



Commission for
Communications Regulation

Complaints and Redress Procedures: Consultation on Proposed Guidelines for Postal Service Providers

Consultation

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An Coimisiún um Rialáil Cumarsáide

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1 Introduction

- 1.1 In July 2012, the Commission for Communications Regulation ('ComReg') in ComReg Document 12/81¹ set out the regulatory framework for the implementation of the Communications Regulation (Postal Services) Act 2011 ("the 2011 Act") for the postal sector in Ireland.
- 1.2 This consultation paper seeks the views of interested parties regarding the guidelines ComReg propose, in order to give effect to section 43 of the 2011 Act, which requires postal service providers to publish a Code of Practice for dealing with postal service users complaints and to put in place dispute resolution procedures.

Why ComReg is establishing guidelines for the Code of Practice

- 1.3 ComReg Document 12/81 set out the requirements for authorisation of postal service providers under the 2011 Act and the procedures to be followed by postal service providers, who provide or intend to provide a postal service, when obtaining an authorisation.
- 1.4 The 2011 Act sets requirements on postal service providers to draw up and implement a Code of Practice for handling complaints from postal service users². The relevant legal provisions are set out in full at Annex: 1.
- 1.5 The proposed guidelines for the Code of Practice (as set out in Chapter 2 of this document) seek to provide increased certainty for postal service providers as to the specifications necessary in a Code of Practice for the handling of postal service user complaints.
- 1.6 A clear and unambiguous Code of Practice will inform postal service users of the available remedies and redress, including reimbursement or compensation or both, as appropriate. Postal service users are likely to welcome this, and such a Code of Practice is likely to further ComReg's statutory objective of promoting their interests³.
- 1.7 A Code of Practice will also enable postal service providers to clearly set out what postal service users (with complaints relating to loss, theft, damage or quality of service) have a right to expect in the handling of their complaint and what the likely outcomes from a complaints process will be, thus ensuring that unrealistic expectations are not formed by postal service users.

¹ Postal Regulatory Framework: Response to Consultation, Direction and Regulations (ComReg document 12/81) published 26 July 2012

² As defined in section 6(1) of the 2011 Act a "postal service user" is any person benefiting from postal service provision as a sender or as an addressee.

³ See section 12(1)(c)(ii) of the Communications Regulation Act 2002.

- 1.8 Recent research carried out for the National Consumer Agency (NCA)⁴ shows that 83% of Irish consumers are willing to complain if they were dissatisfied with a good or service they have purchased.
- 1.9 Further studies on best practice⁵ also suggest that customers are more likely to purchase another product or service from the same company if they are satisfied with the way their complaint is handled. This study also indicates that companies who resolve complaints on the first contact increase customer satisfaction and product loyalty, whilst also improving employee satisfaction and reducing costs.
- 1.10 ComReg also believes that robust complaint procedures are fundamental to quality service provision by postal service providers, given the role of complaints information in identifying any service failure areas.
- 1.11 In proposing the guidelines for the Code of Practice, ComReg is mindful of European Standard EN14012:2008⁶ 'Postal services - Quality of service - Complaints handling principles' for the handling of postal complaints by postal services providers; and Irish Standard ISO 10002:2004 'Quality management -- Customer satisfaction -- Guidelines for complaints handling in organizations'⁷.
- 1.12 In 2007 ComReg issued legally enforceable Complaints and Dispute Resolution Guidelines⁸ in accordance with the legislation⁹ in effect at that time. The designated universal postal service provider 'An Post' published its Code of Practice "Getting it Sorted" in early 2008 in accordance with the specifications and requirements of those guidelines and legislation. An Post also publishes information in its Annual Reports on postal complaints received.
- 1.13 Codes of practice were also published and made available to postal service users by all authorised postal service providers required to do so under the legislation in place at that time.
- 1.14 Since then, section 39 of the 2011 Act "Conditions of Authorisation" makes the authorisation of postal service providers subject to the provision of appropriate complaints and redress procedures.

⁴ "Making complaints - consumer behaviour and experiences" – NCA, September 2012

⁵ For example "Best Practices in Handling Customer Complaints" - study by the US government in co-operation with over 50 private companies

⁶ EN14012:2008 Postal services - Quality of service - Complaints handling principles; which updated and replaced EN 14012:2003, both published by the European Committee for Standardisation (CEN)

⁷ ISO 10002:2004 Quality management -- Customer satisfaction -- Guidelines for complaints handling in organizations

⁸ ComReg Doc 07/105 - Complaints and Dispute Resolution Guidelines for Postal Service Providers who provide postal services within the scope of the universal service

⁹ The European Communities (Postal Services) Regulations, 2002 (S.I. No.616/2002)

- 1.15 While there are similarities with the legislative requirements previously in place⁹, the 2011 Act does require some modifications. Details of the proposed guidelines for the code of practice procedures are set out in Chapter 2 of this consultation.

