

case notes



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The **Electricity and Gas Complaints Commissioner Scheme** (EGCC) is an independent service for resolving complaints about electricity and gas companies. **The EGCC service is free to complainants.**

In the 2012-13 year the EGCC received 4,312 enquiries and 2,045 complaints. The EGCC encourages the parties to settle complaints between them, and over 90 per cent of the complaints received last year were settled this way. If the parties cannot settle the complaint between them they can ask the Commissioner to recommend a settlement. The complainant is free to use other forums if they do not accept the recommended settlement. They can take the complaint to the courts or, if the company is a state owned enterprise, the Office of the Ombudsman. If a complainant accepts the Commissioner's recommendation, it is binding on the company.

The Commissioner must publish a case note if she makes a recommendation. Case notes guide member companies and complainants by showing consistent and fair decision making. The Commissioner publishes case notes about other complaints to show different outcomes. There are case notes about complaints settled between the parties, complaints found to be outside the Commissioner's jurisdiction, and withdrawn complaints. All case notes are published on the website; this book contains just a sample.

The EGCC can consider complaints about electricity or gas companies that are members, including complaints about things that happen on land on which companies may have equipment. You do not have to be a customer to make a complaint about a company. The EGCC can consider complaints where the amount in dispute is up to \$50,000, or \$100,000 with the agreement of the company.

All electricity and gas companies have to be members of the EGCC. As members, they agree to use certain processes for complaint handling. This includes telling anyone who makes a complaint that the company is a member of the EGCC. If the company cannot resolve the complaint in a certain time period, they must tell the complainant they can contact the EGCC.

You can find out more about the EGCC by visiting our website, **www.egcomplaints.co.nz**, or free call **0800 22 33 40**.

November 2013

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The company charged Mr B for services to his property when it was vacant and no electricity was being supplied

24326

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Billing - disputed - vacant property	Binding decision

THE COMPLAINT

Mr B complained the company charged him for services to his property when it was vacant and no electricity was being supplied.

The company said its terms and conditions allow it to bill Mr B even though no electricity was being supplied. The company said if Mr B did not wish to pay when the property was vacant, he could ask the company to permanently disconnect the electricity supply.

THE OUTCOME

The parties were unable to settle the complaint between them and asked the Commissioner to recommend a settlement.

The Commissioner upheld the complaint. However, the Commissioner also recommended Mr B pay the company reasonable costs for services to the vacant property.

The investigation found there was no contract between the company and Mr B for supplying services to the vacant property. The company had:

- sent Mr B a copy of its terms and conditions in relation to a different property, not the vacant property
- not shown it had made an offer to Mr B to supply services to the vacant property

The investigation found services were provided to Mr B's vacant property, even though the property was not drawing any electricity and made no demand on the network. These services included network, metering and ripple control.


The Commissioner found the company was entitled to recover reasonable costs for providing its services under the legal principle of quantum meruit. Where there is no contract, quantum meruit may allow a party who has supplied services to recover reasonable costs. Quantum meruit does not apply if the services cannot be rejected. The Commissioner found Mr B could reject the supply of services by completing the company's permanent disconnection form.

The Commissioner assessed the reasonable costs payable by Mr B by reference to the company's tariff structure.

Mr B accepted the recommendation but the company did not. As provided for in the Commissioner's Terms of Reference, the Commissioner then issued a binding decision against the company. This means the company had to abide by the Commissioner's decision.

His bill increased after his company replaced two meters and changed the pricing plan

30712

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2011	Billing - error - pricing plan	Settled

THE COMPLAINT

Mr D complained his electricity bills increased after his retail company replaced the two meters on the property and changed the pricing plan he was on.

The retail company's records showed Mr D's property had an anytime meter and a night meter. Appliances connected to night meters can only be used at night and the electricity used through this meter is billed at a lower rate. Mr D had been billed on this basis for many years.

When the retail company installed an advanced meter at Mr D's property it found both the existing meters were anytime meters. The spa pool was the only appliance connected to the meter billed as a night meter and this had been used in the daytime. The retailer removed the night rate from Mr D's pricing plan, resulting in higher bills.

Mr D was not happy the long-time billing error caused an unexpected price change.

THE OUTCOME


The retail company offered a \$250 credit to Mr D's account for the inconvenience of the unexpected price change.

The retail company also sent a contractor to Mr D's property to confirm the spa pool was the only appliance that had been connected to meter billed as a night meter.

Mr D accepted the retail company's offer.

Mr M believed his advanced meter was not recording electricity use accurately

31784

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Billing - back bill - high - Meter - advanced meter - reading - Marketing	Recommendation - upheld

THE COMPLAINT

Mr M complained his electricity retailer sent him a back bill of \$1,013.38. He believed his advanced meter was not recording electricity use accurately because the use increased after the retailer installed the meter.

Mr M also complained the electricity retailer misled him to expect he would receive data each month about his electricity use for every half hour.

The retailer said the half-hourly data was only available on request.

THE OUTCOME

The parties were unable to settle the complaint and asked the Commissioner to recommend a settlement.

The Commissioner upheld the complaint and recommended the bill be reduced to \$459.37 comprising:

- A discount of 20% on the back bill, or 30% if paid promptly
- A customer service payment of \$250

The Commissioner also recommended the retailer send Mr M half-hourly data about his electricity use without him having to request this each month.


The Commissioner found:

- The retailer made billing errors after installing the advanced meter but had corrected them
- The meter was recording accurately
- The retailer unreasonably delayed using half-hourly readings to bill Mr M which meant he did not have accurate information to evaluate his electricity use
- The retailer misled Mr M about the service it would provide to customers with advanced meters

Both parties accepted the Commissioner's recommendation.

Mr L complained he was being charged a commercial rate for his domestic water pump

32571

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Billing - pricing plan	Recommendation - not upheld

THE COMPLAINT

Mr L complained his network company was charging a commercial rate for his domestic water pump. The network company billed the electricity retailer a commercial rate for Mr L's pump connection, and the electricity retailer on-billed Mr L.

Mr L said he could not afford to pay the commercial rates to supply his home. Mr L said the water pump supplied water to his home, outside bedroom and car shed. He said it was not a commercial pump.

