



Spark^{nz}

Review of the Telecommunications Dispute Resolutions Scheme

Public Version

Commerce Commission

27 September 2021

We welcome the Commerce Commission's review of the TDRS

1. The Telecommunications Dispute Resolution Service (TDRS) is a vital part of the industry eco-system. It provides a route for consumers to escalate their issue if they are not satisfied with how their service provider has addressed their complaint. This provides a vital service to consumers to ensure they are being treated fairly by their provider.
2. The TDRS also provides an important external validation and benchmarking function for industry, setting expectations on how we should be resolving complaints.
3. The existence of a well-structured and well-functioning dispute scheme incentivises industry to address complaints more effectively before they reach deadlock. We therefore welcome the Commission's first review of the TDRS under Part 7 of the Telecommunications Act 2001.

Phase 1 implementation date is impractical if it requires more than clarifying existing practice

4. The Commission has proposed a phased implementation of its recommendations which recognises some changes are more complex or require a longer implementation period. We support this approach which helps us prioritise our own resource.
5. However, we consider the Phase 1 implementation date of 24 December 2021 problematic for a number of reasons:
 - a. The final report is due on the 11th November 2021 giving just 6 weeks to make changes. This period will overlap with our corporate brown-out period where system changes are frozen. This creates challenges implementing new processes and also prevents us from updating information on our internal systems which our front-line staff reference when talking to customers, as well as updating our online channels.
 - b. Implementing changes from 24 December means changes will go live during the Spark and TDRS corporate shutdown period and periods of low staffing due to holidays during January and February. This will create confusion for our staff, and ultimately risks a poor experience for our consumers.
6. We therefore propose the timeframe for Phase 1 and Phase 2 are combined to 1st April 2022.
7. However, clarification of the existing exclusions can be performed relatively quickly as this will just be a matter of TDRS updating their website to reflect the current practice. We discuss this in further detail below and propose substantive changes to the exclusions are managed as part of DR1.

The existing scheme exclusion wording can be clarified to avoid confusion

8. The recommendation on changes to the exclusions proposes that these can initially be introduced through a change in practice by 24 December (DR3 – phase 1) before being implemented by a formal amendment to the Customer Complaints Code (DR1 – phase 3).
9. Our observation is that the proposed recommendations related to reviewing and amending exclusions can be split into two categories:
 - a. Those which represent current practice and simply need to be articulated more clearly and
 - b. Those which require some more formal amendment, and which will result in new types of complaints being accepted by TDRS.
10. Exclusions are included in the Customer Complaints Code (CCC) to clarify what complaints are out of scope. However, we accept that the current drafting may give the impression that some of the exclusions are wider than they are in practice.
11. It is important that both consumers and scheme members are clear on what issues they can bring to the TDRS so we fully support a redrafting of the exclusions to reflect the current practice, and using clear language to make them more understandable.
12. The updated drafting would be included in the next version of the CCC but could, as a temporary measure, be posted on the TDRS and TCF websites to act as an ‘interpretation document’ ahead of the full Code review.
13. DR3 recommends, at a minimum, removing certain exclusions from clause 18. We disagree with fully removing these exclusions but instead suggest the wording can be updated to, where necessary, extend the scope of the scheme.
14. Simply removing the exclusions would allow complaints about such things as the lack of network coverage in a particular location which never had coverage, or congestion issues caused by the customer’s own traffic (perhaps because they have bought a slower connection than they need), or geographic constraints at their property.
15. Instead, the focus should be on issues that are within the RSP or access provider’s control. For example, we fully accept that a customer should be able to complain where they were misled about the likely actual performance of a service, or where the speed of their service has degraded over time due to factors in the telco network.
16. These matters are more subtle and need careful consideration around the boundaries of their application. It is not appropriate to simply delete the existing exclusions. It is important for customers, scheme members and the scheme itself to have complete clarity on the scope of the issues they can address.

17. We suggest that these changes are managed as part of the CCC review (DR1) to ensure all parties are clear on definitions for the expanded scope of the TDRS
18. We have provided a table with our commentary on the exclusions as currently drafted in Appendix 2.