Why ComReg is establishing guidelines for Dispute Resolution procedures

- 1.16 Section 43(1)(d) of the 2011 Act sets out that the code of practice to be drawn up and implemented by postal service providers *shall* make provision for 'procedures for resolving disputes'.
- 1.17 Section 43(3) of the 2011 Act provides that "The Commission, or a person appointed by the Commission, possessing, in the opinion of the Commission, the requisite degree of independence from the postal service provider concerned, *may*, in accordance with procedures established and maintained by the Commission, resolve disputes which remain unresolved after due completion of all the procedures of a code of practice..."
- 1.18 Although postal service providers are required to include dispute resolution procedures in their code of practice under section 43(1)(d) of the 2011 Act, ComReg is minded not to impose dispute resolution mechanisms to the specifications as set out in section 43(3) of the 2011 Act at this time.
- 1.19 In Chapter 3 of this consultation, ComReg sets out its proposals to give effect to the requirement for dispute resolution procedures under 43(1)(d) of the 2011 Act, and proposes a postal service user advocate mechanism¹⁰. ComReg is minded that this mechanism will only be required of the Universal Service Provider (An Post) at this time¹¹.
- 1.20 An Post currently provides its postal service users with access to escalated dispute resolution procedures¹².
- 1.21 As noted by the European Commission¹³, the Postal Services Directive¹⁴ encourages Member States to establish Alternative Dispute Resolution (ADR) schemes.

¹⁰ See paragraph 3.4

¹¹ See paragraph 1.24

¹² Customers of An Post can have complaints reviewed by its Customer Advocate which, according to An Post as set out in its website, "provides free, independent reviews of complaints to help achieve impartial solutions".

¹³ See "Proposal for a Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes", European Commission, 29.11.2011 COM(2011) 793 final.

¹⁴ See Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services (Article 19(1), third subparagraph),

Keeping the burden of regulatory compliance to a minimum

- 1.22 The 2011 Act requires that both the code of practice procedures and the dispute resolution procedures are transparent, simple, inexpensive, and enable disputes to be settled fairly and promptly¹⁵. Additionally, ComReg is under a statutory duty to seek to ensure, in carrying out its functions, that measures taken by it are proportionate, having regard to its statutory objectives¹⁶.
- 1.23 Whilst there is now full market opening (FMO) of the postal services market in Ireland¹⁷ no other postal service provider has gained a significant foothold in the market. This is not unexpected, and indeed studies carried out previously for ComReg identified this when stating that “*evidence suggests that incumbent operators typically enjoy dominant market shares for long periods after FMO*”¹⁸.
- 1.24 ComReg is currently of the view that the demand for dispute escalation mechanisms by postal service users of providers other than the designated Universal Service Provider (An Post) is likely to be very low given current market dynamics, including new entry and market share¹⁹. ComReg will however, in accordance with its statutory obligations and duties, keep this matter under review and proposes to revisit whether other postal service providers should also have in place a postal service user advocate in line with market developments.
- 1.25 ComReg is currently of the view that its proposals will satisfy the dispute resolution needs of postal user complainants. However, if it is found that the postal service user advocate mechanism, as proposed in this consultation, fails to meet these needs ComReg will revisit the area of dispute resolution with a view to implementing section 43(3) in full.
- 1.26 Accordingly, ComReg is minded to propose that the designated Universal Service Provider (An Post) provides code of practice procedures (as set out in Chapter 2) and dispute escalation procedures (as set out in Chapter 3). ComReg also proposes that all other postal service providers provide only the code of practice procedures (as set out in Chapter 2) at this time.

¹⁵ Section 43(5) of the 2011 Act.

¹⁶ Section 12(3) of the Communications Regulation Act 2002.

¹⁷ In accordance with the Third Postal Directive 2008/6/EC, and by means of the 2011 Act, the concept of the reserved area (i.e. those services that only An Post could, by law, provide) has been removed.

¹⁸ ‘Ensuring that consumers benefit from the opening of postal markets to competition, Study for ComReg’, LECG 2007 (ComReg Document No. CP46e)

¹⁹ Currently, there are only six authorised postal service providers, including An Post.

Structure of Document

1.27 This consultation paper, and its annexes, is structured as follows:

Chapter 2 - Proposed guidelines for the Code of Practice;

Chapter 3 - Proposed guidelines for Dispute Resolution procedures;

Chapter 4 - Regulatory Impact Assessment (RIA);

Chapter 5 - Conclusion and Next Steps including submitting comments;

Annex 1 - Legal Framework;

Annex 2 - Consultation Questions.

2 Proposed guidelines for the Code of Practice

2.1 The Code of Practice

2.1.1 In accordance with section 43 of the 2011 Act a postal service provider must provide and publish a Code of Practice setting out procedures, standards and policies with respect to the handling of complaints from postal service users.