THE OUTCOME

The parties were unable to settle the complaint between them and asked the Commissioner to recommend a settlement.

The Commissioner did not uphold the complaint. The Commissioner said she was satisfied the network company's pricing policy meant it was entitled to charge a non-residential tariff for the water pump at Mr L's property. The network company's pricing policy defined residential and non-residential tariffs.

The Commissioner said she was satisfied the network company explained its pricing policy to Mr L, and how this applied to his current tariff.

The network company's pricing policy about residential and non-residential tariffs said:

"Non-residential pricing - The Price Categories in this section apply to End-Consumers who are connected to the Low Voltage network and do not qualify for any other mass market Price category."

The residential price category applied to:

"An End-Consumer's home, which is the End-Consumer's principal place of residence Home does not include holiday homes occupied intermittently or sheds, garages, or other ancillary buildings that are separately metered."

The Commissioner found the connection for Mr L's water pump did not meet the network company's principal residence test because it was separately metered and had its own ICP^[1] number.

The Commissioner found the electricity retailer would be entitled to charge a non-residential tariff for Mr L's separate water pump connection. This was because the second connection to the network at the property did not qualify for a residential tariff. The retailer's "commercial" tariff covered commercial and non-residential connections. Although Mr L's water pump was not a "commercial" connection, the retailer had used the correct tariff category.

The Commissioner believed the network company had made a reasonable offer of settlement to Mr L, and recommended Mr L accept this. The network company said it was willing to combine the ICP numbers for the house and pump at Mr L's property, at his cost. If Mr L's combined electricity use remained below 8,000kW per year he would remain eligible for Mr L residential low user tariff.

The network company accepted the Commissioner's recommendation, but Mr L did not.

^[1] The Installation Control Point is the point of connection on a network from which electricity or gas is supplied to a site.

Mr M complained when he got a back bill for \$17,000

33184

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Billing - back bill	Recommendation - upheld

THE COMPLAINT

Mr M had an account with retailer A for the supply of electricity. Mr M complained when he got a back bill for \$17,000 from retailer B.

Mr M lived at a property that had two ICPs^[1] and three meters. Mr M's account with retailer A was for one of the ICPs, which used two of the three meters. Mr M's ex-partner had opened the account when they moved to the property in November 2007 and Mr M took over the account in August 2009.

Retailer B said the back bill was for electricity from the third meter over the three and half years Mr M had been at the property. When Mr M complained about the bill retailer B offered to discount the invoice by 30%. Mr M rejected this offer.

THE OUTCOME

The parties were unable to settle the complaint and asked the Commissioner to recommend a settlement.

The Commissioner upheld the complaint and recommended retailer B accept payment of \$781.77 from Mr M in full and final settlement of the complaint. The Commissioner based her recommendation on the following findings:


- Retailer B did not take reasonable steps in managing the supply of electricity to the property
 - It did not follow its vacant disconnection process
 - It knew there was electricity being used at the property as early as April 2007
- Mr M only became responsible for the electricity at the property in August 2009
- There was nothing to alert Mr M he was not being billed for all the electricity being used at the property

The Commissioner said a fair and reasonable outcome would be for Mr M to pay for electricity used before retailer B should have disconnected the meter or made Mr M aware of the unbilled electricity use. The Commissioner said two months was a reasonable amount of time for retailer B to disconnect the property, and therefore Mr M should pay charges for that period.

Both parties accepted the Commissioner's recommendation.

Mr R said his retailer did not make enough effort to tell him it could not access the meter

36636

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Billing - back bill - Meter - not read - Information	Settled

THE COMPLAINT

Mr R complained about his electricity retailer sending a back bill of \$2,137.74 eleven months after he became a customer. Mr R had been getting estimated bills.

Mr R said his retailer did not make enough effort to tell him it could not access the meter. Mr R's meter was in the foyer of his apartment building and the retailer did not have a key for the foyer.

Mr R said the retailer did not tell him it did not have an accurate start reading for his account. The retailer did not talk to Mr R about getting a meter reading when he first moved into the property because a utility agency arranged the electricity connection.

The retailer offered to discount half the back bill.

THE OUTCOME

The parties were unable to settle the complaint between them and asked the Commissioner to recommend a settlement.

The Commissioner upheld the complaint and recommended the retailer:

- Reduce the back bill by 20% to account for prompt payment discounts and then by a further 60%
- Give Mr R a reasonable time to pay the balance

The Commissioner found:

- The retailer did not do enough to tell Mr R it could not access the meter
- The bills did not make it clear they were estimated
- The estimated start reading meant it was impossible to know how much electricity was used over the period of the back bill
- The back bill appeared too high compared with Mr R's later bills

The Commissioner found the retailer became aware it could not access the meter a month after Mr R became a customer but it did not try to tell Mr R until three months later. The retailer did this by putting a note on Mr R's bills saying it could not access the meter and asking him to call the retailer.


The Commissioner found the note inadequate to draw Mr R's attention to the fact the retailer could not read the meter because of the note's style, positioning and wording. The Commissioner found the retailer should have followed up with Mr R by phoning him or sending him a letter when he did not respond to the note on the bills.

The Commissioner noted Mr R had not yet arranged for the retailer to access the meter. She said it is Mr R's responsibility to arrange access to the meter and he would breach the retailer's terms and conditions by not providing access.

The parties settled the complaint between them after receiving notice of the Commissioner's recommendation.

Mr E believed the tenants had paid for electricity used at the storage facility

36639

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Billing - back bill - disputing back bill - Contract - quantum meruit	Recommendation - upheld

THE COMPLAINT

Mr E complained an electricity retailer sent his company, ABC Ltd, a bill for \$13,606.59 for electricity used at one of its properties over a five year period. The property was a storage facility ABC Ltd leased on a casual basis to various tenants. The property was sometimes vacant between tenancies. Mr E believed the tenants had paid for electricity used at the storage facility.

The retailer sent the bill for \$13,606.59 to ABC Ltd when it realised it had been charging Mr N, the tenant at a grocery store also owned by ABC Ltd, for electricity used at both properties. Mr N got a refund and ABC Ltd got the back bill.

