



By email: [REDACTED]

23 May 2024

UDL Submission - 2024 Review of the Telecommunications Dispute Resolution Scheme (TDRS)

Introduction

Utilities Disputes Limited Tautohetohe Whaipainga (UDL) welcomes the opportunity to provide feedback on Telecommunications Commissioner Tristan Gilbertson's letter to mobile, broadband and consumer stakeholders dated 11 April 2024 as published on the Commerce Commission's (Commission) website. The letter asks for feedback on TDRS' improvements since its 2021 review. This document sets out UDL's view.

UDL - Overview

UDL is an independent, not-for-profit organisation that resolves complaints between utilities companies and their customers.

We currently operate three main dispute resolution schemes: a government approved Electricity and Gas Complaints Scheme, a Broadband Shared Property Access Disputes Scheme, and voluntary Water Complaints Scheme. We also provide a voluntary complaints resolution scheme for telecommunications complaints for one energy provider.

Our aim is to facilitate a strong relationship of trust between consumers and utilities organisations and focus on three aspects - Prevent, Educate and Resolve.

UDL – Telecommunications Industry

UDL acknowledges the important role of the TDRS in the telecommunications industry and appreciates the opportunity to provide input on the review of the service.

UDL provides a telecommunications scheme for an energy provider.¹ Yet we make our comments primarily from our experience from providing New Zealand's mandatory disputes resolution scheme for the electricity and gas sector.

¹ UDL's Telecommunications Complaints Scheme is not an Industry Dispute Resolution Scheme under Part 7 of the Telecommunications Act 2001. It does not consider complaints about Industry Retail Service Quality Codes or Commerce Commission Codes.

UDL – Feedback

Against the background of the six key areas the Commission wished TDRS to improve upon in 2021, UDL will provide feedback, taking these three questions asked by the Commissioner as a guide:

(1) How effective have the changes to TDRS been in improving outcomes for consumers? Please tell us where you consider changes have or have not been successful and the reasons for your view.

(2) Are there any other ways TDRS could be improved for the benefit of consumers and to maintain best practice in this area? Please tell us what further specific changes you consider necessary and why.

(3) Are there any issues or opportunities that should be addressed in this review?

UDL responds to these questions taking into account the publicly available material. TDRS' internal data and documents will provide further information that will assist any evaluation of progress.

How effective have the changes to TDRS been in improving outcomes for consumers?

UDL acknowledges the many changes to the TDRS in response to the 2021 review. TCF itself sets out how it sought to respond to the Commission's review in the appendix to the document, *Telecommunication Dispute Resolution Scheme Review, Public Consultation Overview Paper* 20 March 2023. A review of the TDRS website shows a renewed effort to communicate with the public in a variety of languages, summaries of the process, and case studies.

Are there any other ways TDRS could be improved for the benefit of consumers and to maintain best practice in this area?

There are some areas which may require further review:

- a) The new documents are relatively complex, even for those used to complaint handling: The *TDRS Terms of Reference (TOR)*; TCF's *Customer Care Code (CCC)*, the retailers *Customer Care Policy*, and the *TDR Disputes Procedure Process (TDR DPP)*.² This latter document is the most accessible in reading style, however in terms of fairness and accessibility some review of these core documents may be necessary to ensure the average consumer can understand the TDRS process.

² The public nature of this document may need to be clarified if it is the document noted at *TOR* cl 2.1(s): "The Disputes Procedures Process is an internal TDR Limited document."

