

17 May 2024

## **UDL Submission - Retail Gas Contracts Oversight Scheme – review of Benchmarks and RCEs**

### **Introduction**

Utilities Disputes Limited Tautohetohe Whaipanga (UDL) welcomes the opportunity to comment on the *Gas Industry Co.'s (GIC) Retail Gas Contracts Oversight Scheme – review of Benchmarks and RCEs Consultation paper*.

### **UDL**

UDL is an independent, not-for-profit organisation that resolves complaints between utilities companies and their customers.

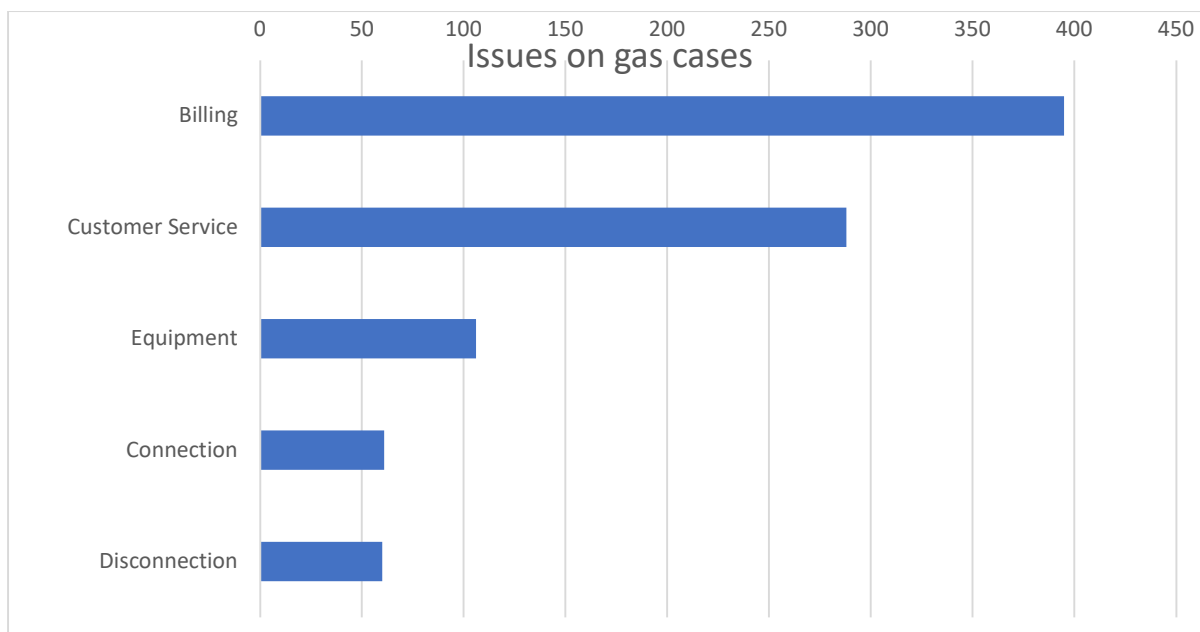
We currently operate three main dispute resolution schemes: a government approved Electricity and Gas Complaints Scheme, a Broadband Shared Property Access Disputes Scheme, and voluntary Water Complaints Schemes. We also provide a voluntary complaints resolution scheme for telecommunications complaints for one energy provider.

Our aim is to facilitate a strong relationship of trust between consumers and utilities organisations and focus on three aspects - Prevent, Educate and Resolve.

### **UDL - Gas Industry**

UDL acknowledge the important role of GIC in the gas industry and appreciates the opportunity to comment on the GIC benchmarks. The benchmarks, coupled with GIC's *Gas Consumer Care Guidelines* and *Reasonable Consumer Expectations for the Retail Gas Contracts Oversight Scheme*, assist industry participants to identify the expected content and form of contracts, and the standards expected when engaging with customers.