Mr E did not believe ABC Ltd should pay the bill.

THE OUTCOME

The parties were unable to settle the complaint and asked the Commissioner to recommend a settlement.

The Commissioner upheld the complaint, and recommended ABC Ltd pay the retailer \$7,047.56 for electricity supplied to the storage facility over the five years. The Commissioner looked at whether it was reasonable for the retailer to charge ABC Ltd for the electricity supplied to the storage facility. The Commissioner took into account information about the way the retailer responded to calls from Mr N with concerns about the way he was being billed for electricity for the grocery store.

The Commissioner found no contract existed between ABC Ltd and the retailer for electricity supplied to the storage facility.

The Commissioner applied the legal principle of quantum meruit.

This applies where goods or services are supplied without a contract. It allows for the supplier to recover reasonable costs where there is no doubt the recipient has received a benefit from the goods or services.

The Commissioner found ABC Ltd clearly benefited from the storage facility being connected to the network and receiving a supply of electricity. This is because it allowed ABC Ltd to lease the property on a casual basis and gain rental income from tenancies.


The Commissioner recommended ABC Ltd pay the retailer \$7,047.56 for the electricity supplied to the storage facility for the five years. This amount was calculated by:

- Starting with the amount ABC Ltd would have paid if the bills had been sent and paid on time
- Applying a discount of \$500 because the retailer did not provide ABC Ltd with retail services such as regular bills, meter readings, and access to the customer service team
- Applying a further 40% discount because it was fair and reasonable in the circumstances

Both parties accepted the Commissioner's recommendation.

Ms J complained her network company installed a new meter without permission

29004

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2011	Meter - installation - consent	Settled

THE COMPLAINT

Ms J complained her network company installed a new meter at her property without her permission.

Ms J saw a newspaper advertisement for a free meter upgrade. She called her network company to ask about the meters. Ms J said the company told her it could not provide the information at the time and it would call her back. She said the company never called her back. A month later she discovered a new meter had been installed at her property. She said she was concerned the new meter would mean she would get higher bills.

THE OUTCOME

The network company gave Ms J some information about the meter. The company said because Ms J was a low user, she would not get higher bills because of the new meter.

The company offered Ms J a choice in the way she was billed by the company. The company said she could have the benefit of the lower of two options:


- Bills based on the readings from her meter
- Bills based on a formula provided by the company

The network company said it would continue to give Ms J this choice until she was satisfied her bills were lower when based on the readings from her meter.

Ms J accepted this as full and final settlement of her complaint.

Mr B complained the retailer did not tell him there were health and safety issues around advanced meters

31603

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Meter - advanced - provision of information - Health and safety	Recommendation - not upheld

THE COMPLAINT

Mr B complained the retailer did not tell him there were health and safety issues around advanced meters when it advised him it was installing an advanced meter at his property.

The retailer did not install the advanced meter at Mr B's property while the complaint was being investigated.

THE OUTCOME

The Commissioner did not uphold the complaint. She found the retailer provided Mr B with appropriate information about the advanced meter to be installed at his property.

The Commissioner found the retailer did not need to disclose health and safety issues around advanced meters in initial information sent to customers, including Mr B. This was because:

- The retailer said it is prepared to provide information about health and safety issues around advanced meters if a customer raises concerns with the company
- The operation of the retailer's advanced meters in a customer's house is unlikely to exceed the limits in the relevant standards for human exposure to electric and magnetic fields (EMFs)

Mr B did not respond to the Commissioner's recommendation and the file was closed.

The Commissioner's recommendation followed an investigation of the complaint. Details of the findings of the investigation follow.

Information about health and safety issues around advanced meters

The retailer said it is prepared to provide information about health and safety issues around advanced meters if a customer raises concerns with the company.

Mr B did not raise concerns about the safety of advanced meters directly with the retailer. Nor did he provide information about how he believes an advanced meter would affect his own health and safety.

The retailer said:

"When a customer raises any health and safety concerns over the advanced meters, we send out a letter to the customer providing some information about the advanced meters, and also direct them to the [the retailer's] website to look into the FAQs to see if it addresses any of their concerns."

Relevant standards for human exposure to EMF

According to the specifications of the retailer's advanced meters, the operation of the meters in a customer's house is unlikely to exceed the limits in the relevant standards for human exposure to EMF.

The National Radiation Laboratory explains EMF are produced by any wiring or equipment carrying electric current.^[1] The National Radiation Laboratory recommends the use of guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP guidelines).^[2] These guidelines set a basic restriction for human exposure to EMF.

Radiofrequency fields are part of the spectrum of EMF.^[3] Sources of radiofrequency fields include telecommunications equipment. The standard for exposure limits for radiofrequency fields is published by Standards New Zealand (the New Zealand standard).^[4] The New Zealand standard is identical to that contained in the ICNIRP guidelines.

The National Environmental Standards for Telecommunication Facilities says an activity (such as a transmitter inside an advanced meter) that emits radiofrequency fields is a permitted activity provided it complies with the existing New Zealand standard.^[5]

The retailer said the transmission frequencies of its advanced meters are:

- EGSM 900 band: 880 MHz to 915 MHz (Transmit Band) and 925 MHz to 960 MHz (Receive Band)
- DCS 1800 band: 1710 MHz to 1785 MHz (Transmit Band) and 1805 MHz to 1880 MHz (Receive Band) *(continued)*

[1] National Radiation Laboratory, "Electric and Magnetic Fields and your Health" (2011), page 1, available at <http://www.nrl.moh.govt.nz/publications/emfbooklet.pdf>.

[2] "ICNIRP Guidelines for limiting exposure to time varying electric, magnetic and electromagnetic fields (Up To 300 Ghz)" (1998), available at <http://www.icnirp.org/documents/emfgdl.pdf>.

[3] WHO information page on Electromagnetic fields <http://www.who.int/peh-emf/about/WhatisEMF/en/#>.

[4] New Zealand Standard 2772.1:1999 Radiofrequency fields - Maximum exposure levels - 3 kHz to 300 GHz.

[5] Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2008, clause 4.

