

NATIONAL COMMUNICATIONS AUTHORITY



PUBLIC CONSULTATION - DISPUTE RESOLUTION COMMITTEE (DRC) USER GUIDELINES

March 2024

Invitation for Comments- Dispute Resolution Committee (DRC) User Guidelines

1. The National Communications Authority (NCA) intends to issue User Guidelines for its Dispute Resolution Committee (DRC) pursuant to its mandate under Section 3(r) of the National Communications Authority Act, 2008 (Act 769).
2. In line with the Electronic Communications Regulations, 2011 (L.I 1991), the DRC is being set up with jurisdiction to settle various disputes:
 - a) among different network operators or service providers;
 - b) between network operators or service providers and a utility provider;
 - c) between a network operator or service provider and a consumer.
3. The User Guidelines for the DRC serve as a comprehensive guide for all stakeholders in the electronic communications industry and provides them with a practical understanding of the operations of the Committee.
4. The public consultation begins on **20th March, 2024** and shall expire on **24th April, 2024**.
5. All responses/comments should be electronically transmitted as e-mail attachments, in Microsoft Word format to info@nca.org.gh.
6. All respondents are requested to complete a response cover sheet (see Pages ii and iii).
7. In furtherance of transparency and openness, the Authority shall consider all responses as non-confidential.
8. Subsequent to the completion of the Public Consultation, the Authority shall proceed to publish the Dispute Resolution Committee (DRC) User Guidelines.

**COVER SHEET FOR RESPONSE TO NCA PUBLIC CONSULTATION ON DISPUTE
RESOLUTION COMMITTEE USER GUIDELINES**

BASIC DETAILS

Name of respondent:

Representing (self or organisation/s):

Address:

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on NCA's website, and I authorise NCA to make use of the information in this response to meet its legal requirements. If I have sent my response by e-mail, NCA can disregard any standard e-mail text about not disclosing e-mail contents and attachments.

Name :

Signed (if hard copy)

FORMAT FOR COMMENTING ON THE DOCUMENT

Chapter/Part Number	Section Number	Heading	Comment	Suggestion / Proposed Amendment

NATIONAL COMMUNICATIONS AUTHORITY



DISPUTE RESOLUTION COMMITTEE (DRC) USER GUIDELINES

GLOSSARY OF TERMS

ADR	Alternative Dispute Resolution
Award	Final decision delivered by the DRC after receiving evidence of parties and receiving legal arguments. It also includes terms of settlement by parties.
Board	Board of Directors of the National Communications Authority established the National Communications Authority Act, 2008 (Act 769).
Constitution	The Constitution of Ghana, 1992
DRC	Dispute Resolution Committee
ECA	Electronic Communications Act, 2008 (Act 775)
ECT	Electronic Communications Tribunal
NCA	National Communications Authority
Network operator	a person licensed under the ECA to operate a public electronic communications network.
Rules	Rules of Procedure of the Dispute Resolution Committee.
Telecommunication	Includes the transmission, emission or reception of signals, writing, pulses, images, sounds or other intelligence of any kind by wire, radio, terrestrial or submarine cables, optical or electromagnetic spectrum or by way of any other technology.

1. INTRODUCTION

These Guidelines are made pursuant to sections 84 and 85 of the Electronic Transactions Act to serve as a comprehensive guide for all stakeholders in the electronic communications industry and to provide them with a practical understanding of the operations of the Dispute Resolution Committee (the DRC).

2. SCOPE OF THE DRC'S JURISDICTION

2.1 The DRC is set up with jurisdiction to settle various disputes between the entities in the telecommunication industry. The jurisdiction of the DRC applies to:

- d) Disputes between or among different network operators or service providers.
- e) Disputes between network operators or service providers and a utility provider.
- f) Disputes between a network operator or service provider and a consumer.

2.2 The membership of the DRC shall be constituted in the following manner:

- a) The Board shall appoint a total of seven (7) persons as members of the DRC. Two (2) out of the seven (7) persons shall be women.
- b) For each dispute, the Chairperson of the DRC shall empanel 3 persons to constitute the panel that determines the dispute.
- c) The Chairperson of the DRC shall be a member of the Board.

2.3 The DRC has the mandate to determine its own jurisdiction. When a dispute is submitted or referred by a party to the DRC, a Respondent to the action may file a challenge to the jurisdiction of the DRC requesting that the DRC either dismiss or refrain from hearing or determining a pending matter based on any of the following grounds:

- a) It appears to the DRC that the subject matter or a part of the subject matter of the dispute is trivial;
- b) It appears to the DRC that the subject matter or a part of the subject matter of the dispute is vexatious;
- c) It appears to the DRC that it would be expedient for the Claimant to exhaust claim procedures in the relevant Consumer Claims Code; or

- d) It appears to the DRC that the subject matter or a part of the subject matter of the disputes is not necessary or desirable in the public interest.