These documents can also be a guide for industry participants when they seek to resolve a consumer dispute. UDL also considers documents of this type when helping parties resolve a complaint, and when tasked with recommending a resolution as they assist in confirming the appropriate industry standards. UDL considered around 7000 complaints in the past 12 months, 383 of these were directly relating to gas and 107 were about gas and electricity together (for examples a complaint about billing involving both services). The top five issues recorded on gas cases over the past five years is shown on the chart below:



Against this complaint handling background UDL makes the following observations.

## UDL – Response to GIC Questions

**Q1. Do you consider the obligation in benchmark 2 (and/or the interpretation of this benchmark) should be amended to better reflect that consumers are unlikely to look to their gas and energy terms and conditions for safety and emergency information in the event of an emergency and, if so – how do you consider it should be amended?**

UDL is often contacted in a range of emergency situations as our details appear at the end of electricity retailers' bills.<sup>1</sup> Any GIC guidance that relates to emergency situations would benefit by being given similar prominence, either on a consumer's bill, or the provider's terms and conditions. This could either include the actual information or a link to where the emergency information is stored on an industry participant's opening webpage. While we accept the majority of consumers are unlikely to look to terms and conditions in an emergency situation, they may look to these resources for contact details or on a regular basis when managing their accounts. The inclusion of emergency information on bills, terms and conditions and other consumer focussed places could be beneficial by raising awareness generally and will be useful for some consumers.

<sup>1</sup> For completion we note the GIC has provided some guidance for its members in relation to advising of the role of UDL, *Guidelines for Raising Awareness of Utilities Disputes and Powerswitch*, August 2022.

**Q2. Do you consider the obligation in benchmark 5.1 to be suitable in its current form, or unreasonably burdensome (and therefore requiring appropriate amendment – in which case what do you suggest)?**

As part of the review of this benchmark UDL considered CGI's, Reasonable Consumer Expectation (RCE), 12: *The contractual terms and conditions are complete, easy to understand, and clearly set out the respective obligations of the company and the consumer.*

This would appear to be an ongoing expectation, and in terms of complaints handling, knowledge and/or access to up to date terms and conditions is important. Availability of information is also key to creating trust between the consumer and industry participant.

Such transparency appears to be even more important where the provider relies on a Standard Form Contract or one like it. In such contracts there is often no effective negotiation between the parties.<sup>2</sup> The consumer in effect has to take it or leave the condition, to enjoy the good being offered, or to continue to enjoy the good. This includes future contractual amendments, where in our experience, the consumer is highly unlikely to be aware of any changes.

Therefore, UDL recommends a cautious approach in amending benchmark 5.1 and that any changes should align with RCE 12.

**Q3. Do you consider the term “price of gas supplied” in benchmark 8(a) requires some amendment as to the scope of the term and, if so, in what way?**

In our experience price changes to inclusive fixed and variable charges at short notice is a regular issue raised in complaints and a significant concern for consumers. While UDL cannot consider complaints about the actual “price” of a fee or charge, we can consider the information provided and if the fees or charges were applied appropriately. In the past 12 months we received 40 complaints disputing additional fees and charges and 12 complaints disputing lines charges.

Consumers are focused on the total price they have to pay. In our view the broader definition of "gas supplied" should continue to include irregular service fees and charges, requiring a 30 day notice of change.

The 30 day requirement ensures consumers remain informed and experience no sudden or unexpected changes in price (see also RCE 14<sup>3</sup>). Such ongoing disclosure may also be viewed as an expression of an industry participant acting in an open manner (see RCE 17<sup>4</sup>). Even small increases in charges can and do effect consumers who are on tight budgets.

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<sup>2</sup> See Fair Trading Act 1986, s 46j; see also discussion in Commerce Commission, *Unfair Contract term Guidelines: Applying to Standard Form Consumer and Trade Contracts*, August 2022, 6, 10,

<sup>3</sup> RCE 14. The company does not impose unexpected costs on the consumer.

<sup>4</sup> RCE 17. The company is honest and open, and acts with integrity in all its dealings with the consumer.

