



Queen Margaret University
CONSUMER DISPUTE RESOLUTION
CENTRE

Independent Review of Utilities Disputes Limited – 2017

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1. FOREWORD

1.1. The scope of the review

Section 95 of the Electricity Industry Act 2010 allows for complaints concerning Transpower and energy distributors and retailers to be made to an approved dispute resolution scheme. Clause 15 of Schedule 4 of the Electricity Industry Act 2010 requires that 'The provider of the approved scheme must ensure that, at least once every 5 years, an independent review of the scheme is carried out and the report of the review is provided to the Minister within 3 months of its completion.' Utilities Disputes Limited is the provider of the approved scheme and in concordance with this requirement has commissioned this independent five-year review.

This report outlines the findings of the Five Year Independent Review of the approved Energy Complaints Scheme provided by Utilities Disputes but also includes a wider review of Utilities Disputes Limited. At the time of the review, as the only scheme provided by Utilities Disputes relates to energy complaints, for ease of reading and reporting reference is made to Utilities Disputes only.

The scope of the review was to assess whether Utilities Disputes and, in particular, its Energy Complaints Scheme was operating effectively and meeting the key criteria expected of industry based dispute resolution schemes. In addition, the review was asked to consider five specific issues:

- Whether the performance standards set by the Board of Utilities Disputes were adequate;
- The quality and results of the internal annual reviews;
- The Commissioner's jurisdiction to consider complaints made by land owners and land occupiers;

- Whether Utilities Disputes sets out appropriate requirements for Provider's complaints processes; and,
- The current levy structure

1.2. The review team

The review team was formed of Gavin McBurnie and Chris Gill. Gavin McBurnie is a Lecturer in Dispute Resolution at Queen Margaret University and is researching for a PhD on the methods used by health ombudsmen in their system improvement role. He was formerly a Director at the Parliamentary and Health Service Ombudsman in England where he led on several important change projects. Previously he was a medical practitioner and senior manager in the National Health Service. In addition, he holds both an MBA and an LLM.

Chris Gill is Director of the Consumer Dispute Resolution Centre, He is an expert in the fields of administrative justice, ombudsmanry, and alternative dispute resolution. He is a former complaints practitioner, having spent ten years in investigative roles at the Advertising Standards Authority and the office of the Scottish Public Services Ombudsman (SPSO). Most recently, he acted as the Independent Assessor for Ombudsman Services (2014 – 2015). Chris is an Independent Member of the Ombudsman Association's Validation Committee.

Chris' academic research has been particularly concerned with exploring optimal designs for complaint handling institutions. Chris' PhD explored how organisations could learn from complaints and how dispute resolution bodies could seek to exercise 'control' over those whose actions they review.

The Consumer Dispute Resolution Centre (CDRC) at Queen Margaret University is a centre of excellence in the provision of CPD, research, and consultancy services for complaint handling organisations. It runs accredited training courses for the Ombudsman Association and is a partner of the International Ombudsman Institute.

1.3. Acknowledgments

The review team wishes to thank:

- Utilities Disputes for making the necessary arrangements for the field visit;
- The staff of Utilities Disputes for their time in answering questions and providing information; and,
- The many individuals from consumer groups, provider organisations and other stakeholders who generously gave up their time to discuss Utilities Disputes with the review team.

Their input is greatly appreciated and ensured the review team was able to come to a holistic view on the performance of Utilities Disputes.

2. EXECUTIVE SUMMARY

2.1. Overall conclusion

The review team can confirm that Utilities Disputes is an effective dispute resolution scheme. To maintain its effectiveness into the future, the review has highlighted a number of areas for further development.

2.1. Effectiveness and efficiency of the scheme

With only a few minor exceptions, Utilities Disputes meets the requirements of the *Key Practices for Industry-based Customer Dispute Resolution* ('Key Practices'). The review team did identify a number of areas where, although Utilities Disputes met the requirements the 'Key Practices', there was room for improvement. These are highlighted below and in the recommendations section.

2.2. Priority areas for change and improvement

In addition to assessing Utilities Disputes against the 'Key Practices', the review team considered a number of specific aspects of the scheme's constitution and operation. The areas which we identified as priorities for change and improvement are:

The Scheme Document

The Scheme Document needs amending. Modern alternative dispute resolution schemes are moving beyond the consideration of individual complaints and are actively contributing to improvements in both complaint handling and service delivery within the industry being overseen. Utilities Disputes should place more emphasis on these latter roles and the Scheme Document should be amended to reflect this.

Land complaints exclusions

Currently, some complaints, referred to as 'land complaints exclusions', cannot be considered by Utilities Disputes. We recommend that the exclusions should be removed. They are not included within the Scheme Documents of comparable schemes in Australia or the UK and run counter to the underpinning principle of access to justice. The exclusion of such complaints represents a significant curtailment on land owner and land occupier's rights to accessible redress.

Public awareness of Utilities Disputes

An area of concern is the low level of public awareness of Utilities Disputes. There is a need in particular to do more to improve access to its services by disadvantaged individuals. While this issue is being addressed by Utilities Disputes, there is a need to prioritise this work to ensure that the scheme can retain public trust.

2.3. Overall comment

In conducting the review, we have sought not only to assess whether the scheme is meeting minimum standards, but also to enter into discussion with the scheme and stakeholders about future developments that would be of benefit. As a result, although we are satisfied that Utilities Disputes is an effective and well run alternative dispute resolution scheme, we make a number of recommendations in this report which seek to encourage and ensure the continued success of Utilities Disputes into the future.

3. SUMMARY OF RECOMMENDATIONS

The review team makes the following recommendations to the Board of Utilities Disputes.

3.1. Accessibility

3.1.1 The Board should agree a Strategic Communications Plan and prioritise its implementation. There should be a focus on working with community outreach groups, particularly those which work with vulnerable groups.

3.1.2 The Board should revise the requirements for providers to promote the scheme. If need be, it should set out minimum requirements which should not be restricted to promoting awareness of Utilities Disputes at the time of a complaint and also set standards on complaint handling against which providers will be expected to conform.

3.1.3 The Board should review the formats by which individuals with particular disadvantages are able to access information about its service.

3.1.4 The Board should seek more detailed socio-demographic information on its service users. The results should be compared annually with the equivalent statistics produced by Statistics New Zealand and where there are identified areas of under-representation, work should be undertaken with relevant representative groups on how best to remedy this issue.

3.1.5 The Board should work with relevant community groups to identify those groups able to provide free advocacy-type support for complainants where this is required. It should put complainants in need of such support in contact with the appropriate community group. Utilities Disputes would need to amend its processes to facilitate this should it be accepted.

3.1.6 To develop these roles will necessitate additional funding and the Board should secure this additional funding through the levy system.

3.2. Independence

3.2.1 The Board should establish its Advisory Committee as a matter of priority.

3.2.2 The Board should consider altering its scheme documents and operational practices to enable it to manage a surge in complaints associated with a one-off provider event.

3.2.3 The Board should seek to have an operations reserve equal to three months' operations costs. In addition, it should hold a small capital reserve.

3.3. Fairness

3.3.1 The Board should continue to ensure the Commissioner bases decisions on what is fair and reasonable in all the circumstances. However, it should produce guidance, and/or host a webinar for providers, on the fair and reasonable test and how it is applied to decisions.

3.3.2 The Board should consider using the survey developed by Kees van den Bos, Lynn van der Velden and Allan Lind (see Section 13 on Performance Indicators) with complainants and providers on all cases reaching deadlock. (For a list of the questions see Appendix 3.)

3.4. Accountability

3.4.1 The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes.

3.4.2 The Board, after discussion with providers, consumer groups and other stakeholders, should review the information that it holds and create an agreed dataset to be published.

3.5. Efficiency

3.5.1 The Board should publish and promote more of its systemic work as part of its contribution to the improvement of the energy system.

3.5.2 The Board should continue to encourage the Commissioner and her team to focus on the timeliness of complaint handling.

3.6. Natural Justice

3.6.1 The Board should consider removing the principle of 'natural justice' from its scheme document.

3.7. Future Developments

3.7.1 The Board should seek to gain additional jurisdictions covering utilities which do not already have an alternative dispute resolution scheme, to ensure coherent and simple access to redress for consumers.

3.8. Performance Standards

3.8.1 It is recommended that the current performance standards relating to the self-reporting of compliance and cost per case should be removed.

3.8.2 The Board should review its performance indicators. It should consider the utility of the indicators described in Section 13 below.

3.9. Levies

3.9.1 Every organisation which is covered by the Scheme should make a contribution to its running costs.

3.9.2 There should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited.

3.9.3 The fixed element should cover all costs incurred by Utilities Disputes excluding those related solely to the handling of individual complaints.

3.9.4 In keeping with the 'user pays' principle, any case reaching Utilities Disputes at deadlock should incur a fee.

3.9.5 The current variable fee structure needs to be reconsidered.

3.10. Requirements for Providers' Complaints Processes

3.10.1 It is recommended that Utilities Disputes adopts a more proactive role in complaint handling by bodies in jurisdiction.

3.10.2 Where Utilities Disputes has reasonable grounds to believe that a body in jurisdiction is not complying with the minimum standards it should have the ability to audit the body concerned.

4. BACKGROUND

It is a requirement of both the Electricity Industry Act 2010 and the Gas Act 1992 that there must be an approved dispute resolution scheme that considers electricity and gas complaints unresolved by the company involved. On 1 April 2010 the Electricity and Gas Complaints Commission (EGCC) was approved by the Minister for Commerce and Consumer Affairs to be the recognised scheme. Since then, the EGCC has continued to be the approved scheme although, following an extensive consultation in 2016, it amended its constitution and scheme rules to become Utilities Disputes Limited.

