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**Handling Complaints
In an Independent and Transparent Manner,
The Trinidad and Tobago Experience**

Mohan Chadee*
Customer Services Manager
Regulated Industries Commission (RIC)
Trinidad and Tobago

*The views expressed therein are those of the author and does not necessarily represent those of the RIC.

ABSTRACT

Many developed and developing countries have chosen to implement some sort of regulatory reform because of the historical failures of state-owned network industries to provide the level of service required by consumers while simultaneously being economically viable. Regardless of the reasons for reform one of the primary aims of reform is to protect consumers from abuse by firms with substantial market power.

The RIC is a relatively youthful regulator whose credibility and capacity to effectively regulate the sectors are being tested. The RIC has to continually demonstrate its commitment to the principles of independence and transparency in dealing with complaints. While there may be shortcomings in the enabling legislation, those shortcomings must be addressed through subsidiary legislation if the RIC is determined to bring about much needed change in the sectors.

This paper attempts to demonstrate how the RIC operates transparently and asserts its independence in handling complaints and highlights some of the limitations contained in the Regulated Industries Commission Act of 1998 that inhibits the regulator from efficiently achieving greater consumer protection. The paper also provides some suggestions for the RIC as it moves forward in achieving its mandate.

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1. INTRODUCTION

The Regulated Industries Commission (RIC) is an independent statutory body established under the Regulated Industries Commission Act, No. 26 of 1998 (RIC Act). It succeeded the Public Utilities Commission as a result of regulatory reform. Like in many other jurisdictions reform in Trinidad and Tobago became necessary due to the historical failures of state-owned network industries to provide the level of service required by consumers while simultaneously being economically viable. According to Berg et al, one of the broad objectives of reform is “to protect consumers from abuse by firms with substantial market power”. Unquestionably, one of the most successful ways to protect consumers from abuse is through the establishment of an efficient and effective medium for customers to obtain complaints redress and voice their dissatisfaction with the services provided by Service Providers. Indeed, handling of complaints is a complex process, which requires an understanding and appreciation of a mass of knowledge from several fields, including but not limited to law, engineering, accounting, customer relations and even economics. However, unlike its predecessor, which was primarily focused on economic regulation, the RIC by virtue of this new regime is now mandated to focus on this essential function and other critical consumer related issues.

Like any other regulator the RIC’s credibility and capacity to effectively regulate the industries are being tested and will continue to be tested. Nevertheless, these critical factors are dependent on the level of independence the RIC is able to assert, the degree of transparency in its operation especially its decision-making process and the level of accountability stakeholders place on the Commission. It is therefore important that the RIC and other regulators advocate the need for an environment that promotes regulatory independence and transparency, concepts that are still very contentious in many jurisdictions.

This paper attempts to demonstrate how the RIC operates transparently and asserts its independence in handling complaints and highlights some of the limitations contained in the Regulated Industries Commission Act of 1998 that inhibits the regulator from efficiently achieving greater consumer protection. The paper also provides some suggestions for the RIC as it moves forward in achieving its mandate.

2. DEMONSTRATING TRANSPARENCY & ASSERTING INDEPENDENCE

2.1. The Legal Mandate For Complaints And Review

The RIC under Section 6 1 (l) of the Act is required to “investigate complaints by consumers, of their failure to obtain redress from Service Providers in respect to rates, billing and unsatisfactory service and *facilitate* relief where necessary”. Further, Section 53. (1) states “Subject to this section, the Commission may on its own motion or in consequence of a complaint made by any person in respect of-

- (a) the rate charged for a service;
- (b) a disputed billing for a service; and
- (c) the standard or conditions of supply of a service,

review such complaint or any other matter related to its powers, duties or functions under this Act and where it thinks fit, consult with the parties concerned.

53. (2) Every complaint shall be in writing and may be made by the complainant in person or by his counsel or by any person authorised by him in writing in that behalf.

53. (3) A complaint to the Commission against the rate referred in subsection (1)(a) shall be on the ground that the rate is contrary to law or the provisions of a licence.

53. (4) A complaint against the standard or conditions of supply of a service shall be entertained by the Commission only where the complainant satisfies the Commission that he has failed to obtain reasonable redress from the Service Provider.

54. Nothing in Part V or in this Part shall be construed as precluding the Commission from dealing at the same time with an application for a review referred to in section 49 and a related complaint made under section 53(1).

