



General and Scheme Rules

for the

Water Complaints Scheme

operated by

Utilities Disputes Limited

Effective 15 January 2018

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Utilities Disputes Limited

General Rules

INTRODUCTION AND GENERAL PRINCIPLES

1. Utilities Disputes Limited or UDL operates an independent external complaints resolution service whose purpose is to resolve Complaints about Providers who provide goods or services in the Utilities Sector.
2. UDL's main objectives are to:
 - a) provide Complainants with access to a dispute resolution scheme for resolving their Complaint,
 - b) be an Approved Scheme for businesses or undertakings operating in the Utilities Sector, and
 - c) actively help resolve Complaints.
3. UDL will appoint a Commissioner to deal with Complaints. In dealing with Complaints the Commissioner must:
 - a) do what he or she considers appropriate to resolve Complaints in a cooperative, fair, efficient, and timely way,
 - b) proceed with minimum formality,
 - c) be as transparent as possible, while also acting in accordance with his or her confidentiality and privacy obligations, and
 - d) act in accordance with the founding principles of:
 - accessibility
 - independence
 - fairness
 - accountability
 - efficiency
 - effectiveness, and
 - the rules of natural justice.
4. The Commissioner exercises all powers and discretions conferred on UDL by these General Rules and the Scheme Rules. The Commissioner must act independently when dealing with Complaints and not be subject to the direction or control of any other person.

GENERAL RULES AND SCHEME RULES

5. These General Rules set out:
 - a) who can make a Complaint,
 - b) how UDL resolves Complaints,
 - c) the types of remedies UDL can provide, and
 - d) other related matters.

6. UDL will also agree Scheme Rules with individual Providers or groups of Providers that set out:
 - a) more specific details of how the Scheme will deal with Complaints. For example, the value of the maximum Complaint that can be dealt with for purposes of General Rule 15(e), and
 - b) any variations or additions to these General Rules that will apply to dealing with Complaints about the Providers in that Scheme. For example, variations or additions needed to comply with any legislation that applies specifically to Providers in that Scheme.

7. UDL will consult with relevant stakeholders before agreeing Scheme Rules.

8. If a Scheme Rule is inconsistent with a General Rule, the Scheme Rule will apply.

9. By entering into a Provider Agreement, a Provider becomes bound by these General Rules and by the Scheme Rules that apply to it.

10. The Board may amend:
 - a) these General Rules, after consulting with relevant stakeholders including all Providers, and
 - b) any Scheme Rules, after consulting with the relevant Providers and other relevant stakeholders.

11. Where a Scheme is an Approved Scheme, the Board must follow the requirements of the relevant legislation (for example, obtaining the consent of the Minister) before amending the Scheme.

PROVIDER OBLIGATIONS

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.

COMPLAINTS THAT MAY BE CONSIDERED AND DETERMINED BY UDL

13. Before accepting a Complaint for consideration, UDL must be satisfied:

- a) the Complaint is made by or on behalf of a Complainant, and
- b) the Complaint has been made to the Provider and has reached Deadlock.

14. UDL may accept a Complaint for consideration:

- a) about goods or services provided (or requested but not provided) by a Provider,
- b) about the unlawful effect on a landowner or land occupier's rights of a Provider's actions when exercising, purporting to exercise or failing to exercise rights, powers or obligations claimed by the Provider under any applicable law, or under an access agreement granted to the Provider by the owner or occupier, or
- c) if the Provider agrees, where UDL would not otherwise have jurisdiction to accept the Complaint for consideration.

15. Unless the Provider agrees otherwise, UDL must not accept a Complaint for consideration:

- a) if it is about the price a Provider chooses to set for their goods or services. But UDL may consider whether appropriate information about charges has been made available to the Complainant and whether charges for services have been correctly applied,
- b) if the subject matter of the Complaint is being, or has already been, dealt with in a previous Complaint to UDL by or on behalf of the same Complainant against the same Provider, and there are insufficient additional events and facts raised to warrant UDL's consideration of the new Complaint,
- c) if the subject matter of the Complaint is being, or has already been, dealt with in a proceeding brought by the Complainant before a court, tribunal, arbitrator, independent or statutory complaints or conciliation body or a statutory Ombudsman and the Provider has complied with General Rule 13,
- d) if more than six years have passed from the date the Complainant first became aware or should reasonably have become aware of the circumstances giving rise to the Complaint, or
- e) if the value of the Complainant's claim exceeds the amount stated in the Scheme Rules in respect of that Provider.

