



electricity & gas
complaints commissioner

case notes



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

Last year we received over 2,000 complaints. The complaints were from all sorts of people, including home and business owners, and people in rental accommodation.

The EGCC can look at complaints about electricity and gas companies that are members of the scheme. Member companies agree to certain standards of complaint resolution.

We work with the complainant and the company to help them settle the complaint together. Most of our work is by telephone, although we use face-to-face meetings and site visits where these will help settle the complaint.

Over 90% of complaints were settled between the parties after the complainant contacted the EGCC. If the complaint can't be settled this way, the Commissioner decides whether to recommend a settlement. If the complainant agrees with the recommended settlement, the member company must implement the settlement. The settlement may be an apology, a credit, a refund, or any other action the Commissioner thinks is fair and reasonable in the circumstances.

This book of case notes has summaries of some of the complaints we have received in the past few years. The most common issue in complaints is billing, including back bills and high bills. Other common issues are customer service, meters, and supply.

The EGCC can look at complaints about electricity or gas companies that are members, including complaints about things that happen on land on which companies may have equipment. From 1 October 2014, the EGCC has been able to look into complaints about LPG cylinders (less than 15kg). You do not have to be a customer of a company to complain about its actions. The EGCC can look at complaints where the amount in dispute is up to \$50,000, or \$100,000 if the company agrees.

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

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Ms K believed the old meter may have been faulty and caused the high bills

34553

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2013	High bills - meter	Recommendation - not upheld

THE COMPLAINT

Ms K complained her electricity bills from July to November 2011 were too high to be correct.

The meter at Ms K's property was replaced before she complained to her electricity retailer.

Ms K believed the old meter may have been faulty and caused the high bills.

THE OUTCOME

The parties could not settle the complaint between them and asked the Commissioner to recommend a settlement.

The Commissioner did not uphold the complaint because she found the retailer had billed Ms K correctly for her electricity use. The Commissioner recommended Ms K and the retailer agree on a payment arrangement for the outstanding balance on Ms K's account.

The Commissioner's investigation found:

- The appliances at Ms K's property could have used the electricity the retailer billed her for
- The meter readings appear to be correct. The readings from the old and new meters show a consistent pattern of electricity use
- The meters were unlikely to be faulty. An independent expert confirmed the type of the old meter was not prone to faults

The investigation found the retailer had offered to test the meter in 2011 but Ms K had not responded to the offer. Ms K acknowledged she had received the offer letter from the retailer and had not responded by the due date.

The salesperson told her she would save \$20 a week by switching

34863

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Billing - back bill - estimate Meter - access Price - information	Settled

THE COMPLAINT

Ms Q complained a door to door salesperson from an electricity retailer had told her she would save \$20 a week on her electricity bills by switching to the retailer. She said she switched to the retailer but her bills were not \$20 a week cheaper. She also complained the retailer sent her a \$2,000 bill for two months of electricity use at her property.

THE OUTCOME

The EGCC investigation found:

- The retailer billed Ms Q based on estimated meter readings for four months because it could not access her meter
- The retailer could not access the meter because there was a dog at the property
- The retailer underestimated the meter readings it used to bill Ms Q because it was estimating her bills based on a low user plan when Ms Q was a standard user
- After four months the retailer took a meter reading which resulted in a \$2,000 catch-up bill
- Based on the electricity she used at the property in the past, it was likely Ms Q used the electricity the retailer was billing her for
- The door salesperson gave Ms Q a quote based on low user plan prices. Ms Q told the salesperson she was a high user, so the salesperson should have quoted her standard user plan prices
- On a low user plan, Ms Q would have saved about \$5 a week by switching to the retailer

The EGCC sent the parties a summary of the investigation findings and discussed them with the parties. The EGCC helped the parties negotiate. The parties agreed Ms Q would switch back to her previous retailer because the payment options suited her better. The retailer proposed a \$40 a week payment arrangement on the final account balance of about \$2,000. Ms Q accepted the payment arrangement as full and final settlement of her complaint.

Two weeks after the file closed, Ms Q contacted the EGCC to say her income had been cut and she was no longer able to meet the \$40 a week payments. She asked the retailer to renegotiate the payment arrangement to \$10 a week. The retailer declined this offer. Ms Q asked the retailer to send the final bill on the account to debt collection so she could pay the bill off at the rate she chose. The retailer accepted this and sent the bill to debt collection.

Mrs A complained to her electricity retailer when her bills increased after an advanced meter was installed

36689

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2013	Billing - pricing plan - high Customer service	No further investigation

THE COMPLAINT

Mrs A complained to her electricity retailer when her bills increased after an advanced meter was installed at her property. Mrs A complained the retailer:

- Incorrectly changed her pricing plan
- Sent her confusing bills
- Gave her poor information while dealing with the complaint

Electricity retailers use pricing plans to calculate electricity bills. The pricing plan depends on the meters at the property. Advanced meters can be set to allow for several pricing plans. Before the advanced meter was installed, Mrs A's pricing plan was:

- Anytime supply, and;
- Controlled^[1] hot water supply, and;
- Night only supply.

When the retailer installed the advanced meter, it found two meters at Mrs A's property, an anytime meter and a day/night meter. The day/night meter was recording electricity used for the controlled hot water supply and the night store heater. This meant the bill for controlled hot water was calculated using controlled rates during the day and night rates at night. The retailer did not offer this pricing plan.

The retailer set the advanced meter to put Mrs A on a pricing plan to match the meters it found at the property: anytime supply, day supply, and night supply. The new pricing plan was more expensive than the previous one and did not account for Mrs A having controlled hot water supply.

THE OUTCOME

The EGCC investigated Mrs A's complaint, and shared its findings with Mrs A and her electricity retailer. The investigation found the advanced meter had not caused Mrs A's bills to increase. The investigation found the retailer:

- Put Mrs A on the wrong pricing plan for her electricity supply
- Should have changed the meters, rather than changing the pricing plan
- Did not have to put the meters back the way they were
- Provided poor customer service

During the investigation the retailer offered to:

- Put Mrs A on a pricing plan that matched the supply to her property
- Reimburse Mrs A \$431.76, the unit price difference between the two pricing plans
- Make a customer service payment of \$250 to Mrs A

The Commissioner found the retailer's offer was fair and reasonable. The Commissioner advised Mrs A she did not believe further consideration of the complaint was warranted. Mrs A did not respond to the Commissioner's finding and the Commissioner closed the file. The retailer said the offer was still available for Mrs A.