The revised deadlock date should be 15 working days

19. We support a reduction in the deadlock period from the current six weeks, but consider the 10 working days proposed in DR13 is too ambitious. 10 working days does not allow RSPs adequate time to investigate complaints properly and is likely to result in poor decision making.
20. We consider 15 working days is more achievable and is a considerable improvement for complainants on the current 6 weeks.
21. The Commission can look at the benefits of reducing this further to 10 working days in a subsequent review if it feels 15 working days is too long.

We welcome the inclusion of wholesale providers

22. As we noted in our previous submission it is important that wholesale scheme members are properly integrated into the TDRS scheme and that consumers can raise complaints directly without needing to involve a retailer (though as a retailer we would like to be kept up to date on complaints involving our customers where that is appropriate).
23. The wholesale members should be directly involved in the process where the wholesale provider has caused the consumer harm and the complaint has not been resolved directly with the wholesaler.
24. Most of the time there will also be a retail provider involved but there are scenarios where there are no retailers involved and the customer needs to be able to complain directly. For example the customer may have an issue caused by a fibre pre-install which was performed before the customer places an order with their RSP, or the customer may directly contract with the fibre provider for additional work in their home. Chorus, for example, routinely offers to make consumers' homes "fibre-ready" by pre-installing a fibre ONT even if the consumer does not plan to purchase a retail fibre service at that time.
25. In both these cases, the principle should be that the member who caused the issue should be on the hook for resolving it. These issues happen today and the RSP often gets trapped in the middle between the customer and the wholesale member.
26. We note in the Commission's Improving Retail Service Quality – Draft Baseline Report that one of the matters for improvement is consumers finding it difficult to resolve issues. It is important that consumers can engage directly with wholesale members to get resolution to issues which are clearly caused by the wholesale, member without needing to go via the RSP.

27. In the same way, TDRS should be able to deal directly with wholesale members to ensure wholesale members have the right incentives to resolve complaints before they are escalated.

Targeted awareness is not relevant for the inquiry stage

28. We agree that scheme members should ensure their customers are aware of the TDRS, and that we should make this information available at a number of different touch points. However, we disagree that we should make this information available to consumers who have only raised an enquiry.
29. An enquiry is where a customer contacts their provider with a question which we may be able to resolve on the first call and no further action is required. It would be inappropriate and resource intensive to provide information about TDRS to every customer who contacts us.
30. If someone is unhappy with our response to their enquiry, we accept that we should then inform them of our internal complaint process, and their ability to further escalate their complaint to the TDRS if they are not happy with our resolution.
31. We observe a trend for regulation to require us to provide additional information to consumers. For example, we have already updated and extended our disclosure statements to include information on the 111 Contact Code. These are in addition to other statutory disclosure requirements.
32. We ask the Commission to be mindful of consumers' ability to take in large quantities of information and the risk that consumers end up more confused, get bored and stop listening, or simply miss key pieces of information due to the length of our disclosure statements.
33. It's also worth noting that including more things in our disclosures (by which we mean information which we are mandated to tell our customers) is that they take longer to communicate which in turn can lead to longer wait times for consumers attempting to contact us.

The TDR Scheme should be mandatory

34. The TDR scheme is mandatory today for TCF members, but voluntary for all other providers. Non-TCF members have little incentive to join the scheme, and in fact there is a risk with the additional requirements being added by the Commission that costs will increase and there will even be incentives on some existing members to exit the scheme.
35. Spark is committed to the TDR Scheme, but consider it should be mandatory so that consumers are protected no matter which retailer and wholesaler provides their service.