16. UDL decides whether a Complaint falls within its jurisdiction. UDL will request and consider representations from both parties before deciding.

17. If a Complaint is not accepted, UDL will give written reasons to the parties.

18. UDL may refuse to deal, or stop dealing, with a Complaint if UDL considers it appropriate. Examples include where:

- a) there is a more appropriate place to deal with the Complaint,
- b) the Complainant does not, or ceases to, have a sufficient interest in the subject matter of the Complaint,
- c) the Complainant has received a payment under an insurance policy in respect of the subject matter of the Complaint and UDL considers the payment to appropriately resolve the Complaint,
- d) it appears to UDL, on the basis of the facts presented by the Complainant, the relevant Provider has made a reasonable settlement offer in settlement of the Complaint,
- e) the Complaint being made is frivolous or vexatious or not being pursued in a reasonable manner, or
- f) the Complainant knew about the circumstances giving rise to the Complaint for more than 12 months before making the Complaint.

WHO MAKES DECISIONS ON COMPLAINTS

19. The Commissioner makes all decisions on Complaints.
20. The Commissioner may delegate:
 - a) all or any powers (except the power to make final decisions on jurisdiction, Recommendations and Determinations) to any employee or contractor engaged by UDL.
 - b) with the agreement of the Board, the power to make final decisions on jurisdiction, Recommendations and Determinations, to one or more Deputy Commissioners.
21. Despite General Rule 19, the Commissioner may delegate a Deputy Commissioner to one or more Schemes and the Deputy Commissioner will take particular responsibility for dealing with Complaints in that Scheme.
22. The Commissioner will form an independent panel of experts with particular knowledge of the relevant industry sector, including good industry practice to provide independent technical advice to the Commissioner in relation to Complaints.

DEALING WITH COMPLAINTS

23. Where Complainants need assistance, UDL may assist Complainants make a Complaint.
24. UDL must deal with each Complaint on its merits and with the objective of reaching an outcome that, in its opinion, is fair and reasonable in all the circumstances having regard to:
 - a) any legal rule or judicial authority that applies,
 - b) rules of natural justice,
 - c) general principles of good industry practice and any industry guidelines that apply,
 - d) resolving Complaints in a cooperative, efficient and timely way, and
 - e) assisting Complainants and Providers to reach informed and voluntary agreements to resolve Complaints where possible.

INFORMATION

25. UDL will ensure that its Complaint handling process includes a clear and prominent acknowledgement and agreement by the Complainant that the Complainant:
 - a) authorises the Provider to disclose any information UDL may request from the Provider about the Complaint, and
 - b) undertakes to provide any more information UDL may reasonably request.

26. UDL may decide not to continue considering a Complaint where a Complainant unreasonably refuses to provide information requested by UDL.
27. A Provider must promptly provide UDL with information UDL requests to assist in dealing with a Complaint. This does not apply if the Provider provides a certificate to UDL confirming:
- a) the disclosure would cause the Provider to breach its duty of confidentiality to a third party who has not consented to disclosure, despite the Provider using best efforts to obtain such consent,
 - b) the Provider does not have the information requested, or
 - c) providing the information would breach a Court order or legal professional privilege, or would prejudice a current investigation by the New Zealand Police or another law enforcement agency.
28. Information provided by a Party will not be treated as confidential and may be publicly disclosed, unless the law requires, or UDL agrees, otherwise.
29. Any Party may ask for copies of any information on UDL's file on the Complaint and UDL must provide that information subject to legal requirements and any procedural standard UDL develops.

