

10 November 2020

By email: AwarenessOfUDandPS@ea.govt.nz

Utilities Disputes' Submission to the Guidelines for Raising consumer awareness of Utilities Disputes and Powerswitch services

Utilities Disputes welcomes the opportunity to comment on the Guidelines for Raising consumer awareness of Utilities Disputes and Powerswitch services (Guidelines). Please note we have already provided feedback to the Electricity Authority (the Authority) about the Code change and Guidelines. This submission is therefore not exhaustive. It relates to technicalities within the Guidelines.

Background

Utilities Disputes provides independent resolution for the complaints and disputes companies have been unable to resolve with complainants. We operate three dispute resolution schemes: the government approved Energy Complaints Scheme and Broadband Shared Property Access Disputes Scheme (BSPAD), and the voluntary Water Complaints Scheme.

Utilities Disputes, formerly the Office of the Electricity and Gas Complaints Commissioner, was incorporated as a limited liability not-for-profit company and rebranded as Utilities Disputes on 1 November 2016. The purpose of the change was to allow Utilities Disputes to provide multiple dispute resolution schemes under an umbrella structure.

Utilities Disputes is governed by an independent Board. The Board has also set up Advisory Committees for our Energy and BSPAD schemes. These Committees provide consumer and industry feedback to the Board.

Utilities Disputes adheres to the principles set out in section 5(2) of schedule 4 of the Electricity Industry Act 2010. Utilities Disputes interprets these principles according to the Australian Government's Benchmarks for Industry-based Customer Dispute Resolution.

For the purpose of this submission, Utilities Disputes will refer to all its member companies as 'providers'.

Submission

Utilities Disputes supports the intention of the Guidelines. For the Code change to be effective, providers need a clear and consistent understanding of what is expected of them. Therefore, we have responded to the consultation questions simply:

Q1. *Do you agree or disagree that guidelines to support the implementation of 11.30A to 11.30E are needed?*

- We agree the Guidelines are needed to ensure providers have a clear and consistent understanding of what is expected of them.

Q2. *Do you agree or disagree these guidelines should include information on how compliance could be achieved and visual examples? If no, what information should the guidelines provide?*

- We agree the Guidelines should include information and examples demonstrating how providers can comply with the requirements. Including examples will provide necessary clarity.

Q3. *Are there any additional questions that should be included in the FAQ section?*

- We have nothing further to suggest.

Q4. *Do you have any comments on the proposed guidelines and examples provided?*

- We make the following general comments.

General comments

Overall, we are pleased with the changes made after the initial targeted consultation as the Guidelines have been developed. The differences between the Code requirements and our Utilities Disputes Scheme rules are now clearer. However, tensions between the Guidelines and our Scheme rules remain, which we note in this submission.

We believe the following three areas require further work:

- Clarifying the difference between the Code requirements and our Scheme requirements.
- Considering how live chatbots fit into the Guidelines.
- Responding to consumer queries through social media.

1. More clarity is required in the Guidelines about the difference between the Code requirements and our Scheme requirements

The Authority has made progress on clarifying the Code requirements to be more consistent with our Scheme requirements. However, we believe further work is needed to make the difference between the Code requirements and our Scheme requirements clearer for providers.

This is important because, pursuant to sections 96 and 97 of the Electricity Industry Act 2010, providers are required to join Utilities Disputes' Energy Complaints Scheme and comply with its rules.¹ Therefore, the Guidelines must not suggest any course of action that would contradict Utilities Disputes' Scheme rules.

The key differences between the Utilities Disputes Scheme requirements and the Code requirements for providers are:

- The Scheme requires providers to promote the Utilities Disputes on bills, and at various points during the complaints process. Queries do not trigger the same promotional requirements and complaints.
- The Code requires providers to promote Utilities Disputes on their websites, in directed consumer communications, and when responding to queries.

The requirements are separate but taking steps to comply with one set of requirements may overlap with the other.

¹ The Electricity Industry Act 2010 refers to 'a dispute resolution scheme'. Utilities Disputes is the approved dispute resolution scheme for the purpose of this legislation.

1.1 We suggest some minor changes in the wording

We suggest minor changes to the wording of the Guidelines, to make compliance with the different Code and Scheme requirements as easy as possible. The changed sections are highlighted for ease of reference.