It is also a requirement of the Electricity Industry Act 2010 that the approved scheme must undergo an independent review at least every five years. The report of this review must be provided to the relevant Minister, by Utilities Disputes, within three months of its completion. The Board of Utilities Disputes appointed Gavin McBurnie and Chris Gill, from Queen Margaret University in Edinburgh, Scotland, as the independent reviewers for 2017.

The scope of the review was to assess whether Utilities Disputes is operating effectively and meeting the key criteria expected of industry based dispute resolution schemes. In addition, the review was asked to consider five specific issues:

- Whether the performance standards set by the Board are adequate;
- The quality and results of the internal annual reviews;
- The Commissioner's jurisdiction to consider complaints made by land owners and land occupiers;
- Whether Utilities Disputes sets out appropriate requirements for Provider's complaints processes; and,
- The current levy structure

5. METHODOLOGY

The following approach to the review was adopted.

Phase 1: desk-top research was undertaken by the review team. An initial list of documents necessary for the review was sent to Utilities Disputes for consideration prior to the subsequent field visit in phase 2. In addition, other documents were sourced from relevant websites prior to the field visit. In excess of 100 individual documents were reviewed and these are listed in Appendix 1.

In addition, a call for evidence was placed upon the home page of Utilities Disputes' website. In this call for evidence, specific questions were asked of members of the public, members of the scheme and to other stakeholders respectively. The call for evidence was open for a four-week period.

Phase 2: fieldwork was undertaken in Wellington. This consisted of discussions held between the review team and representatives from consumer organisations, network providers, retail providers, other stakeholders, and staff from Utilities Disputes itself. A list of those with whom discussions were held is in Appendix 2. A total of 24 meetings were held. In addition, the review team observed staff at work. Finally, while conducting the fieldwork, the review team was presented with further documents by those interviewed.

The reviewers are confident that all relevant information necessary for this review was collected and considered.

6. STRUCTURE OF THE REPORT

The report is structured into two parts:

Part One: This involves a review of whether Utilities Disputes meets the principles contained within its Scheme Document and, thus, satisfying the requirements of both the Electricity Industry Act 2010 and the Gas Act 1992. In order to assess the performance of Utilities Disputes against these principles the standards document 'Key Practices for Industry-based Customer Dispute Resolution' was used. It is referred to in this report as 'Key Practices'. Following the review of the individual principles, consideration of whether Utilities Disputes meets its scheme and legislative requirements is undertaken. The revised Scheme and General Rules and The Constitution and Governance Charter are then reviewed as they took force from 1 November 2016. When writing the report, the focus has been on issues that have been identified by the review team as warranting comment. Where no comment is made by the review team on a particular principle then it is because the review team has no concern.

Part Two: There then follows a consideration of the five specific issues identified by the Board of the Utilities Disputes: the adequacy of both the annual internal reviews of its performance and the performance standards used by Utilities Disputes for internal control and reporting measures; its current levy structure; the current requirements for Providers' complaints processes; and the continuation of the 'land complaints exclusions'.

7. PART ONE: THE REVIEW OF THE SCHEME

7.1. Principle One: Accessibility

Principle: The office makes itself readily available to customers by promoting knowledge of its services, being easy to use and having no cost barriers.

Purpose: To promote access to the office on an equitable basis.

UMR conducted consumer research, on behalf of Utilities Disputes, during March 2017 to estimate public awareness of Utilities Disputes. The results were as follows:

Unprompted awareness of Utilities Disputes was at 2%, with another 4% of the sample identifying the Electricity and Gas Complaints Commission also without prompting. (The Electricity and Gas Complaints Commission was the name used by Utilities Disputes until 1 November 2016.) Combined, they show an unprompted awareness of 6%. This combined level of unprompted awareness of 6% is in keeping with the last survey carried out in 2015 which also showed an unprompted awareness of 6%. 16% of respondents would look to their gas or electricity company for information on how to complain but 26% were unsure what they would do if they did have a complaint.

When prompted, the awareness of the Utilities Disputes name was 7%, which compares with a prompted awareness rate of 17-18% for the Electricity and Gas Complaints Commission in previous surveys. The media, friends, and the Citizens Advice Bureau were the commonest means by which people had heard of Utilities Disputes. It is interesting to point out that Utilities Disputes had been undertaking community outreach work with the Citizens Advice Bureau and it appears that this work has had some success in promoting Utilities Disputes. Only 2% of respondents had found out about Utilities Disputes from their utility company. When asked what would help them become aware of Utilities Disputes, respondents said that advertising (TV and online in particular) would be the most helpful.

There are several reasons for the current low levels of awareness of Utilities Disputes. Firstly, Utilities Disputes is a new brand name and it will take time for that new name to register in people's consciousness. Secondly, people talked to the review team, during the fieldwork, of New Zealand having a 'low-complaint culture'. If that is correct, then that culture would impact on the public awareness of complaint organisations.

However, the review team was also told by several participants that the most important reason for the low awareness of Utilities Disputes was due to the fact that, historically speaking, the Electricity and Gas Complaints Commission took a low-key approach to raising awareness about its existence and activities. The review team was told that, previously, the Board took the view that providers were doing a good job promoting the scheme and that any public awareness exercise undertaken by the Board would upset providers. The review team was informed by some provider interviewees that they would have concerns should Utilities Disputes start significant self-promotion work. The Commissioner informed the review team that work undertaken by Utilities Disputes indicated significant unmet need for its services. The UMR awareness survey showed 14% of respondents said that they had an issue with their electricity or gas company but 22% of these were unresolved.

The low level of awareness of Utilities Disputes is a matter for concern. In particular, the low level of awareness about Utilities Disputes originating from the utility companies indicates that the expectation that providers will promote the scheme may be misplaced.

The Key Practices indicate that schemes must seek to ensure that those who need their services are aware of it and that they should promote their scheme through the media or by other means. The new Board of Utilities Disputes is aware of this. The Communications Manager has produced a 'Strategic Communications Plan'. This plan is ambitious and, when executed, should result in significant improvement in this area. In addition, there is a full calendar of outreach activities scheduled. The success of Utilities Disputes' work with Citizens Advice Bureaux suggests that this priority of working with community and outreach groups should remain.

The Board should agree a Strategic Communications Plan and prioritise its implementation. There should be a focus on working with community outreach groups, particularly those which work with vulnerable groups.

The Board should revise the requirements of providers to promote the scheme. If need be, it should set out minimum requirements which should not be restricted to promoting awareness of Utilities Disputes at the time of a complaint and also set standards on complaint handling which providers will be expected to meet.

To develop these roles will necessitate additional funding and the Board should secure this through the levy system.

Another requirement of the Key Practices document is for industry schemes to promote accessibility to enable participation across the community. Utilities Disputes already does much in this regard. It prints information sheets in 10 languages and uses both Language Line¹ and New Zealand Relay.² However, there is more that it could do. For instance, it could place on its website a video in New Zealand Sign Language. It should also check that its online complaint form is able to be used by those with visual impairments.

The Board should review the formats by which individuals with particular disadvantages are able to access information about its service.

Utilities Disputes asks for, and keeps, limited information on the individuals which uses its services. The surveys that it uses for consumer satisfaction does seek information on age, sex, income, ethnicity and preferred language which will give it some

¹ Language Line is a translation service

² New Zealand Relay is a service for the New Zealand Deaf, deafblind, hearing impaired and speech impaired communities.

understanding of its services base but given that these surveys are undertaken every two years it is suggested that this is insufficient.³

The Board should seek more detailed socio-demographic information on its service users. The results should be compared annually with the equivalent statistics produced by Statistics New Zealand and where there are identified areas of under-representation, work should be undertaken with relevant representative groups on how best to tackle remedy this.

Complainants are able to make their complaint via a variety of methods (predominantly by telephone with a significant minority of cases submitted electronically), free of charge, and with staff competent to provide assistance where required.

Individuals making a complaint are able to be supported throughout the process, at their own expense, assuming that the complainant has given the necessary permissions. It maybe the case that, some individuals, for example, from a disadvantaged minority, may wish support to make a complaint, but are unable to secure the necessary support.

The Board should work with relevant community groups to identify those groups able to provide free advocacy-type support for complainants should this be required. It should put complainants in need of such support in contact with the appropriate community group. Utilities Disputes would need to amend its processes to facilitate this should it be accepted.

³ Recent consumer research conducted in the UK suggested that there were significant gaps on data collected by ADR schemes, particularly in relation to the demographics of their users. These data gaps were seen as limiting ADR schemes' ability to understand and expand their customer base, particularly to include disadvantaged or vulnerable individuals. See <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Gaps%20overlaps%20consumer%20confusion%20201704.pdf>

7.2. Principle Two: Independence

Principle: The decision-making process and administration of the office are independent from participating organisations.

Purpose: To ensure that the processes and decisions of the office are objective and unbiased, and are seen to be objective and unbiased.

The Commissioner meets the requirement of independence as set out in the Key Practices. The Commissioner is responsible for the recruitment of staff and the operation of the office. In effect, the Commissioner is also the Chief Executive. Staff are appointed by the office through a rigorous competency based recruitment process.

Utilities Disputes has a Board structure. As a result of the move to Utilities Disputes the Board is in transition. Historically, the Board included two industry members and two consumer representative members. While acting as Board members, they were expected to meet the competencies of a Board member and to act as a Board member. That is, they were expected to be concerned with the organisation as a whole and act independently from the sectional interest from which they originated. There was also a requirement for all board members to be capable of understanding the viewpoints and concerns of consumers and be persons in whom consumers can have confidence.⁴ At the present time this industry and consumer representation has been reduced to one industry and one consumer member with the intention that in November 2018 there should be no industry or consumer representative places specifically identified on the fully independent Board.