^[1] *Controlled supply means the electricity can be turned off for short periods, usually at times of high demand. It is usually the electricity network company that controls the supply. The electricity retailer will charge customers less per unit of electricity supplied through controlled meters, whether or not the supply is actually controlled.*

The previous retailer had underestimated Ms Z's bills

37016

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Billing - back bill - disputed - difficulty in payment Meter - not read - access	Settled

THE COMPLAINT

Ms Z complained her new electricity retailer sent her a \$1,200 back bill in January 2012 after it billed her on estimated meter readings from the time she became a customer in August 2011.

The retailer said it first tried to read Ms Z's meter in September 2011, but could not get access. The retailer said it took several weeks to get a key for the meter reader.

The retailer said the meter reading showed the previous retailer had underestimated Ms Z's bills, and she had not paid for a large amount of electricity.

The retailer stopped billing Ms Z while it investigated the problem. The retailer calculated what the correct meter reading was when Ms Z opened her account.

THE OUTCOME

The EGCC investigated Ms Z's complaint. The EGCC helped Ms Z and the retailer negotiate an agreement to settle the complaint.

The investigation summary found:

- The bills from the retailer appeared to be accurate
- The retailer's actions to gain access to the meter appeared to be reasonable

The EGCC arranged a teleconference with Ms Z and the retailer. The parties agreed the retailer might not be the best choice for Ms Z because of the way it bills its customers (online only).

The parties agreed:

- The retailer would apply a \$200 credit to Ms Z's account
- Ms Z would switch electricity retailers as soon as she could (the parties accepted it was not necessary to put a time frame on the switch)
- Ms Z would pay the retailer \$140 a week as long as she was still a customer
- As soon as Ms Z switched to a different retailer she would pay the retailer \$40 a month until the arrears were paid in full

Mrs O was often late with payments so she accumulated fees and lost prompt payment discounts

39442

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2013	Billing - high Customer service	Recommendation - upheld

THE COMPLAINT

Mrs O complained her previous electricity retailer sent her bills too high for her electricity use. She said bills were lower since switching to a new retailer. Mrs O said she had complained repeatedly about the bills but the previous retailer took a long time to respond.

The previous retailer said it billed Mrs O correctly. It said Mrs O was often late with payments so she lost prompt payment discounts and accumulated fees which increased the balance owing. The previous retailer said it had explained the bills to Mrs O.

THE OUTCOME

The parties could not resolve the complaint and asked the Commissioner to recommend a settlement.

The Commissioner recommended the previous retailer apply a credit of \$75 to Mrs O's account for not addressing her complaint earlier.

The Commissioner found the bills were correct and based on accurate meter readings. She said the fact Mrs O did not question the bills from her new retailer meant that it was unlikely the meter was faulty.

The Commissioner said the previous retailer should have addressed the complaint earlier. She said the previous retailer did not do things it agrees to do as a member of the Electricity and Gas Complaints Commissioner Scheme (EGCC). These include treating Mrs O's concerns about her bills as a complaint, explaining the complaints process, and referring her to the EGCC.

Both parties accepted the recommendation.

The company did not have Ms O's correct mailing address so she did not know she was liable to pay

39843

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2013	Billing - disputed Property - tenanted - vacant	Binding decision

THE COMPLAINT

Ms O owned a rental property. Ms O complained her electricity network company billed her for line function services supplied to the property, both when it was tenanted and when it was vacant.

Ms O bought the property in 2004. From 2005, Ms O leased the property to tenants.

In 2010 the network company started billing Ms O for line function services supplied to the property and used by the tenants. The company did not have Ms O's correct mailing address. This meant Ms O was unaware of the bills until February 2011.

From July 2011 Ms O disputed liability for the bills, saying the company should be billing the tenants for any services provided. In December 2011 the property was vacant for two weeks until a new tenant moved into the property.

THE OUTCOME

The EGCC held two conciliation conferences between the parties. The company said it understood Ms O could not have known about the services provided between April 2010 and February 2011 because the company could not contact her. The company offered to wipe the bills for services provided before February 2011.

Ms O rejected the company's offer and asked the Commissioner to recommend a settlement.

The Commissioner upheld the complaint and recommended the company remove charges from Ms O's account for the period before March 2012.

The Commissioner found the company had given Ms O a copy of its terms and conditions of supply in March 2012. Ms O did not tell the company she did not want to receive the services after she received the terms and conditions. The Commissioner found this meant there was a contract between the company and Ms O, and she should pay the cost of services provided under the contract from March 2012.

The Commissioner's process allows the parties to a complaint to comment on recommendations. In this case the company did comment. The company said it should be able to recover costs for

services supplied before the contract was formed.

The Commissioner reviewed what happened before March 2012. The Commissioner recommended the company remove charges for service before December 2011 from Ms O's account.

The Commissioner applied the legal principle of quantum meruit and found the company was able to recover the cost of services supplied from December 2011 to March 2012. Quantum meruit applies where goods or services are supplied without a contract. It allows the supplier to recover reasonable costs where:

- There is no doubt the recipient has received a benefit from the goods or services
- The person receiving the services had a chance to tell the supplier they did not want the services

The Commissioner found while the property was vacant in December 2011:

- There was no doubt Ms O received a benefit from the line function services
- Because the company was sending Ms O bills, she was aware the company was supplying the services, and had the chance to tell the company she did not want the services

The Commissioner found Ms O continued to receive a benefit from the services until the contract was formed in March 2012.

The Commissioner found Ms O could not have told the company she did not want the services before December 2011 because there was a tenant living in the property until December 2011. Under the Residential Tenancies Act a landlord cannot interfere with the electricity supply. This meant the company could not recover costs under quantum meruit for services supplied before December 2011.

Ms O accepted the Commissioner's final recommendation but the company did not. When this happens, the Commissioner's Terms of Reference allow her to issue a binding decision against the company. This means the company has to abide by the Commissioner's decision.