COMPLAINT RESOLUTION PROCESS

30. After accepting a Complaint for consideration, UDL must:
- a) use reasonable efforts to resolve the Complaint in a timely manner,
 - b) comply with the requirements of natural justice and procedural fairness, and
 - c) regularly inform the Parties of progress towards resolving the Complaint.
31. In resolving the Complaint, UDL:
- a) must investigate the Complaint to the extent it considers appropriate in the way set out in these General Rules and the relevant Scheme Rules and consistent with the rules of natural justice,
 - b) may consider any information in relation to a Complaint, and make any inquiry, that is fair and reasonable in the circumstances, and
 - c) must aim to be consistent with the way other Complaints have been resolved by UDL, but is not bound by any legal rule of evidence. Decisions do not create precedents.

Recommendations

32. If the parties do not settle the Complaint, or if the Complainant or Provider requests, the Commissioner may recommend a settlement. Before recommending a settlement the Commissioner must give the Parties 15 working days' notice of the intention to do so and the opportunity to make submissions during the notice period.
33. Resolution of a Complaint about a Provider is binding on the Complainant if the Complainant accepts the resolution in full and final settlement or has agreed to be bound by a final decision and a Determination is made.
34. If a Recommendation is accepted by all Parties, the Provider must promptly comply with it.

Determinations

35. If a Recommendation is accepted by the Complainant, but not by the Provider, within 15 working days, the Commissioner may make a Determination.
36. If a Determination is accepted by the Complainant within 15 working days it is binding on the Parties and the Provider must promptly comply with it. If not, the Complainant is entitled to pursue any remedy in any other forum and the Provider is fully released from Determinations in relation to that Complaint.
37. The value of any Determination must not be greater than the amount set out in the Scheme Rules that apply to the Provider, unless the Provider agrees a greater amount.
38. In addition to the amount payable under General Rule 37, a Determination may include an amount of up to \$2,000 to compensate a Complainant for expenses of making a Complaint or for inconvenience suffered because of a Provider's failure to comply with a relevant code of conduct. Any amount of money paid to a Complainant under this clause is in addition to the amount a Determination may otherwise provide.
39. Unless the Provider agrees otherwise, any Determination that requires the Provider to provide any good or service, take any action or pay money or money's worth must be made on terms that it may be accepted only in full and final settlement of the subject matter of the Complaint.
40. There is no right of appeal of a Determination.

TEST CASES

41. At any time before the Commissioner has made a Recommendation or Determination, a Provider named in a Complaint:

- a) may give UDL written notice that it considers the Complaint should be pursued in court proceedings because it involves an issue which may have important consequences for the Provider's business or businesses like it, or an important or novel point of law,
- b) must at the same time write to the Complainant explaining that it proposes to pursue the Complaint as a test case and outlining the process by which this will occur. The provider must copy that correspondence to UDL, and
- c) must:
 - begin, and/or assist the Complainant to begin, proceedings in respect of the Complaint in any New Zealand court within four months of the date of notice to the Complainant,
 - pay the Complainant's costs and disbursements (including any reasonable costs of legal representation) of the proceedings at first instance and any subsequent appeal proceedings commenced by the Provider (except by way of respondent's notice, cross-appeal or other similar procedure), and
 - make interim payments for such costs if and to the extent that it is reasonable to do so.

42. Provided UDL agrees with the Provider's reasons and considers the Provider's notice to the Complainant is accurate and clear, UDL must suspend consideration of the Complaint for four months.

43. UDL may elect to resume consideration of the Complaint if proceedings are:

- a) not begun within four months, or
- b) not pursued to judgment.

COSTS OF PROVIDING THE SERVICES

44. All UDL's costs of operation and of providing its services and related activities are met by the Providers.

45. Each Provider will pay membership fees and charges as set out in the relevant Scheme Rules.

46. UDL will set the membership fees and charges payable in respect of each Scheme with the aim of covering the Scheme's direct costs and a proportionate share of UDL's overall costs

OTHER UDL ACTIVITIES

47. As well as resolving Complaints, UDL may carry out activities it may consider appropriate to support its services and with the aim of promoting good practice in relation to handling of Complaints and public confidence in dealing with Providers.