2.1.2 Section 43 of the 2011 Act requires that the Code of Practice makes provision for certain specific matters as set out in section 43(1).

2.1.3 Therefore, following the order as set out in section 43(1) of the 2011 Act, ComReg sets out below its proposals / preliminary views as to how these matters should be provided for in a postal service provider's Code of Practice:

a. The first point of contact for complainants

2.1.4 ComReg proposes that clear and up to date information must be available to postal service users on how to contact the postal service provider in the event of making a complaint. ComReg proposes that forms of contact should include, at a minimum a contact telephone number, and dedicated contact addresses (both physical and email).

b. A means of recording complaints

2.1.5 ComReg proposes that the postal service provider must ensure full flexibility for postal service users to record complaints, for example complaints could be submitted verbally (visit to premises or telephone lo-call number), in writing (on-line customer service, dedicated email address, by letter), or by any other standard medium (including any future technological innovations).

2.1.6 ComReg proposes that postal service providers should have written procedures for the process to be followed by a postal service user when recording a complaint and the process that will be followed by the service provider thereafter.

2.1.7 ComReg also proposes that all such procedures should be easy to follow, and the information communicated should be clear. In this respect, ComReg is of the preliminary view that assistance in making a complaint should be available to all postal service users, including those with disabilities, during normal business hours at a very minimum.

- 2.1.8 ComReg is of the preliminary view that postal service users should be informed of the appropriate timescales for making a complaint. In this respect, ComReg proposes that a postal service provider must accept and handle complaints in accordance with the following timescales:
- for domestic mail one (1) month from date of receipt of item and three (3) months from date of posting of item.
 - for international mail up to six (6) months.
- 2.1.9 In addition ComReg expects postal service providers to ensure that all reasonable attempts will be undertaken to resolve a complaint in cases where the appropriate timescale for recording complaints has elapsed.
- 2.1.10 ComReg proposes that postal service provider's complaints and redress procedures for the submission of complaints (and all relevant forms) should be readily available to postal service users and accessible at all physical points of contact (buildings), for example retail offices, mails offices, customer service areas etc., and should be accessible to disabled postal service users.
- 2.1.11 ComReg also proposes that all employees and / or contractors of the organisation should be fully conversant with the company's complaint handling procedures and be able to effectively direct the postal service user towards the proper complaints channel/contact.
- 2.1.12 ComReg is of the preliminary view that in accordance with CEN Standard EN 14012:2008 postal service providers should ensure that at least one available access channel is free of any charge to postal service users who wish to contact an organisation to make a complaint.
- 2.1.13 ComReg proposes that postal service providers must accept a claim from any postal service user.
- c. A time frame within which the postal service provider concerned shall respond to complaints**
- 2.1.14 ComReg proposes that postal service providers should have written procedures describing response times for each category of complaint thereby ensuring reasonable expectations are set and met. Postal service users should be informed of the expected time for them to receive answers at all treatment stages of the complaint.
- 2.1.15 ComReg also proposes that receipt of each complaint should be acknowledged to the postal service user making the complaint within three (3) working days of receipt of the complaint.

- 2.1.16 Taking into account that a full and complete investigation of a complaint must be undertaken and that some complaints are more complex than others, ComReg proposes to retain existing timelines²⁰ and thus allow the following maximum handling times within which a complaint should be resolved:
- up to thirty (30) calendar days for domestic complaints,
 - up to forty (40) calendar days for complaints covering Europe, Canada, New Zealand, Australia and USA and all other countries where the matters can be dealt with by email and any other electronic means, and
 - up to sixty (60) calendar days for all other international complaints.
- 2.1.17 ComReg notes that in some instances international postal service providers may fail to respond to enquiries made by Irish postal service providers, or that the response can fall outside the sixty (60) day limit, and that the postal service provider handling the enquiry may not therefore be in full control of this timeline.
- 2.1.18 In such instances, ComReg proposes that the postal service provider must keep the postal service user who has made the complaint informed as to the progress of international investigations, and provided with specific information about the time foreseen for the conclusion of investigations, the resolution of the complaint and the final response.
- 2.1.19 ComReg proposes that postal service providers providing postal services to these destinations should advise their postal service users of the limitations of these international locations, in their published terms and conditions for these services.
- 2.1.20 If the timescale for receiving a response regarding domestic complaints is not met, ComReg proposes that the postal service user who has made the complaint should be immediately provided with specific information about the time foreseen for the conclusion of investigations, the resolution of the complaint and the final response.
- 2.1.21 ComReg also proposes that postal service providers should provide some redress to postal service users who have made a complaint when the response times and /or maximum handling times (as set out in paragraphs 2.1.15, and 2.1.16) are not met, and this should be detailed as part of their formal Code of Practice.