⁴ Electricity and Gas Complaints Commission, 2014, *EGCC Scheme Document 1 October 2014 – 31 October 2016*, Clause E.4 [Online] [Viewed 15 May 2017] [Available from] <http://media.utilitiesdisputes.org.nz/media/Scheme%20Documents/SD%201%20Oct%202014%20to%2031%20Oct%202016.pdf>

This approach is to be welcomed. It recognises that Board members should be appointed on the basis of their experience and ability to undertake a Board member role irrespective of their background. This move creates a modern governance structure. The Scheme document sets out the responsibilities of the Board and these are very much in keeping with what one would expect of a well-functioning Board.

Several provider participants were of the understanding that the Board would establish an Advisory Committee, comprising industry and consumer representatives the views of which the Board would have due regard. Clause 8.19 of the Constitution of Utilities Disputes states that the Board “must form at least one Advisory Committee for each Scheme unless otherwise provided in the rules governing the relevant Scheme”. As the Scheme rules do not state otherwise, indeed they are completely silent on the issue, then it appears that Utilities Disputes should establish an Advisory Committee.

The Board should establish the Advisory Committee as a matter of priority.

Utilities Disputes keeps a Director’s Register of Interest and checks for any potential conflict of interest prior to the start of each Board meeting. Formally seeking any conflict of interests at the start of each meeting is good practice.

Utilities Disputes sets its annual budget through a mix of fixed and variable levies. The variable levies element is calculated using the actual number of complaints considered by Utilities Disputes in the previous year. All things being equal, that establishes a sound financial base for the year’s operations. However, it can create problems if, in a particular year, there is a surge in complaints due to a one-off event. Examples would be a major power outage, an earthquake or where a company made a significant change to its operations. In these situations, Utilities Disputes is faced with dealing with a surge in complaints while the funding for them will not be received until the following year.

This creates problems for Utilities Disputes, other providers and complainants. Utilities Disputes has a fixed number of staff to manage an anticipated set workload. A surge in complaints from a one-off event creates problems with the management of casework. Utilities Disputes attempts to manage such problems by pulling staff off other duties and by increasing caseloads. Inevitably, this leads to delays in closing cases, the effects of which can be long lasting. As a result, satisfaction with the scheme by complainants and providers drops. It is noticeable that a common concern in the recent provider survey was the timeliness of the complaint handling, explained to a significant degree by a previous one-off event which led to a surge in complaints. In addition, the longer those cases take to complete leads to increased costs for other providers.

A potential solution would be for Utilities Disputes to amend its scheme rules so that when a surge in complaints is received from a specific provider, Utilities Disputes has the power to invoice that provider an interim charge to cover the increased costs. Thus, the costs associated with a one-off surge in complaints would be funded the same year. Having secured the funding, Utilities Disputes would still need staff resource to manage the complaints. A potential solution would be for Utilities Disputes to have a pool of associate caseworkers, able to consider complaints but who would be paid only when utilised. There would, therefore, be minimal financial risk to Utilities Disputes. Obviously, the provider concerned would not be invoiced the following year for the surge cases for which it had already been charged.

The Board should consider altering its scheme documents and operational practices to enable it to manage a surge in complaints associated with a one-off provider event.

Changes to the levy system may also be relevant in addressing these issues and this is returned to in Section 14 below.

Finally, it is important to highlight a concern noted during the review. The level of reserves carried by Utilities Disputes is significantly lower than industry norms.

The Board should seek to have an operations reserve equal to three months' operations costs. In addition, it should hold a small capital reserve.

7.3. Principle Three: Fairness

Principle: The procedures and decision-making of the office are fair and seen to be fair.

Purpose: To ensure that the office performs its functions in a manner that is fair and seen to be fair.

During the review, comment was made by provider interviewees on whether Utilities Disputes was fair in its procedures. In the view of the review team the procedures of Utilities Disputes more than satisfactorily meets the required standards in the Key Practices.

Final determinations are based on the Commissioner considering what was fair and reasonable in all the circumstances. However, using the principles of what was fair and reasonable in all the circumstances was one of the reasons that some providers perceived there to be unfairness in the process. Several provider interviewees said that, in their view, Utilities Disputes did not base their decisions sufficiently strongly on a legal basis, with some of the interviewees raising concern over Utilities Disputes interpretation of the law. Some interviewees went so far as to suggest that Utilities Disputes should base their decisions entirely on a legal basis instead of what was fair and reasonable, while one particular interviewee suggested that there should be an independent legal body to which parties could appeal a decision of Utilities Disputes and which would give a binding *legal* decision.

The fundamental purpose of alternative dispute resolution schemes is that they are an alternative to courts rather than seek to replicate court processes. The strength of alternative dispute resolution is that it does not operate as courts and does not base decisions on narrow legal technicalities but what is right and proper in all the circumstances.

While alternative dispute resolution schemes may routinely use and refer to law in their decisions, they are not well placed to settle legal controversies as they are not legal bodies and it is not the place of alternative dispute resolution schemes to make legal precedents. Legal precedents are properly made by courts. However, as the General Rules (para 24) makes clear, decisions made by Utilities Disputes must take into account “any legal rule or judicial authority that applies; rules of natural justice; general principles of good industry practice and any industry guidelines that apply”. Thus it is clear that the decisions to be made by Utilities Disputes must be fair and reasonable, taking account of any applicable legal rule and not be solely technocratic legal decisions.

The Board should continue to ensure the Commissioner bases decisions on what is fair and reasonable in all the circumstances. However, it should produce guidance, and/or host a webinar for members, on the fair and reasonable test and how it is applied to decisions.

A second common concern raised by provider participants was their perception that Utilities Disputes is pro-consumer. The role of Utilities Disputes in this regard was described by one interviewee as ‘walking a tightrope’. Indeed, the Commissioner recognised this challenge facing ADR schemes when, in an interview in Energy News, she highlights that she receives complaints from service users that they are in the pockets of the energy companies, while providers accuse Utilities Disputes of being ‘a woolly cardigan customer advocate’.

Determining whether such a bias exists is a complex task, but the evidence available to the review team does not suggest any obvious issues. Utilities Disputes operational processes are designed to deliver procedural fairness. It is worth noting that in an average year Utilities Disputes receives around 500 cases at deadlock. Of these cases, 230 are resolved by the company or ruled out of jurisdiction after Utilities Disputes provides detailed information about the complaint and remedies sought. Thus, around 270 cases enter the conciliation phase. Of those cases entering conciliation one third

will end up with a decision made by the Commissioner with the other two thirds being resolved through conciliation. A review of the case notes published for the year 2015 provides details on 20 complaints. Of these 20 complaints four were either withdrawn or settled by negotiation without the Commissioner making a decision. Three complaints were not upheld. That leaves 13 cases where the Commissioner upheld the complaint. A look at the detail of these case notes, however, reveals that the recommendations in four of these 13 cases was sufficiently in favour of the provider that the complainant refused to accept the recommendation and the case was therefore closed. Thus, only in nine out of the 20 cases was the outcome significantly in favour of the complainant. This does not suggest a pro-consumer approach to decisions.

However, in alternative dispute resolution schemes, an individual's perception of the fairness of the process is often strongly correlated to the decision made. As one industry participant said a focus on individual cases where you might not agree with Utilities Disputes can lead to a loss of perspective and failure to recognise the overall benefits.

The Board should consider using the survey developed by Kees van den Bos, Lynn van der Velden and Allan Lind (see Section 13 on Performance Standards) with complainants and providers on all cases reaching deadlock. (For a list of the questions see Appendix 3.)

7.4. Principle Four: Accountability

Principle: The office publicly accounts for its operations by publishing its final determinations and information about complaints and reporting any systemic problems to its participating organisations, policy agencies and regulators.

Purpose: To ensure public confidence in the office and allow assessment and improvement of its performance and that of participating organisations.

Through the means of its website and the production of information brochures, newsletters and information sheets, Utilities Disputes makes significant effort to inform those interested in its guidelines and policies for dealing with complaints. The website page on the complaints process is a very accessible means of understanding exactly what will happen during a complaint.

Also contained within its website is a searchable case notes page. Case notes are anonymised summaries of complaints handled by Utilities Disputes. An individual can search using a number of filters including the nature of the issue, the year and whether it is a gas, electricity, or land complaint. In addition, Utilities Disputes publishes each year a Case Notebook containing a selection of interesting case notes for that year. All published case notes are anonymized both for complainant and organisation.

However, the review team was informed that the Electricity Authority would be naming electricity companies in its reports from 1 June 2017. At the present time, Utilities Disputes contains within its Annual Report, information on the number of deadlocked complaints accepted for consideration against each provider, naming the provider in doing so. This has increased the transparency of its activities and allows readers additional information about energy providers.

The Board should consider following the example of the Electricity Authority and name the relevant providers in its case notes. It is important that energy companies are clearly seen to be held to account.

Utilities Disputes publishes an Annual Report each year on its website and in hard copy. The contents of the Annual Report are in line with the expectations contained within the Key Practices document. However, the review team were told several times by providers, consumer representatives and other stakeholders that Utilities Disputes holds significant amounts of data on complaint themes and trends and there was a real enthusiasm for this information to be shared. While some information is published by Utilities Disputes this is at a fairly high level and does not reflect the nuanced information collected by conciliators during complaint handling.

The Board, after discussion with providers, consumer groups and other stakeholders, should review the information that it holds and create an agreed dataset to be published.

7.5. Principle Five: Efficiency

Principle: The office operates efficiently by keeping tracks of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.

Purpose: To give the community and participating organisations confidence in the office and to ensure the office provides value for its funding.

The service model operated by Utilities Disputes sets out how a complaint brought to it should be handled. There is a clear process which considers jurisdiction issues, privacy issues and how the complaint should be progressed. Should the complaint fall outside the jurisdiction of Utilities Disputes it would be referred timeously to the appropriate body. There are clear time limits set for the handling of the complaint.

