



GUIDELINES ON LIABILITY & CLAIMS PROCEDURES IN POST & COURIER MARKETS

Abstract

Guidance on licensee, customer and regulatory obligations with respect to damage, delay and or loss in post and courier services

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GUIDELINES ON LIABILITY IN THE POST AND COURIER MARKET

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PART 1

Preliminary

The Uganda Communications Commission (UCC) was established by the Uganda Communications Act 2013 to facilitate the development of a modern communications sector. The sector comprises telecommunications, broadcasting, postal services, radio communications, and data communication and infrastructure.

Accordingly, the Commission has developed **Guidelines on Liability in the Post and Courier Market** to govern the relationship between consumers and Licensees in post and courier services in regard to liability as provided for under Section 36 of the Uganda Communications Act 2013.

These Guidelines may be cited as the Guidelines on Liability in the Post and Courier Market. The Guidelines promulgate the practices that Licensees should follow when providing services to consumers in Uganda.

In all cases where agreements between a licensed operator and consumer entail less favourable terms and conditions as compared to the provisions of these Guidelines, the Guidelines shall prevail.

Notwithstanding anything contained in these Guidelines, nothing herein contained shall operate so as to limit or exclude any rights or remedies of any consumer including access of a consumer to the Courts or any other appropriate dispute resolution forum.

Nothing in these Guidelines shall remove or restrict the effect of or reliance on;

- i. Any written law, licence condition or regulations that impose on the licensee a duty stricter than that imposed under these Guidelines.
- ii. Any term in any agreement between a consumer and a licensee to the extent that the term:
 - a) Imposes a stricter duty on the licensee than that imposed under these Guidelines.

- b) Provides a remedy more advantageous to the Consumers than the remedies provided under these Guidelines.

The Guidelines are a clear statement of what the Commission considers acceptable practice in the post and courier market in addressing liability.

2. Definitions

In these Guidelines, unless the context provides otherwise, the following terms will have the meanings ascribed to them:

“Acceptance” means a point of time at which the Courier formally agrees to provide the service in accordance with the Agreement on the one hand, when the recipient acknowledges that certain Items/mails have been received by the carrier for onward delivery to the destination and on the other hand.

“Agent” means a representative of the Courier,

“Claim” means a party’s demand to the other after suffering a delay, loss or damage either financial or material.

“Consequential loss” means any loss other than direct loss resulting from non-performance or negligence of either party.

“Customer/ Consumer” means any person who enters into an agreement for the provision of service with a licensee.

“Damage” means breakage or alteration of a the parcel/item in the course of delivery to the recipient

“Delay” means failure to deliver mail within the agreed time.

“Delivery” shall be deemed to occur when a licensee has handed over an item and obtained from the recipient a signature of acceptance or has captured data from an identity card or obtained other evidence of receipt that is legally binding under the legislation of the country of destination to confirm acceptance. For avoidance of doubt, delivery time shall be determined by the courier.

“Disposal” means the action or process of getting rid of something.

“Goods in Transit” means parcel/items that are in possession of the courier and have not yet reached the desired destination.

“Force Majeure” -means the occurrence of an unexpected event, outside the control of the parties to an agreement, that may affect either party's ability to carry out the terms of a contract and shall include acts of nature (fire, flood, earthquake, storm, accident or other natural disaster), war, hostilities, insurrection, terrorist activities, nationalisation, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of power sources.

“Indemnity” means restoring the party who has suffered a loss to their original

“Licensee” in the context of these Guidelines means any organisation authorised by UCC to provide postal services, including courier companies, transporters, freight, forwarders, delivery companies and direct marketing companies that handle postal articles;

“Liability” means the burden extended on the party for non-performance or failure to perform his or her duties according to the terms of the contract.

“Loss” means financial or material setback suffered by a party due to another party's wrongful acts or omissions in the Contract.

“Mail” means all postal subject matter and includes letters, parcels and other Articles submitted to a licensee for conveyance.

“Mis-delivery” means delivery to a wrong recipient or at a different address.

“Negligence” A party to a contract shall be deemed to be negligent when he or she performs his/her duties unreasonably or omits to do the duties according to the terms of the contract.

“Non-delivery” means the courier does not deliver any item/mail at all to the intended recipient.

“Permitted item” means items whose entry in a recipient country is granted by the relevant body/authority.

“Prohibited Item” means any good or material the carriage of which is prohibited by any law, rule and or regulation of any country in which the consignment travels.