31603 continued

The retailer said the maximum transmission power from the modem within the meters is:

- EGSM 900 band: 2 watts
- DCS 1800 band: 1 watt

The transmission power is a measure of the energy used by the meter during the time it transmits. At the point of transmission there will be a maximum of two watts of power in the emitted electromagnetic waves. The two watts of power is spread out equally in every direction from the transmission point. The further away from the meter a person stands, the weaker the person's experience of these fields will be.

Mathematically, the two watts are divided over the area of a sphere at a certain distance from the transmitter (as the energy is emitted in all directions). The area of a sphere is calculated as $4\pi d^2$ where "d" is the distance a person is standing from the meter.^[6]

At one metre away from the transmitter, the power per surface area is 2 divided by 12.6 watts per square metre, which equals 0.16.

The average person has a surface area of 1.79 square metres, so would be exposed to a maximum of 0.32 watts.

Both the ICNIRP Guidelines and the New Zealand standard say that for general public exposure to the EMF at the transmission frequencies the meters operate, the maximum Specific energy Absorption Rate (SAR) is 0.08 watts per kilogram of the person exposed. The SAR defines the energy being absorbed by human tissue from EMF. For example, a person weighing 60 kilograms would have a maximum SAR of $0.08 \times 60 = 4.8$ watts.


Therefore, if the meter was transmitting at its maximum power of two watts, a person would have to weigh less than 25 kilograms and be grasping the active transmitter for the radiofrequency fields to exceed the guidelines.

An advanced meter in a residential house is usually situated inside a box on an exterior or interior wall. The retailer said the meter transmits once a day for 20 to 30 seconds. Therefore the Commissioner believed it is unlikely the meter would operate in a way that would exceed the limits for human exposure to EMF contained in the New Zealand standard.

^[6] Using 3.17 for π means the area of the sphere is calculated as 12.6 (4 times 3.17) $\times d \times d$.

Ms G said she did not want a pre-pay meter installed

34072

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Customer service - back bill	Settled

THE COMPLAINT

Ms G complained about receiving a back bill from her electricity retailer after receiving estimated bills for three months.

Ms G said when she phoned the retailer to discuss her account, the person she spoke to in the credit department was rude and unhelpful. Ms G said she explained, because of illness and her financial position, she was a vulnerable customer. Ms G said she could not afford to pay the back bill in full.

Ms G complained the retailer did not follow appropriate protocol when dealing with a vulnerable customer and did not offer to set up a payment plan for the back bill. Ms G also complained a debt management fee was applied to her account.

The retailer offered Ms G the option of installing a pre-pay electricity meter as a way of avoiding any further issues with back bills following estimates. Ms G said she did not want a pre-pay meter installed. The retailer sent a contractor to Ms G's property to install a pre-pay meter despite Ms G saying she did not want one.

THE OUTCOME

The complaint was settled between the parties after discussion with the Commissioner's office.


The retailer apologised for the poor customer service Ms G received over the phone. It said it would give appropriate feedback and further training to the representatives she had dealt with.

The retailer apologised for the contractor's visit and said it would review its systems to avoid such mistakes in the future.

The retailer credited Ms G's account \$120 as acknowledgement for receiving poor customer service. The retailer offered to install an advanced meter at Ms G's property. Advanced meters are read remotely, meaning there is no need for a meter reader to visit the property. Ms G accepted the retailer's offer as full and final settlement of her complaint.

Mr R wanted compensation of \$5,024.64 for the damage to the appliances

32521

TYPE	YEAR	ISSUES	OUTCOME
	2013	Supply - surge - damage - Consumer Guarantees Act	Binding decision

THE COMPLAINT

Mr R complained appliances at his property were damaged by a power surge. Mr R said the power surge happened when a tree fell onto power lines, which made a 33kV line clash with a 11kV line. Mr R wanted compensation from the network company because he believed the presence of the trees near the lines combined with the age and condition of the particular tree meant there was a foreseeable risk of a surge if a tree fell.

Mr R wanted compensation of \$5,024.64 for the damage to the appliances.

THE OUTCOME

The parties were unable to settle the complaint between them and asked the Commissioner to recommend a settlement.

The Commissioner upheld the complaint and recommended Mr R's electricity retailer pay him \$5,024.64 for the damage to his appliances. The Commissioner found the retail company was liable under the Consumer Guarantees Act 1993 (CGA) because the supply of electricity did not meet the guarantee of quality.

The Commissioner applied Justice Miller's judgment in *Contact Energy v Jones*. This judgment confirms that electricity retailers are liable under the CGA for breaches of the guarantee of quality. The judgment accepts network faults are often the cause of problems experienced by the consumer, but the consumer should be able to recover losses from the electricity retailer with whom they have a contract for supply.

The Commissioner found the network company was not liable for the event that caused the surge. The tree that fell and caused the surge was not within the growth limit zone for trees near power lines. This means the network company did not breach its obligations under the Electricity (Hazards from Trees) Regulations 2003. The Commissioner was also satisfied the damage was not as a result of any negligence on the part of the network company.

However, the Commissioner was satisfied the retailer was liable for the cost of the damage. This was because she believed the electricity delivered to Mr R did not meet the acceptable quality guarantee set out in the CGA.

The Commissioner did not accept the companies' arguments that the surge was a "momentary fluctuation" and so within the required standard for electricity as set out by Section 28 (2) Electricity (Safety) Regulations 2012. The Regulations say the standard is 230 volts, plus or minus 6%, apart from momentary fluctuations. The Commissioner said while the variation in voltage was momentary, it was not a fluctuation. She said it was more accurately described as a significant event, which was widespread and had affected a significant number of consumers. The Commissioner said the variation in voltage was so significant that surge protection devices would not have prevented damage to appliances.

Balancing all the considerations set out by Miller J, the Commissioner believed the electricity would not have been considered acceptable by the reasonable consumer. The retailer accepted the statement of loss Mr R had provided, so the Commissioner recommended the retailer pay the full amount claimed.

In its submission, the retailer asked the Commissioner, if she found the retailer to be liable, to order the network company to indemnify the retailer under the Electricity Industry Participation Code. The network company did not agree it should indemnify the retailer. The Commissioner ruled she did not have jurisdiction to consider disputes between members, and so could not consider this issue.