The office considers systemic issues that are raised through individual complainants, either singly or in aggregate. However, the reporting of its work in this area is limited with only two such reports published in the Annual Report for 2015-16. Internationally, while the resolution of individual complaints is central to alternative dispute resolution schemes, such schemes are increasingly looking at how they can contribute to the improvement of the industry they oversee. It is here where the knowledge and expertise gained by alternative dispute resolution schemes can be used to the benefit, not only of large numbers of individuals, but also of the providers as these systemic reports should improve their processes and reduce complaints. It is of note that, in the UK, the Scottish Public Services Ombudsman, has recently established a Learning and Improvement Unit, the purpose of which is to work with organisations to improve its complaint handling and assist in the learning from systemic issues to the benefit of organisation and service-users.

Several provider participants were of the view that Utilities Disputes should reduce its costs and increase 'value for money'. However, this view was based on a narrow

understanding of the purpose of alternative dispute resolution being restricted to complaint handling and did not take account of the other roles undertaken by Utilities Disputes. Increasing the publication of its systemic work would demonstrate the increased value for money delivered by Utilities Disputes and increase confidence in both it and trust in the overall energy system.

The Board should publish and promote more of its systemic work as part of its contribution to the improvement of the system.

A concern raised by several participants was the timeliness of complaint handling. It is very difficult to compare timeliness between schemes, as the way schemes operate vary very widely and, indeed, they may call the same activities by different names and use the same name to cover different activities. In addition, how they measure their performance can also vary significantly. Speed of closure is also a crude measure of performance. The rapid closure of cases is not successful if it is associated with low satisfaction or significant case reopening rates. The quality of casework may reduce if the emphasis is on speed of closure and not the quality of decisions. A surge in case numbers arising from a one-off event can have long-lasting consequences. Therefore, caution should be used with the interpretation of timeliness figures. Notwithstanding these caveats, the recent figures for timeliness published in the last Annual Report are disappointing, principally due to the consequences of a one-off provider event and there is scope for improvement here. Conversations with senior members of Utilities Disputes indicate that this is a current priority area for action.

The Board should continue to encourage the Commissioner and her team to focus on the timeliness of complaint handling.

7.6. Principle Six: Effectiveness

Principle: The office is effective by having an appropriate and comprehensive jurisdiction and periodic independent reviews of its performance.

Purpose: To promote community confidence in the office and ensure that the office fulfils its role.

Utilities Disputes has a well recruited and trained team. They undergo regular annual appraisal. To this end a revised Performance Review process was introduced from 1 April 2017. What is noticeable about the revised process is that it contains a significant formative element. Such an approach will encourage the development of staff competencies and should result in improved performance. Comment should be made on the fact that Utilities Disputes (or the Electricity and Gas Complaints Commissioner Scheme as it was then known) won the Best Small Business to Work for Award in 2011 and 2016 while also being a finalist in each of the last six years. In addition, it achieves very high staff engagement scores above the 90% level. Although a study into the engagement of American employees, and therefore needs to be treated with caution when translating to New Zealand, Gallup (2017)⁵ found that the engagement scores of American workers were around half that achieved by Utilities Disputes. These scores pay testimony to the leadership of the organisation at all levels.

Several matters are relevant to consider under this principle, but are considered elsewhere in this report:

- Utilities Disputes meets the requirement of the Key Practices as it relates to coverage with the exception of its land complaint exclusions. This issue is covered in Section 16.

⁵ Gallup, 2017, State of the American Workplace, [Online] [Viewed 4 May 2017] [Available from] <http://www.gallup.com/services/178514/state-american-workplace.aspx>

- There is also an issue relating to providers' internal dispute mechanisms and compliance. These are considered in Section 15.
- Utilities Disputes needs to consider its activities in relation to systemic problems. This is considered in Section 7.5.

7.7. Principle Seven: Natural Justice

The Key Practices does not contain a principle relating to natural justice. It is understood that it has been included in the scheme document only from 2016 at the request of a provider. No equivalent Australian scheme has this seventh principle. The review team are concerned about the inclusion of this principle in the scheme document, because the term ‘natural justice’ is capable of misinterpretation and because procedural safeguards are already adequately covered under principle 3 (fairness). The paragraphs below explain our rationale for coming to this conclusion.

Mulcahy⁶, Legal Professor at the London School of Economics, suggests that natural justice has two basic tenets: ‘the rule against bias and the need for a fair hearing’. She claims that Courts have developed these tenets to include specific standards:

The right to be given notification of a hearing, the right to an oral hearing, the right to questions witnesses at a hearing, the right to be represented at a hearing, details of the case to be met, adequate time to prepare one’s case, access to all material relevant to one’s case, the right to have a case decided solely on the basis of material made available, and a reasoned decision which takes account of the evidence and answers the case made.⁷

However, Mulcahy talks of a sliding scale of implementation with a ‘watered-down’ version being used with less important disputes and that courts apply them as a “fluid rather than a rigid concept” dependent upon the nature and value of the dispute. Of importance, Mulcahy⁸ notes that courts have been reluctant to apply these principles to complaints being considered in alternative forums as these principles have been seen as “inextricably linked to ... the adversarial system”.

⁶ MULCAHY, L., 1999, Sliding Scales of Justice at the End of the Century – A Cause for Complaints?, in HARRIS, M. AND PARTINGTON, M., eds., *Administrative Justice in the 21st Century*, Oxford: Hart Publishing

⁷ Ibid, P.76

⁸ Ibid, P.78

Alternative dispute resolution schemes deliberately have fewer procedural safeguards than the adversarial court process, but the quid pro quo is that they provide quicker, more accessible, more consumer friendly processes. Natural justice needs to be understood in the context of alternative dispute resolution: procedural fairness, here, it incorporates a need to balance the individual rights of the parties with a need to fulfil the promise and purpose of alternative dispute resolution as an alternative to costly, formal, and inaccessible court procedures. The problem with using the term natural justice is that few people have this kind of sophisticated understanding of the way in which it operates on a spectrum and how its meaning and requirements may differ depending on context. Because the term may create unwarranted expectations from complainants and because sufficient procedural safeguards are only assured through principle 3 (fairness), we consider that the natural justice principle should be removed from the scheme document.

The Board should consider removing the principle of 'natural justice' from its scheme.

8. COMMENTS FROM INTERVIEWEES

Although not a specific principle, the review team believes that it would be helpful to provide examples of the comments which it received from interviewees. As would be expected there was a range of views.

Consumer representatives

Consumer representatives felt that Utilities Disputes was doing *'good stuff'* and *'trying to perform better'*.

Provider representatives

Providers had a more mixed view. The majority of feedback to the review team from provider interviewees was positive. Some typical favourable comments were:

"[Utilities Disputes] compares favourably with other ADR schemes."

"[Utilities Disputes] undertakes good complaint handling."

"The process is good; the people are good."

"[Utilities Disputes] supports better working in the industry."

"Staff are very professional and excellent to deal with."

"Staff generally very good, documentation good, accessibility good, overall performance very good."

"Glad they exist."

Typical of the few less favourable comments from providers were:

“Lack of industry knowledge.”

“We have respect for the role and the scheme. What we need is a high quality one.”

Stakeholder representatives

Stakeholders had positive comments for the scheme, such as:

“Utilities Disputes are doing a good job; good people doing good things.”

“The scheme has led to improved complaint handling.”

The overall feedback from those interviewed was positive.

9. FUTURE DEVELOPMENTS

A significant factor in the decision to move from the Electricity and Gas Complaints Commissioner Scheme to Utilities Disputes was recognition that the sector in which Utilities Disputes operates is changing rapidly. Providers are increasing the range of services that they supply customers and the sale of some products will not be subject to the jurisdiction of Utilities Disputes. This could cause problems for consumers. As providers increasingly bundle up services, it becomes possible that individuals could be subject to the disconnection of energy because of debts accrued relating a telecommunications service.

As the provision of services becomes increasingly interconnected it is essential that the alternative dispute resolution scheme maintains its ability to deliver justice. Although discussing the situation in the UK, Dunleavy et al (2010)⁹ state that while complainants may have a 'joined-up' view of a complaint system, very often, this is not what occurs in practice. Complainants become confused on where to go, if anywhere, to make a valid complaint. Often, they try several routes in order to receive the justice to which they believe they are entitled but by doing so they are criticised for 'forum shopping'. From discussions with interviewees by the review team it is suggested that this view holds as much resonance in New Zealand as it does in the UK¹⁰.

At the time of writing, Utilities Disputes has submitted a proposal to become the approved alternative dispute resolution service for complaints concerning the access to shared property for the installation and maintenance of ultrafast broadband. The result is not yet known. However, in the interests of consumers it is suggested that Utilities

⁹ DUNLEAVY, P., BASTOW, S., TINKLER, J., GOLDCHLUK, S. and TOWERS, E., 2010, Joining Up Citizen Redress in UK Central Government, In, ADLER, m.,ed., *Administrative Justice in Context*, Oxford: Hart Publishing

¹⁰ Recent research in the UK shows the consumer confusion that can arise from a highly complex and fragmented system of consumer dispute resolution. A similar situation should be avoided in New Zealand. See <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Gaps%20overlaps%20consumer%20confusion%20201704.pdf>

Disputes seek to become the recognised ADR scheme for a wider range of utilities. In Australia, the energy ombudsmen are also the ombudsman for water complaints. In the UK Ombudsman Services is the ADR scheme for businesses in the energy, telecommunications, property, home improvement and home removal sectors among others. Consolidation of ADR schemes is not confined to the private sector. In the UK the public sector ombudsmen for Scotland, Wales and Northern Ireland hold jurisdiction for all public services in their country while the proposed Public Services Ombudsman for England attempts to achieve a broadly similar goal.

The Board should seek to gain additional jurisdictions covering utilities which do not already have an alternative dispute resolution scheme, to ensure coherent and simple access to redress for consumers.

