

Customer J and Momentum – decision and reasons

Application of section 48A of the Gas Industry Act 2001 – compensation for
wrongful disconnection

7 October 2020

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Referral from the ombudsman

1. On 16 April 2020, the Energy and Water Ombudsman (Victoria) referred this matter to the commission for decision. The matter arises from a complaint made to the ombudsman by a residential customer, Customer J.
2. The referral concerns the application of section 48A of the Gas Industry Act 2001 (the Act) to a disconnection by Momentum Energy Pty Ltd (ACN 100 569 159) of Customer J's gas supply at the relevant premises. Specifically, the ombudsman seeks the commission's clarification whether Momentum complied with its obligations to provide information about the customer's entitlement to assistance under Part 3 of the Energy Retail Code (the code) prior to disconnecting Customer J.
3. Customer J's gas supply to the premises was disconnected by Momentum as a result of non-payment of bills from 11:22am on 14 October 2019 to 9:19am on 16 October 2019 – a period of 1 day, 21 hours and 57 minutes.

Issues for decision

4. The ombudsman has raised three questions for decision by the commission. All three questions are concerned with whether Momentum complied with its obligations to provide information about the customer's entitlement to assistance under Part 3 of the code.
5. The first question is whether the information in Momentum's reminder notice and payment assistance brochure satisfied the requirement to provide clear and unambiguous information about the assistance available under Part 3, in accordance with clauses 89(1)(b) and 80(2) of the code.
6. The second question is whether the information in Momentum's disconnection warning notice satisfied the requirement to provide clear and unambiguous advice about the assistance available under Part 3, in accordance with clause 110(2)(ba)(ii) of the code.
7. The third question is whether Momentum complied with its obligation to use its best endeavours to contact the customer in relation to the matter and, in so doing, provided clear and unambiguous information about the assistance available under Part 3, in accordance with clause 111A(1)(a)(iv).
8. If the commission finds Momentum complied with these requirements, then the disconnection was not wrongful and no further issues arise.
9. If the commission finds that Momentum has not complied in relation to any of the three questions, then the issue arises of whether compensation is payable to the customer in accordance with section 48A of the Act.

Relevant facts

10. The commission analysed the ombudsman's request for a decision and sought additional submissions from Customer J and Momentum. Having assessed the matter and the submissions, the commission makes the factual findings set out below.
11. On 14 January 2019, Customer J established a gas account with Momentum for the premises. Customer J's preferred method to receive communications was post.
12. On 2 August 2019, Momentum issued a gas bill to the account for \$518.28 (including \$302.73 overdue) payable by 26 August 2019. The bill was not paid by the due date and caused the disconnection process to commence.
13. On 2 September 2019, Momentum issued a reminder notice to the account for \$518.28. Relevantly for the purposes of this matter, the second page of the reminder notice contained the following in relation to the assistance available under Part 3 of the code:

Further assistance

Depending on the type of help you need, further assistance we can offer may include:

- repayment of arrears over a period of up to two years, paying in regular intervals of up to one month
- advice on options that will enable you to repay your arrears within two years
- specific advice on your likely future energy use/cost and how this could be lowered
- advice on Government and non-Government assistance to help meet energy costs (including payment by Centrepay if applicable)

14. The reminder notice also included a payment assistance brochure titled 'Worried about your energy bills?'. The brochure contained the following more detailed information about the assistance available under Part 3 of the code:

Here's how we can help Victorian households.

Anyone can find themselves in circumstances that make it difficult to keep up with bill payments.

Every day, we provide support, resources and flexibility for customers in this situation.

If you fall into any of the categories below, get in touch and let us help you too. (You'll find our contact details over the page.)

I'm up to date with my bills, but I could still use help.

We can help you set yourself up so things run a little more smoothly. This could mean:

- paying a set amount on a regular basis
- arranging to pay at different intervals that work better for you
- getting a payment extension if you just need a little more time (you can do this once per bill), or
- paying in advance, which can be helpful if your budget tends to vary.

I've missed this one bill, but I'll be OK to pay my future ones.

If you've missed a bill, but you're pretty sure it's just a one-off, get in touch to talk about:

- a plan to pay off your bills (up to two years)

- estimating your future energy use and finding ways to lower it by getting an energy-use audit (over the phone or in your home) to identify the best places to make savings, or
- advice on government and non- government assistance, including Utility Relief Grants and energy concessions (more details over the page).