“Proof of Delivery” means evidence that an addressee received the items sent by the sender or in the case of courier evidence that the licensee made efforts to reach out to the addressee.

“Reasonable time” means suitable time within which delivery/action must take place.

“Resolution” means the action of solving a problem, dispute, or contentious matter.

“Restricted Item” means that they are regulated in either the quantity/quality by the recipient country.

PART 2

General Provisions on Liability

3. Obligations of a Licensee

A licensee shall in sending, conveyance and delivery of letters, items and parcels of its customers:

- (a) Meet the quality of service parameters set by the Commission, including the delivery of postal items within a reasonable time;
- (b) Guard against loss or damage to postal items;
- (c) Ensure the health and safety of its customers and the general public against dangerous or hazardous items.

4. Commencement and termination of liability

A licensee shall assume liability for items in their custody from the point of acceptance to delivery of the article. This assumption of liability will be clearly stated on a waybill/receipt.

Acceptance is deemed to commence from the time the article is received by a licensee when it is deposited into a posting box or handed over to an employee or agent of a licensee authorised to receive it.

An article is deemed to have been delivered to the addressee:

- (i) When it is delivered into a private letter box or bag of the addressee;
- (ii) When it is left at the house, or office of the addressee as set out there on, or with the employee, agent or any other person authorised to receive it;
- (iii) Where the addressee is a guest or resident at a hotel, hostel or lodging, when it is left with the proprietor or manager of the hotel, hostel or lodging or with his agent; or
- (iv) To have been received by a postal licensee when it is deposited into a posting box or handed over to an employee or agent of a postal service operator authorised to receive it.

5. Vicarious Liability (Third Party Liability)

A licensee shall be liable for delay, loss or damage occasioned by appointed carriers and by extension their agents which occur during the provision of contracted service.

6. Exclusion of Liability

A licensee shall not be liable:

- a) where mail items have been delivered in line with their established procedure of the licensee for items of the same kind except where loss or damage is discovered either prior to or at the time of delivery of the item;
- b) in cases where the addressee or, in the case of return to origin, the sender of a mail item, although having given a proper discharge, notifies the licensee within reasonable time that he has found damage, he shall furnish proof that such damage did not occur after delivery;
- c) in cases of force majeure, provided that proof of their negligence has not been otherwise produced;

- d) When such loss or damage has been caused by the fault or negligence of the sender or arises from the nature of the contents;
- e) In the case of prohibited items;
- f) When the items have been seized under the national legislation;
- g) In the case of insured items which have been fraudulently insured for a sum greater than the actual value of the contents;
- h) When the sender has not collected or made inquiry within a reasonable time after that on which the item was posted;
- i) For customs declarations in whatever form these are made or for decisions taken by the Customs on examination of items submitted to customs control, and;
- j) For any consequential loss or loss of profits or moral damage and these shall not be taken into account in the indemnity to be paid.

7. Prohibited Articles

- (1) All Licensees shall, where applicable before accepting any item for postage, require the sender to declare its contents.
- (2) A person shall not send, by post:
 - (a) Any article for export, import or carriage which is prohibited under any law in Uganda, or which, being subject to any restriction imposed by such law, is transmitted otherwise than in accordance with that restriction;
 - (b) Any article which may not, under the law of the Country to which it is addressed, be imported or transmitted by post;

8. Compensation and liability limits

- (1) A licensee shall develop and file with the Commission for approval adequate compensation policies for loss, damage and delay of postal articles under the various categories including extending coverage for goods in transit policies.
- (2) Section (1) notwithstanding a licensee shall ensure there are in place compensation caps and limits on liability and that the same are prominently displayed.
- (3) Review of licensee compensation policies will include the following considerations:
 - a) The operational size and asset value of the licensee
 - b) The safety history of the licensee

9. Supplementary insurance cover

A Consumer may opt to take out supplementary insurance for items prior to their transfer to the postal/courier operator.