The retailer sent a high back bill five months after the business moved to a new building

42512

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2013	Billing - back bill - disputed	Settled

THE COMPLAINT

Mr A complained his retailer sent a high back bill five months after he moved his business to a new building. Mr A said the back bill did not make sense as the following bills were lower, despite the business having more staff and equipment.

The retailer said it could not read the meter because it was inside a warehouse. When the retailer got access to the warehouse and read the meter, it showed several months of electricity use. The retailer sent the back bill to the occupier, which was Mr A's business. The retailer used the final meter reading from the previous occupier as the start read for the business.

Before the complaint came to the EGCC, the retailer discounted the back bill by 20% and credited the prompt payment discounts.

THE OUTCOME

The parties settled the complaint during an EGCC teleconference.

The parties discussed how appliances at the property contributed to the electricity use. The retailer said the heater had the potential to use up to two units an hour. Mr A said as there were no meter readings for five months it was difficult to tell how use affected the bill.

The retailer and Mr A negotiated the bill and settled the complaint. The retailer waived the bond, and reduced the amount owing by a further \$105.

The rental agreement for the property said the rent included electricity for the first three months

43843

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2013	Billing - back bill - disputed	Recommendation - upheld

THE COMPLAINT

L Ltd complained about a back bill for \$4,629.74 from an electricity retailer. L Ltd said the bill was for electricity used by tenants at its rental property over an 18-month period.

L Ltd said the rental agreement for the property said the rent included electricity for the first three months of the tenancy. L Ltd said it signed a new tenancy agreement after three months that meant the rent no longer included electricity.

L Ltd said it did not receive any bills from the retailer during the period and it expected bills to go to the tenant.

THE OUTCOME

The EGCC facilitated a teleconference between the parties. L Ltd agreed to pay \$735 towards the bill covering the first three months. This was because L Ltd agreed with the tenant that rent for that period included electricity.

The parties could not settle the complaint about the balance of \$3,894.74 and asked the Commissioner to recommend a settlement.

The Commissioner upheld the complaint. She recommended the retailer credit \$2,720.99 to L Ltd’s account.

The Commissioner said the retailer could recover reasonable costs from L Ltd for electricity used by the tenant until it was clear the rent no longer included electricity. Although there was no contract between the parties, quantum meruit allowed the retailer to recover reasonable costs from L Ltd.

Quantum meruit is where something, often a service, has been supplied without a contract. The supplier can recover reasonable costs where there is no doubt the recipient has benefited from

the services. The Commissioner said the electricity supply clearly benefited L Ltd because it allowed L Ltd to let the property on the basis rent included electricity.

At the end of the first three months, L Ltd did not make a contract with the retailer for electricity supply, nor did it reject supply. The Commissioner said it was reasonable to expect L Ltd knew electricity was being supplied even if it did not know who the supplier was.

L Ltd and the tenant entered a new tenancy agreement after three months. The new agreement did not contain a clause saying rent would include electricity. The new agreement was backdated three months. The Commissioner said until the new agreement was signed, L Ltd was still responsible for the electricity even though the new agreement was back dated.

Once the new tenancy agreement was signed, L Ltd no longer benefited from the electricity. This meant the retailer could not claim payment from L Ltd for electricity used after then.

When the Commissioner calculated reasonable costs she reduced the amount the retailer could claim from L Ltd because the retailer:

- Did not provide full retail services during the period of the back bill (including sending bills and providing customer service)
- Contributed to the back bill increasing for 18 months by not acting on information it had showing someone was using electricity at the property

L Ltd rejected the recommendation and the complaint was closed.

Mr A said the retailer gave him inaccurate information about the cost of merging his accounts

37477

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Customer service - provision of information - merging of accounts	Settled

THE COMPLAINT

Mr A complained his electricity retailer gave him inaccurate information about the cost of merging his home and workshop electricity accounts.

Mr A had separate electricity accounts for his home and workshop. He wanted to merge the accounts so he only paid one network charge. Mr A asked his retailer if he could merge the accounts. The retailer sent a contractor to assess Mr A's property.

The contractor told Mr A there should be no difficulty merging the accounts because the house and the workshop were on the same property. Mr A said the contractor told him the only problem was the workshop and the house were on different feeder lines. The contractor said he would tell the retailer what he had seen.

The retailer told Mr A it would cost \$99 to merge his accounts. Mr A agreed and the company sent its contractor to install new meters. Mr A paid the retailer \$99.

A month later, Mr A checked his account online and discovered he still had two accounts. He complained to the retailer, who told him the network company had advised the accounts could not be merged because his house and workshop were supplied by different power poles.

Mr A contacted the network company. It told Mr A he would need to install a sub-main between the workshop and his house to avoid paying two sets of network charges. This work would cost \$3,400. Mr A believed his retailer should be bound by its original quote of \$99.

THE OUTCOME

The EGCC held a teleconference between the parties.

The retailer accepted it had not provided Mr A with accurate information about his property and should have referred him to the network company straight away. It was only after the network company sent a contractor that Mr A learned the true cost of the work.

The retailer offered to pay 50% of the cost of installing the sub-main. Mr A accepted this offer in full and final settlement of his complaint.

Ms A said she did not ask for gas services

40218

TYPE	YEAR	ISSUES	OUTCOME
 GAS	2012	Customer service- failure to respond Billing - other	Settled

THE COMPLAINT

Ms A complained about a gas retailer charging her company \$12 a day for gas lines charges. Ms A said she did not ask for gas services and did not believe her company was liable for the lines charges, totalling \$2,165.90. Ms A said the gas retailer told her it would credit the gas lines charges, but then sent the charges to debt collection.

THE OUTCOME

The EGCC looked into the complaint. The investigation found Ms A did not sign a contract for gas services.

The gas retailer offered to clear the gas lines charges, and Ms A accepted the offer in full and final settlement of the complaint.

Ms Y asked the company to downgrade the electricity supply

40268

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Customer service - provision of information Billing - pricing plan	Settled

THE COMPLAINT

Ms Y complained the lines company told her she could not downgrade the electricity supply to her business.

