

Have your say on the Telecommunications Dispute Resolution Scheme

Your details

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What do you think is currently working well?

While some aspects of the Scheme appear to be working well, based on our general observations there is significant room for improvement in relation to a number of factors including independence, awareness, usage, structure, and processes of the Scheme.

Some aspects which appear to be working well include:

- Consumer satisfaction level - in its 2019/20 Annual Report the TDRS shows an 89% satisfaction level from complainants. 93% of those surveyed agreed TDR staff were friendly and courteous and 85% of respondents agreed that TDR staff listened and understood their complaint. This score may need to be tempered by just 0.05% of New Zealand residents accessing the Scheme, as explained below.
- The TDRS has an active presence on Facebook.
- The TDRS appears to have achieved most of its internal business performance targets and has helpful case note studies available in its report.

What do you think could be improved and how?

We set out below the areas in which we believe the TDRS could improve and where there appear to be fundamental flaws with the Scheme.

The scheme should demonstrate more independence

Our view is that for the TDRS to be independent it needs to operate as a not-for-profit, mandatory scheme with all telecommunications providers required to join.

Membership of a scheme needs to be mandatory for a scheme to be independent. This reduces the influence, both real and perceived, of scheme members on the case management and decision-making process. An extreme example of a potential problem with a voluntary scheme would be where a scheme member threatens to withdraw because of a finding that was not favourable towards them. Another extreme example is where a voluntary scheme is incentivised to account for a scheme member's concerns in a case and may find more favourably towards the scheme member than it would if it were fully independent.

A scheme can be funded by its industry and remain independent if membership of the scheme is mandatory and the scheme is not-for-profit.

Also important is the perception of independence. A scheme where membership is not mandatory and is for profit will be viewed by consumers as being influenced by industry. A for profit dispute resolution scheme is also potentially a reputational risk if Government is endorsing a particular service provider.

TDRS reports to a governing Council which is made up of industry representatives and consumer representatives in equal numbers. We believe there can be a perceived lack of independence in having a governing council made up of industry representatives from organisations from which the scheme considers complaints about. It would be preferable if the governing Council were made up of independent directors.

TDRS is part of FairWay Resolution Limited. Fairway is an employee trust owned company which we understand is run for profit. It is a large conflict and dispute resolution organisation with over 100 persons working across the country. Fairway does not specialise in any particular industry rather it handles a wide and disperse range of dispute resolution schemes including ACC, building and construction, financial, relationship property, workplace coaching, student, family and commercial as well as running a specialised telecommunications dispute resolution scheme.

TDRS has no centralised decision maker

We understand TDRS uses a variety of resolution practitioners, contracted by FairWay, who act independently when writing their decisions. This process could be improved with the introduction of a centralised decision maker.

A centralised decision maker can be pivotal in a successful scheme, particularly where complaints are unable to be settled. It allows for greater consistency of decisions, without the cost of litigation to provide judicial precedent and provides certainty for both consumers and scheme members so long as decisions are readily accessible.

Including a standard of 'fair and reasonable' that a centralised decision maker can exercise is also important. It enables the decision maker to recognise a legal position or precedent, but also depart from them when having regard to the facts of a particular case.

Time frame for resolving complaints is too long

According to the TDRS Customer Complaints Code it deadlocks a complaint "*Where more than 6 weeks has passed since the Customer complained to the Scheme Member and no final response has been forthcoming*" or "*A customer is not satisfied with the Scheme Member's final response to a Complaint and the Customer has received a Referral Number.*"

We believe a 6-week time frame for acceptance of a deadlocked complaint is too long.

The Australian Telecommunications Industry Ombudsman (TIO) has a 15-day requirement. Lengthy delays can discourage consumers from following through with their complaints. Most consumers want their concerns resolved rapidly. This is particularly true given the importance of being connected through telecommunication in contemporary lifestyles with some consumers believing such connection is an essential service and others believing it ought to be a basic human right.

Limiting numbers of Dispute Resolution Schemes

More and more businesses are diversifying the services they provide to consumers and selling them as a bundle of offerings. This trend can be seen in the energy industry where several retailers now bundle broadband/fibre products with the provision of electricity and gas. This can create barriers to dispute resolution if a consumer must deal with multiple agencies to resolve an issue. It is a potential disadvantage of TDRS which can only deal with telecommunications related complaints and must refer other complaints elsewhere. Utility providers themselves should not have to engage with two separate dispute resolution services.