Appendices:

- Appendix 1: Comments on Individual Recommendations
- Appendix 2: Comments on existing exclusions

Appendix 1 - Comments On Individual Recommendations

Recommendation		Spark Comments
DR1	Conduct a full review of the Customer Complaints Code and publish the revised Code by 1 August 2022. At a minimum, the review must cover the matters identified in recommendations [3, 5, 11, 13, 15, 18, 24] of this report. Proposed changes should be developed with the TDRS Council and tested via a full public consultation process with the Scheme Agent and other interested parties (including consumers and consumer groups).	Agree
DR2	Conduct a full review of the Scheme Terms of Reference and “Agreement with the Scheme Agent for Provision of Services in respect of the Telecommunications Dispute Resolution Service” and publish the revised Terms of Reference by 1 August 2022. At a minimum, the review must cover the matters identified in recommendations [20, 21, 22]	Agree

<p>DR3</p>	<p>Review and amend the scope of the TDRS’ jurisdiction under the Customer Complaints Code to ensure that complaints regarding RSQ matters for which telecommunications providers have legal obligations (whether under contract, legislation, Commission or industry RSQ codes, or any other law) are within the TDRS’ jurisdiction. This should include, as a minimum, removing the following exclusions from clause 18:</p> <ul style="list-style-type: none"> • Clause 18.1.14 – complaints relating to equipment sold by a telecommunications provider to a consumer; • Clause 18.1.6 – complaints relating to the extent of network coverage; and • Clause 18.1.21 – complaints relating to broadband congestion or speed. <p>These changes should be introduced initially as a change in practice for the TDRS by 24 December 2021, with formal amendments to the Customer Complaints Code made as part of the review in recommendation DR1</p>	<p>See comments above.</p> <p>Where the exclusion simply requires clarifying to make the current practice clearer this can be achieved relatively quickly. See our summary in Appendix 2</p> <p>Any actual changes in scope or process need to be deferred until the new year (coinciding with the Phase 2 timeframes) as it is inappropriate to launch changes to the scheme as we go into corporate lockdowns and the summer period with lower staff availability.</p>
<p>DR4</p>	<p>The TCF and TDRS should work to improve consumer awareness of the TDRS, in particular to ensure that consumers who have raised an enquiry or complaint with their telecommunications provider are informed of their right of recourse to the TDRS</p>	<p>If anyone raises a complaint with us then we inform them about the TDRS.</p> <p>However, we disagree with the need to inform customers about TDRS when they contact us with an <i>enquiry</i>.</p> <p>If the customer is unhappy with our response to their enquiry, we then inform them how to make a <i>complaint</i> and it is appropriate to inform them of their rights under the TDRS at that stage.</p>

<p>DR5</p>	<p>The Customer Complaints Code should establish clearer guidelines and obligations on Retail Scheme Members, along with regular compliance testing, to raise awareness of the TDRS among their customers.</p> <ul style="list-style-type: none"> • This should ensure a consistent approach by Retail Scheme Members to raising awareness at different customer touch points, such as websites, bills, promotional materials, Interactive Voice Recording messages and call centre handling. • Retail Scheme Members should inform their customers of the TDRS when a complaint is first made, during the complaint process and when deadlock is reached. These changes should be introduced initially as a change in practice for the TDRS by 1 April 2022, with formal amendments to the Customer Complaints Code done as part of the review in recommendation DR1 	<p>It may take time to agree an industry approach to raising awareness and we are unsure of what 'consistent approach' means in practice. Some of the proposals (such as adding to IVR messages) will require significant development and need further discussion.</p> <p>We already inform customers of the TDRS when they raise a formal complaint and when deadlock is reached</p>
<p>DR6</p>	<p>The engagement requirements in the TDRS 2021/22 Business Plan should be extended in future years so that the Scheme Agent carries out high quality engagement with both Scheme Members and consumer organisations to improve awareness and understanding of the scheme for consumers</p>	<p>Agreed, subject to this being reviewed on an ongoing basis to ensure it is an effective use of resource.</p>
<p>DR7</p>	<p>Continue the increased resourcing for awareness initiatives beyond 2021/22 to ensure they have a lasting effect. The work should focus on, among other things:</p> <ul style="list-style-type: none"> • ensuring consumers are made aware of the TDRS at the beginning of the complaints process; • reaching consumers from groups that are rarely using the TDRS; and • continuing to build general awareness of the TDRS 	<p>Agreed. Although we note this increases the cost of being a member of the TDRS scheme which is likely to act as a disincentive for some providers to become (or remain) members.</p>