²⁰ As set out in ComReg Doc 07/105 - Complaints and Dispute Resolution Guidelines for Postal Service Providers who provide postal services within the scope of the universal service

2.1.22 Also, ComReg is of the preliminary view that all postal service users' records held by the postal service provider should be maintained and postal service users must be regularly updated as to the progress of investigations in respect of their complaint when a resolution is not imminent.

d. Procedures for resolving disputes

2.1.23 In accordance with section 43(1)(d) of the 2011 Act, every postal service provider has to make provision in its Code of Practice for procedures for resolving disputes. Please see Chapter 3 of this consultation document for ComReg's proposals in relation to procedures for resolving disputes, to apply, at this stage of market development, only to the designated universal service provider (An Post).

e. Remedies and redress, including reimbursement or compensation, or both, as appropriate

2.1.24 ComReg is minded to require that the following principle for compensation will apply to standard postal services.

2.1.25 If the postal service provider fails to provide the postal service user with the service in question, then subject to force majeure²¹ and excluding consequential loss, ComReg proposes that the postal service provider should at a minimum put the postal service user in the position it would have been in had the service been satisfactorily provided.

2.1.26 ComReg proposes that compensation for Insured services will be as per the specifications contained within the terms and conditions for that service.

2.1.27 ComReg proposes that compensation for Proof of Delivery services will be as per the specifications contained within the terms and conditions for that service.

2.1.28 ComReg proposes that the compensation scheme for standard postal services will:

- i. Cover the full cost of the mailing, which will include recompense²² for the following elements;
 - The cost of the postage fee paid;
 - The cost of the material in the mailing, which should reflect the current cost of the replacement / reproduction of the packaging and contents and

²¹ "Force majeure" does not include any form of industrial action.

²² ComReg notes that a contractual relationship between a postal service provider and its customers may refer to specific compensation terms equal to or in excess of these guidelines.

- A small compensation to cover any other relevant and reasonable costs incurred.
 - ii. Exclude consequential loss²³; and economic loss;
 - iii. Provide for the user to receive compensation in the form of a number of stamps and/or a financial amount (credited for example by means of cheque, bank draft, money order, postal order or bank transfer) provided it is reasonable and in proportion to the full cost of the mailing.
- 2.1.29 By virtue of: (i) the exclusion of consequential loss (ii) the common law position in respect of economic loss; (iii) the non-application of this principle to services covered by insurance and proof of delivery; and (iv) the requirement of reasonable proof²⁴, ComReg does not anticipate an unreasonable or disproportionate level of burden on postal service providers in providing this compensation.
- 2.1.30 ComReg is of the preliminary view that postal service providers must clearly communicate to their customers:
- i. the availability of the compensation scheme;
 - ii. the process to be followed to initiate a claim for compensation.
- 2.1.31 Also, ComReg proposes that compensation and/or refunds must be provided promptly and in an easily accessible manner that does not impose a charge on the recipient of the refund. Refunds issued by cheque must be drawn from a Euro (€) currency account and any bank drafts, money orders, postal orders used to refund end-users must be in the Euro (€) currency.

²³ Section 26 of the 2011 Act limits the liability of the universal postal service provider in respect of any loss or damage suffered by a postal service user.

²⁴ For example, whilst a certificate of postage is available from An Post, ComReg would not anticipate that this is necessary for all claims, and would expect that the complaint details as submitted would be generally accepted by all parties. However, there may be some cases where reasonable proof is needed and the postal service user is required to provide some form of evidence of posting.

f. Procedures for determining where responsibility lies in cases where more than one postal service provider is involved

2.1.32 Subcontracted and/or Services provided by a postal service provider that has access to the universal postal service provider's postal network:

- i. In order to simplify complaint and redress procedures for postal service users ComReg is minded to set out that in the event that there is a complaint relating to the provision of a postal service that is 'sub-contracted' and/or provided by a postal service provider that has access to the universal postal service provider's postal network, the postal service provider with whom the postal service user entered into a contract to provide the service is responsible for resolving the complaint²⁵.
- ii. ComReg considers that the specifications of the Code of Practice of the postal service provider with whom the postal service user has contracted will apply, regardless of whether the complaint relates to the contracted services that have been outsourced by that postal service provider.
- iii. ComReg proposes that postal service providers should ensure that inter-operator agreements between postal service providers make reference to the fact that the Code of Practice of the postal service provider with whom the postal service user has contracted with will apply when a complaint is lodged, so that the procedures, in particular timelines, set out therein can be fully complied with in the case of complaints about such services.
- iv. ComReg proposes that any postal service provider seeking access to the network of a universal postal service provider²⁶, should ensure that its Code of Practice specifications (including timelines) are contained in any contract in order to ensure postal service user complaints relating to a postal service which has been delivered by means of an access arrangement are treated in the same manner as those that are not. Whether such a postal service provider's access agreement with the universal postal service provider would thereafter be likely to have a provision providing for recompense in relation to instances of service failure by the universal postal service provider is a matter for negotiation between the parties.