10. OVERALL OPINION

The overall view of the review team is that Utilities Disputes is both meeting its purpose and legislative requirements as the approved scheme, and, is continuing to meet the principles of accessibility, independence, fairness, accountability, efficiency, effectiveness and the rules of natural justice.

While it is meeting these requirements, the review team has identified some areas which, if implemented, it believes will improve the efficiency and effectiveness of Utilities Disputes and ensure its continued success into the future.

11. PART TWO: THE SPECIFIC REVIEW QUESTIONS

The review team was asked to consider the following specific questions:

- the adequacy the annual internal reviews of its performance
- the performance standards used by Utilities Disputes for internal control and reporting measures;
- its current levy structure;
- the current requirements for Providers' complaints processes;
- and the continuation of the current 'land exclusion' clauses.

The following sections detail the review team's opinion.

12. THE QUALITY AND RESULTS OF THE ANNUAL REVIEW

12.1. Introduction

As part of the review, the review team was asked to consider the quality and results of the annual internal reviews undertaken by Utilities Disputes and submitted to its Board for consideration. In undertaking this review, the review team considered the annual reviews which had been prepared by Utilities Disputes since the last five-year review in 2012. The current requirement for an annual review is detailed in Clauses 19-21 of the Utilities Disputes' Governance Charter. Clause 19 states that the review should consider the performance of the scheme "against any applicable regulatory requirements or standards, performance standards set by the Board and any issues raised by the relevant Minister". It is important to note that the Clause 20 of the Governance Charter requires the Board to seek feedback from the relevant Advisory Committee on the performance of the scheme. At the time of writing, the relevant Advisory Committee for Electricity and Gas had not been established. This will mean that the Board is not able to comply with this part of its Governance Charter in 2016/2017.

Prior, to the establishment of Utilities Disputes, the former Electricity and Gas Complaints Commissioner Scheme had similar requirements in Clause E.57 of its then Scheme document.

12.2. Structure of the annual reviews

The reviews share a common structure:

1. Summary
2. Requirement for annual review
3. Requirements of Schedule 4 of the Electricity Industry Act 2010 met
4. Performance standards largely met
5. Time to close cases

6. Cost per case
7. Complainant satisfaction
8. Member satisfaction
9. Awareness and accessibility
10. External review of cases
11. Reporting
12. Member compliance

Appendix 1 Summary of compliance with requirements of clause 13, Schedule 4, Electricity Industry Act 2010

Appendix 2 – EGCC Reporting requirements

Each section of the report provides detailed information relating to a particular area of performance together with a narrative providing detail on the performance achieved.

Appendix 1 of the annual review provides detailed information on how the requirements of the Electricity Industry Act 2010 are met by Utilities Disputes. As required, a summary of the annual review is included in the relevant Annual Report.

12.3. Opinion

It is the view of the review team that the annual reviews undertaken by Utilities Disputes are of high quality, and provide full and accurate information to the Board, which enables it to fulfil its governance and fiduciary responsibilities.

13. PERFORMANCE STANDARDS

13.1. Introduction

As part of the review, the review team was asked to review ‘whether the performance standards set by the Board were adequate’. This part of the review considers the current performance standards presented to the Board, considers relevant papers published on the assessment of the performance of alternative dispute resolution schemes, before making recommendations on potential future performance standards for use.

13.2. Current Performance Standards

For this part of the review the following documents were considered:

- The Utilities Disputes Operations Report, which is presented to the Board by the Commissioner at each Board meeting; and,
- The Annual Report.

Utilities Disputes produces a significant number of additional reports on its activities, which were examined, but, as these are more descriptive in nature, and do not include performance standards, they have not been used for the purposes of this section of the review.

Operations Report

This is a report that is generated at the beginning of each month for the Commissioner, Deputy Commissioner and the Board. It provides monthly statistics on case numbers, progression against the business plan and KPIs and consists of five tables and two graphs. The tables consider case statistics on a rolling three month basis and, where appropriate, map them against the relevant targets. The graphs indicate actual activity against the activity forecast in the business plan. The targets included within the Board

report are the total number of cases received, the number of deadlock cases accepted for consideration, and performance against the 30, 60 and 90 day closure targets. It should be noted that significantly more information is provided to the Board than simply that of actual performance against targeted performance. The report provides the Board with sufficient information for it to be able to judge the performance of the office.

Annual Report

Contained within its Annual Report, Utilities Disputes includes performance statistics.

These include the following:

- Time to close complaints, with targets for 30 and 90 days;
- Time to close complaints made against the Scheme;
- The average cost per case;
- Member satisfaction;
- Complainant satisfaction;
- Unprompted awareness; and
- Reporting of compliance with the Scheme document by providers;

A review of the Annual Reports of Utilities Disputes' Australian and UK equivalents indicate that the targets used are broadly similar between all the organisations although due to differences in processes, nomenclature and the actual standards used direct comparison of performance is impossible.

13.3. Published work on measuring the performance of ombudsman offices

There has been some papers published that suggest how ombudsmen schemes can assess their effectiveness and impact. Marin and Jones (2011)¹¹ undertook a review of

¹¹ MARIN, A. and JONES, G., 2011, Measuring Ombudsman Performance: Setting Performance Standards and Indicators, in ASIAN DEVELOPMENT BANK, *Strengthening the Ombudsman Institution in Asia: Improving accountability in public service delivery through the Ombudsman*, Asian Development Bank: Philippines

the typical performance measures used by members of the Asian Ombudsman Association and identified a broad range of criteria used by ombudsman schemes to assess their own performance. They subsequently detailed 22 'typical measures' although there is some overlap between the measures identified. Allowing for the requirements of their own schemes, the measures identified are similar to those used by Utilities Disputes.

Marin and Jones, and other work published by Bizjak¹², Stuhmcke¹³ and Danet,¹⁴ make proposals on how the effectiveness and impact of ombudsman schemes can be assessed. Danet was one of the first to consider how to measure the performance of an ombudsman office and split her indicators into three groups which include:

- Measures relating to service users: awareness of the ombudsman office and socio-demographic representativeness of service users compared to the general public;
- Measures relating to the bodies in jurisdiction: how many complaints does the ombudsman receive about which bodies, the subject of the complaints, the number of upheld complaints (including by socio-demographic sub-groups), and the responsiveness of bodies to the recommendations of the ombudsman; and,
- Measures relating to the ombudsman office: annual caseload and staff workload, the degree of investigation (in the case of Utilities Disputes, the split between enquiries, number of complaints, number of deadlocked cases, number of conciliated agreements and number of decisions), efficiency (number of cases closed and speed of closure), and the ability to help (defined as the number of people assisted by the office but who did not receive an ombudsman intervention).

¹² BIZJAK, I., 1999, Fifth UNDP International Workshop on Ombudsman and Human Right Institutions, *Effectiveness of an Ombudsman Institution*, [Lecture] Almaty, 9-11 November 1999

¹³ STUHMCKE, A., 2012, Evaluating the Effectiveness of an Ombudsman: A riddle, wrapped in a mystery inside an enigma, Speech to International Ombudsman Institute World Conference, 14th November 2012.

¹⁴ DANET, B., 1978, Toward a Method to Evaluate the Ombudsman Role, *Administration & Society*, Vol 10 No 3, 335- 370

It is suggested that this is a logical approach by which to consider performance indicators and will be used as a framework in the consideration of performance indicators appropriate for Utilities Disputes.

Before that however, a word of caution, as Marin and Jones (p.210-211) considered the risks associated with the development and use of performance standards which included 'navel- gazing', 'being hoist by one's own petards' (through the setting of expectations that cannot be met), and, more importantly, that they do not reflect accurately the work of an ombudsman's office. The work of a dispute resolution scheme is complex, as its primary objective, the delivery of justice is intangible. Its work consists of much more than simply the handling of complaints. It includes a role to contribute to the improvement of the overall system in which it exists and the management of the expectations of complainants. A final role for alternative dispute resolution schemes is that they should contribute to the improvement of public trust in the overall system in which they operate, in the case of Utilities Disputes, the energy system. For these reasons, an over-emphasis on the performance of individual complaints will provide a very limited picture of the overall performance of the scheme.

The old adage about performance indicators is also apposite: quantitative measures drive out qualitative measures and financial measures drive out quantitative measures. Utilities Disputes needs to ensure that a natural drive to focus on numbers is not to the detriment of the quality of its work. By means of reassurance, there is no evidence of this happening at the time of the review.

13.4. Feedback on Utilities Disputes' current performance indicators.

There was little comment during the review on performance indicators although the following concerns were raised.

There was some agreement that the cost per case indicator, constructed as it is, is flawed and, accordingly, the utility of this standard was also considered to be doubtful. It

is calculated by dividing the total budget by the total number of enquiries and complaints. It is reported that a complaint can take 27 times longer to complete than an enquiry and thus considering them together as if they were of the same value creates an erroneous impression of office productivity. A small increase or decrease in enquiries, which would create or remove little overall activity, could result in very different costs.

A concern, raised by several provider interviewees, was that they wanted reassurance that Utilities Disputes was operating efficiently and delivering 'value for money'. It behoves any organisation to demonstrate good governance and this includes the efficient and productive use of its assets (including staff). Linked to this is a concern that performance indicators should be able to demonstrate the value added by Utilities Disputes.

A concern was raised about the validity of customer, provider and stakeholder surveys and, in particular, firstly, their utility depends upon them containing the right questions and, secondly, that the respondents' answers will be subjective.

Finally, concern was raised by providers at the number of conciliators that may work on any one case. Each time the caseworker changes, the new caseworker has to take time to understand the case and to develop a relationship with the provider. In addition, this is likely to lead to a longer duration on the case. In addition, changing caseworkers during a case is a known cause of dissatisfaction to complainants.

These concerns will be considered below.

