

OF 2018 – 2 - Consultation Proposed Customer Complaints Appeals Procedure Guidelines



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Contents

A.	Introduction	2
B.	Legal Framework	2
C.	The Draft Guidelines	3
D.	Consultation Questions	4
E.	How to Respond to This Consultation	4
Annex 1: Draft Customer Complaints Appeals Procedure Guidelines		6

A. Introduction

1. The Utility Regulation and Competition Office (the '**Office**' or '**OfReg**') is the independent regulator established by **section 4(1)** of the Utility Regulation and Competition Law (the '**URC Law**') for the electricity, information and communications technology ('**ICT**'), water, wastewater and fuels sectors in the Cayman Islands. The Office also regulates the use of electromagnetic spectrum and manages the .ky Internet domain.
2. **Section 59** of the URC Law requires, among other things, the Office to "*receive and determine appeals from customers of the sectoral providers in respect of disputes between the customer and the sectoral provider*" and, to "*establish and publish the procedures for the handling of such appeals.*"
3. The attached draft *Customer Complaints Appeals Procedure Guidelines* (the '**draft Guidelines**') are prepared pursuant to **section 59(2)** of the URC Law. They will provide, subject to consultation, the guidelines and principles to be followed by customers of utility service providers and the Office in relation to the submission of complaints regarding those utility service providers.

B. Legal Framework

4. Under **section 6** of the URC Law, the Office has principal functions in relation to the markets and sectors for which it is responsible. One of these is to resolve disputes between sectoral providers, and between sectoral providers and sectoral participants. In **section 2** of the URC Law, a sectoral participant is defined as "*a person who provides, uses or seeks to use utility services in a sectoral utility, but does not include the Office*", and a sectoral provider is defined as "*a person, whether or not an authorization holder, who provides good or services in a sectoral utility*". In performing its functions and exercising its powers under the URC Law, the Office may provide advisory guidance to sectoral participants.
5. **Section 59** of the Law states:

(1) The Office shall receive and determine appeals from customers of the sectoral providers in respect of disputes

between the customer and the sectoral provider and, in this regard, the parties will be bound by the decision and remedies (if any) determined by the Office.

(2) The Office will establish and publish the procedures for the handling of such appeals.

C. The Draft Guidelines

6. The draft Guidelines are attached to this consultation document as **ANNEX 1**, and are summarised in the paragraphs below. The Office strongly encourages respondents to read the draft Guidelines prior to submitting comments on the draft Guidelines, or to answering the consultation questions in the next section, as this summary is not intended to be exhaustive.
7. The attached draft Guidelines are divided into ten sections addressing:
 - The legal framework and the purpose of the Guidelines;
 - complaint submission and methods of submission;
 - review of complaints;
 - notification of complaints to the sectoral provider(s) and sectoral provider responses;
 - OfReg's decision-making processes; anonymous complaints and .ky domain name disputes.
8. Parts A and B outline the legal framework and the objectives of the draft Guidelines. The circumstances in which the Office may depart from the draft Guidelines is also addressed in part B. The information required to be submitted to the Office in relation to the submission of complaints, as well as the methods of submission are dealt with in parts C and D. Parts E and F addresses how the Office will review and commence processing of the complaint, including the notification of the sectoral provider and timelines in relation to the sectoral provider's final opportunity to remedy/resolve the issue(s) with the customer. The process that the Office will follow in relation to its review of any responses by the sectoral provider and requests by customers for a decision to be issued by the Office regarding complaints is outlined in parts G and H. The draft Guidelines also address how the Office will treat anonymous complaints and .ky domain name disputes in parts I and J.

9. The Office intends to apply the draft Guidelines to complaints submitted by consumers in all sectors for which it is responsible under the URC Law.

D. Consultation Questions

10. Based on the above and on the attached draft Guidelines, the Office invites all interested parties to submit their comments on the draft Guidelines, with supporting evidence, including in particular on any or all of the following questions:

Question 1: Do you agree with the minimum required information that needs to be submitted by customers to the Office in relation to complaint submissions? If not, please explain your reasoning in detail, along with providing supporting evidence.

Question 2: Do you agree with the methods of submission available?

Question 3: Do you agree with the Office's proposed process in regard to how the Office will address complaints after the sectoral provider is informed?

Question 4: Are there any other views that you consider relevant to this consultation? Please provide any other views you may have, along with any supporting evidence.