The DRC may only undertake settlement of a dispute between an operator and a subscriber where the subscriber has first made a reasonable effort to resolve the issue or complaint through the Complaint Handling Procedures of the provider of the electronic communications service or network operator.

3. SUBMISSION OF DISPUTES TO THE DRC

- 3.1 If a consumer decides to file a claim with the DRC, he or she must file two (2) copies of the claim and pay the applicable fees. After filing the claim, the Claimant must ensure the Registrar serves copies of the claim on the Respondent(s).
- 3.2 The claim is filed by completing and submitting the relevant DRC Form with the following details.
 - a) The names, addresses and telephone numbers and email addresses of the parties to the dispute which will serve as the Claimant's address for service;
 - b) A statement of the nature of the dispute,
 - c) The remedy or relief sought, including an amount claimed,
 - d) The agreements or other documents relied on in support of the Claimant's claim, and
 - e) Any other relevant information.
- 3.3 The claim may be filed electronically by sending the completed claim Form to the following email address [insert email address] or by uploading the claim Form with supporting documents on a digital platform designated by the Registrar.
- 3.4 Once a claim is filed before the DRC, the DRC has the jurisdiction to decide on it. Thus, a Respondent who has a challenge to the jurisdiction of the DRC (for whatever reason), must timeously serve the DRC with notice specifying the grounds for the challenge.

4. Dispute Resolution Process

- 4.1 The DRC has the power to determine how the hearing may be conducted. It may be in person or virtual. But each party must have adequate notice of the trial and must be given equal opportunity to present its case.
- 4.2 If the DRC on its own or pursuant to the agreement of the parties determines that the matter may be more efficiently determined by the conduct of the hearing based on documents and other material evidence, it shall dispense with the need to conduct oral hearing.
- 4.3 To ensure this equality, the Rules require the DRC to ensure that each party is duly notified of the hearing at least seven (7) working days before the date for the hearing through their email addresses.
- 4.4 A party who requires the services of a translator must inform the Registrar in good time for the Registrar to procure the services of a qualified translator at the cost of the requesting party. However, where the requesting party is an individual consumer (a natural person), the Authority may bear the cost of procuring the services of a translator if it is satisfied that the consumer cannot afford the services of a translator.

4.5 Opening statements

The essence of the opening statement is to give each party the opportunity to put forward the theory of their case, clarify the issues to be resolved and possibly provide a roadmap on how they intend to prove their case. It is not expected that parties would make their full arguments at this stage. Thus, the DRC may set a time limit for each party to make its opening statement or, with the agreement of the parties, waive it altogether.

4.6 Taking of Evidence

After the opening statements, the parties will then take turns to present their evidence and witnesses to the DRC, with the Claimant beginning the process. To save time, parties are expected to file witness statements of all the witnesses they intend to call at the hearing ahead of time. At the hearing, the witness statement will be adopted as the evidence of the witness. The lawyer for the opposing party will then cross-examine the witness. After the cross-examination, the lawyer for the party who called the witness may choose to re-

examine the witness. These processes of examination begin with the Claimant's witnesses and follow with the Respondent's witnesses. The DRC may examine the witnesses and call expert witnesses of its own.

4.7 **Closing Arguments/Written Submissions**

After evidence has been taken, the parties may then summarise their entire case and legal arguments in a written submission. The DRC is expected to direct the parties on when to file the submissions. The submissions will highlight the legal arguments together with the evidence the parties have presented.

4.8 **Award**

4.8.1 After the parties submit their written legal submissions, the DRC will formally close the hearing and is expected to deliver its Award within 14 days after the close of hearing. All Awards must be in writing and must state the reasons for the conclusions made by the DRC.

4.8.2 The decision of the DRC is made either by a unanimous decision or by simple majority. Where there is a dissenting opinion, the member dissenting must also state the reasons for the dissent, and this must be included in the Award to be submitted to the NCA.

4.8.3 If parties voluntarily settle the dispute before an Award is rendered, then the settlement agreement must be submitted to the DRC, and the DRC must adopt the terms of the agreement as its Award which will be binding on the parties.

4.8.4 The decision of the DRC may include the grant of the relief or remedy sought in the claim or counterclaim or any other relief or remedy that the DRC considers just, based on the evidence presented before it. The relief or remedy may include:

- a) damages;
- b) a relief specified in an agreement between the parties relevant to the dispute;
- c) an order for specific performance under a relevant agreement; or
- d) an amendment or revocation of an agreement.

5. Appeal Process

5.1 A party who is dissatisfied with the Award may appeal against the DRC's decision to the Electronic Communications Tribunal (the ECT) within 28 days from the date of receipt of the DRC's Award.¹ The notice of appeal must contain the following details.

