

17 April 2023

New Zealand Telecommunications Forum
Auckland
By email to: submissions@tcf.org.nz

SUBMISSION on the New Zealand Telecommunications Forum Inc's Telecommunications Dispute Resolution Scheme Review

1. Introduction

Thank you for the opportunity to make a submission on New Zealand Telecommunications Forum Inc's (TCF) Telecommunications Dispute Resolution Scheme Review (the Review). This submission is from Consumer NZ, an independent, non-profit organisation dedicated to championing and empowering consumers in Aotearoa. Consumer has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

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2. Comments on the Review

As noted in our previous submission on the Telecommunications Dispute Resolution Scheme (TDRS), we support changes being made to the TDRS to create a more effective dispute resolution scheme.

We have set out our answers to selected questions in the Public Consultation Overview Paper below.

***Question 2: Did you identify any inconsistencies across the documentation?
This could be through the terminology used, or the way the parties' rights
and obligations are described.***

We have not identified any inconsistencies across the documentation. However we think the wording of the documents could be improved. In their current form, the documents are, in places, difficult to read and understand, and not consumer friendly. Particularly, the revised TCF Customer Care Code (the Revised Code) is not written with the consumer in mind.

Some examples of wording in the Revised Code that would benefit from review include:

- Clause 10.2.6– we consider that the phrase “use reasonable endeavours” in this clause risks diminishing a service provider’s obligations under the Fair Trading Act. We suggest removing the words ‘use reasonable endeavours’ so that the clause reads: “Provide services to the standard that is advertised and described in the Provider’s contracts with the Customer”.
- Clause 10.2.15– we think the wording in this clause is too vague, and would benefit from rewording. We suggest amending this clause so that it reads: “Provide appropriate support when a Customer anticipates payment difficulties and/or is in arrears”.
- Clause 14.1 allows the provider to charge for the handling of complaints – if their terms allow them to do this. We think that such a term could be considered an unfair term in breach of the Fair Trading Act. We therefore suggest the words “unless allowed for in the Provider’s and/or Third-party’s terms of service” are removed.
- Clause 14.4– we consider this clause needs amending. The current wording of this clause requires that, where a complaint is upheld, providers pay back “any fees paid by the customer”. This does not appear to be the intention of the clause so we suggest it is reworded to read: “Where a Customer’s Complaint is upheld, a Provider will credit any fees that it owes to the Customer ...”
- Clause 15– we consider this clause would benefit from simplification and clarification. We suggest rewording the clause to read: “When a Complaint involves a Third-party, the minimum requirements in clauses 16 and 17 will be met”.

Examples of wording in the Terms of Reference that would benefit from review include:

- Using capitalised terms that are not defined. For example, “Court”, “Prescribed Timeframes” and “Disputes Procedure Process” are capitalised but not defined. These terms should be defined, or the capital letters removed.
- Clause 11 needs to be reviewed and consolidated. Clauses 11.7 and 11.10 could be combined into a single clause and clause 11.4 deleted (as it is covered in clause 11.7).
- We question whether the references to clause 21.3 in clause 24 are correct.

Question 3: In your view have any of the Commission’s recommendations not been addressed or implemented through the proposed changes to the Scheme? If so, please detail which recommendation and provide reasons.

We consider that overall, the Review has responded adequately to the Commerce Commission’s recommendations as set out in the “2021 Review of the Telecommunications Dispute Resolution Scheme” report (the Report). However, we make the following observations:

- Recommendation 3b of the Report suggested that the Customer Complaints Code should “minimise the number of exclusions that prevent consumers from utilising the scheme.” Although Schedule 4 of the TDRS Terms of Reference (Scheme TOR) includes a smaller list of exclusions, we are concerned about the exclusion in clause 2 relating to the composition or level of charges (price). Consumers who have been misled about costs by their Provider should not be excluded from accessing the TDRS. We suggest further consideration should be given to the circumstances in which pricing issues can be brought to the TDRS.
- Recommendations 4 and 5 of the Report relate to raising consumers’ awareness of the TDRS. We consider that clause 11.2 of the Revised Code and clause 5.3 of the Scheme TOR are too vague and should provide further details around how providers should “raise awareness”. The Scheme TOR does not specify whether providers should raise awareness on multiple or every touch point listed. We think that both documents should clarify how they are expected to raise awareness. Ideally, this would be done at every touch point.

- Recommendation 17 of the Report suggested that when deadlock has occurred, the TDRS should immediately remind the relevant provider of its obligation to cease debt recovery action and to desist from disconnecting consumers. We don't think that clause 14 of the Revised Code accurately reflects this recommendation. Specifically, we are concerned that clause 14.2 of the Revised Code could be interpreted to mean that a provider may not demand payment of the disputed amount, but it can still take debt recovery action, such as passing on the debt to a debt collector. We suggest rewording clause 14.2 to read: "If a complaint relates to a disputed amount, a Provider will not demand payment or take any debt recovery action of the disputed amount while the complaint is being investigated."
- Recommendations 18a, 18b, and 19 of the Report relate to the complaint summary process and were included in the Interim TCF Customer Care Code. We query why these recommendations have not been reflected in the Revised Code.
- Recommendation 21 of the Report states that the composition of the TDRS Council should be rebalanced to ensure that resolutions can be passed in a way that no one group has the right to veto. Currently, the draft Constitution sets out that 75% of fully paid ordinary shares will be held by the Chair, and 25% of fully paid ordinary shares by the TCF. Some significant decisions, such as approving the annual budget of the company, and approving a major transaction require approval by all shareholders. This means the TCF will, if it chooses, be able to veto some significant decisions. We think that this contradicts recommendation 21 of the Report, and suggest this issue is addressed.

Thank you for the opportunity to provide comment.

ENDS