²⁵ ComReg is mindful of section 4.13 of CEN Standard EN 14012:2008 which suggest that "*it should be possible for a user to make a complaint to any of the postal operators involved*" however notes that this does not state that it must be possible for a user to make a complaint to any of the postal operators involved, rather, the word "*should*" is used.

²⁶ In accordance with section 33(1) of the 2011 Act

2.1.33 Franchise / Subsidiary companies:

- i. ComReg proposes that in the event there is a complaint relating to the provision of a postal service that is provided by a franchisee or subsidiary company then the postal service user will follow the Code of Practice of the master franchisor²⁷.
- ii. ComReg proposes that the master franchisor should require as part of its franchise terms that all of its sub-franchisees reference the master franchisor's Code of Practice in their product offering's terms and conditions.

g. retention of records of complaints

2.1.34 All records relating to complaints, including records escalated for dispute resolution (see Chapter 3), should be retained by postal service providers for a period of not less than one year, following the resolution of the complaint, including —

- i. copies of the complaint and any response thereto, and
- ii. any determination in respect of the complaint and any documentation considered in the course of such determination

2.1.35 Postal service providers should ensure that they comply with their legal responsibilities as data controllers under the Data Protection Act²⁸, including ensuring records "shall not be kept for longer than is necessary for that purpose or those purposes²⁹."

2.1.36 Postal service providers should also be cognisant of the "Rules of Data Protection" as set out by the Office of the Data Protection Commissioner³⁰ in their retention of customer information including records relating to complaints.

h. any other matters the Commission considers necessary and appropriate to secure effective protection for postal service users

2.1.37 Section 24(2)(b) of the 2011 Act provides that the universal service provider An Post's terms and conditions shall include its procedures for dealing with complaints made by postal service users relating to the universal postal service provision.

²⁷ There is a postal service model based on the franchise system. In this case the franchisor delegates the delivery of postal services to a number of contracted franchisees.

²⁸ Data Protection Act 1988 as amended by the Data Protection (Amendment) Act 2003.

²⁹ Section 2(1)(c)(iv) Data Protection Act, 1988

³⁰ See "For Organisations – Your Responsibilities" section of www.dataprotection.com

- 2.1.38 ComReg envisages that postal service providers would also include their procedures for dealing with complaints made by postal service users, in the terms and conditions of any contract offering.
- 2.1.39 ComReg notes that recital 34 of the Postal Services Directive 97/67/EC (as amended) states that EC Directive 93/13/EEC of 5 April 1993³¹ on unfair terms in consumer contracts, which have not been individually negotiated, applies to postal operators.
- 2.1.40 Reference to the complaints and dispute resolution procedures should also be communicated through all product offerings and public notice material to postal service users.
- 2.1.41 All personnel in contact with postal service users making complaints should treat the postal service users in a courteous manner and promptly respond to their complaints, or immediately direct them to the appropriate individual or service in the organisation that is able to respond to the complaint.
- 2.1.42 At a minimum, all postal service provider personnel should be familiar with the procedures to be followed including the information to be provided to postal service users who want to make a complaint. For example all personnel should also be aware of their roles and responsibilities in respect of complaints and be aware of what procedures to follow and what information to provide to postal service users. Postal service providers should take all reasonable steps to implement and maintain this awareness.

ComReg's proposals and preliminary views:

- 2.1.43 In the above, ComReg has set out its proposals and preliminary views as to how the matters required by section 43(1) of the 2011 Act can be provided for in a postal service provider's Code of Practice. ComReg would welcome submissions on these proposals and preliminary views:

Q. 1 Do you agree or disagree with ComReg's proposals and preliminary views as to how a Code of Practice should make provision for the matters required by section 43(1) of the 2011 Act? Please support your answer with reasons and any supporting material.

³¹ This Directive has been implemented in this jurisdiction via the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27/1995) and the European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2000 (SI. No. 307/2000).

2.2 Publication of the Code of Practice

- 2.2.1 To give effect to the requirements of section 43(2) of the 2011 Act, ComReg proposes that postal service providers publicise their Codes of Practice for Complaints and Dispute Resolution through the usual communication and advertising mediums to include company websites, product offering terms and conditions, and by way of notice prominently displayed in all offices owned or controlled by the postal service provider, within 3 months of the issue of ComReg's Guidelines for Complaints and Redress Procedures for Postal Service Providers.
- 2.2.2 In accordance with section 43(2) of the 2011 Act, postal service providers shall make their Code of Practice available, on request, to postal service users free of charge.

Q. 2 Is the proposal with regard to the publication of postal service providers Code of Practice appropriate in your view? If not, please give reasons for your answer.