A single utility dispute resolution scheme provider could reduce consumer confusion and maintain consistency across the sectors.

Global trending supports consolidation of scheme providers to handle utility sector disputes. For example, in the UK, the Ombudsman Services deals with both Energy and Telecommunications. This provides a single seamless point of contact, greater awareness of the dispute service, ease of accessibility and increased consistency of decisions across the utilities sector.

An example of the growing synergy between the two sectors is the partnership between Vector and Amazon Web Services (AWS). AWS has announced a strategic alliance with Vector to jointly develop a New Energy Platform (NEP). Powered by AWS, NEP is an Internet of Things (IoT) and analytics solution for the energy industry and will be introduced first in Australia and New Zealand, to help deliver more affordable, reliable, and cleaner energy options to consumers. Through this strategic alliance, Vector and AWS will leverage the breadth and depth of AWS services, including IoT, analytics, machine learning, and infrastructure services, with Vector's energy industry knowledge, plus the joint engineering capability of both organisations.

Low awareness and low effectiveness of TDRS

The TDRS needs to be more widely known so that consumers have confidence that if they are unable to resolve an issue with their provider there is a further independent avenue readily available. It signals a mature industry and provides a much-needed safety net for consumers.

Recent media publicity suggests that consumers in New Zealand contact a myriad of different agencies about their telecommunications disputes. Many appear to refer their telecommunications concerns to other agencies such as Citizen Advice Bureau, MP's electorate offices, Community Law Centres, and regulators.

To illustrate, the Commerce Commission in its Complaints Snapshot 2019/20 received 761 complaints about Telecommunications retail service providers, an increase from previous years. This was surpassed only by travel related complaints, at 1225, an industry with no clear dispute resolution service, and strongly impacted by COVID-19.

Utilities Disputes itself, in the year to 1 December 2020, received approximately 174 enquiries about telecom issues which were referred on to TDR.

On 15 November 2020, Consumer NZ Chief Executive John Duffy, in an opinion analysis for *Stuff Business* said that even a global pandemic was not enough to knock the longstanding "champion" the telecommunications sector, too far of its perch as the worst performer on the complaints table. He went on to say that *"telcos have privileged positions in highly concentrated markets – they deal with huge numbers of customers and bring in huge numbers in revenue. This should come with the expectation that they do the right thing by consumers..... It is critically important the commission*

publishes its complaint stats. Sunlight is the best disinfectant and the industries topping the list – particularly repeat offenders like telcos – should take note that they’re failing to meet the expectations of their customers and do better.”

The descriptions in the report of the telecommunications complaints were such that an effective TDRS ought to be receiving them.

The MBIE, NZ Consumer Survey 2018 says *“Those who experience issues with mobile telecommunications services are more likely than average to say that they are unlikely to be resolved”*.

The numbers of complaints that the TDRS actively resolves appear to be on the low side. Its Annual Report for 2019/20 shows it closed 98% or 2,752 of enquiries and complaints received often after just a single phone call to TDR. The Report disclosed 60 matters being actively resolved by TDR. This equates to 1% or 33 being settled with help from TDR facilitators and mediators and 1.5% or 27 decisions being made.

The Australian TIO, in its annual report for 2019/20, reports receiving 318,797 contacts of which 127,151 were complaints.

These figures equate to 0.05% of NZ’s population accessing TDR and 1.27% of Australia’s population accessing TIO.

Limited monetary jurisdiction

The TDRS’ jurisdiction of \$15k while sufficient for personal telecommunication users, appears low particularly if complaints from businesses are received which generally include higher monetary amounts.

The UK Ombudsman Services, which deals with energy and communications complaints, recently asked government to allow more small companies to access its services to address an imbalance of power between telecom (and power) providers. It said its research showed that the larger the company “the more likely it is to want to take a telecoms (or energy) complaint to a third party for redress”. (Ombudsman Services UK website article, “Give SME’s access to redress to boost recovery”, 25 November 2020: www.ombudsman-services.org.)

Accessibility and community outreach could be improved

It is crucial that the TDRS is readily accessible to all those living in Aotearoa New Zealand.

The UK Ombudsman Services, acknowledges that complaining is not easy and sees its role being to “make sure it’s fair”.

We believe more can be done by the TDRS to reach vulnerable people in the community.

We have set out below under “other comments” some of the steps Utilities Disputes is taking to reach all parts of the community.

Are there any other ways you think TDRS could be improved for the benefit of consumers?