55. It is a condition of every licence that a licensee shall not discontinue service to a consumer where, in respect of the service provided to the consumer, a complaint made under section 53 remains unresolved

From the information presented above, this particular mandate of dealing with complaints is made unambiguous. Clearly, within this context, the role of the RIC is not one of an adjudicator, but one of a facilitator. Apart from its legal mandate, it is important for the regulator to have well defined policies and procedures to facilitate the resolution of complaints. According to Hay 2002, these procedures must be congruent with the principles of natural justice and administrative law.

An analysis of the legal framework of other regulators in the Caribbean relating to complaints redress as provided in Table 1 reveals the uniqueness of the RIC. As can be observed, all of the Regulators except the RIC have the power to enforce their decision directly through the provision in the Act or primary legislation either by

Memorandum or Orders. While the RIC cannot use the same means to enforce regulatory decisions, it has to rely on subsidiary legislation to achieve the same end result. The RIC is not as independent as it should be in getting subsidiary legislation enacted, because according to the RIC Act, the Minister must grant approval. Further, our experience has been that the time taken for obtaining the Minister’s approval to enactment has been very long.

Table 1: An Analysis Of The Legal Framework Caribbean Regulators

Regulator Country	Legal Provision for Handling Complaints
PUC Bahamas	Holds Public Inquiry, has the power to enforce remedial measures by Memorandum
FTC Barbados	Hold Enquiry, has the power to enforce decisions by Order
PUC Guyana	Hold Enquiry, has the power to enforce decisions by Order
OUR Jamaica	Hold Enquiry, has the power to enforce remedial measures
RIC Trinidad & Tobago	The use of Alternative Dispute Resolution (ADR) which includes Mediation, Facilitation, and Conciliation

As a facilitator the RIC can utilize any one of the Alternative Dispute Resolution (ADR) techniques suitable for resolving the complaint. However, conciliation and mediation are the most frequently used of all the techniques. What is interesting to note is that although most jurisdictions have a quasi-judicial framework and are empowered to impose their decision on the Service Provider, they frequently utilise some form of ADR technique in their complaints handling process.

In addition, the RIC Act, Section 24 provides for the establishment of Consumer Service Committees (CSCs) to represent the interest of consumers. One of the responsibilities of these committees is to ensure that the Service Provider makes available an adequate complaint procedure. However, the power to appoint such committees is within the domain of the Minister and they have not been established.

2.2. Balancing the Various Interests

As indicated earlier, a primary role and function of a regulator is to protect the interest of consumers, especially where the Service Provider enjoys a substantial

market power or monopolistic control of the industry. The importance for this role becomes absolutely clear when one examines the nature of the complaints that are being submitted. Section 6 (3) of the RIC Act stipulates, “in the performance of its functions the RIC shall have regard to the public interest”. Protection can take various forms, however, this objective can be achieved in a number of ways which includes; ensuring that services are reliable and provided at the lowest possible cost, allowing consumers to have equal access to service, ensuring fair treatment of consumers and of Service Providers similarly placed, ensuring non-discrimination in relation to access, pricing and quality service and very importantly handling complaints effectively and fairly.

Regulation demands that the Regulator ensures that the Service Provider has the necessary revenue to finance its operations. Section 6 (3) (c) of the RIC Act stipulates that “the regulator should ensure, as far as is reasonably practicable, that the service provided by a Service Provider operating under prudent and efficient management will be on terms that will allow the Service Provider to earn sufficient returns to finance necessary investments”. This dual role places a tremendous amount of responsibility on the regulator to ensure that its decisions are fair. This goal within the context of complaints handling is achieved by ensuring that the process used for handling complaints is independent and transparent to all stakeholders.

According to Stokiewicz 2002, regulators must balance numerous economic, political and social objectives, which sometimes place more importance in some objectives relative to others. There are times when the Service Provider describes the RIC as being pro-consumer when a complaint is not resolved in favour of the Service Provider. While this statement is certainly unfounded in fact, it somehow paints a picture of how consumers are perceived by some Service Providers. As Regulators we need to encourage, develop and enforce a comprehensive complaint handling procedure, which maintains and continually enhances customer satisfaction, not only for those customers who access our service but also for those who use the services of the Service Provider. Most importantly this process must not only be fair but also seem to be fair.