DR8	<p>Undertake a review of its topic-specific guidance to:</p> <ul style="list-style-type: none"> • update current position statements to ensure they are fit for purpose; • identify and fill coverage gaps in its guidance; and • develop topic-specific guidance in the form of recurring issues articles and news articles into position statements. <p>The review and (re) publication of position statements should occur by 1 April 2022.</p>	<p>Agreed. We agree these should be kept up to date and fit for purpose. We suggest TDR adopt a process where they consult with RSPs and consumers before publishing to ensure they are fit for purpose.</p>
DR9	<p>Ensure that all current and new guidance documents set clear standards for Scheme Members and include how the TDRS will handle complaints where those standards are not met</p>	<p>We agree that clearly documented standards and processes are important for Scheme Members and consumers.</p>
DR10	<p>Publish anonymised determinations (including those regarding assessment of jurisdiction) on the TDRS website to allow consumers, consumer groups and industry parties to understand how the TDRS has considered a matter in more detail</p>	<p>We are not convinced that full determinations should be published as they can be misleading for customers without a full understanding of the wider context which led to the decision. Instead we suggest publications of a case summary, written in a consumer friendly way, which focusses on the key facts that lead to the decision.</p>
DR11	<p>Amend the Customer Complaints Code to give express authority to, and place an obligation on, the Scheme Agent to analyse all complaints and enquiries it receives to identify systemic issues (see DR1)</p>	<p>Agreed.</p>
DR12	<p>Continue the work to improve the categorisation and reporting of complaints and enquiries to allow better identification of systemic issues.</p> <ul style="list-style-type: none"> • Within 18 months of the publication of the final version of this report, public reporting should include data on systemic issues and root causes. 	<p>Agreed. TDRS already reports categorises its reports. An annual review in 18 months showing trends over this time would be useful.</p>

DR13	Reset the deadlock period for the TDRS from six weeks to 10 working days. This change should be introduced initially as a change in practice for the TDRS by 1 April 2022, with formal amendments to the Customer Complaints Code done as part of the review in recommendation DR1.	See comments above. We disagree with 10 working days as this does not allow RSPs adequate time to investigate complaints properly and is likely to result in poor decision making. We consider 15 working days a more appropriate timeframe.
DR14	To ensure consumers have confidence that their dispute will be dealt with quickly and efficiently and without undue delay: <ul style="list-style-type: none"> • the TDRS should display sufficient independence from Scheme Members by proactively deadlocking complaints where the complaint has not been resolved within the deadlock period; 	Agreed. However we think it makes more sense to implement this as part of the deadlock period reset (DR13) for consistency. See our earlier comments on timing of Phase 1 changes
DR14	To ensure consumers have confidence that their dispute will be dealt with quickly and efficiently and without undue delay: <ul style="list-style-type: none"> • the TDRS quality assurance framework should be amended by 1 April 2022 to require assurance reviewers to check whether Resolution Coordinators are deadlocking complaints promptly in line with the Customer Complaints Code; and • the Scheme Agent should put processes in place to ensure that the deadlock period is tracked and reported upon. 	Agreed

DR15	Improve the complaints handling process to ensure that consumers' complaints that involve Wholesale Scheme Members are resolved quickly and efficiently (see DR1).	Agreed. See our comments above. It is important Wholesale Scheme Members are resolved quickly and efficiently. This is a cause of frustration for consumers and RSPs today, and should be addressed as soon as possible
DR16	Revise the TDRS internal complaints handling processes so that consumers do not need to submit their complaint more than once. The TDRS should ensure that it offers and supports various means of submitting complaints (such as over the phone or referrals from consumer agencies) to ensure all consumers are able to make a complaint.	<p>Agree. This is useful to formalise, however there can be times when the customer wishes to refine their complaint following discussions with the RSP - for example if it is a multifaceted complaint where one part has been addressed, or another issue is identified as part of the investigation.</p> <p>Therefore, we suggest that the default is that a customer's original complaint does not need to be resubmitted, but that the customer has the option to refine their complaint if they feel this is necessary.</p> <p>Our only proviso on this is that if the complaint changes substantially from what was originally raised with their provider, then the RSP should have another chance to resolve before it moves to deadlock. This would only need apply where the changes are so significant they should effectively be considered a new complaint.</p>