- a) the decision appealed against,
- b) the provision under which the decision appealed against was taken, and
- c) the grounds of appeal.

5.2 The Notice of Appeal must be served on the other party. And the ECT is required to convene within 1 month after the Notice of Appeal is filed, to determine the appeal.

5.3 If a party is still dissatisfied with the decision of the ECT, then the party may appeal against the said decision at the Court of Appeal on point of law within 90 days after the date of the decision.

5.4 The relevant resource on the procedure for appealing decisions of the DRC to the ECT is the Electronic Communications (Rules of Procedure of the Electronic Communications Tribunal) Regulations, 2016 (L.I. 2235).

6. Time frame for DRC Proceedings

Unless extended by the Board, the DRC must resolve disputes within six (6) months from the date the DRC panel is constituted for the claim. This requires cooperation from the parties and strict compliance with orders and directions of the DRC.

7. Stakeholder Rights and Responsibilities

7.1 Ethical Duties of the DRC

Maintaining high ethical standards in the dispute resolution system does not only ensure justice but also reduces or extinguishes any perception of bias and corruption. To protect the integrity of the DRC's proceedings, each DRC panel is required to observe the following ethical standards.

¹ Section 91 of Electronic Communications Act, 2008 (Act 775).

a. *Impartiality and Independence*

Independence from political or corporate pressures is essential to maintain the DRC's credibility. Flowing from this, every DRC panel member must remain impartial and free from bias. They should not have any affiliations or relationships that may influence their decision-making process.

b. *Transparency*

The procedures and processes for dispute resolution must be clear and transparent. Stakeholders should be able to understand how decisions are made and the criteria for awards. The issue of transparency must be evenly balanced with the duty to maintain confidentiality.

c. *Confidentiality*

Information disclosed during the resolution process should be kept confidential, unless otherwise required by law. Personal and sensitive data should be protected to ensure privacy. This duty applies to lawyers and other representatives who participate in the proceedings as well. It continues to exist even after the representation of the client ceases.

d. *Accessibility*

All users of telecommunication services, regardless of their background, should have equal access to the dispute resolution mechanisms. Services should be available without discrimination based on factors like race, gender, socioeconomic status, etc.

The Authority shall endeavour to provide translation and transcription services for parties with special needs or otherwise require such services but cannot afford.

e. *Efficiency*

Disputes should be resolved in a timely manner. Delays should be minimised to ensure that consumers or parties involved do not suffer due to extended waiting times.

f. Fairness

The process should be fair, giving both parties an equal opportunity to present their case, unless a party voluntarily decides not to utilise the opportunity given to it. Decisions should be based on evidence, rules, and the law, not on arbitrary or subjective judgements.

g. Competence

DRC members are adequately trained and competent in both telecommunications and dispute resolution. The Authority will organise periodic training and updates to equip DRC members to handle evolving challenges in the telecommunications sector.

h. Accountability

There are mechanisms in place to hold the DRC accountable. This includes periodic reviews, audits, or feedback mechanisms. The Board plays a supervisory role in periodically vetting decisions made by the DRC.

i. Public Interest

Decisions made by the DRC would not only consider the interests of the disputing parties but also the broader public interest. It is in this light that the Rules require the DRC to dismiss a claim summarily if it would be disadvantageous to public interest.² The overarching goal is to enhance the telecommunication sector's quality, efficiency, and reliability for the public.

j. Avoiding Conflicts of Interest

Individuals involved in the decision-making process are required to disclose any potential conflicts of interest. The Board would address any potential conflicts promptly to ensure they do not affect the integrity of the dispute resolution process.

² See Clause 5.2 of this Manual; Rule 1.6 of the Rules.

k. Continual Review and Improvement

The ethical framework and processes would be reviewed periodically. Feedback would be collected and incorporated to improve the dispute resolution process continually.

8. Lawyers and other representatives' duty to the DRC

8.1 Lawyers and other representatives also owe the DRC duties aimed at ensuring the effective determination of the dispute between the parties. In addition to their professional duties, every party and their representatives have the duty to:

- a) Avoid any deliberate attempt to deceive or mislead the DRC;
- b) Avoid any attempt to compromise any material witness to the dispute; and
- c) Avoid any attempt to compromise or influence the decision of any member of the DRC.

9. Confidentiality

9.1 Information disclosed during the resolution process would be kept confidential, unless otherwise required by law.

9.2 The DRC keeps the personal information of clients/consumers confidential unless the DRC is:

- a) Authorised or required by law or an order of the courts to do otherwise.
- b) In possession of written approval from the client/consumer to do so.
- c) Required to release such information for the purpose of briefing auditors or inclusion in their annual reports.

10. Feedback and Claims

The DRC will develop appropriate mechanisms by which it will solicit feedback and claims from stakeholders.