Under the new regulatory regime the regulator is required to establish decision-making processes that are transparent and fair to all parties. Such openness can assist in gaining stakeholders’ confidence and acceptance of the regulator’s decisions. As the level of independence increases so too the level of transparency as a means of leveraging accountability. Stakeholders are holding regulators more accountable for their actions. However, the degree of transparency is dependent on the following factors:

- Explicit declaration in legislation – The Act requires the RIC to publish standards for services. The Commission also has to consult with Service Providers and other stakeholders on specific matters. For example, rate determinations, sanctions for non-compliance of standards or licence condition and periodic reviews.

- The level of development of administrative policies and procedures
- Development of the sector
 - Bargaining power of consumers and consumer advocacy groups
 - Degree of competition within and for the market.

The RIC is fully committed to the principle of transparency, which is demonstrated by the Commission's openness about its objectives, processes, data and decisions particularly those relating to handling consumer complaints. We believe that this modus operandi will certainly facilitate the maintenance of an arm's length relationship with all stakeholders to avoid regulatory capture.

2.3. Complaints Management Policy

The RIC Act is certainly not as detailed as the Fair Trading Commission Act of Barbados when it comes to the issue of dealing with complaints. Therefore, it was imperative for the RIC to develop its own administrative policies to treat with customer complaints. The objectives of the RIC's Complaints Management Policy (CMP) are multi-dimensional. It seeks to ensure that the Service Providers are more sensitive to the needs of their customers and that consumers are aware of their rights to fair treatment and proper redress guaranteed in legislation. Further, it ensures that the CSRs are aware of their roles and responsibilities with respect to handling complaints so that resolution is achieved effectively and efficiently. Additionally, the CMP acknowledged the need to facilitate research on matters of concern and interest to consumers, which would help govern complaints policy decision. The CMP also envisages that the functions of the CSCs would be to (1) act as final arbiter if either the Customer or Service Provider is dissatisfied, (2) act as an independent audit committee (3) act as a consumer advocacy group that will seek to improve practices in the Service Provider. It was also developed to ensure that the Service Provider subjects no sector in society to discriminatory practice.

The CMP focused on several areas which includes:

- Customer Information and education;
- Dispute resolution;
- Research and policy development
- Periodic Monitoring and Review;
- Confidentiality

2.3.1. Customer Information And Education

One of the critical success factors for the RIC relates to Consumer information and education. The policy emphasised the customer's right to unbiased and accurate information that would enable him/her to acquire the knowledge to make informed choice and take appropriate action where necessary. The RIC's web-site was the main platform by which information was made available. However, a 2003 survey conducted by the RIC showed that only eight percent (8%) of the population in Trinidad and Tobago was aware of the RIC, and as such, the Commission embarked on a mass media campaign and engaged the attention of the public in a variety of mediums and areas of interest. The Consumer Services Department (CSD) works very closely with the Corporate Communications Department in conducting educational programmes that will make the general public aware of their rights and responsibilities. Exhibit I provides a list of customers' rights and responsibilities. In addition, the CSD participated in conferences and seminars and highlighted some key statistics on the performance of the RIC and Service Providers as it relates to Complaints as depicted in figures 1-6 below. As a mark of maintaining our independence the RIC has paid T&TEC for inserting the Quality of Service Standard brochures in T&TEC's billing.

2.3.2. Dispute Resolution

The Commission is of the view that consumers should receive prompt and independent advice in resolving complaints against a Service Provider. As part of its own internal standards the RIC has established performance standards for the Customer Services Department which give specific timeframes to respond to complaints. Refer to Exhibit II. Further, The RIC uses a relatively simple complaints procedure that is easy to understand and access in order to resolve individual complaints.

Upon receipt of a complaint the Commission:

1. Conducts an investigation
 - a. Obtain all relevant documented information from the customer; and or
 - b. Conduct a site visit where necessary.
2. Contact the Service Provider
 - a. Relay the customer concerns and request an investigation and response; and or
 - b. Request specific information.
3. Evaluate the Service Provider response
 - a. In the event of a disagreement with the response
 - State what is in disagreement and provide a sound rational and
 - Request reconsideration of the complaint