2.3 Disputes involving postal service providers in more than one Member State

- 2.3.1 In accordance with section 43(7) of the 2011 Act a person may, where the dispute involves postal service providers in more than one Member State, request ComReg to co-ordinate its efforts with any relevant regulatory authority in another Member State with a view to bringing about a resolution of the dispute.

2.4 Publication of complaint information

- 2.4.1 Section 43(6)(a) of the 2011 Act provides that postal service providers shall publish information on the number of complaints made and the manner in which they have been dealt.
- 2.4.2 European Standard I.S. EN 14012:2008 sets out a framework for complaint reporting, including timescales and suggested formats for reports³².
- 2.4.3 ComReg considers that postal service providers when publishing information on the number of complaints made and the manner in which they have been dealt with, should do so in accordance with I.S. EN 14012:2008.

³²See Annex F

3 Proposed guidelines for dispute resolution procedures under section 43(1)(d) of the 2011 Act

- 3.1 Section 43(1)(d) of the 2011 Act sets out that the code of practice to be drawn up and implemented by postal service providers *shall* make provision for 'procedures for resolving disputes'
- 3.2 As outlined earlier in this consultation document (see paragraph 1.24) given that the liberalised postal market in Ireland is very much at a nascent stage, ComReg does not propose to fully implement section 43(3) of the 2011 Act at this time.
- 3.3 Instead, and in order to keep the burden of regulatory compliance to a minimum, ComReg is currently minded to call only for the designated Universal Service Provider (An Post) to provide dispute escalation procedures that reflect so far as possible section 43(3) of the 2011 Act, within its code of practice procedures.
- 3.4 In order to reflect in so far as possible section 43(3) of the 2011 Act, dispute resolution procedures may take the form of a postal service user advocate mechanism, either internal or external to the postal service provider, whose role is to independently assess the previous actions and decision taken by the postal service provider and in particular to review the decision regarding the complaint.
- 3.5 In accordance with the 2011 Act ComReg is of the preliminary view that the postal service user advocate (as proposed in paragraph 3.4) must possess the requisite degree of independence from the postal service provider concerned (for example if it is an internal person then that person must be independent of the consumer complaints and mails operations sections in the postal service provider organisation) so as to demonstrate and ensure that any review is free from bias.
- 3.6 ComReg will, in accordance with its statutory obligations and duties, keep this matter under review and proposes to revisit whether other postal service providers should also have in place a postal service user advocate in line with market developments.
- 3.7 In parallel, ComReg also proposes, in accordance with its statutory obligations and duties, to again consider whether section 43(3) of the 2011 Act should be fully implemented.

Escalating a complaint which remains unresolved after due completion of all the procedures of a code of practice

- 3.8 In relation to escalating a complaint which remains unresolved, ComReg proposes that the postal service provider's Code of Practice should note that postal service users must send in their complaint to the postal service user advocate who will independently assess the complaint, within three (3) months of the postal service provider providing a final response to its investigations of the postal service user's complaint.
- 3.9 ComReg proposes that any postal service user making such application must give reasons for the claim and, in particular, should include the following details:
- Details of the service under complaint;
 - The exact issues which are being disputed;
 - The reasons why the complaining postal service user is making a claim or trying to have an issue resolved;
 - Details of any compensation element if appropriate;
 - To support the application, the postal service user must be advised to include copies of any documents that are relevant to the complaint, including letters, e-mails, records of phone calls made or received, or other letters and contact between the postal service user and the postal service provider.
- 3.10 ComReg also proposes that a final response, containing the reasons which support the postal service user advocate's decision, must be provided to the postal service user by the postal service user advocate, who has independently assessed the complaint, no later than thirty (30) days after the first contact³³ unless:
- The postal service user accepts a settlement the postal service provider has offered or
 - The postal service provider gives the postal service user everything claimed for.
- 3.11 ComReg also proposes that the decision of the postal service user advocate is final and cannot be appealed by the postal service user – it can only be accepted or rejected. Equally, ComReg is of the preliminary view that the postal service provider should not be able to appeal the decision of the postal service user advocate.

³³ This timeframe mirrors that provided in the UK to customers of Royal Mail. Complainants can refer a complaint to the 'Postal Review Panel' for a "fresh and impartial" review of a complaint and they will provide a final response within 30 days of first contact.