13.5. Review

If one uses Danet's three-part classification then the current performance indicators used by Utilities Disputes are classed as follows:

- Service users: unprompted awareness and customer satisfaction;
- Provider: member satisfaction; and,
- Office: time to close cases, including complaints against itself, and the average cost per case.

The providers self-reporting of compliance sits uneasily as a standard as this is not a measure of Utilities Disputes' performance except in the most indirect manner. This issue of compliance is best considered as part of the proposed extension to the Scheme's responsibilities in relation to provider's complaint handling detailed in Section 15.

As discussed above, the average cost per case standard also appears flawed and lacks the required credibility.

It is recommended that the current performance standards relating to the self-reporting of compliance and cost per case should be removed.

Using Danet's three-part classification potential performance indicators could be:

Customer focus

- service usage by socio-demographic breakdown compared to information from Statistics New Zealand;
- customer satisfaction (by socio-demographic breakdown);
- no more than X cases are considered by more than two caseworkers, where X is the number agreed by the Board of Utilities Disputes.
- unprompted and prompted awareness.

Provider focus

- satisfaction surveys by type of provider;
- responsiveness of providers to Utilities Disputes recommendations (excluding binding decisions);

- Utilities Disputes produces systemic reports. At present relatively few are published but in Section 7.5 it is recommended that Utilities Disputes increases its activities in this area to the benefit of consumers and providers. A potential measure of the change would be to assess the number of complaints about an issue received before the issuing of a systemic report and after the issuing of the report. There would need to be a time lag to allow providers to make any necessary changes and may need to be tracked over an extended period of time.

Office focus

The commonest way to assess the efficiency of complaint handling is to set a target of % of cases closed within a given time frame. Utilities Disputes does this with its targets for closure at 30 and 90 days (with a 60 day target also reported to the Board). Utilities Disputes also measures the average number of days taken to close a deadlocked complaint accepted for consideration.

As Danet¹⁵ suggests, the combination of the number of files closed together with the speed of handling will provide an indication of efficiency especially if linked to the number of whole time equivalent staff.

In addition, a case reopening indicator should be created. The rapid closure of cases is not necessarily successful if it is associated with a significant number of cases needing reopening.

It is important for Utilities Disputes to continue providing information on complaints made against the Scheme.

In relation to the concern about the asking the right survey questions there are two potential options available to Utilities Disputes. Utilities Disputes already carries out

¹⁵ DANET, B, 1978, Toward a Method to Evaluate the Ombudsman Role, *Administration & Society*, Vol 10 No 3, 335- 370, p.356

limited satisfaction surveys using UMR Research. It could either continue to use that approach or it could adopt surveys that have already been tested.

Two such surveys, among others, are those developed by Naomi Creutzfeldt¹⁶ and by Kees van den Bos, Lynn van der Velden and Allan Lind¹⁷. The Creutzfeldt survey has been used to examine complainants' use of a range of ombudsman services in Europe, including the energy ombudsmen in Germany, France and the UK. This would allow some initial comparison and if repeatedly used will then allow subsequent year-on-year performance to be considered. The second tool is that developed by van den Bos, van der Velden and Lind. They claim that the questions relate to the perceived fairness of the processes used by the complaint body and that the better the scores on the six questions the more likely that people would be satisfied not only with the way their case was handled but also the outcome even where negative.

Whichever option is chosen, using the questionnaire on all 250 or so complainants, whose cases are accepted by Utilities Disputes each year, should generate reliable answers assuming a reasonable response rate.

The Board should review its performance indicators. It should consider the utility of the indicators described within this section.

¹⁶ CREUTZFELDT, N., 2016, *Trusting the Middle-Man: Impact and Legitimacy of Ombudsmen in Europe*, [Online] Viewed 26 April 2017, [Available from] <https://www.law.ox.ac.uk/trusting-middle-man-impact-and-legitimacy-ombudsmen-europe/project-reports>

¹⁷ VAN DEN BOS, K., VAN DER VELDEN, L. and LIND, E. ALLAN, 2014, On the Role of Perceived Procedural Justice in Citizens' Reactions to Government Decisions and the Handling of Complaints, *Utrecht Law Review*, Vol.10 Issue 4.

14. LEVIES

14.1. Introduction

As part of its review the review team was asked to consider the current levy structure used by Utilities Disputes. As a consumer alternative dispute resolution scheme it is funded by organisations within the industry over which it has jurisdiction. This section considers the current levy system, issues raised with the review team concerning the current levy system before making recommendations for change.

14.2. Current System

Since its inception in 2002, initially as the Electricity and Gas Complaints Commission, and latterly as Utilities Disputes, six different levy systems have been used with the current levy system in operation from 2012. It is comprised of both fixed and variable elements, with the variable element calculated using the number of deadlocked complaints considered by Utilities Disputes in one year being used to calculate a provider's variable contribution the following year. A mix of fixed and variable elements is typical of private sector funded alternative dispute resolution schemes although the ratios between the two elements differ significantly between schemes.

For the variable element, once a deadlocked complaint has reached Utilities Disputes, there is effectively a 24 hour period during which a provider can make a final attempt to settle the complaint. If they succeed the provider will not accrue a fee. If the dispute continues past that 24 hour period a staged variable levy payment system begins. Around half of all deadlocked complaints are settled within that first 24 hour period.

Should a case, reaching deadlock, be ruled out of jurisdiction then no variable fee is payable.

For cases that are settled by Utilities Disputes after deadlock, a three-tier payment system applies. The level of tier which is finally paid depends upon the length of time that it takes Utilities Disputes to resolve the complaint, and is as follows:

- Level One: Up to eight hours or 20 days, cost \$500NZ.
- Level Two: the next eight hours or a further twenty days, costs an additional \$500NZ.
- Level three: any case that takes longer than level two, costs an additional \$1,000NZ.

The total possible cost of any individual complaint is therefore \$2,000NZ.

Utilities Disputes have developed the following requirements for the levy system:

1. The system should encourage the timely and appropriate resolution of complaints;
2. It should support the achievement of the Scheme's purpose, such as, it is free to complainants, is accessible and independent etc.;
3. It should provide certainty and predictability to providers;
4. It should reliably provide the funds to run the Scheme;
5. It should be easy to administer and understand; and,
6. Be equitable between members.
7. Ensures a levy is not disproportionate to the cost of dealing with a complaint.
8. Is not dependent on the outcome of a particular complaint.
9. Is sufficiently robust to not need changing for several years.

10. Complies with the requirements of Schedule 4 of the Electricity Industry Act 2010.

14.3. Issues with the current system

The following issues were reported to the review team during the interviews.

It was reported on several occasions that should a complaint reach Utilities Disputes at deadlock there was an incentive for the provider to make an offer to settle the complaint thus avoiding the variable fee even where the provider felt completely in the right, with one participant claiming it drove the 'bizarre behaviour' of settling to avoid a fee.

Providers have relatively strict deadlines to which they must respond for requests for information. Such deadlines do not apply to the complainant. Providers raised concerns that, where a delay was caused by the complainant's delayed response, the complaint could fall into a higher fee band even though the caseworker may not have undertaken any work on that case while waiting for the response. One provider described this as 'punitive'.

The review team was also told while all providers are required to be part of Utilities Disputes not all make a financial contribution to the costs of the Scheme and that Transpower received what was described to the review team as a 'sweetheart deal' when it joined the Scheme and which continues to be in place today.

While concerns were raised by providers, the most common view told to the review team was that the current levy system was generally acceptable. One interviewee said it was 'the best that they [Utilities Disputes] have had'.

Finally, from a Utilities Disputes view, the number of jurisdiction issues needing consideration by senior members of staff from Utilities Disputes has noticeably risen, potentially, driven by the fact that if a case is ruled out of jurisdiction no variable fee is payable.

14.4. Recommendations

The requirements of the levy system developed by Utilities Disputes establish a sound basis upon which it can operate. However, following feedback from the interviews the review team is of the view that they should be amended and, to the list detailed in the Scheme Document, should be added:

1. Every organisation covered by the scheme should make a contribution towards its costs; and,
2. There should be no cross-subsidisation of providers, nor sweetheart deals.

Every organisation which is covered by the Scheme should make a contribution to its running costs. It is accepted that some bodies are low volume, low profit organisations, yet it is important that every body contributes. The Board should determine the correct fee. It is noted that similar schemes, based in Australia have a 'membership fee' applicable to all organisations that are under their jurisdiction, the fee size reflecting the size of their customer base.

There should be no cross-subsidisation of providers, nor sweetheart deals. Thus, the levy arrangements for Transpower and First Gas should be revisited. When Transpower and First Gas joined the Scheme, as voluntary members in 2005, they were charged \$65,000NZ and \$23,000NZ respectively. In addition, annual increases were to be calculated using CPI. This may have been appropriate in 2005 but it now appears that the other provider schemes are effectively subsidising both Transpower and First Gas's contributions. There are two matters that the Board of Utilities Disputes should consider:

- Firstly, what is the correct level of basic contribution for both Transpower and First Gas? If it significantly increases from their present levels should there be a transition period and, if so, for how long should it last?
- Secondly, even if the Board determines not to change the current contribution from both Transpower and First Gas, the annual increases should be on the same basis as every other provider organisation and not linked to CPI.

The fixed element should cover all costs incurred by Utilities Disputes excluding those solely related to the handling of individual complaints. The current split between the fixed and variable elements appears about right as it provides sufficient stability of income for Utilities Disputes while, as the evidence indicates, also acts as an incentive for bodies to resolve complaints prior to them reaching Utilities Disputes. However, dependent upon the future activities undertaken by Utilities Disputes, such as increased activity in systemic improvement, engaging with the public, or supporting complaint handling by provider organisations, this ratio may need to change. However, the variable element should relate only to the costs of dealing with complaints which have reached Utilities Disputes at deadlock. The Board will need to keep this under review.