Ms Y's business moved to a property with a direct connection to a transformer. The direct connection meant the power supply to the property was higher capacity than Ms Y needed. The monthly lines charges were about \$1,000.

When Ms Y first asked the company to downgrade the electricity supply, the company told her this was not possible. Some months later, the company told her an electrician could downgrade the supply.

Ms Y was billed the lines charge for high capacity supply for five months and incurred a debt of \$1,297.58. She said she would

like the debt cleared as the lines company provided incorrect information about her ability to downgrade.

THE OUTCOME

The EGCC facilitated a meeting with the parties. In the meeting the parties agreed that:

- It was unclear whether the lines company provided incorrect information about capacity downgrades
- Information mailed to Ms Y was confusing

The company agreed to clear the debt of \$1,297.58 and to provide clear information to Ms Y about lines charges, capacity downgrades, and pricing. Ms Y accepted this and the complaint was settled.

Mr R got a disconnection notice on a Thursday afternoon

48107

TYPE	YEAR	ISSUES	OUTCOME
	2014	Customer service - poor attitude Disconnection Vacant premises	No further investigation

THE COMPLAINT

Mr R complained an electricity retailer (retailer A) gave him incorrect information and poor customer service.

Mr R owned a rental property. The previous tenants had moved out and closed their account with retailer A, but the electricity was still on. Mr R did some work at the property while it was empty and used electricity.

Mr R got a disconnection notice from retailer A on a Thursday afternoon. The notice said retailer A was going to disconnect the electricity to the property the next day, Friday.

Mr R called retailer A to try to delay the disconnection. Mr R said he did not want to open an account because of the way the retailer uses customers' personal information. Mr R said the retailer told him "It's not only retailer A, it's nationwide, and it's something that is passed down through the government, so it's not by choice."^[1]

Mr R asked for a few days to find another retailer, but was told he had to find another retailer immediately to avoid disconnection. Mr R opened an account with retailer B, later that day. Retailer B sent a message to retailer A through the electricity registry^[2] to say Mr R had opened an account for the property.

There was an advanced meter at the property, which meant the electricity could be disconnected remotely. Retailer A disconnected the property before it got the message from the electricity registry.

Mr R complained he was given incorrect information about the way retailer A uses and shares customers' personal information. Mr R complained he was not given the opportunity to talk to someone who might have been able to delay the disconnection. Mr R complained the remote disconnection was extremely dangerous as he could have been using power tools at the time. Mr R complained the disconnection was:

- Unfair because he had opened an account with retailer B
- Inconvenient because he could not arrange reconnection until Monday morning. Mr R said he lost a whole weekend when he could have been working on the property

Mr R said he did not want this to happen to anyone else. Mr R told retailer A his complaint would be resolved if retailer A:

- Confirmed both staff members involved had been sanctioned and undertaken further training. In particular he said he wanted the name of the person who disconnected the property late on a Friday afternoon, so he could make a formal complaint to their professional body
- Discussed its policy on these matters, so he could tell whether these were isolated events related to the individual staff members or if they were following retailer A's policy
- Offered compensation that adequately represented the inconvenience he suffered

Retailer A apologised, and offered Mr R a fruit basket. It then increased the offer to \$300, and then \$600. Retailer A also offered to refund Mr R the \$36.22 paid for electricity between his tenants moving out and his switch to retailer B.

Mr R refused retailer A's offer, and asked the EGCC to investigate.

^[1] These statements are not correct. On 1 April 2012, changes to the Credit Reporting Privacy Code came into effect. Further information on the Credit Reporting Privacy Code is available through the Office of the Privacy Commissioner's website: <http://www.privacy.org.nz/the-privacy-act-and-codes/codes-of-practice/credit-reporting-privacy-code/>

^[2] The electricity registry is a national database of information on every point of connection on a network from which electricity is supplied to a site. The points of connection are called installation control points (ICPs), and each one has a unique number. The electricity registry is maintained by the Electricity Authority.

THE OUTCOME

The EGCC investigated Mr R's complaint. The Commissioner reviewed the investigation and said she did not believe it was appropriate to consider Mr R's complaint any further. The Commissioner believed retailer A did provide Mr R with poor customer service, but the offer of \$600 to resolve his complaint was reasonable.

The Commissioner said:

- She believed retailer A's customer service representative (CSR) was impatient and discourteous to Mr R
- She believed the CSR gave Mr R incorrect information about retailer A's use of personal information
- She did not believe the team leader followed company policy when the team leader refused to escalate Mr R's call

- Retailer A should have given Mr R better information about the time it would take to switch to a new retailer
- Retailer A was entitled to disconnect the electricity at Mr R's rental property with the information it had available
- There was no contract for the supply of electricity to the property^[3]
- There are no safety or compliance issues meaning a retailer cannot remotely disconnect a vacant property

Mr R and retailer A accepted the Commissioner's decision.

^[3] For a contract to exist, the following elements must be present:

- Offer and acceptance
- Consideration
- Intention to create legal relations

The meter had a fault which caused it to over record electricity use

39075

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2013	Meter - fault - compensation	Recommendation - upheld

THE COMPLAINT

Mr J complained his retailer had incorrectly calculated the amount he had been overcharged while his meter had been faulty.

The retailer agreed the meter had a fault which caused it to over record electricity use. The retailer replaced the meter and then used the average daily use on the new meter to work out the most likely date the meter fault occurred. The retailer believed the fault was likely to have occurred in early 2009. The retailer credited Mr J the amount it believed it had overcharged from January 2009.

Mr J disagreed with the retailer's methodology to calculate the overcharge and believed the meter had been faulty the entire time he had been at the property, since 2002.

THE OUTCOME

The Commissioner upheld Mr J's complaint and recommended the retailer credit Mr J's account a further \$500. Mr J rejected the Commissioner's recommendation and the complaint was closed.

The Commissioner based her recommendation on the following conclusions:

- The meter fault was likely to have occurred after January 2009
- The retailer compensated Mr J for the difference between his actual use and what he was charged after January 2009
- Mr J's failure to report a problem with high bills to his retailer was inconsistent with comments he made

The Commissioner provided Mr J's electricity use data (before and after the meter replacement) and the meter test result to an expert on her independent panel of experts. The Commissioner asked the expert to give his opinion on when the meter fault was likely to have occurred. Based on the information provided, the expert's view was the fault was likely to have occurred on or after January 2009. The retailer had already reimbursed Mr J for the amount he would have been overcharged after January 2009.