<p>DR17</p>	<p>When deadlock has occurred, the TDRS should immediately remind the relevant Scheme Member(s) of its/their obligation to cease credit recovery action and to desist from disconnecting consumers</p>	<p>There are two issues which need to be considered here:</p> <p>1) sometimes deadlocked customers choose not to pursue their complaint to TDRS. Debt recovery action should be able to resume if this is the case after a reasonable period of time.</p> <p>2) Debt recovery/disconnection should be able to continue on uncontested aspects of the customer's account. For example if a customer is disputing a roaming charge on a bill this should not impact their ability to pay the rest of the bill.</p> <p>This recommendation should be updated to include a reminder from TDRS to the customer that the customer needs to pay the un-disputed bits of their bill.</p> <p>10.5 of the CCC confirms that a customer does not have to pay <i>the disputed part</i> of the bill while their Scheme Member investigates and confirms whether there has been an error.</p> <p>11.4 of the CCC confirms that, for the avoidance of doubt, services may be restricted while a complaint is lodged with TDRS, although the service relating to the dispute should not be disconnected or credit recovery action started until the process is completed.</p> <p>11.5 of the CCC states that the customer should not be disconnected for non-payment of part of an account that is the subject of a Complaint to the TDRS. However, a Customer may be disconnected for non-payment of that part of an account which is not in dispute</p>
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		<p>There any changes to this approach will require a change to the Code. However, as noted above, we think the existing policy is correct. Otherwise customers can use the complaints process on an minor part of their bill to avoid action on the rest of their bill which is not in dispute.</p>
<p>DR18</p>	<p>All parties should have equal opportunity to provide views and respond to others' submissions during the Complaint Summary process. Adjustments should include, but are not limited to:</p> <ul style="list-style-type: none"> • revising the TDRS' internal processes to provide consumers with an opportunity to respond to the Complaint Summary; and • revising clause 40.8 to explicitly permit consumers to respond to the Complaint Summary including to provide 	<p>Agreed. This should be the standard process</p>

	their response to Scheme Member submissions that the complaint should be ruled outside jurisdiction (see DR1)	
DR19	A mandatory proposed determination step in the complaints handling process should be added to improve the quality of determinations by allowing parties to ensure that key facts are accurate before the determination is finalised.	Agreed. This should be the standard process
DR20	<p>Ensure that governance responsibility for the TDRS sits with the TDRS Council, to ensure:</p> <ul style="list-style-type: none"> • The TDRS Council has the powers to set and amend the rules for the TDRS including, but not limited to, jurisdiction, monetary compensation, process quality, and Scheme Members’ roles and responsibilities. • The Scheme Agent is accountable to the TDRS Council enabling the TDRS Council to: <ul style="list-style-type: none"> o set and manage the terms of the Scheme Agent’s contract; o set KPIs and assess the Scheme Agent’s performance; and o either (a) set the budget for the scheme; or (b) make recommendations to the TCF for the scheme budget 	Agreed.

DR21	<p>The TDRS Council’s composition should be rebalanced to ensure that resolutions can be passed using a combination of independent council members and either consumer group or industry group representatives, ensuring that no one group has the effective or explicit right of veto.</p> <p>This could be accomplished by:</p> <ul style="list-style-type: none"> • having an independent chairperson, with equal numbers of consumer and industry representatives, and a simple majority required to pass a resolution; or • the TDRS Council could be comprised of equal numbers of independent, consumer and industry representatives, with a two thirds majority required to pass a resolution. 	Agreed.
DR22	<p>Adjust the terms for which the TDRS Council members can serve, to ensure continuity through longer tenures. This should be coupled with regular, staggered refreshes of the council members.</p> <ul style="list-style-type: none"> • There should be a limit placed on the number of consecutive terms for which members can serve. This will ensure the TDRS Council members and Chair are refreshed on a regular basis. 	Agreed.