I can't afford my bills anymore and I need some help.

If you're worried about keeping up with the ongoing cost of your energy, please don't be nervous about asking for help. Our team regularly handles these kinds of conversations with respect and discretion. If you're in this situation, we can help you:

- estimate your future energy use and find ways to lower it by giving you an energy-use audit (over the phone or in your home) to identify the best places to make savings
- with advice on government and non-government assistance, including Utility Relief Grants and energy concessions (more details over the page)
- find practical ways to lower your energy costs, including a program where:
 - we investigate if there's another plan that may work better for you based on your energy usage and payment history
 - for at least 6 months, we:
 - put any money you owe us on hold
 - help you work on lowering your usage costs
 - let you pay less than full cost for your ongoing energy use (though this balance will be added to the amount you owe later)
 - we check in on your progress every so often to make sure things are working for you.

What else can I do?

Check other financial assistance: You may be eligible for financial assistance outside of what we can provide. Check in with the National Debt Helpline by visiting www.ndh.org.au or calling 1800 007 007.

Talk to community service providers: There are charities that provide a range of support services and facilities to help people in need, including:

Anglicare: 1800 809 722

Lifeline: 13 1114

Salvation Army: 13 72 58

St Vincent de Paul Society: 1800 305 330

Consider the Utility Relief Grant Scheme: If you can't pay your bill, we can check if you're eligible for the Utility Relief Grant Scheme (and send you the application form if you are).

Look into concessions: The Victorian Government offers concessions to make essential services more affordable for low-income households and to help out with bills in times of payment difficulty.

To find out more, visit the concessions page on the Department of Health and Human Services (DHHS) website: <https://services.dhhs.vic.gov.au/concessionsand-benefits>

Use Centrepay: If you receive Centrelink payments, you can use the free Centrepay service to arrange regular deductions for energy bills. To find out more, visit the Centrepay page on the Department of Health and Human Services (DHHS) website:

<https://www.humanservices.gov.au/individuals/services/centrelink/centrepay>

Get in touch.

There are lots of ways we can help, but we need to hear from you first. Call us, email us, post us a letter - whatever's most comfortable for you. But please do get in touch. We're here to help.

Phone: 1300 662 778

Email: info@momentum.com.au

Post: Momentum Energy, PO Box 353 Flinders Lane, Melbourne VIC 8009

15. On 16 September 2019, Momentum issued a disconnection warning notice to the account for \$518.28. The disconnection warning notice contained the following in relation to the assistance available under Part 3 of the code:

Further assistance

If you require assistance in paying this notice, there are lots of ways we can help. But we need to hear from you first. Call us on **1300 662 778**.

Depending on the type of help you need, we may be able to offer further assistance, including:

- a plan to pay off your bills (up to two years)
- estimating your future energy use and finding ways to lower it by getting an energy-use audit (over the phone or in your home) to identify the best places to make savings
- advice on government and non-government assistance, including Utility Relief Grants and energy concessions. Call us and we can check if you're eligible for the Utility Relief Grant Scheme and send you the application form if you are. To find out more about concessions, visit the Department of Health and Human Services website: services.dhhs.vic.gov.au/concessions-and-benefits
- finding practical ways to lower your energy costs, including a program where we investigate if there's another plan that may work better for you based on energy usage and payment history
- for at least 6 months, we put any money you owe us on hold, help you work on lowering your usage costs and let you pay less than full cost for your ongoing energy use (though this balance will be added to the amount you owe later).
- we will also check in on your progress every so often to make sure things are working for you.

Concessions

If you are a residential customer, you may be eligible for a concession on your energy bill if you hold an eligible concession card or are on life support. To find out more about concessions, visit the Department of Health and Human Services website: services.dhhs.vic.gov.au/concessions-and-benefits

Talk to community service providers

There are charities that provide a range of support services and facilities to help people in need, including:

Anglicare: 1800 809 722

Lifeline: 13 1114

Salvation Army: 13 72 58

St Vincent de Paul Society: 1800 305 330

Check other financial assistance

You may be eligible for financial assistance outside of what we can provide. Check in with the National Debt Helpline by visiting www.ndh.org.au or calling 1800 007 007.