In keeping with the ‘user pays’ principle, any case reaching Utilities Disputes at deadlock should incur a fee. At the present time only about half the complaints that arrive at Utilities Disputes at deadlock generate a fee. Providers have 20 days to resolve a case (and which can be extended in certain circumstances) yet over half of cases at deadlock are resolved within a day of it arriving at Utilities Disputes. Arguably, this indicates that it should have been possible for the bodies to resolve the complaints prior to it reaching deadlock. These 250+ cases, which are resolved on the first day, create activity for Utilities Disputes and should generate a fee. This may be something fairly nominal such as \$50 - \$100NZ but it would be in keeping with the objective of encouraging complaints to be resolved in-house.

The current variable fee structure needs to be reconsidered. The Board should remove the day element of the three-tier fee structure so that it is only the time spent on the case by Utilities Disputes that indicates the tier into which the case falls. In addition, instead of the tiers consisting of 0-8 hours, 8-16 hours and over 16 hours work, there should be five tiers of 0-4 hours, 4-8 hours, 8-12 hours, 12-16 hours and over 16 hours in its place. The fees would more accurately reflect the time spent on the case. It is not suggested that costs should relate exactly to the actual time taken as this would increase the cost of administration through the need to keep very accurate track of the time involved and the subsequent calculation of the relevant costs. This administrative

time would be unproductive activity. If the Board accepts the recommendation that there should be five tiers and not three as at present, it would need to review the level of fees per tier.

It is not intended to suggest that these alterations to the overall levy structure increase the income generated by Utilities Disputes. There is a difference between identifying a fair levy structure and the budgetary requirements of Utilities Disputes although it does appear to the review team that there is some confusion between the two subjects. The actual cost of the service is a matter for the Board to determine and the levy structure will identify the resulting individual costs for providers. The Board in exercising its governance responsibilities will want to demonstrate efficiency in its operations and the section of this review on performance indicators will demonstrate some indicators that may be used to achieve this.

15. THE REQUIREMENTS FOR PROVIDERS' COMPLAINTS PROCESSES

15.1. Introduction

As part of the review, the review team was asked to consider whether Utilities Disputes sets out appropriate requirements for Provider's complaints processes. The requirements are contained within clause 12 of the general rules within the Scheme Document:

12. Each Provider must:

- a) promote the relevant Scheme(s) on any invoice to customers and in other relevant customer information.
- b) have and comply with a documented Complaints process appropriate to the nature of their services and scale of their operations, including providing and keeping up to date information about the staff member(s) responsible for complaint handling.
- c) provide information about their Complaints process to their customers or consumers.
- d) ensure Complaints can be made in any reasonable form and are promptly recognised as Complaints.
- e) promptly refer Complaints made to them in error to the correct Provider.
- f) provide UDL's contact details to Complainants when:
 - the Complainant first makes the Complaint to the Provider,
 - advising the Complainant of the outcome of the Provider's Complaints handling system, or,
 - the Complaint has reached Deadlock.
- g) when advising Complainants of the outcome of Complaints dealt with by the Provider's Complaints handling system, also advise Complainants that they may complain to UDL, if they are not satisfied with that outcome.

15.2. Issues

The approach taken by Utilities Disputes may be described as ‘light touch’. It sets out general requirements, which allows individual providers latitude in establishing complaints procedures appropriate to their business. Providers must complete a compliance report each year. However, there are some issues.

A mystery shopping exercise conducted by Utilities Disputes revealed that not all companies were complying with the requirements of the scheme; some companies used terms such as ‘issues’ and ‘resolution process’ rather than ‘complaints’ and ‘complaint handling’ which may cause confusion to some individuals; some bills, while containing the requisite information, did so in such a small font that it would be potentially unreadable to persons with eyesight problems; and, with the increasing move to online billing it can take several clicks before information on the complaints process can be located. It is clear that uneven practice exists.

15.3. International Approach

Increasingly alternative dispute resolution schemes see themselves as experts in the complaints system and that they should use this experience and their role within the overall system to improve the overall complaints processes at all levels.

In the UK, in 2015, OFGEM, the regulator for the gas and electricity markets commissioned Lucerna to review Ombudsman Services: Energy¹⁸. In this report, Lucerna noted that Ombudsman Services: Energy had three roles: individual complaint handling, improving complaint handling by energy firms, and, identifying systemic industry wide issues. In its recommendations (p. 43), Lucerna encouraged Ombudsman Services: Energy to undertake greater activity in the latter two of these three roles. That is, in improving complaint handling by energy firms and the identification of systemic industry wide issues. It states that by doing this it “has the potential to drive significant benefits for all consumers – those who complain, those who complain initially but do not pursue their claim to the ombudsman, and those who never complain” (p.43)

¹⁸ Lucerna, 2015, *Review of ombudsman services: energy. A report for Ofgem*, [Online] [Viewed 19 May 2017] [Available from} https://www.ofgem.gov.uk/sites/default/files/docs/2015/09/review_of_ombudsman_services_energy_2.pdf

Also in the UK, the Scottish Public Services Ombudsman has a statutory function to set standards and audit compliance of the complaints systems and processes of bodies in jurisdiction. The new Public Services Ombudsmen in England will be given the statutory duty to provide information, training and advice on complaint handling to bodies in jurisdiction.

Both the Public Service Ombudsman of Wales and the Parliamentary and Health Service Ombudsman in England have strategic aims to help improve complaint handling by bodies in jurisdiction. This is not confined to the UK. For example, in Australia, the New South Wales Ombudsman, the Commonwealth Ombudsman and the Queensland Ombudsman all undertake action aimed at improving complaint handling by bodies in jurisdiction.

15.4. Recommendations

It is recommended that Utilities Disputes adopts a more proactive role in complaint handling by bodies in jurisdiction. These should include, as a minimum, the provision of guidance material demonstrating good advice in complaint handling and which sets out the minimum standards to be met by bodies in jurisdiction which is supported by the provision of training on complaint handling. This latter could be provided on an online basis.

In addition, **where Utilities Disputes has reasonable grounds to believe that a body in jurisdiction is not complying with the minimum standards it should have the ability to audit the body concerned.**

16. LAND COMPLAINT EXCLUSIONS

16.1. Introduction

As part of the five year review, the review team was asked to consider ‘the Commissioner’s jurisdiction to consider complaints made by landowners and occupiers’.

This section of the review considers:

- the current exclusions that apply in relation to complaints made by landowners and land occupiers that prevent consideration of the complaint by the Commissioner;
- the history of the exclusions; and,
- the views of both transmission organisations and Utilities Disputes.

The section will conclude with discussion about whether land exclusions should still apply

16.2. History of the Land Complaint Exclusions

The land complaint exclusions that exist date back to the expansion of the Electricity and Gas Complaints scheme (EGCC) in 2006. The driving force for the changes to the EGCC was a Government Policy Statement issued in 2004 which stated that

everyone (including potential customers and landowners) have access to a free, independent system for resolving complaints about electricity distribution (including Transpower) and electricity retailers whether or not they have a consumer contract with the retailer or distribution company. (cited by the Land Code Working Group, 2005, p.6).

In 2004, the Electricity Amendment and Gas Amendment Acts were passed which required every electricity and gas distributor and retailer to be part of a complaints

scheme; this scheme to be an industry sponsored scheme. Both these Acts made clear the expectation that complaints to the scheme could be made by land owners and land occupiers.

Consequently, a Land Code Working Group was established by the Electricity Network Association, Transpower and the Gas Industry Company, and which developed proposals that supported the EGCC becoming the relevant scheme as the EGCC satisfied the requirements of the relevant Acts, that the EGCC had good brand awareness among electricity consumers, and of the perceived 'benefits in terms of efficiency, public perception and avoiding confusion in having 'joined up' schemes for consumer and landowner complaints'¹⁹. It is worth noting that the Land Code Working Group consisted solely of representatives from the industries affected by the changes with neither consumer nor EGCC representation.

The working group considered which types of disputes should be considered by the EGCC and which types of complaints should be excluded from its consideration. The exclusions within the current Utilities Disputes scheme date from that time and remain basically unaltered.

16.3. The Industry's Position

The former Electricity and Gas Complaints Commissioner Scheme consulted on the retention of the land complaint exclusions in 2016, as part of its more general consultation which led to it becoming Utilities Disputes Limited. In June 2016, its Board produced a document, *Proposed Scheme Changes –Removal of land complaint exclusions*, which detailed the concerns raised by distributors during the consultation, together with the Board's response to that concern. These concerns were:

- The exclusions had been approved by the Minister;
- There were historically good reasons for the exclusions;

¹⁹ LAND CODE WORKING GROUP, 2005, *Proposal for Expansion of the Electricity and Gas Complaints Commissioner Scheme to Include Land Owner and Land Occupier Complaint*, pps.8-9

- The exclusions cover complaints that are complex and more adequately dealt with in other forums;
- There would be significant implications for network companies' operations;
- Landowners would be encouraged to bring meritless or highly speculative claims to the EGCC; and,
- Increased costs to members means increased costs to consumers.

In this review, the review team was informed by Transpower of the following additional reasons:

1. Transpower does not deal with consumer complaints;
2. That removal of the land complaint exclusions would affect its license to operate;
3. There are a range of court based approaches which exist to resolve any dispute;
4. Although Utilities Disputes cannot make legal decisions it can make binding decisions which could lead to more complaints particularly as there is no obstacle to bringing a complaint;
5. The value of any injurious effect should be determined by the courts;
6. If there was to be an injurious event then an applicable easement would need to have been agreed prior to the work starting. If the work had been completed and Utilities Disputes subsequently determined that there was an injurious effect for which no easement had been obtained then it would raise questions of whether the work was lawfully established;
7. If there is injurious effect then a landowner can prevent Transpower from coming onto their land. If the landowner complained to Utilities Disputes then Utilities Disputes could prevent Transpower from proceeding, holding up the proposed work; and,
8. While the rules say that Utilities Disputes can decide that there may be a more appropriate forum they do not prevent Utilities Disputes nonetheless from considering that complaint.