DR23	<p>The TCF should actively encourage a broader membership of the TDRS. This should, at a minimum, include engaging on a regular basis with smaller telecommunications providers to encourage them to join, and to understand and address the potential barriers to them becoming Scheme Members.</p>	<p>While TCF can encourage providers to join TCF, the increased cost of the scheme will act as disincentive to join. There is also little incentive on RSPs with poor customer service to join the scheme.</p> <p>We consider TDRS should be mandatory for all providers who offer retail telecommunications service to New Zealand consumers, and their wholesale providers. This should be technology neutral and include fixed, mobile and satellite service providers.</p> <p>This will ensure all consumers buying telecoms service receive protection, and the cost of the scheme can be spread widely.</p>
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<p>DR24</p>	<p>The Customer Complaints Code should be amended (DR1) to ensure that:</p> <ul style="list-style-type: none"> • Complaints relating to the 111 Contact Code, Copper Withdrawal Code and other Commission Codes are explicitly recognised as being within the jurisdiction of the TDRS. • Consumers are able to appoint a lawyer to act on their behalf in relation to a complaint without causing their complaint to be deemed to be outside TDRS jurisdiction. • Complaints in respect of RSQ matters for which providers have legal obligations are within scope (see DR3). • Consumers have longer periods to access the scheme (ie, longer than the existing 12 month limit) and to respond to offers of resolution from their provider before a complaint can be closed (ie, longer than the six-week limit). • The compensation limits keep pace with those of the Disputes Tribunal, and the remedies available are consistent with those available at the Disputes Tribunal 	<p>The Code should avoid duplicating obligations that sit elsewhere as this can complicate compliance and risks requirements become out of date as they change in other documents.</p> <p><i>Lawyers</i></p> <p>We disagree that customers appointing a lawyer <i>to act on their behalf</i> should be able to use the scheme as that changes the nature of the discussion.</p> <p>We are not against consumers receiving legal advice or having their complaint written or prepared by a lawyer.</p> <p>However all communication should be between the scheme member and the individual. Scheme members should not be required to communicate directly with the customer’s lawyer, and lawyers should not be able to lodge a complaint on behalf of a client.</p> <p>This approach would be consistent with the Disputes Tribunal where hearings are private and the respondent cannot have a lawyer to represent them¹.</p> <p><i>Period to access the scheme</i></p> <p>We agree that customers should have longer periods to access the scheme but it would be useful to have a backstop on timing such as 3 years.</p>
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¹ <https://disputestribunal.govt.nz/going-to-a-hearing/what-to-expect/>

		<p><i>Compensations Limits</i> We agree that compensation limits should keep pace with the Disputes Tribunal</p>
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Appendix 2 – Customer Complaints Code Exclusions

(CODE) Exclusions from Scope		Our Interpretation	Spark's Comments
18.1.1	if it relates to an entity that was not a Scheme Member at the time that the event that triggered the Complaint occurred, or at the time the Customer made the complaint;	A customer cannot make a complaint through TDR if it is regarding an event that occurred before the SM joined the Scheme	We agree with this exclusion and the existing wording
18.1.2	if it is frivolous or vexatious or trivial;	If a customer is acting in a vexatious manner, or the complaint is deemed trivial or frivolous.	We agree with this exclusion and the existing wording
18.1.3	if it is a request for information;	A request for information is not considered a complaint. (ie A question from a customer about an account balances, pricing , information around processes etc)	<p>We agree with this exclusion and the existing wording which refers to what we call an <i>Enquiry</i>.</p> <p>See comments above on DR4 for why we do not consider it appropriate to tell customers about the TDRS scheme if they are simply requesting information or clarity on their account and where they do not wish to a raise a complaint.</p>
18.1.4	if it relates to equipment and/or applications the Customer owns which the Scheme Member does not support;	If the customer is having issues with equipment they have not purchased from the Scheme member or is using applications not supplied or supported by the Scheme member. eg : 3rd party modems, 3rd party WiFi or mobile extenders, installing publicly available software not supplied at point of sale on their device etc.	<p>We agree with this exclusion and the existing wording</p> <p>Scheme Members are not responsible for the fitness to purpose, interoperability or performance of services they do not supply or support.</p>