16. On 23 September 2019, Probe Group, on behalf of Momentum, sent an email to Customer J stating his 'account is overdue and needs to be paid immediately'. The email further stated, 'If you are unable to pay this account in the next 7 days, please contact us to discuss payment options that may assist you'. Probe Group also called Customer J's mobile at 6:48pm, however there was no answer.
17. On 24 September at 1:32pm and 5:55pm, Probe Group, on behalf of Momentum, called Customer J's mobile. Probe Group left a voicemail on both occasions, requesting Customer J contact them.
18. On 25 September 2019, Probe Group, on behalf of Momentum, sent an SMS to Customer J stating his account was overdue and to make payment immediately, or to contact Probe Group to 'avoid disruption of your service'.
19. On 30 September 2019, Momentum issued a notice via registered post to the account for \$518.28 titled 'IMPORTANT NOTICE - Disconnection Imminent'. The notice stated, 'If you do not pay the balance due or contact us in the next 6 business days, supply to your property could be disconnected without further warning'. The notice also included a payment assistance brochure identical to that provided with the reminder notice.
20. On 4 October 2019, Momentum raised a service order with the distributor, scheduling disconnection to occur on 14 October 2019.
21. On 14 October 2019 at 11:22am, the gas supply to the premises was disconnected. Customer J's wife called Momentum the same day to advise the gas was disconnected, and that her husband was overseas until November. Customer J's wife requested the account be reconnected, however Momentum advised that Customer J must call them to authorise Customer J's wife on the account.
22. On 16 October at 9.19am, the gas supply to the premises was reconnected following a complaint raised by Customer J's wife via the ombudsman.

Relevant obligations

23. The relevant obligations in this matter arise from the [Gas Industry Act 2001](#), the [Energy Retail Code \(Version 13\)](#), [Momentum's gas retail licence](#) and Momentum's contract with the customer.

Legislative requirement to pay compensation for wrongful disconnections

24. Section 48A(1) of the Act includes a statutory condition into gas retail licences to make a payment of the prescribed amount to a relevant customer if the licensee fails to disconnect the customer in accordance with the terms and conditions of their contract.

25. Sections 48A(3) and (5) require payment of the prescribed amount as soon as practicable after the supply of gas is reconnected. The prescribed amount is \$500 for each full day and a pro rata amount for each part of a day that the supply is disconnected.

26. Momentum holds a gas retail licence and is therefore subject to the statutory condition contained in section 48A(1) of the Act.

Obligation to provide information about assistance under Part 3

27. The relevant obligations in this matter concern Parts 3 and 6 of the code. Part 3 sets out the payment difficulties framework, and establishes an entitlement to minimum standards of assistance for customers anticipating or facing payment difficulties so that disconnection of a residential customer for not paying a bill is a measure of last resort. Part 6 provides a retailer's obligations for arranging de-energisation of small customer's premises.

28. Clause 111A(1) of the code provides:

A retailer may only arrange de-energisation of the premises of a residential customer for not paying a bill if:

(a) the retailer:

(i) has complied with all of the retailer's obligations to the customer under clause 89; and

(ii) has issued a reminder notice to the customer that complies with clause 109; and

(iii) has issued a disconnection warning notice to the customer that complies with clause 110; and

(iv) has, after the issue of the disconnection warning notice, used its best endeavours to contact the customer in relation to the matter and, in so doing,

provided clear and unambiguous information about the assistance available under Part 3; and

(v) has at all times acted fairly and reasonably in relation to the customer.

29. Clause 111A(1)(a)(i) incorporates compliance with clause 89 as a precondition for arranging de-energisation. Clause 89 is contained in Part 3 of the code and contains a number of retailer obligations. The ombudsman has drawn particular attention to clause 89(1)(b) which provides that a retailer must:

at all times when it is relevant to do so, including on being contacted by a residential customer, give the customer in a timely manner clear and unambiguous information about the assistance available under this Part.