Both the network and retail company rejected the Commissioner's recommendation, but the complainant accepted. As provided for in the Commissioner's Terms of Reference, the Commissioner then issued a binding decision against the retail company. This means the company had to abide by the Commissioner's decision.

Applying the CGA to electricity

Applying the CGA to electricity involved complex legal issues which had not yet been addressed by the courts. The Commissioner and a group of retailers agreed the issues surrounding how to apply the CGA to electricity were best addressed by the High Court.

(continued)

32521 continued

The group of retailers issued High Court proceedings to clarify how the Commissioner should interpret and apply the CGA to electricity retailers. In particular, how the Commissioner should interpret and apply the guarantee that electricity (as a good) must be of “acceptable quality”.

The Wellington High Court heard the matter in January 2009 and Miller J issued his judgment on 24 April 2009, *Contact Energy Ltd v Jones* [2009] 2 NZLR 830.

Miller J’s judgment

Miller J’s judgment said the legislature has opted for strict liability for electricity retailers. Electricity retailers may be liable under the guarantee of acceptable quality for fluctuations or outages attributable to the distribution system.

However, parliament did not want consumers to prove whether the defect in the quality of electricity supplied was the responsibility of a network or a retail company. The companies should work that out between them, and the consumer should be free to claim against either.

The judgment said questions of fact and degree have to be asked about whether the retailer breached its guarantee of acceptable quality.

Miller J explained the test is what the reasonable consumer, fully acquainted with electricity distribution in New Zealand would regard as acceptable.

Miller J says the reasonable consumer must be taken to have an understanding of the nature and properties of electricity, beyond simply knowing what it is. They know how electricity is distributed and how this may affect the quality of the electricity which arrives at their property.

This does not mean the reasonable consumer will find the known risks of electricity and electricity distribution acceptable. Nor does it follow the consumer will always find it acceptable when their electricity supply is affected. This is a matter of fact and degree, dependent on individual facts.

The judgment sets out a two-part test for the Commissioner.

The first part is a list of seven (non-exhaustive) considerations the Commissioner must address in deciding whether a given supply of electricity has breached the guarantee of acceptable quality.

These considerations cover the: common use of the electricity; nature and extent of risks; extent of the incident, duration and frequency of the incident; point at which the fault becomes unacceptable; cause; price; and anything the supplier may have said to the consumer about the goods.

Miller J says the Commissioner must balance these considerations against one another, using the individual facts of the complaint, to reach a preliminary view.

If the Commissioner’s preliminary view is the delivered electricity supply met the guarantee of acceptable quality, this is the end of the process.

If the Commissioner’s preliminary view is the delivered electricity supply did not meet the guarantee of acceptable quality, the retailer is prima facie liable.

The Commissioner must then look at other factors that might limit or exclude the retailer’s liability. This consideration is no longer about the ‘reasonable consumer’; it is about the circumstances and knowledge of the particular consumer and the individual facts.

In this second part of the test, the factors the Commissioner must consider are:

- Did the retailer adequately tell the consumer about specific defects in the electricity before they agreed to supply?
- Did the circumstances of the incident or way in which the consumer used the electricity exclude the retailer’s liability?
- Was the loss claimed reasonably foreseeable?
- Should the consumer and retailer share the liability (where the consumer’s actions may have contributed to the damage)?

A network company refused to reconnect the power supply unless Mr L paid the previous owner's debt

33445

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Supply - refusal - Debt	Binding decision

THE COMPLAINT

Mr L complained a network company refused to reconnect the power to his newly purchased property unless he paid the previous owner's debt.

Mr L bought a property at auction by mortgagee sale. When Mr L arranged to have the electricity supply to the property reconnected, the network company refused to do so unless Mr L paid \$1,564. The network company told Mr L the \$1,564 was for unpaid lines charges from the previous owner. The network company told Mr L section 106 of the Electricity Industry Act 2010 (the Act) said it was entitled to refuse to reconnect the property if there were unpaid lines charges.

THE OUTCOME

The parties were unable to settle the complaint between them and asked the Commissioner to recommend a settlement.

The Commissioner upheld Mr L's complaint and recommended a fair and reasonable settlement of the complaint would be for the network company to refund Mr L \$1,564.


The Commissioner said the company was mistaken about its right to refuse to reconnect Mr L's property. Section 106 of the Act applies to properties with a connection as of 1 April 1993. The electricity supply to Mr L's property was installed in 2003.

The Commissioner also found this mistake meant Mr L would be entitled to relief under the Contractual Mistakes Act 1977.

Mr L accepted the recommendation but the company did not. As provided for in the Commissioner's Terms of Reference, the Commissioner then issued a binding decision against the company. This means the company had to abide by the Commissioner's decision.

Mr H claimed \$16,000 from the network company for damage to computer equipment and loss of business

34249

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Supply - planned outage - damage/loss	Recommendation - not upheld

THE COMPLAINT

Mr H complained his network company did not notify him about a planned outage to replace a transformer. He said the outage caused surges which damaged computer equipment and a server at his business.

He said he knew there were surges because the lights were flickering when the power went out, and the next day, six of his computers stopped working. Mr H claimed \$16,000 from the network company for damage to computer equipment and loss of business.

THE OUTCOME

The EGCC arranged a teleconference between the parties. During the teleconference the network company acknowledged an administrative error meant Mr H was not notified about the planned outage to replace the transformer.

The network company offered Mr H a goodwill payment of \$1,000. Mr H refused that offer and asked the Commissioner to recommend a settlement.

The Commissioner did not uphold the complaint. She recommended Mr H accept the network company's offer of \$1,000 in full and final settlement of his complaint.

The Commissioner requested voltage data from smart meters affected by the same planned outage, and provided it to a member of her panel of independent experts.

The independent expert advised disconnection or reconnection of electricity at the transformer will not cause damage to computer equipment, as it is just like switching an appliance off and on again at the wall. The expert said the only way damage could occur to computer equipment is by prolonged high voltage.

The voltage data from smart meters connected to the same transformer did not show any prolonged high voltage.

The independent expert said:

"I therefore conclude that the disconnection and subsequent reconnection of the transformer by [the network company] is unlikely to have caused damage to computer equipment."