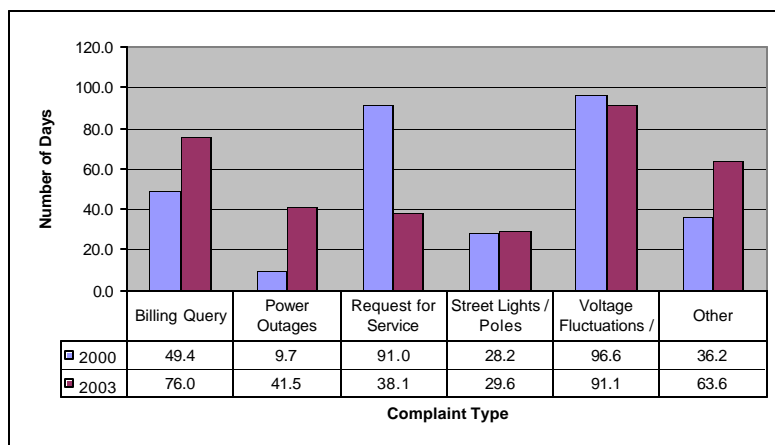
4. Respond to the customer
5. If the customer is dissatisfied try to facilitate a resolution using ADR

The RIC will do all that is necessary to facilitate a resolution of a complaint. However, in some cases the customer may still feel dissatisfied with the outcome. In such circumstances the RIC will then advise the customer on what further action may be available or can be taken. The onus however, is on the customer to take any further action. All the information relating to the complaint is captured in the computerised database, which includes all documented information and correspondence, photos and videos where necessary.

Resolving disputes quickly, with little or no cost to the customer.

Prior to April 2004, there were no enforceable standards in either the electricity and water sectors and therefore complaints took a relatively long time to be resolved. Figure 3 illustrates the resolution time for complaints filed against T&TEC for the years 2002 & 2003. In an effort to bring about greater efficiency in resolving complaints, and improve the level of service the RIC has established Quality of Service Standards in the Electricity Transmission and Distribution Sector, which became law on April 7, 2004. For example, with respect to written customer queries/requests, T&TEC is now required to provide a letter of acknowledgement within 5 working days of receipt of the query and communicate a final position within 15 working days, in accordance with the Overall Electricity Standard (OES6). One of the most contentious of all complaints against T&TEC relates to damage appliances due to voltage fluctuation (power surge). As shown in Figure 3 the resolution time for this category of complaint was approximately 91 days in 2003. Today the Guaranteed Electricity Standard (GES6) mandates T&TEC to resolve this category of complaint within 35 working days. Standards for the Water and Wastewater sector are being finalised and are expected to be enforced by the end of 2004. These standards were developed through public consultations with all stakeholders.

Fig 3: The Resolution Time For Complaints Filed Against T&TEC For The Years 2002 & 2003



The statistics for WASA in terms of resolution time of complaints relating to billing queries are cause for great concern. As at July 31, 2004 the average resolution time for this particular type complaint was 130 days. However, there are complaints that have remained unresolved for over 18 months. Clearly, this was unacceptable and hence the urgent need for the introduction of Quality of Service Standards for this sector.

The Commission is committed to removing or at least significantly reducing the cost barriers to making complaints to the RIC. It is generally recognized that one of the best options in making the RIC more accessible is the introduction of a Toll Free number (800-4RIC). In fact, the possibility of implementing such an option was recognized at one of the RIC’s consultations in Tobago in March 2004. This facility would benefit both the consumer and the RIC. Not only would it provide a direct access at no cost to the consumer but an easy to remember and user-friendly way of engraving in the minds of consumers that the RIC is here to assist with consumer complaints.

Given the geographic location and level of infrastructure in some communities in Trinidad and Tobago, access to certain amenities including telephone services, postal services and transport facilities may be difficult or non-existent for vulnerable groups. Consequently, consumers in these areas would be at a disadvantage in expressing their utility-related grievances. The RIC has just approved the introduction of a mobile office, which will visit various locations in Trinidad and Tobago. The mobile office will be housed in the Offices of Regional Corporations, Borough Councils, City Councils, Community Centres and offices of recognized Non-Governmental Organisations (NGOs) and Community Based Organizations (CBOs).

Objectivity and fairness in its decision-making.