It is our view that a stronger and more effective TDRS that has buy-in from the industry, yet remains fully independent, could make a significant difference to consumers in New Zealand. It can model to industry how to resolve complaints fairly in a way that empowers the consumer.

Where providers are levied for each complaint that is accepted for investigation (after the provider has been given an adequate opportunity to resolve it themselves) there is a real incentive for providers to improve their customer service.

This coupled with dispute resolution service facilitated training provided to retail providers' customer service teams, data provision and systemic issue reporting can make a marked difference. As retail markets in telecommunications continue to be competitive and the margins are less there is a real incentive to retain a customer. Zendesk's consumer survey 2013 found "After a bad customer service experience, 39% of customers will avoid a company for two years." (Zendesk.com article: Poor Service Frightens Away Customers for Years to Come.)

Below, under "other comments", is information on how we believe the energy industry has responded to Utilities Disputes as its dispute resolution service and how, as a result, energy providers have improved their internal customer service.

Expanding the jurisdiction of TDRS

In June 2019, the Australian Competition and Consumer Commission (ACCC) released its final report on the Digital Platforms Inquiry covering competition law, consumer protection and media regulation and privacy. It called for dramatic reforms to address online dominance of digital agencies such as Facebook and Google.

The ACCC recommended substantial changes to Australian Consumer Law to address imbalances in bargaining power between digital platforms and consumers when it comes to terms of use and particularly privacy.

An example is where a digital platform imposes invasive privacy terms on its users, which outweigh the benefits of the service provided. The ACCC called for digital platforms to face significant fines for imposing unfair contract terms on users.

The report recommends a new mandatory standard to bolster digital platforms internal dispute resolution processes. This would be reinforced by the creation of a new Ombudsman Scheme to assist with resolving disputes and complaints between consumers and digital platforms. The ACCC considers that the Australian TIO may be an appropriate body to implement the scheme.

Utilities Disputes suggests the Commerce Commission investigate the feasibility of expanding the jurisdiction of a TDRS to include such complaints in New Zealand.

Another area in which the TDRS could eventually be expanded relates to the 17 September 2020 open letter to the telco industry from the Commerce Commission concerning the development of a consumer data right allowing consumers to share usage and product data between telcos and with comparison services. Once implemented if complaints arise from this initiative the TDRS could provide a dispute resolution scheme for complaints from consumers about possible inappropriate use of their data and related matters. Utilities Disputes has been given this role by the Electricity Authority as explained below.

Other comments

Background of Utilities Disputes and insights it has gained from its dispute resolution work in the utilities sector

To assist the Commerce Commission in its review of the TDRS we set out some factors below which we believe has made Utilities Disputes an effective and successful dispute resolution organisation in the energy industry and has worked with industry to improve customer service.

Utilities Disputes is a specialised independent, not-for-profit company that provides expert resolution for complaints and disputes arising in the utilities sector that our members have not been able to resolve. We consider cases between consumers and scheme members, and indemnity disputes between scheme members such as those stemming from the Consumer Guarantees Act.

We currently operate three dispute resolution schemes:

- A Government approved Energy Complaints Scheme
- a Government approved Broadband Shared Property Access Disputes (BSPAD) Scheme, and
- a voluntary Water Complaints Scheme.

This year Utilities Disputes was appointed by the Electricity Authority (EA) as the provider of a dispute resolution scheme to manage complaints relating to its Additional Consumer Choice of Electricity Services (ACCES Hub) where complaints are unable to be resolved directly between the parties. This was an initiative by the EA to enhance additional consumer choice of electricity services and customer access to their data and to share their electricity consumption data with businesses and organisations they trust.

Each Scheme has been tailored to a unique set of requirements; our model includes early resolution, conciliation, investigation, and a centralised decision maker. We have refined these processes since we began operation in 2001, almost 20 years ago.

Utilities Disputes' has one central governance structure overseeing its discrete dispute resolution schemes. This structure is cost efficient because costs can be shared proportionally between the appropriate schemes.

Utilities Disputes is governed by an independent Board. The Board has set up Advisory Committees for its Energy and BSPAD schemes (and is considering an Advisory Committee for its voluntary water scheme), made up of industry and consumer representatives. This maintains industry feedback for our operations and provides advice to our Board.

Utilities Disputes' tagline is Prevent, Educate and Resolve:

- **Prevention** through its external training and methodology
- **Education** through systemic issue reporting
- **Resolve** through alternative dispute resolution framework.