The Commissioner based her recommendation on the following conclusions:

- Disconnection or reconnection of the supply of electricity at the transformer will not cause damage to computer equipment or servers, unless there is an over voltage event
- Voltage data from other properties connected to the same transformer did not show any over voltage event or surge
- Flickering lights do not indicate an over voltage event
- The guarantees under the Consumer Guarantees Act 1993 did not apply because Mr H was operating a business
- Mr H was not notified of the planned outage to replace the transformer.


After Mr H accepted the Commissioner's preliminary recommendation, he advised he believed he could still pursue his claim in other forums.

The Commissioner explained her recommendation was only binding on the network company if Mr H accepted it full and final settlement of his complaint. The Commissioner told him if he wanted to pursue the complaint through other avenues he had to reject her recommendation.

Both parties accepted the Commissioner's recommendation.

Ms L complained a retailer incorrectly installed an advanced meter

34764

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Supply - outage (unplanned)	Recommendation - upheld

THE COMPLAINT

Ms L is a property manager. She manages flat 3 in a block of seven flats.

Ms L complained in July 2012 a retailer incorrectly installed an advanced meter at flat 3. Ms L said the retailer disconnected the supply of electricity when a tenant moved out of flat 3 in November 2012. Ms L said this affected the hot water supply to the other flats in the block. Ms L said the other flats in the block did not have electricity for eight days. Ms L said she had to pay to have an electrician look at flat 3 and pay the retailer to have the property reconnected.

THE OUTCOME

The EGCC investigated the complaint and held a conciliation conference. The parties were unable to resolve the complaint between them and asked the Commissioner to recommend a settlement.

The Commissioner upheld the complaint. The Commissioner recommended the retailer reimburse Ms L for the electrician's bill and the reconnection fee and pay her \$300 for the inconvenience she experienced when trying to find the cause of the hot water outage. The Commissioner also recommended the retailer pay \$50 each to the other flats in the block for the inconvenience of not having hot water for eight days.

The Commissioner found the retailer caused the hot water outage. This was because it was more likely than not the retailer wired the ripple relay for the entire block of flats through flat 3's meter. In April 2012, before the retailer installed the advanced meter, the retailer had disconnected the electricity supply to flat 3 for a week. None of the other flats had complained about losing their hot water supply at that point. When the retailer disconnected flat 3 in November 2012 the other flats lost their hot water supply. The Commissioner found this meant it was the retailer's actions that caused the hot water outage.


The EGCC asked an independent expert for advice about ripple relays and wiring. The expert explained ripple relays control electricity to hot water cylinders and require electricity to work. The expert said the retailer should have known disconnecting flat 3 would affect the hot water supply to other flats. The expert said the retailer should have wired the ripple relay differently when it installed the meter in flat 3.

The Commissioner found the retailer had responded appropriately to Ms L's complaint and provided her with a reasonable level of customer service.

Both parties accepted the Commissioner's recommendation.

Mr X said damage to the switchboard was related to the line falling on the electric fence

37827

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2013	Supply - surge - damage	Recommendation - not upheld

THE COMPLAINT

Mr X claimed \$1,626.66 compensation from the network company for damage to the switchboard at his cowshed. In February 2012 an electricity line fell on an electric fence at Mr X's farm, damaging the electric fence and killing stock at his farm. Mr X said he found the switchboard burnt out in March 2012. Mr X said the damage to the switchboard was related to the line falling on the electric fence.

The network company agreed to compensate Mr X for the electric fence and stock, but not the repair bill for the switchboard. The network company said when the contractor attended the fault in February the contractor tested the meter board and found no fault.

THE OUTCOME

The parties were unable to settle the complaint between them and asked the Commissioner to recommend a settlement.


The Commissioner did not uphold the complaint.

The Commissioner asked an independent expert about the probable cause of the damage to the switchboard. The Commissioner accepted the expert's advice there was not sufficient evidence to show the network company contributed to the damage and the likely cause of the damage was a loose connection in the switchboard.

Mr X said he disagreed with the recommendation and he would take the complaint to the Disputes Tribunal.

The network company challenged the Commissioner's jurisdiction to look at the complaint

38039

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Conditions for supply - Jurisdiction	Settled

THE COMPLAINT

Mr G was subdividing a large block of land. The subdivision required an electricity connection and sign off from the network company confirming the subdivision had sufficient electricity supply. The network company would not sign off the subdivision unless Mr G gave the network company an easement for lines on the land.

Mr G complained the network company was unjustly requiring him to register and pay for an easement for its infrastructure before it would agree to sign off his subdivision plan for the District Council. He said he believed this was unjust because the easement is beyond the network company's legal entitlements and at his cost.

The network company challenged the Commissioner's jurisdiction to consider this complaint. Its concern was the complaint was outside the Commissioner's jurisdiction to consider land complaints because it was about an easement. The Scheme document dated April 2011 was in effect at the time. It said:

"B.9.8 The Commissioner cannot consider any of the following matters which are excluded from the definition of Land Complaint:....

(e) any dispute relating to or arising from the negotiation for, or other process of, obtaining any interest in Land in relation to Lines Equipment, including under the Resource Management Act 1991 or the Public Works Act 1981"

THE OUTCOME


The Commissioner decided she was able to consider the complaint. She said the determinative factor was whether the complaint was a land complaint or a complaint about line function services. The exclusion about negotiations for an interest in land [B.9.8 (e)] only applied to land complaints.

The Commissioner found Mr G's complaint was about the conditions the network company was setting for a new connection to the network. Therefore she believed the complaint was about line function services. She said while the easement being sought was about an interest in land, the requirement for it was part of Mr G's application for a new connection to the network.

Following the Commissioner's decision on jurisdiction, the network company and Mr G agreed to allow their lawyers to negotiate the matter. The parties resolved the complaint themselves without a decision from the Commissioner.

Mr B complained the company was unable to provide evidence about who owned the line

27117

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2011	Lines - ownership - Pole - maintenance	Recommendation - upheld

THE COMPLAINT

Mr B disputed he was responsible for maintenance of an electricity line on a right of way supplying him and three other properties. The network company said Mr B owned the line and was therefore responsible for the cost of maintenance. Mr B complained the network company was unable to provide evidence about who owned the line.

