submitted on behalf of.

The relevant reference number, if applicable, should the Complainant have contacted ComReg's Consumer Care team previously.

2. Postal Service Provider's details

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

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

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

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

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

3. Details of the dispute

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

4. Remedies and redress

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

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

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

5. Documentary evidence.

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

6. Confidentiality of the dispute application

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

7. Declaration

Confirmation that the all of conditions as detailed in this "Guidance note on completing application form for submitting a dispute for independent resolution" are understood and accepted.

Confirmation that the dispute resolution procedures have been read and understood, and that the Complainant wishes to proceed with submitting the dispute.

Confirmation that the Complainant has paid the Application fee (€15.00).

Summary of Section 43(3) Dispute Resolution process timelines