**Q4. As per Q3 above do you consider the term “price of gas supplied” in benchmark 8(b) requires some amendment as to the scope of the term and, if so, in what way?**

See comments above on the importance of accurate and up to date pricing formation being provided to consumers.

**Q5. Do you consider that benchmark 9.1(a) requires any amendment (for clarification) as to what satisfies the requirement for price information to be in a “publicly accessible location” and, if so – in what way?**

In the utilities sector there is a move towards providing comprehensive advertising for a product or bundled products in an easily accessible format for consumers to understand.

Benchmark 9 and the GIC interpretation could be improved by considering how public disclosure will occur, such as in plain language and in an accessible format. This is something UDL has endeavoured to do for its telecommunications complaints scheme<sup>5</sup> Some further emphasis on the form of information within the benchmark and others, may assist the consumer in being readily able to choose gas suppliers, products and services, and pricing plans (see RCE 3).

The benchmark may also set out how a record of such information should be kept (and accessible to a consumer after purchase), as such information can assist in resolving consumer disputes that arise from the initial contact with the consumer.

In terms of a publicly accessible location, the example of the internet appears the most common. In another setting the Commerce Commission has defined prominent disclosure as follows “means to display, in a position that is visible without requiring additional actions to view, in a manner that an ordinary consumer is likely to notice and understand”.<sup>6</sup> The GIC may wish to consider if some definition like this would be helpful in assessing the benchmark.

While many consumers of all ages are internet savvy, many vulnerable consumers and the elderly are not. UDL often has to assist such consumers obtain information, therefore the GIC is invited to continue to consider how their needs may be met and if some amendment to the benchmarks is needed to account for their needs.

**Q6. Do you consider benchmark 12(a) or the interpretation of this benchmark requires any amendment or clarification to better reflect that a retail gas customer does not generally own or install their own meters and, if so – in what way?**

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<sup>5</sup> See for example New Zealand Telecommunications Forum, *Code for Broadband Disclosure Information*, 7 April 2022, cl 8; and UDL, *Customer Service Code for the Telecommunications Complaints Scheme*, 1 April 2023, cls. 6-8. Note UDL’s Telecommunications Scheme is a private scheme and is not an Industry Dispute Resolution Scheme under part 7 the Telecommunications Act 2001. See also Simpson Grierson, *Gas Industry Company: Retail Gas Contracts Oversight Scheme Benchmark Assessment Report*, (June 2023), nos. 466-468.

<sup>6</sup> Commerce Commission, *Product Disclosure – Retail Service Bundling Guidelines (Energy and Telecommunications Bundles)*, 22 November 2023, cl. 6.

Our experience in the utilities sector confirms the public often is unaware of the distinctions between meter companies, retailers, and/or network companies. These distinctions can become important in complaint handling, and sometimes a complainant can be moved between one or another industry participant or on occasion no industry actor appears to be taking control of the consumer issue.

Therefore UDL, in terms of disclosure and transparency (see RCE 17), supports any change to the GIC interpretation of the benchmarks, which will provide the consumer with easy-to-read information on the roles and functions of the different industry gas participants (see also response to Q8).

The GIC may also consider providing a fact sheet on its website to assist the consumer understand the differing roles of industry participants.

**Q7. Do you consider benchmark 12(b) or the interpretation of this benchmark requires any amendment or clarification and/or whether a statement about meter reading being done in accordance with Industry Standards and Regulations should be considered aligned with this benchmark and, if so – in what way do you consider it should be amended?**

Along with price, metering can give rise to a number of consumer issues, in the past 12 months we received 28 complaints about inaccurate or disputed gas meter reads. We note the GIC has published on its website how its members can conform to the benchmarks.<sup>7</sup> Therefore the benchmarks appear to have an educative function for consumers and industry participants. UDL is therefore in favour of a descriptive approach to benchmark 12(b) rather than a generic statement. This could be done in an appendix if the information is too complex to easily set out.

The GIC may wish to consider if the benchmark itself or in the interpretation section should address the standards and timeframes expected when a meter is found to be recording incorrectly.