THE OUTCOME

The parties were unable to settle the complaint between them and asked the Commissioner to recommend a settlement. After completing an investigation, the Commissioner upheld the complaint. She recommended the network company maintain the electricity line on the right of way because the network company had previously acted as if it had owned the electricity line by adding new connections to the line.

The Commissioner’s recommendation was based on the following conclusions:

- On the balance of probability it is likely Mr B owns the line because it seems likely the original owner paid to construct the line.

- The house was built in 1960. The relevant regulations at the time were the Electricity Supply Regulations 1935. According to these Regulations, if the original owner of the property paid to construct the electric line, they would own it.
- It is likely the original owner of the property paid to construct the line because the Regulations said the consumer may be asked to pay for lengths of line over 60 feet. The line is at least 231 feet long and at the time it was the only house up the right of way.
- In 1996 the network company connected a neighbouring property to the privately owned line. The network company did not seek permission from the owner of the line for the new connection. The network company is estopped^[1] from claiming it is not responsible for maintaining the line because it acted as if it owned the line.
- The actions of the network company prevented Mr B and his neighbours from negotiating agreements or contributions to pay for projected maintenance of the line.

Both parties accepted the Commissioner’s recommendation.

^[1] Estoppel is where one party makes a statement to another party intending the other party to rely on the statement.

Mr N wanted the network company to pay \$19,000 to cover the cost of the damage

41252

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2013	Lines - damage	Complaint not pursued further

THE COMPLAINT

Mr N complained a network company would not pay for damage to his property after clashing power lines caused a fire. Mr N said the fire destroyed a sleep out, a three-bay shed, native plants, and a brushwood fence at his property.

He said the network company did not properly investigate the cause of the fire and told him it was caused by pine trees adjacent to the property.

Mr N said the pattern of burned vegetation and the weather conditions at the time indicated the power lines were the source of the fire.

Mr N's insurance covered the cost of most of the damage, but Mr N wanted the network company to pay \$19,000 to cover the cost of replacing the sleep out and the three-bay shed and its contents (native timber, tools, and a car trailer).

THE OUTCOME

The parties were unable to resolve the complaint and asked the Commissioner to recommend a settlement.

The Commissioner requested information from the New Zealand Fire Service, the network company, and Mr N's insurance company and provided it to a member of her panel of independent experts.

The expert said the lines were 11kV lines with insulators and overvoltage protection. The expert said if the lines were responsible for the fire, there would be evidence of a fault on the network records.^[1] There was no evidence of a fault on the network records, and the expert concluded the lines could not have caused the fire at Mr N's property.

The Commissioner called Mr N and explained she would base her decision on the report from her expert. Mr N accepted the expert's conclusion that the power lines were not the cause of the fire, and the EGCC closed the complaint file.

The expert's full report said:

"Under steady electricity network conditions (i.e. normal undisturbed voltage conditions), the electrical breakdown distance of air around 11kV conductors is only a few centimetres. The insulators supporting the electricity conductors where they pass over or under the pole cross arms have dimensions well in excess

of the steady state electrical breakdown/flashover distance. The insulators are also designed so that if a nearby lightning storm induces extra high voltages on the line conductors, flashover will occur at the cross-arm insulator positions so that damage to the line or to any customer's equipment being supplied via the network is minimal; usually avoided.

For a flashover to occur between electricity power line conductors and ground, or vegetation nearby, the conductors would have to move within centimetres of ground or live vegetation, or a piece of vegetation would have to be blown into the line. In this case, the line conductors are in the order of 6m above ground, so that vegetation some 6m long would need to come between a conductor and ground to initiate a flashover. Conductor to conductor flashover requires significant movement to bring them close together.

Overvoltage protection in the form of surge diverters (sometimes referred to incorrectly as lightning arrestors) are commonly installed on 11kV and higher voltage lines, at selected locations to divert any over-voltages from the power lines direct to earth. This prevents flashovers occurring on the power lines.

Heat energy is necessary to start a fire, and in the case of line flashovers initiating fires, any flashover rapidly becomes a short circuit fault current causing hot metal to be ejected from the conductor which helps start a fire. In addition, the fault current can only be interrupted by the protection equipment tripping suitably located switchgear. This action is recorded via the SCADA system, and physical evidence on the conductor/s is obvious and usually needs some repair work.

When a flashover occurs, the air in the flashover path is ionized (becomes conductive) and this ensures the follow current quickly increases to fault current levels.

Alternatively, a fire below a power line produces rising hot air, and hot air includes ionized air, which establishes an electrically conductive path between the power line and ground; in such a case the fire creates conditions for a flashover to occur. Electricity does not 'jump' distances as is popularly stated.


However, the SCADA/fault/protection records do not show any evidence of a possible power line fault/flashover at or near the time of the fire.

Conclusion: In view of the height of the power line conductor above ground, and the lack of physical evidence of a conductor flashover in the vicinity of the property fire, it is logical to conclude that the [network company] power line was not involved in any stage of the property fire, and therefore cannot be regarded as a possible cause.

^[1] These come from a supervisory control and data acquisition (SCADA) system that records events on the electricity network.

Mr Y said he did not have a contract with the network company

33237

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Contract - Provision - Supply	Binding decision

THE COMPLAINT

Mr Y complained a network company charged him for services to his property when the property was vacant. Mr Y said he did not have a contract with the network company and had not asked the network company to supply any services.

The network company challenged the Commissioner's jurisdiction to consider the complaint. The challenge used the fact the charge was explained in the network company's terms and conditions, which were consistent with the Electricity Industry Participation Code (in the Electricity Industry Act 2010).

The Commissioner said these facts did not mean she could not consider the complaint. The Scheme document sets out complaints the Commissioner can and cannot consider, and this complaint was one she could consider.

THE OUTCOME

The EGCC held a conciliation conference between Mr Y and the network company. The parties shared information and discussed the network company's pricing model.

The parties were unable to settle the complaint between them and asked the Commissioner to recommend a settlement.

The Commissioner upheld the complaint.