30. In addition to the obligation to comply with clause 89(1)(b) at all times where it is relevant, clause 111A(1) provides a foundation for three instances prior to arranging disconnection, at which retailers are required to provide customers with clear and unambiguous information (or advice) about their assistance entitlements. The code explicitly requires retailers to provide information about the assistance available under Part 3 at three specific instances as part of a disconnection process:

- a. Within 21 business days of the pay-by-date where a residential customer has not paid their bill by the pay-by-date and has arrears of more than \$55, under clause 80(2) of the code.
- b. When the retailer issues a disconnection warning notice under clause 110(2)(ba)(ii) of the code.
- c. As part of the obligation on the retailer to use its best endeavours to contact the customer in relation to the matter after issuing a disconnection warning notice, and, in so doing, provide clear and unambiguous information about the assistance available under Part 3 under clause 111A(1)(a)(iv) of the code.

31. The questions raised by the ombudsman are concerned with whether the information provided at each of these relevant points satisfied Momentum's obligation to provide clear and unambiguous information (or advice) about the assistance available under Part 3.

Licence conditions regarding the code

32. Clause 8.1 of Momentum's gas retail licence requires it to ensure Momentum's contracts for the sale of gas expressly deal with each matter which is the subject of a term or condition of the code.

33. Clause 8.3 of Momentum's gas retail licence requires each term or condition of Momentum's contracts for the sale of gas to be consistent with each term and condition of the code.
34. Clause 8.4 of Momentum's gas retail licence requires it to comply with the terms and conditions of any contract for the sale of gas with a relevant customer.
35. Clause 17.1 of Momentum's gas retail licence requires it to comply with all applicable provisions of the code.
36. Clause 25 of Momentum's gas retail licence requires it to comply with all applicable laws.

Contract term to disconnect in accordance with the code

37. Clause 33.1 of Momentum's contract with the customer specified that any disconnection was subject to Momentum first complying with 'regulatory instruments'. Clause 52 of the contract defined 'regulatory instruments' to include the Energy Retail Code.
38. In accordance with the terms of its contract with Customer J, Momentum was therefore required to comply with the relevant provisions of the code before disconnecting the customer and non-compliance with the code would constitute non-compliance with the terms and conditions of the contract which specify the circumstances in which the premises may be disconnected.

Submissions

The ombudsman's submissions

39. Through its letter of referral and accompanying memorandum, the ombudsman acknowledged that Momentum demonstrated compliance with clause 109 of the code, which concerns the obligations for reminder notices. The commission acknowledges that compliance with this clause is not in dispute.
40. As outlined in the issues section of this decision, the ombudsman has raised three questions for decision by the commission concerned with whether Momentum complied with their obligations to provide information about the customer's entitlement to assistance under Part 3 of the code.
41. In relation to each of the three questions, the ombudsman acknowledges that the information provided by Momentum to the customer in relation to assistance under Part 3 is 'reasonably comprehensive' however it nonetheless seeks clarification on the application of these provisions of the code.

Momentum's submissions

42. The ombudsman's referral includes a position statement from Momentum in which it states that it has complied with the minimum standards of conduct required when disconnecting Customer J. On each of the specific questions raised by the ombudsman, Momentum states that there are no deficiencies in the Part 3 information provided to Customer J.
43. The commission invited Momentum to provide any further submissions and any information or documents it considered the commission should have regard to in making its decision, Momentum provided written submission and documents for the commission's consideration in this matter.
44. Momentum's submissions reiterate its position that it has complied with the minimum standards required when disconnecting Customer J. Momentum further submitted that:

The Customer took no reasonable action to respond to the bill, reminder notice, disconnection warning notice, numerous phone calls and Momentum's best endeavours to contact the Customer.

As such, Momentum's actions were fair and reasonable considering the Customer did not take any action towards remedying the matter or engaging with Momentum's attempt to

provide payment assistance Momentum's disconnection of the Customer was a measure of last resort following the Customer's refusal and failure to take reasonable action toward making payments of their on-going energy use or arrears.

Customer's submissions

45. The commission invited Customer J to provide submissions, however no response was received.
46. The referral provided by the ombudsman to the commission stated Customer J's wife, on behalf of Customer J, had informed them:

The gas supply was disconnected 14 October 2019.

She called Momentum energy, after the disconnection, and it refused to speak to her as her husband, Customer J, is the account holder.

Customer J's wife advised Momentum Energy that her husband is ill overseas and unable to talk to it.

She is unsure why the gas was disconnected.