- b) There is an effort in the documents to adopt a more informal style in terms of process, however a review of the complaint registration procedure may be necessary. It is not clear how this works in practice, however the registry prescriptions may not need to be as many or so legalistic to ensure delivery of a consumer-friendly scheme (see *TDR DPP*, Complaint registration Purpose clause 2, page 3). For example, the necessity of a complainant having to confirm that the written record is accurate appears legalistic with an affidavit like quality. UDL's experience is that most complainants are forthcoming, co-operative and their complaints easy to understand. For more difficult complaints and complex matters, strategies like these can be helpful, but not necessarily so prescribed and normative (see also discussion below on the unique role and function of a consumer dispute resolution scheme).
- c) The deadlock procedure is 15 working days. However, for urgent matters, it may be necessary to insert a clause shortening this period at the Scheme Agent's discretion (see *TDR DPP*, Deadlock clause 1, page 2).
- d) At the proposed decision stage parties may comment on the facts of the decision (see *TDR DPP* Final Determination clause 3-5, page 8). It is unclear why there is a focus on the facts alone, and not the underlining reasoning. UDL's experience is that even at this late stage both retailers and consumers can provide valuable input on the reasoning of a decision. The telecommunications space, like all utilities, has a complexity seldom fully mastered by the most experienced, and a proposed decision can focus the attention of retailer and consumer in a new way, so that previously overlooked regulations and obligations can be offered that recast a decision.
- e) Progress has been made in making consumers aware of TDRS. While the actual practice may be clear, the expert's review may wish to confirm complaints received by phone are advised of the TDRS process. This appears to be implied in the scheme documents but is not explicit (see *TOR* 5.3; and *CCC* 12.8).
- f) The process of TDRS to identify systemic issues and its root causes may also require further review. Between July and December 2023, of the complaints and queries referred to TDRS, 89.8% have been resolved or closed directly between the provider and customer with little intervention from TDRS, while 7.2% were closed without any intervention from TDRS. TDRS formally investigated only 53 (3%) cases. The investigated cases will often be more serious or complex and thorough investigations are more likely to uncover systemic issues than direct referrals. The review might also want to consider whether more complaint details could be collected at referral stage to identify potential systemic issues. Sometimes there might be seemingly small issues that would not necessarily justify thorough investigations but it could affect a wide range of consumers and therefore have a significant impact on the industry as a whole. An example of this could be early termination fees that are not clearly communicated to consumers.
- g) As well as measuring prompted awareness of the TDRS as per the MBIE survey, the review may wish to consider unprompted awareness studies to get a fuller picture regarding TDRS' public awareness. UDL has received data from a recent Consumer NZ survey on unprompted awareness of dispute resolution schemes we could provide to the Commission if that was of interest.

Are there here any issues or opportunities that should be addressed in this review?

The review may be a further opportunity to review two areas:

1. The review standard appears to be set out in cl 19.2 of the TOR:

When considering a Dispute, the Scheme Agent shall have regard to:

- (a) fairness in all the circumstances;*
- (b) applicable contractual and general legal rights and obligations;*
- (c) TDR Guides, as contemplated in clause 11;*
- (d) the Customer Care Code, Code Compliance Framework and Other Codes; and*
- (e) previous Final Determinations (with a view to achieving consistency between Final Determinations, where appropriate)*

In our experience consumer dispute schemes often give greater prominence to the application of a fair and reasonable standard in decision making, with the other variables (such as b-e above) being matters a decision maker has regard to when determining what is fair and reasonable. The idea being, the decision maker must have regard to any contractual or industry standard but may depart from those if it is fair and reasonable in the circumstances of the case, as the process is intended to be less legalistic and formal than a court or tribunal. In practice little may turn on this point, however, a slight revision may make it clear this is the intention. In this regard the exclusion at clause 10 may need reframing as could be capable of being understood in a restrictive way preventing payments for inconvenience or distress (see schedule 4, TOR).

The flexible and informal nature of consumer focussed complaints schemes is further seen in that, while considering the law, such schemes may at times depart from it for a just reason.³ Accordingly, the review may wish to evaluate if the revised scheme has got the balance right in terms of the distinctive role consumer dispute resolution schemes have apart from the legal system.

Highlighting the flexible nature of complaints schemes UDL sees this illustrated in the telecommunication sector by the Australian Telecommunications Industry Ombudsman who can award up to \$1,500 for significant stress and inconvenience.⁴

2. UDL concludes its response by noting an aspect of Commission recommendation 7, that TDRS should take steps to reach “consumers from groups that are rarely using the TDRS.” Sometimes in a review such clauses can come at the end of a review, but often if such periphery groups are shown to have access to a scheme this can be a sign that other groups are also included. UDL is finding in its community outreach in its beginning phase, often groups who have poor contact with dispute resolution services would benefit most from them. UDL was able to resolve complaints referred during a community outreach event that would have not reached UDL otherwise. The review may wish to focus on such groups that would most benefit from the TDRS, and assess how each is being served, and their awareness of the scheme.

³ See *Contact Energy Ltd v Moreau* [2019] 2 NZLR 692 at [120-121]; see also [99-106].

⁴ See this matter which may have benefited by a more flexible approach in awarding compensation: <https://www.tdr.org.nz/resources/048600-fibre-installation>

If we can be of further assistance at this stage, please contact Markus Frey ([REDACTED]).



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