The Electricity Network Association (an industry group) informed the review team that there was a low level of land complaints and that this figure was static. The Electricity

Network Association interpreted this as confirming that landowners or occupiers who have a complaint have a satisfactory means of resolving the complaint in alternative forums. It questioned the ability of Utilities Disputes to adjudicate on complex high value complaints and said the theoretical potential cost could be very high with the costs being passed onto consumers.

In a letter dated 14 June 2016, addressed to Board Members of the former Electricity and Gas Complaints Commission, Transpower argued that the inclusion of the land complaint exclusion clauses was lawful, citing Clauses 5(1)(c) and 13(1)(c) of Schedule 4 of the Electricity Industry Act 2010 in support. A review of these clauses supports Transpower's view that Parliament envisaged that there would be some kinds of complaints that the scheme would not deal with and that the scheme rules would set these out. The public interest would be protected by the need for the scheme rules to receive Ministerial approval.

However, in conflict with this argument is that Clause (1)(a) of Schedule 4 states

The purpose of the dispute resolution scheme is to ensure that—

- (a) any person (including consumers, potential consumers, and owners and occupiers of land, but excluding members of the scheme) who has a complaint about a member has access to a scheme for resolving the complaint;

If we assume that a landowner has a complaint about a network company which is a member of Utilities Disputes Limited then Clause (1)(a) makes clear that the landowner should be able to access the scheme in an attempt to obtain resolution. However, if the nature of that complaint is such that it is covered by one of the land complaint exclusions contained within the Scheme Document then the landowner is effectively precluded from accessing the scheme in an attempt to resolve that complaint.

The difficulty is that one of the mandatory requirements for the approval of the scheme is 'whether the scheme is capable of meeting the purpose of the dispute resolution scheme as set out in clause 1' (Clause 5(1)(a)). There is a reasonable argument that the Scheme is not able to meet this mandatory requirement as, in the circumstance

described above, the landowner is not able to access a 'scheme for resolving the complaint' (Clause 1(a)). The fact that there are legal alternatives does not negate his right to access the dispute resolution scheme.

16.4. Analysis

The review team is not in a position to provide an opinion on the legality of the exclusions. The review team's view is based upon their expertise in alternative dispute resolution, knowledge on comparable schemes and the application of general principles of accessible justice.

The review team investigated the nature of exclusions that are in place in similar schemes in other countries. In doing this, it examined the scheme documents (or their equivalents) of the Australian and UK energy ombudsman schemes. It is important to note that each of these schemes contain exclusions, and, in the case of the Australian energy ombudsmen, the scheme exclusions are broadly similar, but in every case the restrictions are more circumscribed and none of the documents contained similarly restrictive land complaint exclusions.

Our analysis, based on the statutory provisions and the policy statements preceding them, is that Parliament intended for land owners and land occupiers to be able to bring complaints about Transpower and other network companies to Utilities Disputes. It is reasonable for schemes such as Utilities Disputes to contain exclusions on the kind of cases that it will consider. This approach is used in many similar schemes. However, the extent and scope of the exclusion within the Utilities Disputes scheme documents is unparalleled and significantly constrains the rights of land owners and land occupiers to obtain justice. The failings of the court system to address the rights of such land owners and land occupiers were recognised by the Land Code Working Group. As the Land Code Working Group stated:

the ordinary court systems are often seen by landowners as involving too much costs, complexity and formality to be an effective means of resolving complaints. This is particularly the case for complaints where the loss suffered is relatively low or the landowner does not have large financial

resources. In such cases, the relatively high cost of court proceedings may discourage the complainant from pursuing the case'.²⁰ .

In addition the Working Group acknowledged that this was a major factor in the Government's decision to introduce the complaints scheme. One cannot make a stronger argument.

A scheme such as Utilities Disputes should only constrain the rights to justice of individuals where there is evidence to demonstrate a realistic possibility of significant harm. Given that the schemes in Australia and the UK operate without such exclusions and, the concerns raised by the bodies have not materialised in these countries, then there must be doubt that the concerns expressed, while honestly held, would actually cause the problems foreseen. The starting principle should always be that there is no constraint on an individual's right to obtain redress unless there is a demonstrable public interest that significantly outweighs that individual's rights. That is not the case at present.

16.5. Recommendations

Should the question of the exclusion's lawfulness persist then the Board may want to take senior counsel opinion on this matter.

It is recommended that the land exclusion clauses should be removed. In order to provide safeguards the following is recommended:

1. Where the commissioner believes that, all things considered, there is a more suitable forum to consider the complaint then the default position is that it should be referred for consideration by that forum;
2. The test-case clause should be retained. This will enable network companies to seek the judgment of the courts if they believe that it is of significant importance;

²⁰ LAND CODE WORKING GROUP, 2005, *Proposal for Expansion of the Electricity and Gas Complaints Commissioner Scheme to Include Land Owner and Land Occupier Complaints* p.12

3. The maximum value of \$50,000NZ is retained;
4. Should the exclusions be removed then Utilities Disputes should only be able to review the actions of network companies that took place after the change date. It should be robust in rejecting old issues packaged as new issues. For clarity, the action complained about must have occurred after the change date; and,
5. Should the exclusions be removed, a review team consisting of Utilities Disputes, Transpower, the Electricity Networks Association, consumer representatives and the relevant Ministry should review its operation after a period of six months to determine if there should be any further change to the scheme rules.

17. APPENDICES

Appendix 1: List of documents reviewed

Appendix 2: List of persons interviewed

Appendix 3: Satisfaction questions developed by van den Bos, van der Velden and Lind

Appendix 1: List of documents reviewed

Utilities Disputes Ltd

- The General and Scheme Rules (effective 1 November 2016)
- The Constitution and Governance Charter (effective 1 November 2016)
- Earlier versions of the Scheme documents
- The second-round consultation document on scheme changes
- Scheme change documents
- Annual Reports for years 2012,2013,2014,2015 and 2016 respectively
- Understanding the Value of the Electricity and Gas Complaints Commissioner (October 2015, Sapere Research group)
- The Complaints Process Model
- Information relating to Community Outreach
- UDL Newsletter (February 2017)
- A range of performance reports
- The results of customer, provider and stakeholder surveys
- Staff performance review forms (blank forms)
- The Position Description for Independent Directors
- The Accessibility Project
- Draft UDL Strategy
- Communication Plans
- The Brochures and Factsheets available on the UDL website
- Case Notes
- Practice Statements
- Issues in Complaints
- Media releases
- Webinar on levies and supporting documentation
- Guidance documents for both providers and consumers
- The outreach speaking calendar for 2017
- Staff survey results
- Independent Review of the Electricity and Gas Complaint Scheme 2011 (Baljurda Comprehensive Consulting Ltd)
- UDL website

Australian Energy Ombudsmen

Where available, the constitutions, charters, website and Annual Reports of the energy and water ombudsmen of:

New South Wales
Queensland
South Australia
Tasmania
Victoria

And the equivalent documents and website for **Ombudsman Services** (the energy ombudsman for the UK), including The Independent Review of the Energy Ombudsman (2010, Sohn Associates)

Australian Ombudsmen

The annual reports of the New South Wales, Queensland, South Australia, Victoria, and Western Australia Ombudsmen.

Ministry of Business Innovation and Employment:

- Its Electricity and Gas Complaints Commissioner Scheme document

Other documents:

- Key Practices for Industry-based Customer Dispute Resolution (2015, Australian Government)
- Australian Standard: Customer satisfaction – Guidelines for complaints handling in organizations (ISO 10002:2004, MOD)
- Some participants in the discussions with the visiting reviewer brought documents which have also been considered.
- Annual Reports of the Alberta, Toronto, Ugandan and Dutch Ombudsmen.

Appendix 2: List of persons interviewed.

Utilities Disputes Limited

Hon Heather Roy – Chair
Nicky Darlow –Board member: Independent Director
Nanette Moreau – Commissioner
Jerome Chapman – Deputy Commissioner
Clive Young – Organisational Development Projects Manager
Liz Lewinson – Communications Manager
James Blake-Palmer – Manager - Stakeholder Engagement
Warren Gaskin – Business Manager
Paul Moreno- Research Analyst

Consumer representatives

Consumer NZ: Sue Chetwin
New Zealand Federation of Family Budgeting Services: Raewyn Fox

Retailer providers

Genesis Energy: Chris O'Donnell and Prudence Hockenhill
TrustPower: Jason Parker and Steve Merchant
Meridian Energy: Jason Woolley and Brendan Feary
Mercury Energy: Roger Wain
Contact Energy: Brook Barrington and Bryan Middleton

Network and Transmission providers

Vector: John Rodger and Ross Malcolm
First Gas: Karen Collins
Transpower: Chris Browne and Peter Scott
Paul Goodeve – former Board member: network representative

Other stakeholders

Gas Industry Company: Steve Bielby and Tim Kerr

Electricity Authority: Ron Beatty
Ministry of Business, Innovation and Employment: Alec Mladenovic and Laurie Boyce
Electricity Networks Association: Graeme Peters and Richard Le Gros
Electricity Retailers Association: cancelled due to illness
Commerce Commission: Rachel Coyle and Ben Oakley
Energy and Water Ombudsman of Victoria, Australia: Cynthia Gebert (Ombudsman)

Appendix Three. Proposed questions to establish satisfaction with Utilities Disputes.

Using a Likert scale, respondents are asked to state how much they agree with the following statements:

1. I was treated in a polite manner.
2. I was treated with respect.
3. I was able to voice my opinions.
4. My opinion was seriously listened to.
5. I was treated in a just manner.
6. I was treated fairly,
7. The officials with whom I interacted were competent.
8. The officials with whom I dealt were professional.