Mr J argued his electricity use on the new meter was the most important factor to take into account. Mr J's current electricity use was lower than his electricity use on his previous meter between 2002 and 2009. Mr J said he started receiving high bills when he first moved in 2002. Mr J said he had taken electricity saving measures and had checked all his appliances were working correctly. The Commissioner agreed Mr J's electricity use pattern showed a decrease from 2007. However, the Commissioner said there was inconsistency between the statements made by Mr J and his inaction over 10 years in reporting a problem. This inconsistency affected the Commissioner's consideration of Mr J's statements as evidence.

The Commissioner relied on her expert's view the fault could not have occurred earlier than the time the retailer rebilled Mr J in January 2009.

The Commissioner believed a fair and reasonable settlement of the complaint would be for the retailer to pay Mr J a further \$500. This was because Mr J had made efforts to lower his electricity use since 2007, and had sacrificed a level of comfort without lowering his electricity charges.

A fault with the neutral connection damaged a heat pump

31502

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Supply - voltage variation Lines - maintenance	Binding decision

THE COMPLAINT

Mr L complained a fault with the neutral connection^[1] on a network company's pole damaged a heat pump at his rental property. Mr L wanted the network company to pay him \$700, to cover the cost of:

- The electrician finding the fault with the neutral connection
- The excess on his insurance

THE OUTCOME

The parties could not settle the complaint between them, and asked the Commissioner to recommend a settlement.

The Commissioner upheld the complaint. The Commissioner recommended the network company pay \$300 towards the cost of the electrician finding the fault with the neutral connection and the excess on Mr L's insurance.

The Commissioner found:

- The network company had a duty to take reasonable care
- There was not enough information about inspection and maintenance for her to decide if the network company took reasonable care
- The network company was responsible for inspecting and maintaining the neutral connection
- The network company followed its own inspection practices, which were inconsistent with industry practice
- The fault with the neutral connection created voltage variation which damaged the heat pump
- The damage to the heat pump occurred about the date Mr L provided
- The network company's agreement with the retailer did not exclude the network company's responsibility
- On the information available, she could not rule out earlier problems with the neutral connection

When the Commissioner makes a recommendation, the parties are invited to respond. In this case, the network company responded, saying:

- The fault did not occur on the network, which meant the Commissioner did not have authority to consider this complaint
- Its records were sufficient to show the lines, connections, and pole were maintained
- The damage to the heat pump could have happened before or after the fault with the neutral connection was fixed
- Mr L's account of the events and dates was inconsistent with the network company's records
- The agreement the network company had with the retailer meant the network company was not responsible

The Commissioner considered the network company's submission. The Commissioner asked for further information from the property manager, the company who fixed the heat pump, and the electrician who found the broken neutral connection.

The Commissioner asked for expert advice from two members of her panel of independent electrical experts. One of the independent experts advised the property would have experienced high and low voltage because of the faulty neutral connections. He advised the tenant might not have noticed electrical problems at the property until the neutral connection broke away from the network pole. The other independent expert advised both high and low voltage would damage the heat pump.

The Commissioner added this information and advice to her findings, but did not change her recommendation. Mr L accepted the recommendation but the company did not. The Commissioner's Terms of Reference allow her to issue a binding decision against the company. This means the company has to abide by the Commissioner's decision.

^[1] The neutral connection provides a return path for electricity from a property to the power pole. The demand for electricity in the house changes as appliances are turned on and off, and a neutral connection is essential in maintaining stable voltage. A faulty neutral connection can lead to voltage fluctuations. Voltage fluctuations, whether they cause high voltage or low voltage, can cause damage to electrical appliances.

Mr J complained about the frequency and duration of outages at his beach property

31840

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Supply - outage (unplanned)	Recommendation - not upheld

THE COMPLAINT

Mr J complained about the frequency and duration of outages at his beach property. He said the network company should do more to secure the supply of electricity in the area, including looking at putting lines underground and trimming trees.

Mr J said he pays lines charges and he should receive a refund for the days he does not have electricity.

The network company said Mr J should expect outages at his property because it is in a coastal area surrounded by dense bush. The network company said it had improved its service by installing devices called auto-reclosers. Auto-reclosers automatically turn the power back on after brief outages.

THE OUTCOME

The parties could not settle the complaint between them and asked the Commissioner to recommend a settlement.

The Commissioner did not uphold the complaint.

The Commissioner found the network company met the service level required. The network company provided information showing the number and frequency of outages it believed affected Mr J's property. According to this information, the

network company's standard of service was within the level set by the network company. Mr J did not provide further information about the outages.

The Commissioner found the network company took appropriate steps to reduce outages by installing auto-reclosers and fulfilling its obligations under the Electricity (Hazard from Trees) Regulations 2003. The Commissioner found the network company acted reasonably in not putting the lines underground because the cost would be disproportionate to the inconvenience experienced by Mr J.

The Commissioner found Mr J was unlikely to succeed in a claim against his retail company under the Consumer Guarantees Act 1993. The Commissioner found the electricity supplied was of acceptable quality and was what a reasonable consumer, fully acquainted with electricity distribution in New Zealand, would regard as acceptable.

Mr J did not accept the Commissioner's recommendation and the complaint was closed.

Mr V complained his network company unfairly applied a transformer charge to his bill

30139

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Lines - ownership Billing	Recommendation - not upheld

THE COMPLAINT

Mr V complained his network company unfairly applied a transformer charge to his bill. He said it was unfair because he owned the transformer.

Mr V said he approached the local power board^[1] about installing electricity at his farm in May 1970. The power board provided Mr V with three options to cover the cost of supplying electricity to his property. These were:

- Make a lump sum payment of the estimated cost; or
- Enter into a guarantee agreement of \$216 per year for ten years; or
- Make a lump sum payment as capital contribution towards the estimated cost, and enter into a guarantee agreement to cover the remainder of the cost.

