

COMPLAINT NUMBER	17/121
COMPLAINANT	H Gray and D Repko
ADVERTISER	Contact Energy
ADVERTISEMENT	Contact Energy, Print and Digital Marketing
DATE OF MEETING	9 May 2017
OUTCOME	H Gray Settled D Repko Not Upheld

SUMMARY

Contact Energy email, website and flyer advertisements offering 30 cents off per litre of fuel every month, on a one-year fuel rewards plan. The advertising said there are “No tricks, no waiting, no surprises.” Two complaints were received about this advertising.

Complaint 1

H Gray said the email advertisement was misleading as it did not state that there was a 50 litre a month maximum on the offer. That detail was only included on the AA Smart Fuel website.

The Advertiser amended the advertisement to include “(up to 50 litres)” as part of the offer for future advertising. The majority of the Complaints Board agreed, that given the amendment the Advertiser had made, the complaint was settled.

Complaint 2

D Repko was concerned the advertisement only talked about fuel savings and did not mention that current Contact Energy clients could be worse off as a result of this deal therefore making it misleading.

The Advertiser said the Complainant was provided with all the tools necessary to be able to analyse whether this offer was a favourable deal for their specific circumstances. The Complaints Board agreed that all necessary information had been provided to enable consumers to make an informed decision and the advertisement was not misleading.

The Complaints Board ruled that this complaint was Not Upheld.

[No further action required]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertising with reference to the Basic Principle 4 and Rule 2 of the Code of Ethics. This required the Board to consider whether the advertising was, either directly or indirectly, likely to deceive or mislead the consumer.

Was the fuel limit clear?

The Complaints Board began by considering H. Gray's concern that the 50 litre fuel limit was not clear. The majority of the Board agreed the 50 litre upper limit message may not have been obvious to a customer who was not already familiar with the terms and conditions of smart cards. The majority considered the language used by the Advertiser was ambiguous and a more straightforward message about the limits of the offer would have helped eliminate any confusion.

By adding the "Up to 50 litres" message to future advertising copy, the Board said this ambiguity had been removed and accordingly the majority of the Board agreed to settle the complaint based on the Advertiser's action.

A minority of the Board said the complaint should not be upheld as it did not meet the threshold to mislead the consumer. The minority said that during the process of signing up for any smart card deal, the terms and conditions were clearly laid out. However, in accordance with the majority, the Complaints Board ruled the complaint was settled.

The Complaints Board ruled H. Gray's complaint was Settled.

Was the advertisement misleading to existing Contact Energy customers?

The Complaints Board then considered D. Repko's concern that accepting the fuel offer could mean existing customers would be worse off and not make any savings.

The Board agreed with the Advertiser's response that this was a fuel saving offer and the advertisement did not make any guarantees that existing customer's unit price for power would be less, as a result of taking up this offer. The Board noted that the Complainant used solar power, which was likely to also impact on the value of the offer to them.

The Complaints Board discussed that the advertising appeared to be targeted at new customers and accepted that it did not imply that all customers would be better off. The Board noted the Complainant's point that the campaign emphasised no tricks, no waiting and no surprises. However, the Complaints Board said sufficient information was made available in order for consumers to make an informed decision as to whether they would accept the fuel savings offer and what affect that would have on their power costs.

The Complaints Board agreed the advertisement was not misleading and did not breach Rule 2 or Basic Principle 4 of the Code of Ethics.

The Complaints Board ruled D. Repko's complaint was Not Upheld.

COMPLAINT FROM H GRAY

I received an email from Contact Energy that included the attached information stating that if I signed up to a fixed term contract (to June 2018) with Contact Energy I would receive "30c off per litre of fuel (via AA Smartfuel at BP stations) every month". There is no information

about the maximum amount of fuel or maximum number of fills suggesting that every time I fill up the car with fuel at BP I would receive a 30c/litre discount via this Contact energy offer. In fact buried on a 2nd website (AA Smart fuel) is the real details which state that the discount is available on a maximum of 50L per month. I consider Contact Energy's information to be very misleading as the clear implication is that all fuel will be at a 30c/L discount when in fact the actual situation is much less generous at 50L/month meaning that the maximum discount achievable is \$15/month. This is compounded by the Contact Energy email/flyer stating "No tricks, no waiting, no surprises" when in fact the email information is very tricky and the unsuspecting consumer is in for a big surprise!

COMPLAINT FROM D REPKO

I think the Contact Energy Fuel Offer ad campaign (including Website and direct email offer) is deceiving/misleading for the following reasons:

- the headline only talks about fuel savings and stresses 'no tricks, no waiting, no surprises and 'they call that a no brainer', clearly creating the impression that 'you can only win'.