**Q8. Do you consider benchmark 13.1(b) or the interpretation of this benchmark requires any amendment or clarification regarding retailer terms as to the process for disconnecting consumers (in particular with respect to network operator disconnections) and, if so, in what way?**

UDL's affirms the importance that there is good communication between the retailer and the network operator. As confirmed above, consumers often understand little of the different roles of the retailer, meter company and network operator (see response to Q6).

In effect the retailer is the entry point for the consumer. The Consumer Guarantees Act 1993, in part, recognises this by placing the quality of supply gas guarantee with the retailer

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<sup>7</sup> See GIC website, [Compare prices and contracts - Gas Industry](#) (10 May 2024).

(see section 7A), but allowing the retailer to be indemnified if the breach is by a third party (see s. 46A).<sup>8</sup>

For a consumer, a disconnection is a major event no matter its cause. There will be occasions when this for safety reasons has to be done without informing the consumer. However, on these occasions and whenever there is a disconnection it is important that the consumer has access to accurate information at the earliest opportunity, which industry participant it should dialogue with, and the obligations of each. We support the Simpson Grierson report's recommendation that the retailer should take the lead role in communicating information with the consumer.<sup>9</sup>

Therefore, UDL supports any efforts by the GIC to further clarify this issue, but also providing any other guidance to industry participants as to the information that is to be shared between industry participants when there is a disconnection, and their shared responsibilities to the consumer. Such clarity will further enable industry participants respond to GRE 18.<sup>10</sup>

**Q9. Do you consider benchmark 16.1 or the interpretation of this benchmark requires any amendment or clarification and, in particular, as to the extent of network operator liability exclusions that are considered “clearly reasonable” under the benchmark and, if so – how should it be amended or clarified?**

The GIC interpretation for this benchmark states due: “to the nature of this benchmark, clarity can be assessed in terms of what is likely to be clear to a lawyer, rather than what is likely to be clear to an average consumer.”

However, some care is required. UDL is aware of reliance on such contractual clauses, sometimes where it appears they do not mirror changes in legislation or the courts interpretation of their application. For example the application of the opting out requirements in s. 43 of the CGA. This clause appears to require some form of active participation by the consumer, rather than a simple conveying of the contractual clause to a consumer. The GIC may wish to provide further guidance on the use of such clauses.

Retailer clauses which specify compensation limits, can often fail to align with compensation limits that apply under UDL's Energy Complaints Scheme rules, which all retailers are required to adhere too. The Energy Complaint Scheme rules prescribe a cap of \$50,000 which can be extended to \$100,000 by agreement. However, UDL has come across occasions where a retailer has limited compensation to less than these amounts, for example recently

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<sup>8</sup> See also albeit primarily in the electricity context, *Contact Energy Limited v Jones*, HC, WN, CIV 2007-485-2761 [2009], para 73.

<sup>9</sup> See Simpson Grierson, Gas Industry Company: Retail Gas Contracts Oversight Scheme Benchmark Assessment Report, (June 2023), no.472; and GIC, Retail Gas Contract Oversight Scheme – Review of Benchmarks, (Consultation Paper), 8 April 2024, 11.

<sup>10</sup> RCE 18. The company will either directly answer where possible, or otherwise assist in obtaining an answer, to consumers' enquiries about all aspects of their supply, billing and contracting arrangements in a timely, courteous and accurate manner.

we have seen retailers advising consumers compensation is capped at \$10,000.<sup>11</sup> While UDL's Commissioner considers any relevant contractual clause,<sup>12</sup> he is not bound by them when deciding what is fair and reasonable.