Mr V said he chose the second option, and entered into a guarantee agreement over ten years. He said any money he paid for electricity used in the premises was credited against the guarantee agreement each year.

The guarantee amount was a promise by Mr V to the power board that if his electricity costs did not meet the guarantee level, Mr V would 'top up' to the guarantee amount. This agreement was under the Electrical Regulations 1967 (the Regulations), which were in force at the time. The transformer was installed in 1973.

THE OUTCOME

The parties could not resolve the complaint between them and asked the Commissioner to recommend a settlement.

The Commissioner did not uphold the complaint. She found Mr V did not own the transformer because:

- There was no evidence Mr V purchased the transformer or of any agreement to transfer ownership to him
- The guarantee agreement Mr V entered into with the local power board was not evidence of purchase
- The Regulations did not provide that by paying money due under the guarantee, Mr V would then own the transformer

The network company accepted the Commissioner's proposed recommendation. Mr V rejected it, but made no further submissions, and the Commissioner closed the file.

^[1] The New Zealand government used to operate the electricity industry through local power boards, but in the 1990s the industry was privatised. The ownership of assets (lines, poles, and other equipment used to supply electricity) of the local power boards was transferred to private network companies.

Mr D was billed even when there was no electricity supply

38306

TYPE	YEAR	ISSUES	OUTCOME
	2012	Supply Provision Disconnection	Settled

THE COMPLAINT

Mr D complained he was billed even when there was no electricity supply to the property.

Mr D said his company bought a vacant subdivision in 2006. He said his company paid to have an electricity connection to the subdivision and paid lines charges between 2006 and 2012.

In March 2012, Mr D's company decided to develop one of the parcels of land in the subdivision. He switched the property to a new electricity retailer, retailer X. He said when he visited the property to start work the contractors discovered there was no electricity supply at the subdivision.

Mr D said he called retailer X to ask why there was no electricity supply to the subdivision. He said retailer X referred him to the network company. Mr D said he went back and forth between the two companies for a month before the network company found the cable supplying the subdivision was disconnected at the transformer. Mr D asked the network company to refund the charges he had paid while the subdivision was disconnected. He said he should not have to pay for a service he did not receive.

Retailer Y, the retailer for the property from 2006 to March 2012, refunded the charges between 2010 and March 2012.

THE OUTCOME

The EGCC requested information from the parties, including a fault and incident report for 2006 to 2012 from the transformer at the subdivision. The report showed the network company did some work at the transformer in 2008, which was most likely when the subdivision was disconnected.

The network company offered to make Mr D a customer service payment of an amount equalling the remainder of the charges Mr D had paid between 2008 and 2010. The network company calculated this amount was \$1,117.45. Mr D accepted this offer in full and final settlement of his complaint.

The network company sent an invoice for \$8,078.80 for damage to overhead lines

36538

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Lines - liability for damage	Recommendation - upheld

THE COMPLAINT

Mrs G, for W Ltd, complained the network company sent an invoice for \$8,078.80 for damage to overhead lines. The damage occurred after W Ltd, a transport company, transported some machinery under the lines. Network company vehicles, including a bucket truck, accompanied W Ltd while it transported the machinery.

Mrs G said the network company should be responsible for the cost of the damage because:

- The network company inspected the load and issued a permit to W Ltd
- The load was under the height allowed by the permit
- W Ltd did all the network company asked to prepare the load for transport, including using rails over the load (called 'skidding')
- The network company's bucket truck was about 200 metres away from the transport truck when the damage occurred

The network company said:

- A pipe protruding from the load caught on a line and caused the damage
- W Ltd did not adequately skid the load
- During the inspection the network company suggested W Ltd put a tarpaulin over the load but W Ltd did not do this
- The final responsibility for safety and security goes with the person transporting the load

THE OUTCOME

The parties asked the Commissioner to recommend a settlement because they could not settle the complaint.

The Commissioner recommended the network company cancel the bill to W Ltd for the damage.

The Commissioner asked for advice from a member of her panel of independent experts. The independent expert saw photos of the load and a copy of the permit application.

The expert said he believed the load was adequately skidded. He said the network company could have inspected further or withdrawn the permit if its first inspection of the load raised any concerns.

The expert said the permit application did not contain a clause saying the transport company would be liable for any damage. He said permit applications used by other network companies contain a clause saying the transport company will be liable for damage.

Both parties accepted the recommendation. The network company said it did not agree with all points but had no information to justify a review.

The tree hit the power line during a storm, which created a fireball

36544

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2012	Land - trees - damage - notice	Settled

THE COMPLAINT

Mr B complained a network company did not do anything about a tree on his property that was close to a power line.

Mr B said the network company should have issued a “cut and trim” notice under the Electricity (Hazards from Trees) Regulations. Mr B said the tree hit the power line during a storm, which created a fireball. Mr B said this happened because the tree was not trimmed.

Mr B said he was concerned about his family’s safety, so immediately started trimming the tree with a chainsaw. Mr B said he injured himself with the chainsaw while he was trimming the tree.

THE OUTCOME

The EGCC held a teleconference between the parties to get more information about what happened.

Mr B had a support person at the teleconference to help explain what happened on the day the tree hit the power line. Mr B said he paid a friend \$500 to help him trim the tree. Mr B said he was not wearing safety equipment when he used the chainsaw, and was not wearing shoes.

The network company said two staff checked the tree before the incident. They reported the tree was in the notice zone, not the growth limit zone (GLZ). These zones are set in the Electricity (Hazards from Trees) Regulations. The network company said it was not required to send cut and trim notices for trees in the notice zone. If a tree is within the notice zone, the company may send the customer a cut and trim notice. If the tree is within the GLZ, the company must send the customer a cut and trim notice.

The network company said it pays for the first cut and trim of trees inside the GLZ. The network company offered to pay Mr B \$500 because the tree had not had a first cut and trim.

After the teleconference the EGCC conducted shuttle negotiation between the parties. During negotiation, Mr B accepted the offer of \$500 in full and final settlement of his complaint.