- No reference whatsoever is made to the fact that Contact clients can be worse off with this deal (no tricks/no surprises?), depending on the current contract they are on.

- I searched ads, email and the Contact website, as well as read the Terms and Conditions referred to in the add but could not find any reference to the fact that current customers can be worse off; In my case I eventually found out (see other points below) that in the 30cent Fuel Saving contract the Kwh rate would increase by 6.156cent per Kwh. As I generate my own solar power I am only a very modest user of Contact Energy power eg 3600 - 4000 Kwh per year. The 6.156 cent increase would add between \$221 and \$246 to my annual power bill. The maximum savings I can get through their 30cent fuel offer is 12months x 30cents x 50liter max = \$180. Larger Contact Energy users of power, which will be most clients as not many have solar, will be much worse off than me.

- In my quest to get to the bottom of this, I followed the online process for changing my contract till the moment I had to commit (at least that's the strong impression I got) and still no mentioning that I would be worse off.

- I then called the call centre (6 April - talked to Jason M. of the Dunedin call centre) and asked them what T's and C's applied; although I had given him my client no. he did not mention that my Kwh rate would go up by the said amount.

- only when I pushed hard and after I dug deeper into the promotional/personalised email I had received (clicking through several times), I noticed the increased Kwh rate that would apply to my contract. Jason then confirmed that.

- I expressed my dismay that the fact that Contact customers will have to accept a price increase and possibly be worse off is totally absent from the advertising campaign; no reference to it whatsoever!

In summary, the ad campaign boldly stresses the fuel saving one can make 'at the pump' but does not indicate/makes no reference to the fact that Kwh price paid might go up for existing customers, resulting in a higher power cost overall, which can be considerably more than the theoretical (maximum) fuel cost savings one can achieve. Only after 'digging deep' I discovered this; I am convinced that many people will not take the trouble to do what I did and would simply accept the advertiser on their word. If this campaign/promotion is not misleading, then what is?

CODE OF ETHICS

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 2 Truthful Presentation: Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

RESPONSE FROM ADVERTISER: CONTACT ENERGY

A basic, neutral description of the advertisement	<p><u>Direct to customer</u></p> <p>Notification (direct mail or email) to 247,000 current customers to communicate that Contact is now offering AA Smartfuel rewards as part of its range of energy plans and no longer offering Fly Buys points. This is a legal requirement to notify all customers who collect Fly Buys that the current terms of their contract with Contact are changing.</p> <p>Directing customers via a personalised url to a microsite specifically for current customers with personalised information unique for each account and/or to contact our call centre by either phone or email with their queries or decisions.</p> <p><u>General advertising</u></p> <p>Advertising to non-Contact customers selling the AA Smartfuel rewards energy plans. Headline offer of 30c off per litre of fuel on Fuel Rewards one year plan. Directing customers to the general Contact website (not the current customer microsite)</p>
Date advertisement began	First emails and direct mail were sent to customers 4 April 2017
Where the advertisement appeared	<p>eDM and DM to existing customers</p> <p>(Please refer to media schedule which commenced 4 April 2017)</p> <p>Digital advertising (desktop, mobile, social, Xaxis programmatic, Google display, search)</p> <p>National TV</p> <p>Press full page</p> <p>Radio</p> <p>Buses – Auckland, Wellington, Hamilton, Christchurch</p>

	Digital billboards – Auckland, Christchurch Digital display malls – Auckland, Tauranga, Wellington, and Christchurch.
Is the advertisement still accessible	Further eDM and DM material to be sent to existing customers. Note: it has been amended to state that the offer is for up to 50 litres per month. Above the line advertising is in market as per the supplied media schedule.
Who is the product / brand target audience?	eDM and DM and microsite available for all current Contact customers who previously collected Fly Buys points with us. All other collateral/advertising targeted at acquiring new customers or retaining existing customers on new plans, or existing plans with an additional reward.
Clear substantiation on claims that are challenged by the complainant.	Please see below:

**Contact’s response to complaints that
Contact has breached the Code of Ethics, Principle 4, Rule 2
alleged by D Repko and H Gray:**

Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 2: Truthful Presentation – Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

Repko Complaint:

Contact considers that the essence of D Repko’s complaint is that the complainant considers:

- The phrase “no tricks, no waiting, no surprises” is misleading as it only talks about fuel savings, and when combined with the words “they call that a no brainer” creates the impression that “you can only win”.
 - No reference is made to the fact that some existing customers may be worse off with this deal.
1. Contact does not consider that it has breached the Code of Ethics, or misled consumers.
 2. Contact further considers that the two aspects of the complaint need to be considered together as they are closely related, and that the headline needs to be considered in the context of the overall communication to D Repko.