<p>18.1.5</p>	<p>if it relates to the level of charges Scheme Members choose to set;</p>	<p>A customer may complain about the Scheme members right to levy a charge, but not the amount of that charge. i.e: A customer may complain that the scheme member charges for duplicate copies of account statements, but cannot complain about how much the SM chooses to set for that service.</p>	<p>We agree with this exclusion although we accept the wording could be clarified.</p> <p>Customers should be able to dispute whether a charge has been levied correctly, or has been communicated correctly.</p> <p>But they should not be able to dispute that the RSP has a charge as part of its plans, or the amount of the charge itself (so long as it has been clearly communicated to customers)</p>
<p>18.1.6</p>	<p>if it relates to the extent of network coverage;</p>	<p>A customer may complain that a network service provided by the scheme members has degraded or is not performing as it should, however a customer cannot complaint to that a particular network is not yet available at a given location.</p>	<p>We agree with this exclusion and the existing wording</p> <p>If an existing service is supplied to the customer and coverage deteriorates to a substantial level then the customer has a right to claim. Or if the provider makes a claim about a service being available when it is not, then the customer has the right to complain.</p> <p>However if a network is simply not available (i.e: no infrastructure or capacity), and we are not claiming it does exist, then the customer should not be able complain to TDR about something that is not available or doesn't exist.</p>

18.1.7	if it relates to 111 emergency calls, which should be referred to the relevant emergency service;	A customer may complain if their telecommunications service provider or wholesale network provider prevented their call to the 111 call answering point (ICAP) but they cannot complain about how an emergency service provider answers their call or responds to their call.	We agree with this exclusion and the existing wording. Complaints to TDRS should be limited only to issues with connectivity between the customer and the ICAP eg the call failing to connect or having insufficient call quality. This is the only part that the provider is responsible for.
18.1.8	if it is a grievance by one Scheme Member against another;	Scheme Members should not use the CCC to complain about any Scheme Member	We agree with this exclusion and the existing wording
18.1.9	if it relates to the content of any Yellow Pages advertising service additional to that provided under a standard residential or business fixed line telecommunications contract. Complaints about advertising content should be referred to the Advertising Standards Authority	Customers cannot complain about the content published by Yellow Pages. Any advertising complaints ought to be made to the relevant Disputes Authority. i.e: ASA	We agree with this exclusion and the existing wording
18.1.10	if it relates to privacy issues, which fall under the jurisdiction of the Privacy Commissioner;	Privacy concerns raised with the SM and are not resolved ought to be made to the relevant Disputes Authority. ie: PCO	We agree with this exclusion and the existing wording
18.1.11	if it is a grievance subject to legal action and/or being pursued in alternative forums, including any forum set out in clause 17.8;	If a customer has engaged a lawyer or similar to take an action against the provider, or has the same complaint being heard at another forum (i.e: Disputes Tribunal, District/High Court) they may not engage the SM via the Scheme.	We agree with this exclusion and the existing wording Any change could lead to conflicting decisions and could be Prejudicial.
18.1.12	if it relates to matters for which the Customer who is complaining does not have sufficient interest in;	The matter being complaints about must affect them or their service connection, and must be a genuine expression of dissatisfaction with Telecommunications services, systems, processes and/or staff by a Customer.	We agree with this exclusion and the existing wording
18.1.13	if it relates to matters which the Scheme Member is prevented by law from resolving;	Neither customer nor TDR can compel a Scheme Member to break the law.	We agree with this exclusion and the existing wording