48. These activities may include (but are not limited to):

- a) promoting a Scheme to ensure public awareness of UDL's services and how to use them,
- b) setting performance standards for UDL's resolution of Complaints, and measuring the quality and timeliness of their services by reference to those standards,
- c) reviewing the General Rules, Scheme Rules and Schemes from time to time, to assess whether UDL considers any amendments are appropriate,
- d) monitoring Providers' compliance with the Scheme(s) including, for example, by mystery shopping, and providing reports and recommendations to Providers based on the outcome of the monitoring,
- e) collecting and analysing information and data about Complaints and their handling and about the Utilities Sector, and using those to monitor, prepare and publish reports about trends, practices and systemic issues in relation to a particular Scheme or all or part of the Utilities Sector,
- f) making recommendations and reports in light of trends, practices and issues in relation to a particular Scheme or all or part of the Utilities Sector,
- g) preparing a code of conduct Providers must follow when handling Complaints,
- h) establishing a process for dealing with Complaints about UDL's operation of a Scheme,
- i) preparing reports on UDL's activities for stakeholders including the Board and any Minister, or
- j) providing anything required by legislation to enable a Scheme to be an Approved Scheme.

49. A Provider must promptly provide information UDL requests:

- a) for administrative, operational, business planning or performance review purposes,
- b) to prepare reports and recommendations for a Minister or other significant stakeholder,
or
- c) to assist in developing a code of conduct for Providers in one or more Schemes or Utilities Sectors.

OTHER MATTERS

50. The Commissioner, Deputy Commissioner(s), Board members and UDL employees and contractors are not liable for any loss, damage or liability that arises from anything done or omitted in the course of their duties, unless the person has acted in bad faith.
51. The Providers in each Scheme jointly indemnify the Commissioner, Deputy Commissioner, Board members and UDL employees and contractors for any liabilities incurred as a result of an act or omission performed in good faith in administering that Scheme. This indemnity does not cover liabilities:
- a) to the extent that they are covered and paid under an insurance policy held by UDL,
 - b) incurred in administering other Schemes, or
 - c) arising out of a person's wilful default.
52. UDL may hold annual meetings of Providers in each Scheme, giving not less than 10 working days' notice of the time and place. The chairperson of the Board will chair the meeting and will decide the procedure to follow.
53. A Provider which fails to meet its obligations under the General Rules and the Scheme Rules or fails to comply with a Recommendation or Determination may be expelled from UDL by the Board.
54. If there is any inconsistency between a Provider's obligations under a Scheme and a Provider's rights and or obligations under any other agreement or arrangement between Providers, the Provider's obligations under the Scheme prevail.
55. A Provider may withdraw from UDL by giving 12 months' notice (or a shorter period if the Board agrees).
56. Termination or withdrawal does not affect a Provider's obligations to pay money to UDL relating to any period, or to comply with a Recommendation or Determination made by UDL, before termination or withdrawal.

DEFINITIONS

In these General Rules, the following words are used with these meanings:

Approved Scheme means a Scheme approved by a Minister as a dispute resolution scheme for the purposes of legislation that applies to participation in the Utilities Sector.

Board means UDL's Board of Directors.

Commissioner means UDL's Chief Executive Officer and when used in relation to procedures for dealing with Complaints, includes the Deputy Commissioner assigned to the relevant Scheme.

Complaint means an expression of dissatisfaction made to or about a Provider where a response or a resolution is explicitly or implicitly expected. For example, a Complaint may be made by letter, email, phone call, text message or a post on a social media page maintained by the Provider, but not on a social media page maintained by the Complainant or a third party.

Complainant means a person who has made a Complaint.

Deadlock means either

a) the Complaint:

- has not been resolved after more than 20 working days and the Provider has not notified the Complainant in writing of its good reason for extending this time, or
- has not been resolved after 40 working days.

b) the Commissioner considers:

- the Provider has made it clear that they do not intend to do anything further about the Complaint,
- the Complainant would suffer unreasonable harm from waiting any longer, or
- it would be unjust for any other reason to wait any longer.

Deputy Commissioner means a Deputy Commissioner appointed by the Commissioner.

Determination means a written determination by the Commissioner under paragraphs 35-40 including a brief statement of reasons for the determination. **Determine** has a consistent meaning.

Minister means the Minister (or Ministers, as the case may be) that is relevant to a particular Scheme or Schemes.

Party means a party to a Complaint.