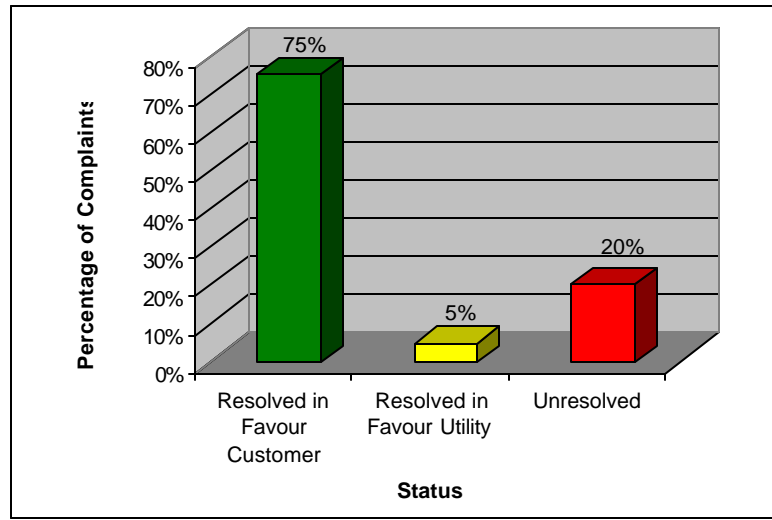
Apart from the information contained in the customer complaint, in many instances the Customer Service Representative will request additional information from the Service Provider. All information will be objectively analysed and the RIC will take a position as to what sort of resolution would be fair and acceptable to the customer and/or the Service Provider. If the complaint is a complex one and requires technical advice or opinion, it will be forwarded to the RIC's Technical/Legal Department for analysis and consideration. In some instances an independent third party may be required to conduct specific tests and analysis. The RIC will then act on the customers' behalf where it is believed that the complaint is justified and request or suggest that the Service Provider take appropriate or specific action to remedy the matter.

There have been instances where the customer has been untruthful with the information provided and it is with deep questioning and probing that this fact is revealed. For example, dealing with complaints relating to unrecognised calls billed to the customer's telephone account. The customer will deny that the call was not made from his/her phone. However, when other members of the household are questioned the truth is revealed. Conversely, there have also been instances where the Service Provider has not been completely honest with its customer. For example, liability claims being denied by T&TEC. When the RIC asked for the reports to justify the Service Provider's position, liability was accepted. Another example is that of WASA billing their customers for water they never received.

Because of its objectivity and fairness, the RIC had been very successful in resolving complaints. Analysis of the data for 2003 has revealed that approximately 80% of all complaints has been resolved as depicted in Figure 4.

Apart from being fair, the operations of the CSD and by extension the RIC as it relates to complaints redress are indeed independent. The Commission has never had any attempts from either the Government or the Service Provide to influence its assessment and decisions in addressing complaints. In fact, both Government Officials (Ministers and Permanent Secretaries) and the Service Providers are referring customers to the RIC. In our opinion this is an indication of the level of independence, respect and confidence the RIC has earned.

Fig 4: The Status of Complaints Filed In 2003



Keeping the Customer updated on the progress of the complaint, the proposed decision and reasons for decision.

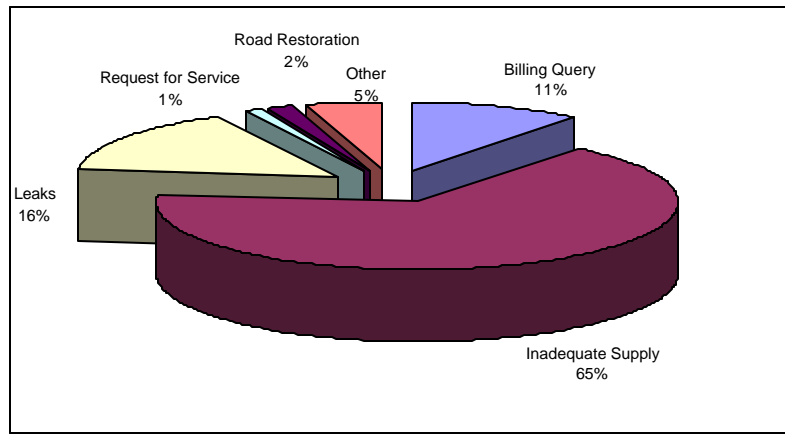
The RIC is committed to ensuring that the customer is kept up-to-date on the progress of the complaint by providing copies of all correspondence on the complaint. The RIC is of the firm view that customers must be given an explanation of its decision, more so when the complaints are not resolved in favour of the customer.