			i.e: a request for personal information of a 3rd party or non-Agency request to trace calls etc.
18.1.14	to the extent that the grievance relates to domain names and would be in the jurisdiction of the Office of the Domain Name Commissioner.	Domain Name concerns ought to be made to the relevant Disputes Authority. i.e: Office of the Domain Name Commissioner.	We agree with this exclusion and the existing wording
18.1.15	if the Customer is claiming more than \$15,000.00 in the value and in respect to their grievance or in the aggregate of all grievances based on the same subject matter against the same Scheme Member	Customer cannot make claims totalling more than \$15,000.00	Spark has previously requested this be reviewed and we are comfortable with this being aligned with the Disputes Tribunal values.
18.1.16	if the Customer has previously made a Complaint to the TDRS about the same Scheme Member based on substantially the same events and facts unless there is relevant new information	Customer cannot re-raise substantially the same complaint at TDR which has previously been raised.	We agree with this exclusion and the existing wording
18.1.17	if it relates to a Corporate Customer or a Government Customer	The CCC is a Consumer and SME code.	We agree with this exclusion and the existing wording
18.1.18	if the Customer has previously accepted, and been provided with by the Scheme Member, an agreed resolution to the specific event or events.	Customer cannot re-raise substantially the same complaint at TDR which they have previously accepted a resolution for.	We agree with this exclusion and the existing wording
18.1.19	if the Customer cannot reasonably identify a specific event by timeframe or date.	The Scheme Member must have sufficient information from the customer to reasonably identify or investigate the complaint.	We agree with this exclusion and the existing wording
18.1.20	if the Customer's Complaint is "general dissatisfaction" not specific to a product, service or event	Complaints can be rejected if they are not the customer, the matter being complained about does not affect them or their service connection, they are generally unhappy but cannot raise a specific event.	We agree with this exclusion and the existing wording

<p>18.1.21</p>	<p>if it relates to Broadband congestion or speed, unless the Broadband service is sold with a Committed Information Rate</p>	<p>Customers cannot complaint about the general availability of services.</p> <p>However, they can complain about congestion or speed if the Broadband product was sold to the customer with a specific speed or throughput guarantee.</p>	<p>We agree this exclusion should be reworded in a more consumer friendly way which reflects current practice.</p> <p>The exclusion should only relate to Broadband availability or speeds available at their location. For the avoidance of doubt customers should be able to complain where they have been misled over their likely actual performance, or where the speed of their service has degraded over time due to factors in the telco network.</p> <p>Currently broadband plans are not sold with speed guarantees, and instead are provided with a general indications of possible speeds.</p> <p>However, we accept that customers should be able to complain about significant degradation to their service since installation, where this has been caused by the network provider.</p> <p>Customer should not be able to complain about their internet slowing down if that was to do with an increase of traffic generated in their home, changes to their home network and devices etc</p>
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			We note that the Commission is looking at how RSPs describe speeds of plans and technologies and has advised RSPs talk about the peak time average of plans. It is important that RSPs are clear that the peak time average speed is not the speed that the customer will get on average.
18.1.22	if it relates to interactions or conduct of the Scheme Member's authorised Debt Collection or Recovery Agency or that Agency's collection fees and/or costs.	Customers cannot complain about the actions of an authorised (3rd party) Credit or Collection agency.	We agree with this exclusion and the existing wording
18.1.23	if the Scheme Member has previously, in writing, offered the Customer a resolution to a Complaint and the Customer has not responded to the Scheme Member within 6 weeks of the offer having been made and the Scheme Member warned the Customer within that timeframe that a failure to respond would exclude them from the using the TDRS.	If a Scheme Member has offered a resolution to the customer in writing and they have not replied to that offer within 6 weeks then they are unable to raise it at TDR	The six weeks ought to be amended in line with the revised Deadlock timeframe.
18.1.24	if the Scheme Agent is reasonably satisfied that the Customer has refused to engage with the Scheme Member or otherwise acted in bad faith in relation to attempting to resolve the Complaint.	If the customer doesn't engage in a meaningful way with the Scheme Member, or if the engagement is in an abusive, threatening or racist manner.	We agree with this exclusion and the existing wording.

[ends]