- 3.12 In the event that the postal service user advocate finds in favour of the postal service user, ComReg proposes that the postal service user advocate can request the postal service provider to:
- Give the postal service user an apology and detail the reasons for the service failure;
 - Take some practical action that will benefit the postal service user;
 - Provide compensation in accordance with the Code of Practice and/or the terms and conditions of the service whichever is more beneficial in monetary terms to the postal service user.
 - Pay an additional small amount for any stress, anxiety or inconvenience the postal service user suffered as a result of how the postal service provider handled the complaint.
- 3.13 ComReg is also of the preliminary view that any further requirements that the postal service provider may place on the process to be followed in making a complaint should not place an undue burden on the postal service user or place them at an undue financial disadvantage.
- 3.14 ComReg proposes that the volume of complaints escalated to the postal service user advocate are published at the same time as the reporting of complaint information (See paragraph 2.4), including details of the advocate's decision in each case.
- 3.15 Finally, ComReg notes that the postal service user remains entitled to avail of the procedures of the Small Claims Court³⁴ if they so choose.

Q. 3 Are you satisfied with ComReg's proposals for dispute resolution? If not what amendments would you consider appropriate? Please support your answer with reasons and any supporting material.

³⁴ The Small Claims Court is provided for under the District Court (Small Claims Procedure) Rules, 1997 & 1999, as amended by the District Court (Small Claims) Rules 2009 (SI 519/2009).

4 Regulatory Impact Assessment (RIA)

- 4.1 ComReg's published RIA Guidelines³⁵ (Doc 07/56a), in accordance with a policy direction to ComReg³⁶, state that ComReg will conduct a RIA in any process that may result in the imposition of a regulatory obligation, or the amendment of an existing obligation to a significant degree, or which may otherwise significantly impact on any relevant market or any stakeholders or consumers. However, the Guidelines also note that in certain instances it may not be appropriate to conduct a RIA and, in particular, that a RIA is only considered mandatory or necessary in advance of a decision that could result in the imposition of an actual regulatory measure or obligation, and that where ComReg is merely charged with implementing a statutory obligation then it will assess each case individually and will determine whether a RIA is necessary and justified.
- 4.2 In this Consultation, ComReg considers that it is not imposing a discretionary regulatory obligation but is acting in accordance with the statutory obligation imposed by section 43(1) of the 2011 Act on postal service providers to draw up and implement a complaints Code of Practice and dispute resolution procedures, by providing guidelines that give certainty to postal service providers as to what is required under the 2011 Act. Therefore, a RIA is not being undertaken on this occasion.

³⁵ Which have regard to the RIA Guidelines issued by the Department of An Taoiseach in June 2009

³⁶ Ministerial Policy Direction made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February, 2003

5 Conclusion and Next Steps

Conclusion

- 5.1 ComReg has, in making its proposals and preliminary views on how postal service provider's should draw up and implement their codes of practice, tried to balance the needs of postal service users ensuring they have access to transparent, simple and inexpensive procedures made available by all postal service providers for dealing with postal users' complaints, and with keeping the burden of regulatory compliance for all postal service providers to a minimum.
- 5.2 In finalising its views, ComReg will consider all the views of respondents to this consultation.

Submitting comments

- 5.3 The consultation period will run until 5pm on 22 May 2013, during which time ComReg welcomes written comments on any of the issues raised in this consultation.
- 5.4 It is requested that comments be referenced to the relevant question numbers and/or paragraph numbers from this document. Where views are provided, please provide a supporting rationale for your comments, including if possible, an indication on the broader impact of any changes proposed.
- 5.5 As it is ComReg's policy to publish all responses in order to make them available for inspection, responses to consultations should be provided as non-confidential documents, with any information for which confidentiality is claimed (e.g. commercially sensitive information) supplied in a separate annex. In this respect, please refer to ComReg's Consultation Procedures - ComReg 11/34 and ComReg's guidelines on the Treatment of Confidential Information - ComReg 05/24.
- 5.6 We request that electronic submissions be submitted in an unprotected format so that they can be appended into the ComReg submissions document for publishing electronically.

- 5.7 All responses to this consultation should be clearly marked:- “Reference: Consultation 13/40”, and sent by post, facsimile or e-mail to arrive on or before 5pm, 22 May 2013, to:

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Annex: 1 Legal Framework

Introduction

A 1.1 The Communications Regulation Act 2002 (“the 2002 Act”) as amended (including by the Communication Regulations Act 2011 (“the 2011 Act”)) sets out, amongst other things, functions, objectives, duties and powers of ComReg that are relevant to this consultation and draft guidelines.

A 1.2 This annex is intended as a general guide as to ComReg’s role in this area, and not as a definitive or exhaustive legal exposition of that role. Further, this annex restricts itself to consideration of those powers, functions, duties and objectives of ComReg that appear most relevant to the matters at hand.

A 1.3 All references in this annex to enactments are to the enactment as amended at the date hereof, unless the context otherwise requires.

Statutory functions

A 1.4 The functions of ComReg in relation to the postal sector are set out in the 2002 Act as follows:

- to ensure the provision of a universal postal service that meets the reasonable needs of postal service users (s.10(1)(ba)) and
- to monitor and ensure compliance by postal service providers with the obligations imposed on them by or under the Communications Regulation Acts 2002 to 2011 in relation to the provision of postal services (s.10(1)(c)).