Original text	Suggested changes	Comments
<p>4.32 <i>The Code is designed to guide standards to raise awareness of Utilities Disputes and Powerswitch. The Code can complement, but not replace, existing scheme rules and processes. Utilities Disputes scheme members should continue to act in accordance with the scheme rules including when:</i></p> <ul style="list-style-type: none"> • <i>the Complainant first makes the complaint to the Provider</i> • <i>when advising the Complainant of the outcome of the Provider's complaints handling system (which may or may not result in deadlock)</i> • <i>the complaint reaches deadlock.</i> 	<p>4.32 <i>The Code is designed to guide standards to raise awareness of Utilities Disputes and Powerswitch. The Code can complement, but not replace, existing scheme rules and processes. Utilities Disputes scheme members should continue to act in accordance with the scheme rules including providing Utilities Disputes' details when:</i></p> <ul style="list-style-type: none"> • <i>the Complainant first makes the complaint to the Provider</i> • <i>when advising the Complainant of the outcome of the Provider's complaints handling system (which may or may not result in deadlock)</i> • <i>the complaint reaches deadlock.</i> 	<p>Clarifying what the Scheme rules require in the events referenced.</p>
<p>4.40 <i>For example, the Utilities Disputes scheme rules require scheme members to advise the consumer of the Utilities Disputes service and contact details if the complaint has reached deadlock, even if the consumer had been made aware of Utilities Disputes in a previous communication.</i></p>	<p>4.40 <i>For example, the Utilities Disputes scheme rules require scheme members to advise the consumer of the Utilities Disputes service and contact details when the complaint is first made, at the end of the scheme member's complaints process, and if the complaint has reached deadlock, even if the consumer had been made aware of Utilities Disputes in a previous communication.</i></p>	<p>The other Scheme requirements are added for completeness.</p>

<p>4.43 For example, a bill may contain clear and prominent information about Utilities Disputes and Powerswitch:</p> <p>(a) as part of the bill; or</p> <p>(b) as part of a covering letter or e-mail with the bill; or</p> <p>(c) as a separate document within the communication ‘envelope’</p>	<p>4.43 For example, terms and conditions may contain clear and prominent information about Utilities Disputes and Powerswitch:</p> <p>(a) as part of the terms and conditions; or</p> <p>(b) as part of a covering letter or e-mail with the terms and conditions; or</p> <p>(c) as a separate document within the communication ‘envelope’</p>	<p>The original example is confusing because it suggests putting Utilities Disputes information on the bill is optional, which directly contradicts the Utilities Disputes’ Scheme requirements.</p> <p>It would be less confusing to use an example communication which is not explicitly referenced in our Scheme rules (such as terms and conditions).</p>
---	--	---

1.2 Utilities Disputes’ information is still required on bills

We believe the current guidance creates confusion about when and where to provide Utilities Disputes’ information with bills:

7.10 suggests it is optional to include Utilities Disputes’ information on the bill.

As we have previously noted, stating it is optional to include Utilities Disputes information on bills contradicts Utilities Disputes’ Scheme requirements.

While we understand the Code requirements function independently of Utilities Disputes’ rules, contradicting the Utilities Disputes’ Scheme rules will create confusion for providers.

7.12 Despite the explanations about the dual requirements of the Code and our Scheme rules (section 4), our concern is that providers will be confused about whether their current practices are sufficient to meet the Code requirements. This could lead to providers believing they can now remove Utilities Disputes’ details from their bills.

We suggest adding the following paragraph in section 7 to help clarify this:

As previously noted, Utilities Disputes Scheme rule 12a already requires promotion of the Scheme on invoices.² Compliance with this existing Scheme rule may be sufficient to meet the requirement set out in clause 11.30A (3)(a)(i) of the Code if Utilities Disputes’ information on the bill is clear and prominent.

2 The Guidelines should clarify that where chatbots are used by providers they are required to provide information about Utilities Disputes

We believe the Guidelines should explain that where a provider uses chatbots, the chatbots are required to share information about Utilities Disputes when consumers interact with them.

This is because:

- queries made via chatbots trigger the Code requirements

² Rule 12a of Utilities Disputes Energy Complaints Scheme.

- excluding chatbots will limit opportunities to increase awareness of Utilities Disputes
- it does not appear to be difficult for chatbots to share Utilities Disputes' information.