The network company cut down a 60-year-old weeping willow tree

40012

TYPE	YEAR	ISSUES	OUTCOME
 TRANSMISSION	2013	Damage - compensation	Recommendation - Upheld

THE COMPLAINT

Mr G complained the network company cut down a 60-year old weeping willow tree on his property and left it there. Mr G said the company did not tell him it was planning to cut down the tree.

Mr G said the tree was valuable because it provided shelter, privacy, aesthetic beauty, and a sound barrier for the property. He said the property used to be a holiday home for his family and they had an emotional attachment to the tree.

The network company accepted it should not have cut down the tree and apologised in writing to Mr G. The network company said when it realised its mistake, it ground the stump and cut and stacked the debris for firewood. The network company said it reviewed its processes to prevent this error recurring.

The network company offered Mr G:

- An arborist to visit the property for one hour to discuss with Mr G a suitable replacement tree
- A replacement tree up to the value of \$500, planted by the network company's contractors
- A payment of \$1,000 within seven days of acceptance of the offer

Mr G did not accept the network company's offer and claimed \$10,000 compensation. He said he did not want a replacement tree.

THE OUTCOME

The parties could not resolve the complaint and asked the Commissioner to recommend a settlement.

The Commissioner recommended the network company pay Mr G \$1,100 compensation for the loss of the tree. This amount included \$800 as the cost of replacing the tree and \$300 for the stress and inconvenience Mr G experienced.

The Commissioner asked an arborist on the Commissioner's panel of independent experts about the cost of replacing the tree. The arborist estimated the cost would be \$945, including the cost of removing the stump. As the network company had already completed this work, this reduced the cost to \$800.

Mr G disagreed with the way the arborist estimated the cost of replacing the tree.

The network company accepted the recommendation but Mr G did not.

The property had been vacant for two years and the electricity supply was disconnected

36684

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2013	Contract - quantum meruit Disconnection Supply	Recommendation - Upheld

THE COMPLAINT

Ms R complained about her electricity network company requiring her to pay outstanding charges owed by the previous owner of her property.

When Ms R bought the property it had been vacant for two years and the electricity supply was disconnected. Ms R arranged through her electricity retailer for the property to be reconnected. The retailer contacted the network company to arrange the reconnection, which was carried out a short time later.

About a week after the property had been reconnected, the network company disconnected the property without notice. Ms R asked the network company to reconnect the property. The company did this and told Ms R she had to pay the outstanding charges owed by the previous property owner.

The network company told Ms R:

- Its terms and conditions allowed it to leave the electricity supply disconnected if there were outstanding charges at the property
- Section 105 and 106 of the Electricity Industry Act 2010 (EIA) required her to pay the charges before the property was reconnected

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 network company remove the outstanding charges from Ms R's invoices. The Commissioner's recommendation was based on the following conclusions:

- Ms R did not believe her contract with the network company allowed it to recover outstanding charges
- The network company was not entitled to recover the charges from Ms R under quantum meruit
- Section 106 of the EIA did not allow the network company to recover the previous debt from Ms R

Contract

The Commissioner found a contract existed between Ms R and the network company, however, the contract did not include the term about outstanding charges. Ms R had clearly rejected the term and the network company continued to supply Mr R with full knowledge of the rejection.

Quantum meruit

The Commissioner found the network company was not entitled to recover the outstanding charges under the legal principle of quantum meruit. Quantum meruit may allow a provider of services to recover the reasonable costs of providing services where there is no contract. The Commissioner found quantum meruit did not apply because Ms R had not received the benefit of the services for which the network company was attempting to recover costs.

Sections 105 and 106 of the Electricity Industry Act 2010

The Commissioner disagreed with the network company over the application of sections 105 and 106 of the EIA. The network company's position was section 106 of the EIA entitled it to disconnect the property because of failure to pay money due on account. The network company argued the charges were a charge on the property like rates. It believed it could refuse reconnection whether or not the current owner had incurred the charges.

Section 105 of the EIA says if a property was connected to the network before 1 April 1993^[1], the lines company must continue to supply line function services except in certain circumstances. These circumstances are the consent of either the Minister or every consumer affected by the cessation of services.

Section 106 says the obligation under section 105 is suspended if the lines company is entitled to cease supply because of a failure to pay money due on account to the [lines company] in respect of the place (s 106(2)(c))

The Commissioner believed section 106 should be interpreted narrowly so the entitlement to suspend supply would only be triggered by a failure to pay by the current landowner. This would include the current consumer if the landowner is not

^[1] The network company confirmed the property was connected to the network prior to 1993

the consumer. The Commissioner believed the following factors supported a narrow interpretation:

- Section 106(2)(c) should not be given a strict liability interpretation
- Statutory interpretation supports a narrow interpretation of section 106(2)(c)
- The network company's interpretation was inconsistent with its own terms and conditions
- The network company's interpretation would breach the Privacy Act

Strict liability interpretation

The Commissioner believed section 106(2)(c) should not be given a strict liability interpretation because the words 'failure to pay' indicates there must be a default, not just money owing. In this complaint, the Commissioner believed there was no default on the part of the person (Ms R) with responsibility to pay in relation to the place.

Statutory interpretation

The Commissioner found the principles of statutory interpretation set out in the Interpretation Act 1999 and the case of *Commerce Commission v Fonterra Cooperative Group Ltd* [2007] 3 NZLR 767 supported a narrow interpretation.

The Commissioner also said if Parliament had intended the interpretation taken by the network company, very clear words would have to be used because it would be a clear infringement on a future property owner's economic rights.

Terms and conditions

The Commissioner noted the network company's terms and conditions allowed it to transfer charges incurred at a previous property to a new property when a customer moved properties. This was inconsistent with the network company's position that charges related to a place, not a person.

Privacy Act

The Commissioner believed the network company's practice of providing information about outstanding charges to potential purchasers was likely to be in breach of principle 11 of the Privacy Act. Principle 11 limits the use of personal information and only allows disclosure to third parties in limited situations which would not be applicable in this case.

Fair and reasonable

The Commissioner said if her interpretation of section 106 was incorrect, a fair and reasonable outcome would still be for the network company to remove the charges of the previous owner from Ms R's account. Clause B.3 of the Commissioner's terms of reference entitle the Commissioner to determine what is fair and reasonable after having regard to all relevant information.