**Q10. Do you agree that the RCEs for the Scheme remain fit for purpose in the contemporary environment and that no changes need to be made to the RCEs at this time (or if you disagree with this please explain what specific changes you consider are required and whether as to form, content or both)?**

The Simpson Grierson report noted the GRE's have a wider reach than in the assessment of benchmarks.<sup>13</sup> It also noted the view that some practices exceed the GREs. The further review of the *Gas Consumer Care Guidelines* may be an opportunity to review the relationship between the three documents and whether this can be more clearly defined and/or streamlined. It is noted that that if there is a conflict between the benchmarks and the *Gas Consumer Care Guidelines*, the benchmarks prevail, hence the importance of getting the alignment between the documents right.<sup>14</sup> GIC may wish to include in the benchmarks, GREs and/or guidelines more guidance on how industry participants are to provide information in Māori, languages other than English, and to assist those who cannot engage retailers through the internet.

**Q11. Do you agree that the Retail Gas Contracts Oversight Scheme remains fit for purpose and that no substantive change is needed to the Scheme at this time (if not, please explain why)?**

UDL appreciates its working relationship with the GIC, and has always found its input helpful and considered when assistance has been sought about industry standards and practice. We acknowledge the importance of GIC, its current work, and its commitment to high standards and improvement.

**Q12. Do you consider the Scheme's benchmarks should and/or could practicably include any requirements for retailers' terms to be drafted in a consumer -friendly way? Please give your reasoning for this?**

This question appears to highlight the relationship between the GRE's, the benchmarks, and *Gas Consumer Care Guidelines*. It may then be appropriate to make explicit, in the benchmarks, the need for all contractual clauses to be written in plain language. In the GIC commentary of this benchmark it could be noted that the subject matter of a clause will in part determine the appropriate level. As noted in the Simpson Grierson report, legal clauses can be written in ways that achieve their purpose but also are more likely to be intelligible to

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<sup>11</sup> See UDL, *The General and Scheme Rules*, (1 April 2019), section 2, rules 7 & 8.

<sup>12</sup> See *Ibid.*, general rule 24.

<sup>13</sup> "Several of the RCEs relate to the way the retailers behave towards consumers rather than the content of their Terms. Commenting on those aspects of the RCEs is beyond the scope of this exercise." Simpson Grierson, *Gas Industry Company: Retail Gas Contracts Oversight Scheme Benchmark Assessment Report*, (June 2023), no. 464.

<sup>14</sup> See *Gas Consumer Care Guidelines*, pg.5.

the consumer. As the Simpson Grierson report emphasises form can be just as important as content when communicating information.<sup>15</sup>

**Q13. Do you have any other comments or consider any amendments should be made to any of the Scheme’s benchmarks [or RCEs] additional to those discussed in this paper (if so, please explain, and detail any specific changes suggested)?**

Once again thank you for the opportunity to comment. Any additional commentary and observations are included in the responses above.

### Next Steps

If UDL can be of further assistance please contact Paul Moreno, Kaiwhakahaere Rangahau, Pūrongo | Research and Reporting Manager [paul@udl.co.nz](mailto:paul@udl.co.nz)

Yours sincerely



Neil Mallon  
Commissioner  
Tautohetohe Whaipanga: Utilities Disputes Limited

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<sup>15</sup> “We found some retailers’ Terms to be harder to navigate and understand than others. Some of the things contributing to this were: (a) the absence of clause and/or subclause numbering; (b) provisions appearing in unexpected places in the Terms, and in particular clauses relating to one subject including provisions relating to a different subject; (c) duplication – addressing the same subject in different places in the Terms (eg liability), sometimes using different language. This can make it difficult for consumers to get a full picture of their rights and obligations, and language differences can result in the Terms being internally inconsistent. Also, some of the Terms have different rules for disconnection and termination but are not clear on what the difference is; (d) spreading Terms across several documents without providing links between the documents or being clear about the hierarchy of the documents; and (e) not providing direct links or any links to important information published on the retailer’s website, such as price lists or price-finding tools. Links that take readers to the retailer’s website home page rather than the relevant page are not very helpful.” Simpson Grierson, *Gas Industry Company: Retail Gas Contracts Oversight Scheme Benchmark Assessment Report*, (June 2023), no. 16 (formatting different from original).