3. On that basis, we have **attached**:
 - a copy of the electronic direct marketing (eDM) that was sent to D Repko, which provided information on options and directed the complainant to a “microsite” to sign up;
 - screenshots from the microsite which was tailored to D Repko’s specific current energy plan with Contact.
4. D Repko has referenced our website and terms and conditions which were created in support of the general advertising media for new customers and to support more generic information about how AA Smartfuel works and its terms. For this complaint, the most relevant information is that which was provided directly to D Repko and tailored based on the complainant’s existing plan and benefits, accessed via the microsite which the eDM was linked to directly.
5. Generic terms and conditions do not mention a “price change” as for many customers who are new to Contact, this is not relevant as there is no price to compare to.

Headline and print ad:

6. The positioning of the words “no tricks, no waiting, no surprises” has been deliberately chosen to be aligned with the reference to “30 cents off per litre of fuel” as it relates directly AA Smartfuel benefits available on the Contact Fuel Rewards plan it is promoting.
7. The words have been chosen to directly inform customers that the discount will be awarded every month, and that it independent from the electricity purchased.
8. This is relevant in light of the fact that all electronic direct marketing (eDM) and direct marketing (DM) messages were sent to those customers of Contact who previously earned Fly Buys points based on spend. A feature of Fly Buys points is that they were earned, and for the average Contact customer who earned 4 points per month, there was a long wait to accumulate enough points to redeem them with a Fly Buys catalogue purchase.
9. By contrast, on a Fuel Rewards plan, the 30c per litre discount is awarded to all customers on the plan every month, meaning that customers have available to them an instantly redeemable discount which can save them up to \$15 per month at the fuel pump, rather than having to wait to earn enough points to spend.
10. Contact also considers that the emphasis in the eDM sent to D Repko as well as the print ad provided is clearly on the fuel cost savings¹, and the availability of the discounts to all residential customers who sign up to the plan², not just new customers.
11. The heading is not intended to be linked to the underlying plan pricing, which for some existing customers will be better, and for others will not depending on their existing plans. Notwithstanding this point, the combination of a fixed plan (which holds the rates for the duration of the plan) with a discount of up to 22%, and 30c off per litre of fuel each month, is a very competitive offering, and while for some the underlying price may be different, if they place greater value on the availability of the AA Smartfuel rewards scheme, then the price is not as important to them.

¹ “30 cents off per litre of fuel every month...No tricks, no waiting, no surprises.” [Print advertisement published in Sunday Star Times, Herald on Sunday, NZ Herald, The Northern Advocate, Bay of Plenty Times, Rotorua Daily Post, Hawkes Bay Tribune, Wanganui Chronicle, The Northland Age, Whangarei Report, Coastal News, Waihi Leader, Hamilton News, Te Awamutu Courier, The Bay News, Katikati Advertiser, Te Puke Times, Rotorua Weekender, Taupo (& Turangi) Weekender, Stratford Press, The Napier Courier, The Hastings Leader, Havelock North Village Press, Central Hastings Bay Mail, Wanganui Midweek, Bush Telegraph, Manawatu Guardian, Horowhenua Chronicle, Kapiti News.]

² “That’s why AA Smartfuel discounts are available to all residential customers regardless of usage.”

12. As the headline is being used across all forms of media, not just DM or eDM to existing customers and is used to promote the reward available, the choice to use the phrase “no tricks, no waiting, no surprises” to the reward itself, not the pricing, was deliberate.

References to pricing, and the process for signing up:

13. In the attached eDM, you will see that Contact provided D Repko with details of two options at Step 1:

1 Check out our new Fuel Rewards plans

We've created some new plans to help you make the most of your fuel savings. Here are a couple of your options:

<p>one year fixed term <small>until 10 June 2019</small></p> <p>30c off EVERY MONTH!</p> <p>Up to 22% discount</p> <p>Switch to this Fuel Rewards plan and you can get a 22% discount plus 30c off per litre each month (you won't be charged a break fee to switch plans). Ts & Cs apply.</p>	OR	<p>10c off EVERY MONTH!</p> <p>Stay on your current Contact plan and get 10c off per litre each month.</p>
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You can also check out our other Fuel Rewards plans [here](#).

14. D Repko could either have moved onto our one-year Fuel Rewards plan, or chosen to stay on the existing plan and receive 10c off per litre, or looked into our other plans available.
15. Contact considers that the comparison of the new plan with the existing plan, implied that the plans were different, and considers that it was clear that there was more to learn about both these plans, and any others available to D Repko.
16. Having provided D Repko with options, at Step 2, D Repko was invited to see how the Fuel Rewards offer compared to the complainants current plan – “Check out how our Fuel Rewards offer compares to your current plan(s)”, and a click through link went to the microsite.