We suggest including chatbots in the definition of "online chat" or "live chat", thereby requiring participants to provide Utilities Disputes' details when using chatbots to respond to queries.

2.1 Queries made via chatbots trigger the Code requirements

Queries made via chatbots trigger the Code requirements. This is because:

- the Code says providers must provide Utilities Disputes' information when responding to any query in any form
- chatbots can and do respond to queries
- therefore, providers need to provide Utilities Disputes' information when using chatbots to respond to a consumer queries.

11.30A (3)(b) states Utilities Disputes' information must be provided when responding to any query in any form. Therefore, it does not explicitly exclude AI chatbots from the requirement:

*...the retailer or distributor, or any person on behalf of the retailer or distributor, responding in **any form**, to any query from a consumer...³*

Chatbots are commonly used by businesses to respond to consumer queries. Accenture Interactive reports:

Although a chatbot cannot handle all customer queries, it can be used to deal with many of the routine queries that typically make up most service requests. For example, at a European telco, a chatbot was used in a pilot program on a set of common customer queries and resolved 82% of interactions by itself.⁴

Therefore, providers are required to provide Utilities Disputes' information when using chatbots to respond to consumer queries.

2.2 Excluding chatbots will limit opportunities to increase awareness of Utilities Disputes' service

Excluding chatbots from the requirements will limit opportunities for consumers to find out about Utilities Disputes.

Chatbots are an increasingly common first point of contact between customer and provider.⁵ Many basic queries can be handled entirely by chatbots without the need to speak to a human representative, and this trend is likely to increase as chatbots improve. Accenture Interactive reports:

With good design and implementation, we have repeatedly seen more than 80% of chat sessions resolved by a chatbot, which would have otherwise been handled by a human agent in a chat session or call.⁶

³ Emphasis added.

⁴ https://www.accenture.com/t00010101t000000_w_/br-pt/acnmedia/pdf-45/accenture-chatbots-customer-service.pdf (page 5).

⁵ The AI Forum of New Zealand's recent [research report](https://aiforum.org.nz/2019/11/06/chatbot-or-digital-humans-part-of-daily-life-in-nz/) says chatbots are increasingly being used in New Zealand to resolve any queries or issues. <https://aiforum.org.nz/2019/11/06/chatbot-or-digital-humans-part-of-daily-life-in-nz/>

⁶ https://www.accenture.com/t00010101t000000_w_/br-pt/acnmedia/pdf-45/accenture-chatbots-customer-service.pdf (page 10).

Customers are less likely to interact with a human representative in the future and will therefore miss the opportunity to find out about Utilities Disputes and Powerswitch. This is an awareness risk unless chatbots are not required to share information about us.

2.3 It does not appear to be difficult for chatbots to share Utilities Disputes' information

We believe there are little to no barriers for chatbots to share Utilities Disputes' information. Providers could easily use chatbots and comply with the Code requirements by using the methods suggested in **6.15**:

- *providing information as part of the initial welcome message for the chat, or*
- *a follow-up communication, where the consumer has provided an e-mail address or contact details as part of the chat, to close the query.*

3 The Guidelines should cover responses to public queries through social media

Presently, the Guidelines are inconsistent with the Code amendment because **6.16 – 6.17** states that responding to public consumer queries on social media does not trigger the requirements.

We believe the guidance on social media should be reviewed, to better explain how providers need to respond to consumer queries made in a public social media forum.

This is because:

- public social media queries trigger the Code requirements
- public social media queries are excellent opportunities for increasing consumer awareness.

3.1 Public social media queries trigger the Code requirements

Public social media queries, and providers' responses to them, trigger the Code requirement to share information about Utilities Disputes.⁷

This is because:

- the Code says providers must provide Utilities Disputes' information when responding to any query in any form
- a consumer query on a public social media forum is a form of query
- therefore, providers must provide Utilities Disputes' information when responding to a consumer query on their public social media page (whether their response is private or public).

Section 6 refers to both consumer "comments" and consumer "queries" on social media. It is important to distinguish between them because queries trigger the Code requirements, whilst comments do not.

Both interactions can occur in public social media forums, such as provider Facebook pages:

*A comment is: something that you say or write that expresses your opinion.*⁸

As opposed to:

*A query: a question, often one expressing doubt about something or looking for information.*⁹

⁷ See Appendix A for an example of a public social media query.