Provider means a business or undertaking that provides goods or services in the Utilities Sector and that has entered into a Provider Agreement. When used in relation to a particular Complaint, Provider means the Provider about which the Complaint is made.

Provider Agreement means an agreement in the form set out in the Appendix. It includes the Scheme Rules that apply to the particular Provider or group of Providers.

Recommendation means a written recommendation by the Commissioner for settlement or withdrawal of a Complaint including a brief statement of reasons for the recommendation.

Scheme means the terms on which an individual Provider or group of Providers agrees to use UDL's services as set out in these General Rules and the Scheme Rules that apply to them.

Scheme Rules means the terms that apply to a particular Provider or group of Providers as set out in their Provider Agreement.

Utilities Sector means businesses or undertakings that provide necessary goods or services to the public including (without limitation) electricity, gas, water, and telecommunications and related goods and services.

APPENDIX: PROVIDER AGREEMENT

New Provider

Name of entity: *[insert details]* **(New Provider)**

Physical address: *[insert details]*

Postal address: *[insert details]*

Scheme: *[select relevant Scheme from dropdown box]* **(Scheme)**

TERMS AND CONDITIONS

- 1 The terms and conditions of this agreement, together with the relevant Scheme Rules and the General Rules of Utilities Disputes Limited (UDL), govern the legal relationship between UDL and the New Provider.
- 2 The New Provider acknowledges that by accepting this agreement the New Provider agrees to:
 - 2.1 become a Provider under the Scheme;
 - 2.2 be bound by the terms of the Scheme; and
 - 2.3 observe and perform all of the obligations of a Provider under the Scheme.
- 3 The New Provider agrees to be bound by the relevant Funding Agreement under Scheme Rule 12.
- 4 For the purposes of the Contracts (Privity) Act 1982, this agreement is given for the benefit of all Providers, each UDL Board Member (including committee members) and the Commissioner, and is enforceable by any of them.
- 5 This agreement becomes effective when it is executed by UDL. UDL will promptly notify you in writing once it has been executed.
- 6 All terms defined in the UDL General Rules or the Scheme Rules have the same meaning when used in this agreement.
- 7 By accepting this agreement you warrant that you are fully and properly authorised to do so on behalf of the New Provider.

The New Provider understands and accepts the terms and conditions of this agreement []

UTILITIES DISPUTES LIMITED

Scheme Rules - Water Complaints Scheme

- 1 These Scheme Rules supplement the General Rules of the complaints resolution services operated by Utilities Disputes Limited (UDL).
Together with the General Rules, they set out the rules that apply to the independent external dispute resolution service for Water Providers and known as the **Water Complaints Scheme**.
- 2 Unless otherwise stated, words and phrases defined in the General Rules have the same meaning in these Scheme Rules
- 3 For the purposes of the Water Complaints Scheme, the principles listed in General Rule [3(d)] have the definitions given to them in the *Benchmarks for Industry-based Customer Dispute Resolution*.¹
- 4 The definition of “Deadlock” in the General Rules does not apply to the Water Complaints Scheme. For the purposes of the Water Complaints Scheme, Deadlock means either:
 - a) the Complaint has not been resolved after more than 20 working days and the Provider has not notified the Complainant in writing of its good reason for extending this time; or
 - b) the Commissioner considers:
 - the Provider has made it clear that they do not intend to do anything further about the Complaint,
 - the Complainant would suffer unreasonable harm from waiting any longer, or
 - it would be unreasonable for any other reason to wait any longer.
- 5 UDL may admit new Providers to the Water Complaints Scheme from time to time.
- 6 For the purposes of General Rule [24] UDL must have regard to relevant Council bylaws, and to the Residential Tenancies Act 1986. In the case of Watercare Services Ltd, this means UDL must have regard to Auckland Council, and Watercare specific bylaws.
- 7 For the purposes of General Rule [15(e)], UDL must not deal with a Complaint under these Scheme Rules where the value of the Complainant's claim exceeds \$15,000. In determining the value of a claim, the Commissioner will take into account the reasonable costs that would be incurred by a Provider in carrying out any actions that may reasonably be required.