The investigation found there was no contract between the network company and Mr Y for supplying services to the vacant property. This was because the network company had not:

- Offered to supply Mr Y with services
- Told Mr Y the terms and conditions of supply

The Commissioner considered whether the network company might be able to recover the costs of supplying the services under the legal principle of quantum meruit. Where there is no contract, quantum meruit may allow a party who has supplied services to recover reasonable costs. Quantum meruit does not apply if the services cannot be rejected. The Commissioner found Mr Y was not given an opportunity to reject the services. This was because the network company had supplied the services without telling Mr Y about the services and telling him how he could reject the services if he did not want them.

Mr Y accepted the recommendation. The network company accepted the recommendation, but said it disagreed with the way the Commissioner had applied the law. The Commissioner then issued a binding decision against the network company.

The retailer sent the final bill to debt collection after telling Mr C it had been paid in full

35213

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Debt	Recommendation - not upheld

THE COMPLAINT

Mr C complained his electricity retailer sent his final bill to debt collection after telling him the bill had been paid in full.

THE OUTCOME

The parties were unable to settle the complaint between them and asked the Commissioner to recommend a settlement.

The Commissioner did not uphold the complaint. This was because:


- The retailer and Mr C agreed the retailer would estimate Mr C's final meter reading and email him a final bill when he went overseas
- The retailer sent the final bill to the email address provided by Mr C
- It was reasonable for the retailer to send the bill to debt collection

The Commissioner agreed the retailer had acted reasonably in referring the bill to debt collection. This is because Mr C had failed to make the payments due under the agreed payment arrangement and the retailer had taken reasonable steps to warn Mr C by sending an email.

Mr C did not accept the Commissioner's recommendation and the file was closed.

Mr R said the retailer did not post the final bill to his forwarding address

37311

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Debt - agency - main account holder	Recommendation - upheld

THE COMPLAINT

Mr R complained his electricity retailer sent the final bill for his flat to debt collection in his name only, when he believed his flatmates were also account holders.

Mr R said he and his flatmates had arranged for a friend to pay the final bill while they were overseas.

Mr R said the retailer did not post the final bill and debt collection notice to his forwarding address. This meant Mr R had no way of knowing the bill had gone to debt collection.

THE OUTCOME

The parties were unable to settle the complaint between them and asked the Commissioner to recommend a settlement.

The Commissioner upheld the complaint and recommended the retailer pay Mr R a customer service payment of \$500.

The Commissioner found the retailer should have told Mr R its billing system only recognised one person as the account holder, even though he and his two flatmates had each asked to be named on the account.

However, the Commissioner also found the retailer's consumer contract meant it was entitled to transfer the unpaid bill to debt collection in Mr R's name only.

Both parties accepted the recommendation.

How to use the Electricity and Gas Complaints Commissioner Scheme

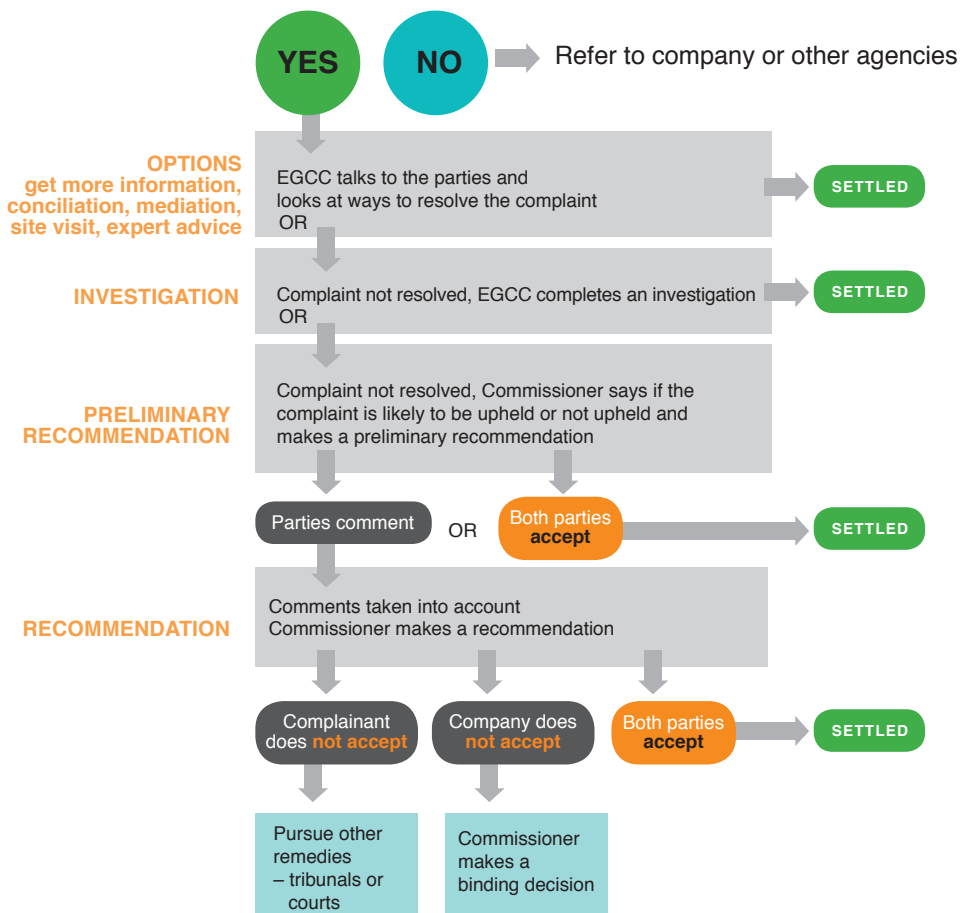
You can contact the Electricity and Gas Complaints Commissioner Scheme (EGCC) for help if you have a complaint about an electricity or gas company.

We encourage you to resolve the complaint directly with the company. If this is not possible, you may be able to use the EGCC service.

We need to check if the complaint is about something the EGCC can consider. For example, the EGCC cannot consider complaints about price, but it can consider complaints about the way charges are applied.



- 1 **Has the complaint been made to the company?**
and
- 2 **Is the complaint about something the Commissioner can look at?**





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