⁸ <https://dictionary.cambridge.org/dictionary/english/comment>.

⁹ <https://dictionary.cambridge.org/dictionary/english/query>.

Section 11.30A (3) (b) of the Code says providers must share information about Utilities Disputes when responding in any form, to any query from a consumer.

Therefore, if a consumer publicly queries a provider through social media, the provider is required to share information about Utilities Disputes, regardless of whether their reply is public or private. An example of a public consumer query that would trigger the requirement is given in Appendix A.

3.2 Public social media queries are good opportunities for increasing consumer awareness

Public social media queries are good opportunities for increasing consumer awareness, this will effectively increase general consumer awareness of Utilities Disputes.

Given that the purpose of the Code amendment is to increase awareness of Utilities Disputes, public social media forums should be fully utilised, and the Guidelines should better explain how to do this.

Sharing Utilities Disputes' details in a public forum (when responding to a consumer query) is the fastest way for providers to increase general awareness of Utilities Disputes' service, as multiple consumers will be able to view the public response. We believe this should be encouraged.

We understand the Guidelines are aiming to reassure providers that they don't need to include Utilities Disputes' details in communications or announcements that are not directed at any particular consumer.¹⁰

We agree with that aim, however, it appears that "public communications" (an unsolicited message intended for a wider public audience) is being conflated with "public responses to queries" (a public response to an individual consumer query in a public forum).

In Appendix A-C, we have provided examples of interactions on public social media forums to highlight these differences.

Thank you for the opportunity to comment on the Guidelines. If we can be of any further assistance, please contact Paul Moreno, Research and Reporting Manager at p.moreno@utilitiesdisputes.co.nz.

Yours sincerely



Mary Ollivier
Commissioner + CEO
Utilities Disputes Ltd

¹⁰ Appendix C shows an example of this type of public communication.

Appendix A: Consumer query in a public social media forum

Public posts at Provider's Facebook page

Consumer to Provider

17h · 🌐

I am looking at different power companies but cannot find anywhere on your website what your pricing is. I can see the plans but I want to see the actual costs per kw dairy charges etc. only thing I found was rate would be sent with welcome pack. There is no way I an signing up without knowing all the costs first.
What a strange way to operate

1 comment

👍 Like 💬 Comment ➦ Share

Oldest ▾

Provider customer service representative

Good Morning [redacted] thank you for reaching out! You can locate the rates for your address at [redacted] Just put in your address, the utilities you have and how many people are in the home and it will display the rates for you, this will not sign you up unless you continue past this point and put all your details in. 😊 Alternatively you can also reach our Onboarding Team to get rates via our Live Chat (Monday to Friday, 8am to 10pm) and [redacted] (Monday to Friday, 8am to 7pm) ~ [redacted]

Like · Reply · 6 h

Appendix B: Consumer comment in public social media forum

Provider's public Facebook post about its promotional video

Provider's promotional video

Provider's promotional video Send Message

125 131 comments 10 shares

Like Comment Share

Most relevant

Write a comment...