PART 3

Claims Management, Recording Keeping and Reporting

10. Claims Management

- (1) A licensee shall:
 - (a) Devise, operate and maintain a claims management procedure as part of a wider consumer complaints handling system which shall be approved by the Commission;

- (b) In clear and simple language, publish and avail to the consumer, information about its consumer complaints handling system;
- (2) A consumer who is aggrieved or dissatisfied with the service or product of any licensee, shall within two months from the date of the incident giving rise to a complaint, lodge a written or oral complaint with the licensee;
- (3) A licensee shall on receipt of a consumer complaint allocate a reference number or other identifier of the complaint before acknowledging receipt of the complaint lodged;
- (4) A licensee shall on acknowledgement of receipt advise the consumer on the following:
- reference number of the complaint;
 - action to be taken;
 - Estimated resolution time.
- (5) In any case all complaints lodged with a licensee shall be addressed within thirty days and the complainants advised of the outcome of the investigation and the licensee's decision;
- (6) In designing the consumer complaints' handling system a licensee shall take into account the interests and rights of persons with special needs and ensure ease of access to its consumer complaint handling system; and
- (7) The licensee shall make provision for escalation or appeal of complaints within the licensee's structure where the consumer is not satisfied with the initial decision of the licensee.

11. Record Keeping

- (1) A licensee shall:

- (a) Maintain at its ordinary place of business; a file or written log of complaints made in writing, by phone or electronic mail including the date and time of lodging of the consumer complaints and whether and how the complaints were resolved.
- (b) On a quarterly basis file with the Commission such information and statistics relating to all the consumer complaints reported, handled, resolved or are still pending.

12. Reporting

- (1) A licensee shall on a quarterly basis as part of their periodic operational reports to the Commission file such information and statistics relating to all the consumer complaints reported, handled, resolved or pending.
- (2) A licensee shall on an annual basis file with the Commission a copy of their compensation policy.

PART 4

Consumer awareness, customer obligations and responsibilities and disposal of articles

13. Consumer awareness

A licensee shall:

- (1) Publish the standard terms and conditions including tariffs under which it provides each category of licensed services and the applicable compensation policies to consumers and ensure that a statement of all applicable terms and conditions is promptly made available for inspection at the request of any member of the public.
- (2) Inform consumers of their obligations, and the repercussions arising from a breach of such contractual obligations.

Before entering into a contract to provide services, a licensee must inform the consumer of any existing contractual warranty and the redress options available should the contractual warranty be broken.

14. Customer responsibility and obligations

Consumers of postal/courier services will be required to truthfully declare the contents of mail items that they post.

Consumers of postal/courier services shall be obliged to provide correct address at time of acceptance by courier.

Consumers of postal/courier services will be obliged to pay for delivered items.

15. Disposal of undeliverable postal articles

(1) Domestic letters or other postal articles that cannot be delivered due to an undecipherable or non-existent address or post code may be opened by a licensee and where the letter or article is capable of being delivered based on information in the letter or article; the licensee shall deliver the letter or article accordingly.

(2) Where a letter or postal article opened under paragraph (1), is incapable of being delivered, but contains the address of a sender, the licensee shall notify the sender.

(3) Every undeliverable postal article that has been opened and remains undeliverable may be kept and disposed of by the licensee as required by law or in a manner approved by the Commission.

(4) In cases of domestic courier, undeliverable items will be kept for no less than 3 months except where they are perishable.

(5) A licensee shall on a quarterly basis furnish the Commission with a detailed list of items it has disposed (in the case of perishable items) or intends to dispose at the end of that quarter.

(6) Where a letter or postal article is opened as provided by these Guidelines, the licensee shall affix a mark on the letter or postal article indicating the:

(a) date and time of opening;

(b) period it has remained undelivered;

(c) contents ; and

(d) manner the licensee decides to deal with the undelivered article.

(7) Where a letter or postal article is returned to the sender because of being undeliverable as addressed and the sender refuses to take delivery, the letter or postal article shall be dealt with as provided under paragraph (3).

16. Postal Articles of Dead Persons

Where a licensee is satisfied that the addressee of a postal article is dead, it may;

(a) retain the postal article and on production of the will or letters of administration to the estate of the addressee together with the written application of one or more of the executors or administrators, deliver or release the article in accordance with such request;

or

(b) treat the postal article in accordance with the provisions of these Guidelines that relate to undeliverable postal articles.

17. Breach of Guidelines

The following shall constitute breach under these Guidelines:

- a) failure to comply with these Guidelines;
- b) failure to file documents or information; keep records or submit reports to the Commissions as required under these Guidelines;
- c) submission or publication of false or misleading information;
- d) obstructing, preventing or interfering with any inspection, investigation or enforcement action carried out or authorised by the Commission under any law or these Guidelines;
- e) Committing any act or omission whose effect would be to defeat the purposes of these Guidelines.

18. Penalties

A licensee or any person who commits a breach under these Guidelines shall, where no specific penalty is provided for in the relevant law, be liable to a penalty as shall be prescribed by the Commission.