2.3.3. Research and Policy Development with Periodic Monitoring and Review

This is a critical component of the process by which the system helps to promote accountability. The computerised database allows easy access to information about systemic problems of the Service Provider for reporting purpose and subsequent action by the RIC. For example, the system can show the types of complaints by Service Provider, as depicted in Figure 5

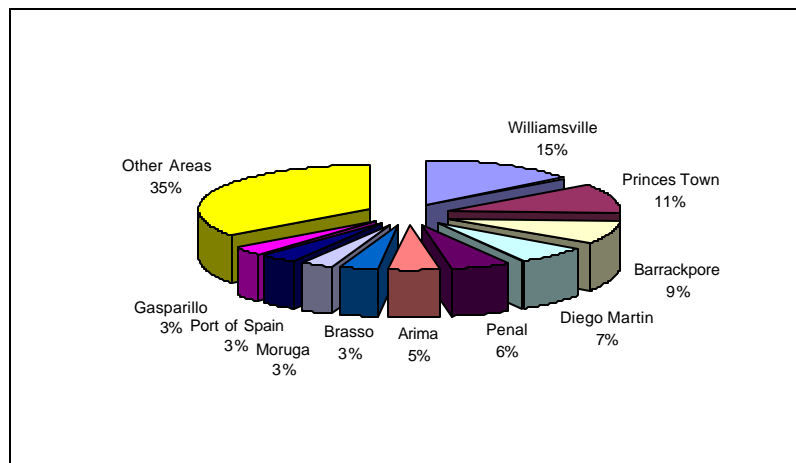
The RIC has a Technical Department that is responsible for monitoring the Service Provider's compliance with the Quality of Service Standards. One of the mechanisms that has been instituted to monitor the Service Provider and to provide an early alarm is the reviewing of their performance via the complaints database. The RIC also intends to continuously monitor the customers' satisfaction with the Service Provider's complaints service. This will help to identify causes of dissatisfaction and allow an opportunity for suggesting improvements where necessary.

Fig 5: Types of Complaints filed against WASA for 2003



The system can further detail where in Trinidad and Tobago certain types of complaints are occurring by Service Provider as depicted in figure 6

Fig 6: Areas that were affected by an inadequate water supply for 2003



Empirical evidence critical for regulatory decisions and subsidiary legislation.

The Analysis of complaints statistics cannot be overemphasised if the regulator has to identify the cause of complaints and determine ways to eliminate these causes. The analysis of the number and nature of the complaints received by the RIC against Service Providers offered empirical evidence critical for regulatory decisions. For example, in drafting the quality of service standards for the Water and Wastewater Sector specific standards were developed to address the high incidence (65%) of inadequate water supply complaints. Data collected for 2003 revealed an eighty-two

percent (82%) increase in complaints relating to billing when compared to 2002, and it represents fifteen percent (15%) of all complaints received for 2003.

Service Providers are currently operating without any standardised Codes of Practice and while they may have their own internal policies relating to consumer issues, these policies are sometimes inconsistently applied and in many instances do not measure up to minimum acceptable standards. Hence, the RIC has focused on four areas, which give rise to billing complaints identified in the Codes of Practice below which consequently give rise to a large number of complaints annually.

With respect to the Development of Codes of Practice, the RIC has suggested some basic guiding principles for Service Providers to consider when preparing Codes of Practice. Although those guidelines are not exhaustive, they are intended to provide a foundation or minimum level of service on which Service Providers and members of the public can expand. However, each Service Provider would be required to prepare and submit Codes of Practice for RIC's approval. The codes were developed utilising the consultative process and seven (7) critical areas were identified:

1. Provision of priority service for vulnerable groups
2. Dealing with customers in default
3. Debt recovery and disconnection procedures
4. Retroactive billing policies and procedures
5. Range and accessibility of payment
6. Complaints procedure
7. Continuous Consumer education

As indicated earlier the RIC does not have the power to enforce its decision directly through any provision in the Act or primary legislation and therefore the Commission must depend on subsidiary legislation to bring about much needed changes in the various sectors that would positively impact on consumer's rights and interests. For example, standards are developed and made law through legal Notices. These standards then form part of the terms and conditions of the Service Provider's licence. The same applies to the development and establishment of the Codes of Practice.

2.3.4. Confidentiality

The Commission recognises the right of consumers to privacy and confidentiality of personal information. As such all information recorded in the RIC's database will be treated as confidential in accordance with Section 30 of the Freedom of Information Act 26 of 1999. The RIC has been challenged to release information contrary to Freedom of Information Act, but the Commission was able to hold its ground.