The Commissioner took into account the following relevant information:

- The network company had disconnected the property without notifying Ms R
- The network company did not take any debt collection action against the previous owner and therefore did not mitigate its loss
- The network company remained entitled to pursue the previous owner for the debt under contract or quantum meruit
- It is not standard industry practice for new occupants of a property to have to pay debts incurred by a previous account holder

Ms R accepted the recommendation but the company did not. The Commissioner's Terms of Reference allow her to issue a binding decision against the company in this situation. This means the company has to abide by the Commissioner's decision.

Mr F was unhappy the network company had created an account for him without confirming his details

40653

TYPE	YEAR	ISSUES	OUTCOME
 ELECTRICITY	2013	Contract – quantum meruit	Binding decision

THE COMPLAINT

Mr F complained the network company charged him from January to August 2012 for supplying energy to his vacant property based on the previous year's demand. Mr F was unhappy the network company had created an account for him without confirming his details or notifying how it would be charging him. Mr F said he was happy to pay \$30 to \$40 a month for services provided while the property was vacant.

THE OUTCOME

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

The Commissioner upheld Mr F's complaint and recommended the network company credit Mr F's account \$565.43. The Commissioner's recommendation was based on the following conclusions:

- There was no contract between Mr F and the network company
- From August 2012, the network company was entitled to recover reasonable costs under quantum meruit
- It is fair and reasonable for the network company to credit \$565.43 to Mr F's account

No contract

The Commissioner was satisfied there was no contract between Mr F and the network company. The Commissioner accepted the network company made an offer to Mr F to supply services by providing Mr F with a copy of its terms and conditions. However, the Commissioner found Mr F had not accepted the offer, though he continued to receive the services provided by the network company.

The Commissioner found the legal principle of quantum meruit meant the network company could recover reasonable costs for the services it provided to Mr F's property after August 2012. Quantum meruit may allow a party that has supplied goods or services where there is no contract to recover reasonable costs for its supply. Quantum meruit applies where the person who received the services:

- Requested to be supplied with services or freely accepted them, and
- Received a benefit from those services; or
- Received a benefit from the services, whether or not the services were requested or were freely received.

The Commissioner found from August 2012 Mr F freely accepted the services provided by the network company. Mr F received a benefit by being able to demand electricity once the property was occupied again. The Commissioner was satisfied Mr F did not realise he had to pay for the services until August 2012. Until then, Mr F was not able to accept or reject the services.

The Commissioner found from August 2012 the network company was entitled under quantum meruit to recover the amount ordinarily charged under its contract. The Commissioner found the network company was entitled to recover the demand charge based on the previous year's demand because that was set out in the pricing methodology.

Fair and reasonable

The Commissioner recommended a fair and reasonable settlement of the complaint would be for the network company to credit Mr F's account \$565.43. This was the amount the network company had charged Mr F for the period between January 2012 and August 2012.

Mr F accepted the recommendation but the company did not. The Commissioner's Terms of Reference allow her to issue a binding decision against the company in this situation. This means the company had to abide by the Commissioner's decision.

Quantum meruit

How to use the Electricity and Gas Complaints Commissioner Scheme

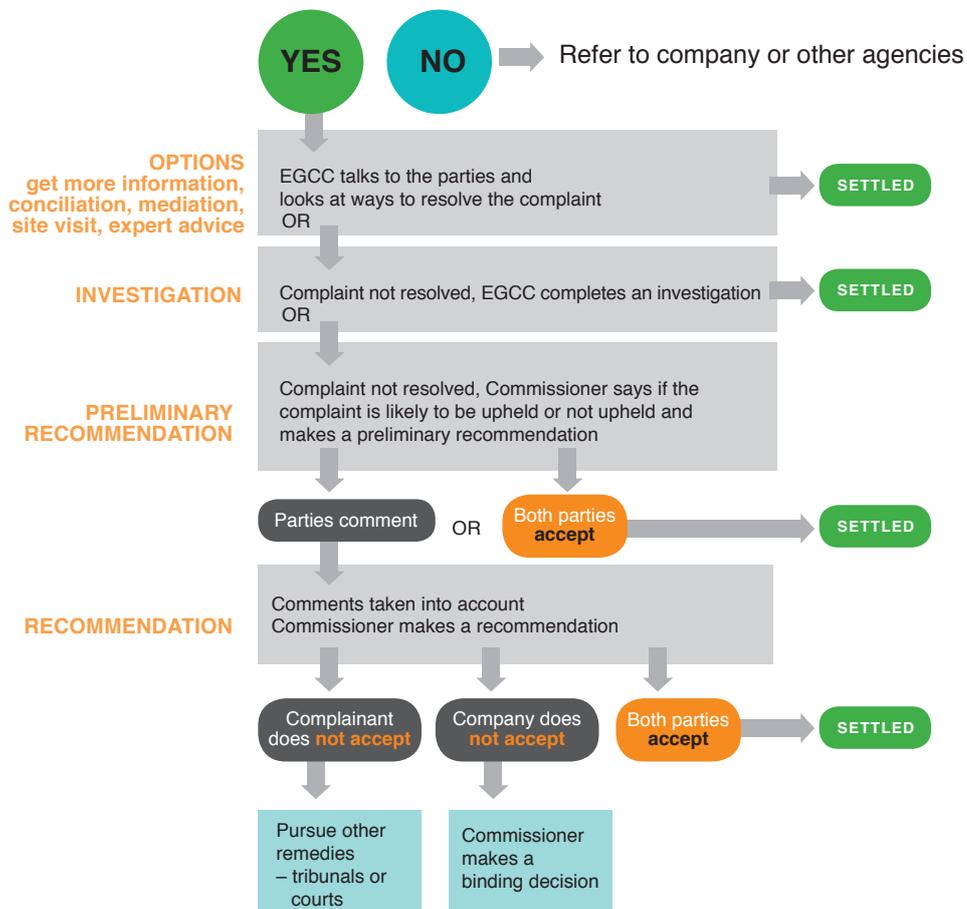
You can contact the Electricity and Gas Complaints Commissioner Scheme (EGCC) for help if you have a complaint about an electricity or gas company.

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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