Decision

47. The commission has had regard to the submissions of the ombudsman, Momentum, and the customer's statement.
48. Momentum disconnected the gas supply to Customer J's premises at 11:22am on 14 October 2019.
49. Momentum was required to comply with the code as a condition of their contract with the customer.
50. The commission considers that the information in Momentum's reminder notice and accompanying payment assistance brochure satisfied the requirement to provide clear and unambiguous information about the assistance available under Part 3, in accordance with clauses 89(1)(b) and 80(2) of the code.
51. The commission considers that the information in Momentum's disconnection warning notice also satisfied the requirement to provide clear and unambiguous advice about the assistance available under Part 3, in accordance with clause 110(2)(ba)(ii) of the code.
52. The commission considers that Momentum complied with its obligation after issuing the disconnection warning notice and prior to arranging de-energisation, to use best endeavours to contact the customer in relation to this matter and, in so doing, provide clear and unambiguous information about the assistance available under Part 3, in accordance with clause 111A(1)(a)(iv).
53. Momentum has therefore complied with its obligations in relation to each of the three issues raised by the ombudsman.
54. Accordingly, the commission considers that the disconnection was not wrongful, and Momentum is not required to make a payment to the customer in relation to the disconnection of Customer J's gas supply.

Reasons

Clear and unambiguous information about the assistance available under Part 3

55. The commission was requested to assess whether the information provided in Momentum's reminder notice and accompanying payment assistance brochure, and disconnection warning notice satisfied the requirement to provide clear and unambiguous information about the assistance available under Part 3, in accordance with clause 89(1)(b) and 110(2)(ba) of the code.
56. The intent of the provisions requiring retailers to provide customers with 'clear and unambiguous' information about their entitlements under Part 3 is to ensure customers facing payment difficulty understand their rights and that disconnection is a measure of last resort. This understanding promotes the outcome of customers contacting their retailer and arranging the assistance which best suits their circumstances.
57. In assessing the 'clear and unambiguous' information requirement, the commission had regard to the following considerations:
- a. The information must be accurate and not misleading.
 - b. The information must be expressed in plain language, legible, and presented clearly and appropriately having regard to its nature.¹
 - c. The information must not have any major omissions of the assistance available under Part 3: it should clearly identify the forms of standard assistance made available by the retailer in accordance with clause 76(2), as well as the tailored assistance measures in clause 79(1) of the code.
58. The commission considers that the assistance information provided by Momentum in the reminder notice and accompanying payment assistance brochure, and in the disconnection warning notice is accurate, generally expressed in plain language, and does not contain any significant omissions about the assistance available.
59. The information in the reminder notice and accompanying payment assistance brochure, and the disconnection warning notice therefore satisfies the requirement to provide clear and unambiguous information about the assistance available under Part 3.

¹ Clause 87(1) of the code.

Best endeavours to provide information

60. The commission must also assess whether after issuing the disconnection warning notice and prior to arranging de-energisation, Momentum complied with their obligation to use best endeavours to contact the customer in relation to this matter and, in so doing, provided clear and unambiguous information about the assistance available under Part 3.
61. As noted in the relevant facts, after issuing the disconnection warning notice, Momentum made the following attempts to contact the customer:
- a. telephoned Customer J once inside and twice outside of business hours.
 - b. sent an email to Customer J, informing him the account was overdue and to make payment, or make contact to discuss payment assistance options.
 - c. sent Customer J a letter by registered post, informing him of the imminent disconnection and including the payment assistance brochure.
62. Retailers are expected to exercise judgement and use the information available and known to them about an individual customer when fulfilling their obligations to use best endeavours.² If known, retailers should attempt to contact customers via their preferred contact method.³
63. Momentum used the information available to them to contact Customer J through a range of methods, including his preferred contact method of post. In doing so, it provided information about the assistance available under Part 3 of the code identical to the information provided in the reminder notice and disconnection warning notice. As already assessed above, the commission considers that this information constituted clear and unambiguous advice about the assistance available under Part 3.
64. Momentum therefore satisfied their obligations to use best endeavours to contact the customer and in doing so, provided clear and unambiguous advice about the assistance available.

² Energy Compliance and Enforcement Policy: Guidance note – Payment difficulty and disconnection 2017 at 8.3.3.

³ Ibid at 8.3.5.