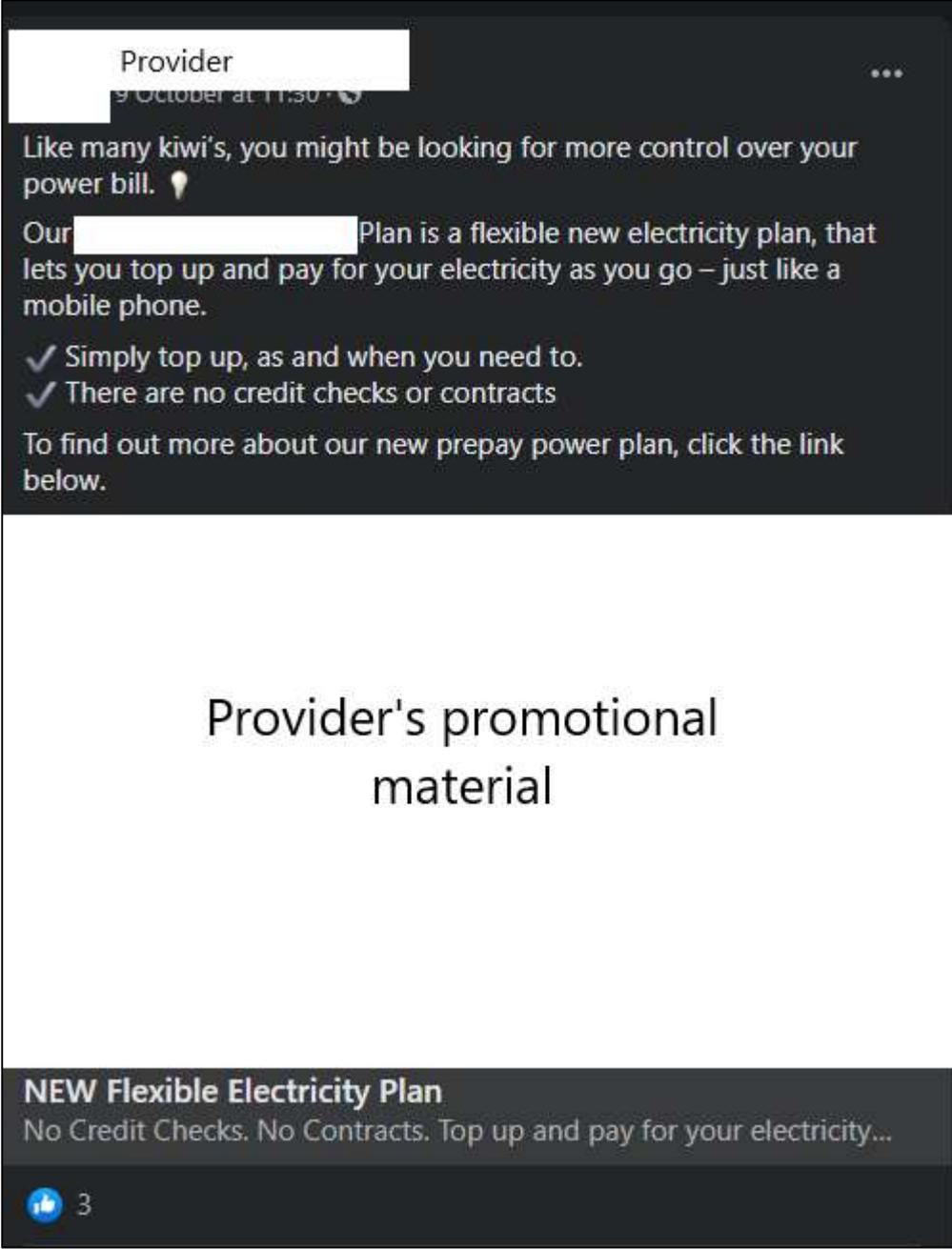
Consumer

I have another advertising idea. It's called Finally Something to Brag About. A person has a series of encounters with boring braggers. People who go on and on about things like their fitness goals, their kid's sporting wins...you get the idea. The long suffering friend retaliates with a smug list of power savings stats from the Hour of Power. It's Finally Something to Really Brag About...

4

Like · Reply · 4 w · Edited

Appendix C: Example of non-personalised public communication



The image shows a screenshot of a social media post from a provider. The post is on a dark background. At the top, the provider's name is redacted with a white box. Below the name, the date and time are shown as '9 October at 11:50'. The main text of the post reads: 'Like many kiwi's, you might be looking for more control over your power bill. 📍 Our [redacted] Plan is a flexible new electricity plan, that lets you top up and pay for your electricity as you go – just like a mobile phone.' This is followed by two bullet points: '✓ Simply top up, as and when you need to.' and '✓ There are no credit checks or contracts'. Below the bullet points, it says 'To find out more about our new prepay power plan, click the link below.' The bottom half of the post is a large white rectangular area with the text 'Provider's promotional material' centered in it. At the bottom of the post, there is a dark grey bar with the text 'NEW Flexible Electricity Plan' in bold, followed by 'No Credit Checks. No Contracts. Top up and pay for your electricity...'. At the very bottom left, there is a blue heart icon and the number '3'.

Provider

9 October at 11:50

Like many kiwi's, you might be looking for more control over your power bill. 📍

Our [redacted] Plan is a flexible new electricity plan, that lets you top up and pay for your electricity as you go – just like a mobile phone.

- ✓ Simply top up, as and when you need to.
- ✓ There are no credit checks or contracts

To find out more about our new prepay power plan, click the link below.

Provider's promotional material

NEW Flexible Electricity Plan
No Credit Checks. No Contracts. Top up and pay for your electricity...

3