Utilities Disputes provides an end-to-end service going beyond merely resolving complaints and providing education through data gathered in our industries about systemic issues and preventing complaints arising via training, forums, and webinars.

An independent dispute resolution provider with a centralised decision maker should be considered for TDRS.

Community engagement

As mentioned above TDRS could do more to increase its engagement with consumers.

To illustrate Utilities Disputes has identified community engagement as a strong focus area.

We are employing a Community Engagement Officer to be based in South Auckland to improve awareness and accessibility of our services. Utilities Disputes is investing significantly in this area as it believes one of its main purposes is to be accessible to all people living in New Zealand. This initiative is welcomed by community groups in South Auckland and Porirua. Success will provide confidence to expand the Community Engagement Officer role into other vulnerable communities in New Zealand.

We are also collecting demographic data including age groups and ethnicity from our callers, which will enable us to measure our community outreach success.

The Electricity Authority is updating its guidelines for vulnerable and medically dependent customers which has widespread buy in from the electricity industry. Utilities Disputes has been involved in assisting with this rewrite.

The 2019 Electricity Price Review Report, which can be found on the MBIE website, recommended several improvements for communications by the industry to their customers to ensure all their customers are aware of their right to refer matters that cannot be resolved with Providers to Utilities Disputes. We have been involved closely with the EA in developing new guidelines which we anticipate will increase awareness of our service.

Alignment with Government Centre for Dispute Resolution

We are working closely with the Government Centre for Dispute Resolution (GCDR), part of MBIE, which is developing New Zealand specific benchmarks including Treaty of Waitangi principles. These will be incorporated into our processes.

Our mediators will be trained to increase their understanding of te reo Māori dispute resolution and equip them with tools and encourage mediators to apply Māori dispute resolution techniques where appropriate

The aim of the GCDR's new benchmarks is to build a shared understanding of what constitutes best practice for dispute resolution in Aotearoa, support continuous improvement and deliver better outcomes for New Zealanders who experience disputes. This will contribute to growing a mana enhancing dispute resolution system for Aotearoa which meets the needs of New Zealanders now and can adapt to their needs in the future.

We are currently participating in a pilot of the GCDR's best practice framework, including a set of model standards and organisational capabilities. The pilot will ensure that the tools, guidance and support that GCDR provides will meet the needs of a diverse range of schemes and regulatory systems. Insights from the pilot will also inform the approach GCDR takes to implementing the framework across the broader dispute resolution system. A staff member is presenting at a GCDR launch event.

How has the Energy market responded to an effective dispute resolution scheme?

Utilities Disputes has seen a marked improvement in customer service from the energy industry over recent years. We enjoy broad support from our members and Utilities Disputes is well respected by its peers in NZ and Australia.

These improvements within the industry have led to less disconnections, and a reduction in complaints requiring investigation. Most energy companies now have more focused and dedicated customer service teams. During COVID-19 lockdown the Energy Industry, spearheaded by the Electricity Authority, came together productively as an industry via a large working group. Utilities Disputes was part of that working group and while its agenda was diverse there was a strong emphasis on support for the consumer.

Training - Our Scheme members are offered external training, which helps improve its customer service. Training includes topics such as recognising a complaint, how to handle a difficult customer and principal methodologies and theories of ADR.

Utilities Disputes provides free monthly webinars to its members. The topics vary depending on market trends, systemic issues or members suggesting a discussion topic. We have found this a useful platform to informally upskill and train our members.

Increased accessibility - We provide accessibility through new technologies such as live chat on both social media and our website, call back request forms and enhanced telephony and telepresence functionality. Utilities Disputes provides extended weekday operating hours and is open on Saturdays. When we refer callers back to providers to resolve complaints, we contact those callers after 20 days to confirm they were able to resolve their issues satisfactorily.

Strong relationship with regulators - Utilities Disputes has a strong working relationship with the regulators in the energy industry, providing monthly reporting on cases. Regular meetings with the Electricity Authority and other regulators and industry representative bodies are held to discuss market trends and development and the ongoing maturity of the Energy scheme. We envisage a similar partnership exists between the Commerce Commission, industry and the TDRS.

Next Steps

We intend to make the further requested submissions by 26 February 2021 on improving retail service quality (RSQ) for telecommunications consumers by providing our views on the key “pain points” being experienced by consumers and how they could be remedied.

In the meantime, we are available to speak to this submission in person or by video link as appropriate.

If we can be of further assistance at this stage, please contact Hamish Clareburt at h.clareburt@utilitiesdisputes.co.nz

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