E. How to Respond to This Consultation

11. This consultation is conducted in accordance with the Consultation Procedure Guidelines determined by the Office and found on the Office's website.¹
12. The Office considers that because the draft Guidelines are published as part of this consultation, this consultation will be conducted as a single-phase consultation over a period of **sixty (60) days**. If, upon review of the

1

<http://www.ofreg.ky/upimages/commonfiles/1507893545OF20171DeterminationandConsultationProcedureGuidelines.pdf>

- responses to the consultation, it becomes clear that a second phase of consultation is required, a further notice will be issued accordingly.
13. As noted above, **section 7(1)** of the URC Law states that prior to issuing an administrative determination of public significance, the Office shall “*issue the proposed determination in the form of a draft administrative determination.*” The Office considers the attached draft Guidelines to be a “*draft administrative determination*” for the purposes of **section 7(1)**.
 14. All submissions on this consultation should be made in writing, and must be received by the Office by **5 p.m. on 15 June 2018**, at the latest.
 15. The Office will post any comments received on its website by **5 p.m. on 29 June 2018**.
 16. Submissions may be filed as follows:

By e-mail to: consultations@ofreg.ky

Or by post:
Utility Regulation and Competition Office
P.O. Box 2502
Grand Cayman KY1-1104
CAYMAN ISLANDS

Or by courier:
Utility Regulation and Competition Office
3rd Floor, Alissta Towers
85 North Sound Road
Grand Cayman
CAYMAN ISLANDS
 17. The Office expects to issue a Determination on the matters addressed by this Consultation by the end of the third quarter of 2018.

OF 2018 – 2 - Consultation
Proposed Customer Complaints
Appeals Procedure Guidelines
ANNEX 1



OF 2018 – G1 – Guidelines Customer Complaints Appeals Procedure



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Contents

A.	Introduction	2
B.	Customer Complaints Appeals Procedure Guidelines Objectives	2
C.	Complaint Submission	4
D.	Methods of Submission.....	5
E.	Complaint Review	5
F.	Inform the Sectoral Provider	5
G.	Sectoral Provider Response	6
H.	OfReg Decision	6
I.	Anonymous Complaints	7
J.	.ky Domain Name Disputes	7

A. Introduction

1. The Utility Regulation and Competition Office (**'OfReg'** or **'the Office'**) is the independent regulator for electricity, information and communications technology (**'ICT'**), water, wastewater and fuels sectors in the Cayman Islands. The Office also regulates the use of electromagnetic spectrum and manages the .ky Internet domain.
2. Under **section 6** of the Utility Regulation and Competition Law, 2016 (as amended) (**'the URC Law'**), the Office has principal functions in relation to the markets and sectors for which it is responsible. One of these principal functions is to resolve disputes between sectoral providers, and between sectoral providers and sectoral participants.
3. According to the URC Law, a sectoral participant is *"a person who provides, uses or seeks to use utility services in a sectoral utility, but does not include the Office"*, a sectoral provider is *"a person, whether or not an authorization holder, who provides goods or services in a sectoral utility"*, and a sectoral utility is *"a utility market or sector for which the Office has specific responsibility under any sectoral legislation."* For the purpose of these Guidelines, a sectoral participant means a customer of a sectoral provider. In performing its functions and exercising its powers under the URC Law, the Office may provide advisory guidance to sectoral participants.
4. OfReg notes that **section 59** of the URC Law states:
 - (1) *The Office shall receive and determine appeals from customers of the sectoral providers in respect of disputes between the customer and the sectoral provider and, in this regard, the parties will be bound by the decision and remedies (if any) determined by the Office.*
 - (2) *The Office will establish and publish the procedures for the handling of such appeals.*

B. Customer Complaints Appeals Procedure Guidelines Objectives

4. This document sets out the Customer Complaints Appeals Procedure Guidelines (**'the Guidelines'**) and principles to be followed by members of

- the public and the Office in relation to the submission of complaints regarding sectoral providers as well as the Office's approach to addressing those complaints.
5. These Guidelines will standardise the process that consumers and sectoral providers should follow in relation to complaints about sectoral providers, and how the Office will typically process those complaints.
 6. While the Office will generally adhere to these Customer Complaints Appeals Procedure Guidelines, it recognises the need for the procedure to be sufficiently flexible and dynamic to address the exigencies of the relevant regulated sectors.
 7. The Office will update these Guidelines from time to time to take account of best practice and ongoing experience with their application as well as comments received from sectoral providers and customers. When the Office does so, it expects to consult with interested parties before adopting any changes.
 8. Although these Guidelines set out the approach the Office expects to take, they do not have legal binding effect. If the Office decides to depart from the Guidelines in particular cases, the Office will set out its reasons for doing so. Circumstances in which the Office may depart from the Guidelines include, without limitation:
 - (a) where the Office may need to ensure that adequate and accurate information has been provided before dissemination and/or investigate the necessary aspects of the issue;
 - (b) where the Office determines that aspects of the complaint should be dealt with by another authority due to the nature of the complaint, e.g. complaints made in relation to sectors for which the Office is not responsible under the URC Law.
 - (c) where the Office is, or becomes, aware that the subject matter of the complaint is also the subject of current court litigation as between the parties;
 - (d) where the Office has received two or more complaints of a similar nature involving one or more of the same parties and the Office considers that, for reasons of efficiency and consistency, it should deal with such complaints as if they were a single complaint; and

- (e) where the Office considers that the complaint raises a matter of public significance which should be addressed through a public consultation.