3. A WAY FORWARD

The existing primary legislation (the Act) in its present form has created many challenges for the RIC especially its inability to enforce decisions arising out of complaints. This is because the Commission functions as a facilitator. There is little that can be done to enforce a regulatory decision outside the scope of existing subsidiary legislation. To date, the Commission has only enacted the Quality of Service Standards for the Electricity Transmission and Distribution Sector. However, the Commission is in the closing stages of developing Quality of Service Standard in the Water and Wastewater Sectors and Codes of Practice (COP) Guidelines. Therefore in an effort to improve the quality of consumer protection and the level of complaints handling at the Service Providers end in particular, the following may be instructive:

- Continue to develop new and improved subsidiary legislation;
 - Quality of Service Standards;
 - Codes of Practice; and
 - Terms and condition of Licence – This is one of the most important pieces of subsidiary legislation to be developed by the RIC. This is the mechanism through which the COP will be enforced. Any breach to the COP will be considered as a breach of a licence condition and may attract financial penalties and other remedies.
- Monitor and enforce compliance;
- Engage in continuous consumer education;
- Conduct audits and surveys on the complaints handling process;
- Engage in continuous skills enhancement in all areas related to complaints handling;
- Ensure stakeholders participate in the regulatory decision-making process;
- Ensure that tariffs are inextricably linked to service quality.
- Continuous improvement in database management of complaints

4. CONCLUSION

Reform has undoubtedly brought greater protection to consumers and also benefits to the Service Providers. Simultaneously, it has placed a tremendous amount of responsibility on the regulator to act independently and transparently in order to gain credibility and acceptance and consequently effectively regulate the Industry. The paper has highlighted the uniqueness of the RIC in relation to its Caribbean counterparts in terms of its inability to enforce its decision directly through the provisions of the RIC Act, but has to significantly rely on subsidiary legislation, which is being put in place to afford greater consumer protection. While the RIC may be unique in this regard, we (regulators) all share similar challenges in resolving complaints independently and transparently. Apart from the legal mandate the RIC is committed to “walking the talk” with the consistent application of its Complaints Management Policy and procedures as the vehicle to positively impact on customer satisfaction. This is a continuous process, which demands dedication, commitment and resources (human and financial) if the regulator is resolved in transforming the Utilities landscape in Trinidad and Tobago.

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APPENDIX - I

REGULATED INDUSTRIES COMMISSION

Rights of Customers of Service Providers

The Regulated Industries Commission, in the performance of its functions, is legally bound to ensure that certain rights of the customer are protected. Customers are therefore assured of the following rights:

YOUR RIGHTS:

The Right to services that are **reliable** and provided at the **lowest possible cost**.

The Right to products and services that are **safe** and will not cause personal harm or damage to property.

The Right to **information** about the product and/or service being obtained from Service Providers.

The Right to **equal access** to services.

The Right to **Fair** Treatment.

The Right to **non-discrimination** in relation to access, **pricing** and **quality of service**.

The Right to obtain **redress** from Service Providers in respect of **rates, billing and unsatisfactory service**.

The Regulated Industries Commission is mandated to ensure that Service Providers initiate Public Education Programs, which inform Consumers of their responsibilities regarding the products and services provided.

YOUR RESPONSIBILITIES:

To ensure that you **understand** the **terms** under which the service is being provided.

That you **utilize** the services under the **guidelines** given by the respective service provider, to ensure your **safety** and that of those around you.

To ensure that the service is **paid** for when payments are due.

To keep **records** of bills and transaction pertaining to the Service provided.

To **report** what you consider to be an **unsafe product or unfair service**.

To stay **informed** about any developments concerning the services which you utilize.

APPENDIX - II

RIC's PERFORMANCE STANDARDS

Target Areas	Details	Target
Response to Written Complaints	Complaints will be dealt with within ten (10) working days of receipt by the RIC	95% within ten (10) working days
Telephone and E-mail Complaints	Complaints will be dealt with within ten (10) working days of receipt	95% within ten (10) working days
Responding to Overnight Messaging Service Contact Information	CSR's will respond within one (1) working day to contact information	100% within one (1) working day
Keeping Appointments	CSRs will see complainant within ten (10) minutes of the time of the appointment	95% within ten (10) minutes