Statutory objectives

A 1.5 The objectives of ComReg in exercising its functions in relation to the provision of postal services are set out in s.12(1)(c) of the 2002 Act as follows:

- (i) to promote the development of the postal sector and, in particular, the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all postal service users;
- (ii) to promote the interests of postal service users within the Community; and
- (iii) subject to subparagraph (i), to facilitate the development of competition and innovation in the market for postal service provision.

A 1.6 Section 12(3) of the 2002 Act provides that in carrying out its functions, ComReg shall seek to ensure that measures taken by it are proportionate having regard to the objectives set out in section 12.

Reasonable measures to be taken to achieve objectives

A 1.7 Under s.12(2A) of the 2002 Act, ComReg shall take all reasonable measures aimed at achieving the objectives referred to in section 12(1)(c), including:

(a) establishing such monitoring and regulatory procedures for the purposes of ensuring compliance by postal service providers with the obligations imposed on them by or under the Communications Regulation Acts 2002 to 2011 as are necessary to secure the provision of a universal postal service,

(b) ensuring that postal service users may avail of a universal postal service that meets their reasonable needs,

(c) in so far as the facilitation of competition and innovation is concerned, ensuring that postal service users derive maximum benefit in terms of choice, price and quality, and

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

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

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

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

and

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

Specific duties and powers relating to complaints and redress

A 1.8 Section 43(1) of the 2011 Act imposes a duty on every postal service provider to draw up and implement a Code of Practice setting out procedures, standards and policies with respect to the handling of complaints from postal service users, in particular, complaints relating to loss, theft, damage or quality of service, and such a Code of Practice shall make provision for the following matters:

(a) the first point of contact for postal service users,

(b) a means of recording complaints,

(c) a time frame within which the postal service provider concerned shall respond to complaints,

(d) procedures for resolving disputes,

(e) remedies and redress, including reimbursement or compensation, or both, as appropriate,

(f) procedures for determining where responsibility lies in cases where more than one postal service provider is involved,

(g) retention of records of complaints for such period, of not less than one year, as the Commission may specify following the resolution of the complaint, including—

(i) copies of the complaint and any response thereto, and

(ii) any determination in respect of the complaint and any documentation considered in the course of such determination,

and

(h) any other matters the Commission considers necessary and appropriate to secure effective protection for postal service users.

A 1.9 A postal service provider shall publish the Code of Practice drawn up under section 43(1) and, on a request being made for that purpose, make the Code of Practice available, on request, to postal service users free of charge (s.43(2)).

- A 1.10 ComReg is given a discretionary power in section 43(3) to *itself*, in accordance with procedures established and maintained by ComReg, resolve disputes which remain unresolved after due completion of all the procedures of a Code of Practice drawn up under section 43(1), or to appoint an independent person to resolve such complaints. This section gives ComReg a discretionary power to issue directions requiring a postal service provider to comply with such measures as ComReg or the independent person may specify for the resolution of the dispute including payment of costs. Any procedures established by ComReg pursuant to s.43(3) have to be published (s.43(4)). Note has to be taken of s.43(1)(d), under which the Code of Practice has to make provision for “procedures for resolving disputes”.
- A 1.11 The procedures referred to in s.43(1) and s.43(3) have to be (a) transparent, (b) simple, (c) inexpensive, and (d) enable disputes to be settled fairly and promptly (s.43(5)).
- A 1.12 Under s.43(6), ComReg may give directions to a postal service provider to whom s.43(1) relates for the purposes of ensuring compliance with s.43 including directions as to-
- (a) the form and manner in which a Code of Practice referred to in s.43(1) and information relating thereto shall be published, including information on the number of complaints made and the manner in which they have been dealt with, and
 - (b) the making of such alterations or additions to its Code of Practice as ComReg considers appropriate and specifies in the directions.

Transposition of EU law

- A 1.13 For completeness, it is to be noted that s.43 of the 2011 Act transposes into Irish law relevant provisions of Article 19 of the Postal Services Directive (Dir 97/67/EC) as amended by the second Postal Services Directive (Dir 2002/39/EC) and the third Postal Services Directive (Dir 2008/6/EC).
- A 1.14 The first paragraph of Article 19 provides as follows: “Member States shall ensure that transparent, simple and inexpensive procedures are made available by all postal service providers for dealing with postal users' complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved), without prejudice to relevant international and national provisions on compensation schemes”.

Annex: 2 Consultation Questions

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Q. 1 Do you agree or disagree with ComReg’s proposals and preliminary views as to how a Code of Practice should make provision for the matters required by section 43(1) of the 2011 Act? Please support your answer with reasons and any supporting material.....	17
Q. 2 Is the proposal with regard to the publication of postal service providers Code of Practice appropriate in your view? If not, please give reasons for your answer.	18
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