C. Complaint Submission

9. The Office will require that a customer first give the sectoral provider the opportunity to address the issue prior to submitting a complaint to the Office. Should a customer submit a complaint to the Office before addressing the subject of the complaint with the sectoral provider, the Office will ask the customer to refer the complaint to the sectoral provider first.
10. If a customer is not satisfied with the results of the response by the sectoral provider, the customer should provide the following minimum information as part of its submission to the Office:
 - a) Full name along with a phone number and email or postal address (include physical address if it would assist in understanding the complaint);
 - b) Account number with the sectoral provider relating to the complaint;
 - c) Brief description of the complaint;
 - d) Identity of the sectoral provider by (official/legal) name;
 - e) The date, time and name of any program, individual, advertisement, technical, or customer services related issue that prompted the complaint;
 - f) The response, if any, given by the sectoral provider when the complaint was first raised with them, along with any (relevant) subsequent communication(s) that may have occurred in relation to the complaint, including dates and times where possible;
 - g) (Specific) product(s) or service(s) for which the complaint relates;
 - h) Property, plant or equipment implicated or affected as a consequence of the issue; and
 - i) Any independent, third-party entity or expertise consulted as part of the effort to resolve the matter.

D. Methods of Submission

11. When a customer submits a complaint against a sectoral provider to the Office, any of the following methods may be used:
 - a) Website Form (<http://www.ofreg.ky/complaints>);
 - b) Email to complaints@ofreg.ky; or
 - c) Hand deliver a completed Complaint Form.
12. Where a form is to be hand-delivered, customers should use the Complaint Form available at: <http://www.ofreg.ky/complaints>. Alternatively, customers can call the Office at 946-4282 and request that the form be emailed to them.
13. Customers may also collect Complaint Forms from the Office during its normal business hours 8:30 a.m. to 5:00 p.m. Monday through Friday (excluding public holidays) located at the Office's business location in George Town, Grand Cayman which can be found on the Office's website at <http://www.ofreg.ky/contact-us>.

E. Complaint Review

14. The Office will, as the norm, review each complaint and will send a written response to the customer within five (5) working days of the submission of a complaint (even if it is just to acknowledge receipt of the complaint.)
15. The Office will review each complaint to verify that all the required information has been provided.
16. In cases where all the required information has not been provided or if the Office requires further clarification, the Office will generally request that the customer provide any missing or additional information in writing accordingly. Once all required information has been provided, the Office will progress the review of the complaint via the process outlined below.

F. Inform the Sectoral Provider

17. The Office will, as part of its effort to remedy/resolve the issue, generally afford the sectoral provider involved a final opportunity to address the

- concerns before the Office reaches any conclusions. As such, a copy of the complaint will be provided to the sectoral provider.
18. A sectoral provider will be given 20 calendar days to respond directly to the customer with a copy to the Office.
 19. Where appropriate, the Office may give the sectoral provider a shorter period in which to respond depending on the circumstances of the matter.
 20. In the interest of transparency, the Office proposes that customers be copied on all relevant email correspondence relating to the issue, where they have provided an email address.

G. Sectoral Provider Response

21. OfReg staff will review the complaint and the sectoral provider's response, considering its policies and regulations, to determine if follow-up action is necessary.
22. If the complaint has been resolved to the satisfaction of the customer, OfReg staff will close the complaint (that is, will deem the complaint closed/resolved and this decision shall be final). The Office reserves the right to depart from this practice if the circumstances require.
23. If the complaint has not been resolved, the customer may opt to follow the process as set out in the following section.

H. OfReg Decision

24. Where the parties are unable to resolve the issue, the customer may request the Office to make a formal decision on the matter.
25. In this instance, the Office may request additional information from either or both parties, where necessary.
26. The Office will then review all of the information provided by both parties and write its decision within 15 working days of the date the information (including the additional information where applicable) is received.

27. The decision will be sent to both parties and subsequently published (redacted where appropriate) on the Office's website. The decision may include one or more remedies, if appropriate. The remedy or remedies, if any, will depend upon the specific circumstances of the complaint and may include:
- a. an apology or an explanation;
 - b. provision of a product or service;
 - c. some other practical action, such as connection or disconnection of a service or cessation of collections activity;
 - d. a correction to one or more bills; or
 - e. such other remedy as the Office may determine is reasonable and appropriate in the circumstances.
28. As set out in **section 59(1)** of the URC Law "*...the parties will be bound by the decision and remedies (if any) determined by the Office.*"

I. Anonymous Complaints and Comments

29. The Office does not pursue anonymous complaints; therefore, a customer must provide their full name and an email or postal address where they can be contacted. The Office holds the position that sectoral providers have the right to know the allegations against them and the identity of the customer.
30. The Office will, however, accept comments filed anonymously by customers of sectoral providers regarding the services received from those sectoral providers. The Office will not treat such comments as 'complaints' but will review them to assess, for example, whether there appear to be systemic or common matters into which the Office should investigate further.

J. .ky Domain Name Disputes

31. Please note that .ky Domain Name Disputes follows a separate, internationally-recognised Dispute Resolution Process ('**DRP**') which can be found here <http://www.ofreg.ky/ict/dispute-resolution-policy>.