¹ *Benchmarks for Industry-based Customer Dispute Resolution*, the Australian Government the Treasury, 2015

- 8 For the purposes of General Rule [37], the value of any Determination under the Water Complaints Scheme must not be greater than \$15,000.
- 9 UDL must only consider a Complaint if UDL is satisfied that the act or failure to act that gave rise to the Complaint first occurred:
- a) On or after the date of the relevant Scheme Member joining the Scheme
 - b) In any other case, on or after the date that applies to the subject matter of the Complaint under the Limitation Act 2010.
- 10 A Provider in the Water Complaints Scheme cannot be a Complainant or make a Complaint under this Scheme.
- 11 The General Rules, together with these Scheme Rules, contain all matters UDL considers might appropriately be included in a code of conduct for the Water Complaints Scheme and UDL does not therefore intend to prepare a code of conduct for the Water Complaints Scheme under General Rule [48(g)].
- 12 Each Provider will pay the fees and charges set out in an agreement (a Funding Agreement) separate to these rules. General Rule [44], General Rule [45], and General Rule [46] do not apply to the Water Complaints Scheme.
- 13 The Water Complaints Scheme will be free of charge to Complainants.
- 14 General Rule [41], General Rule [42] and General Rule [43] do not apply to the Water Complaints Scheme. This means rights and obligations relating to test cases do not apply to the Water Complaints Scheme.
- 15 General Rule [38] does not apply to the Water Complaints Scheme. This means a Determination may not include an amount of up to \$2,000 to compensate a Complainant for expenses of making a Complaint or for inconvenience because of a Provider's failure to comply with a relevant code of conduct.
- 16 General Rule [12(a)] does not apply to the Water Complaints Scheme. This means Providers are not required to promote the Scheme on any invoice to customers and in other relevant customer information. However Providers will include on their primary website and in their customer contracts information about the existence, nature of, and contact information for, the Scheme.
- 17 General Rule [12(f)] does not apply to the Water Complaints Scheme. This means Providers are not required to provide UDL's contact details to Complainants when the Complainant first makes the Complaint to the Provider, or when advising the Complainant of the outcome of the Provider's Complaints handling system. Providers are required to provide UDL's contact details when the Complaint has reached Deadlock.

- 18 General Rule [55] does not apply to the Water Complaints Scheme. Providers are instead required to give UDL at least 65 working days notice before withdrawing from the Water Complaint Scheme.
- 19 General Rule [48(i)] does not apply to the Water Complaints Scheme. Utilities Disputes will refer any request for information from any Minister to the relevant Provider(s).
- 20 A Provider or Providers may require an external review of the Scheme in lieu of an annual internal review required under Clause 19 of the Utilities Disputes Constitution. This will be an independent review to assess whether the Scheme is meeting its performance standards, and to assess the quality and results of the annual in-house reviews. The Board will appoint an independent reviewer and will consult Providers over the terms of reference for the review.
- 21 Promotion of the Water Complaints Scheme under General Rule [48(a)] will be conducted in consultation with relevant providers.
- 22 The results of an external review under Scheme Rule [20] will be made available on the Scheme's website.
- 23 The cost of an external review under Scheme Rule [20] will be paid by the Provider(s) requesting the review.
- 24 UDL will not publicise information under General Rule [28], unless both Parties agree to its publication.
- 25 For the purposes of General Rule [12b], Providers must keep up to date information about the staff responsible for complaint handling. Staff nominated by a Provider may assign complaints to any member of a Provider's staff.
- 26 General Rule [51] does not apply to the Water Complaints Scheme.
- 27 The Board reserves the right under General Rule [48(c)] to review the Scheme arrangements, including rules, processes, and funding arrangements. At a minimum, Utilities Disputes will conduct such a review within 12 months of the Scheme commencing, and within each 12 month period thereafter.
- 28 The Board will conduct a review under Scheme Rule [27] in consultation with Providers.

Appendix One

- 1 UDL must not accept a Complaint for consideration about any of the following:
 - 1.1 In the case of Watercare Services Ltd, Infrastructure Growth Charges, for which a separate dispute resolution process exists.
 - 1.2 Any matter, if more than 12 months have passed from the date the Complainant first became aware or should reasonably have become aware of the circumstances giving rise to the Complaint. For clarity this restriction is over and above General Rule [15(d)].