2 Jump online and start saving

To check out how our Fuel Rewards offer compares to your current plan(s), click the 'find out more' button below. Once you're in, add your AA Smartfuel card number (or request a card), then start saving straight away.

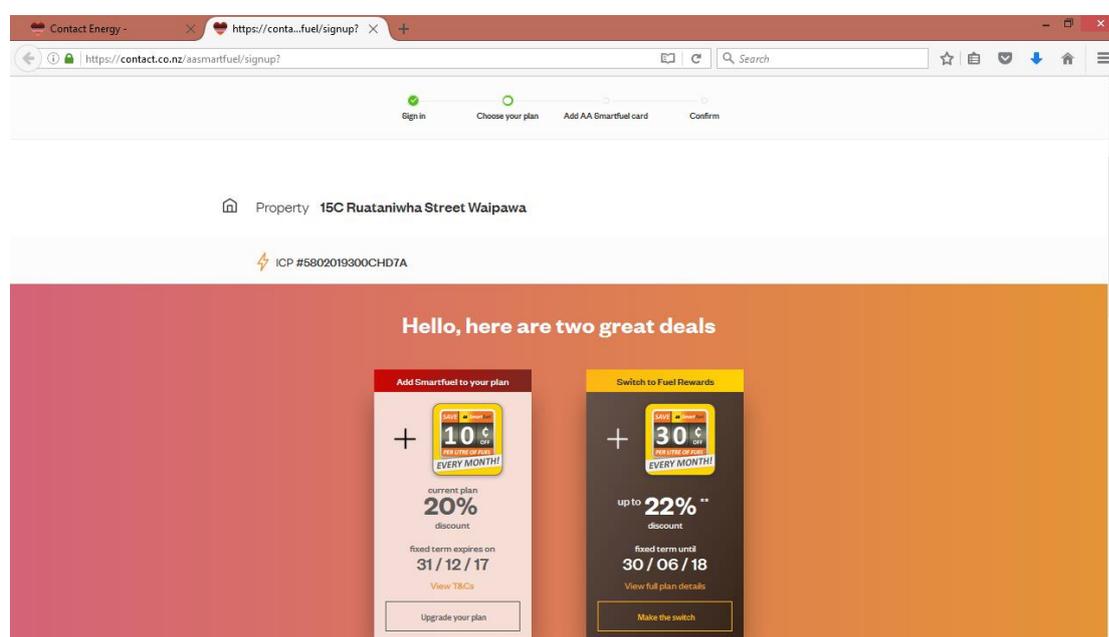
[Find out more](#)

17. Having clicked through to the microsite, section 1 highlighted that there was a comparison below:

1. Your plan preferences

Choose an energy plan upgrade for each property on your account. Offers and comparisons below are based on information current as at 19 March 2017. If anything has changed since then, (e.g. if you've changed plans, or moved house) please give us a call.

18. Underneath this, the same two options as outlined in the eDM were provided for D Repko:



19. At this point, D Repko had the ability to check either plan for the generic terms and conditions of each plan. The exact pricing is not included in the generic terms and conditions, and is confirmed for customers either on the phone, online or provided to them in their confirmation letter.
20. Because pricing varies by region across the country, and by plan type, it is impractical to publish pricing, which is why current customers were directed to a site which would provide them accurate information based on their existing plans.
21. Not all customers will experience a price increase on a Fuel Rewards plan some customers will see an overall price decrease depending on their current plan.
22. D Repko is currently on a fixed term plan which has very competitive pricing (which is no longer available), and at the end of the plan will have to move to a different plan.
23. Directly below the two options was the following comparison calculator which enabled D Repko to see how the two plans compared, and what the likely monthly energy costs would be on the existing plan, compared to the Fuel Rewards plan.

** Based on a Prompt Payment discount of 20% and a further 1% for email billing and 1% for setting up direct debit.

Check out how your current plan compares to our Fuel Rewards plan.

Upgrading to an AA Smartfuel plan could mean changes to your plan prices and discounts. Using our price calculator below, enter your own figures from a recent bill below to compare your costs for both plans. Detailed pricing information is set out below the calculator.

Enter your usage in kWh and number of days*

Anytime (Low User) (kWh) 650	×	No. of Days 30	=	Current Plan Total (Excl. GST) \$176.19	VS	Fuel Rewards Total (Excl. GST) \$208.19
<input type="button" value="Calculate"/>						

Including 20% prompt payment discount only. You may be eligible for up to a further 2% discount.

24. It is clear from both the heading “Check out how your current plan compares to our Fuel Rewards plan” and in the preamble to the calculator that changing to an AA Smartfuel plan could mean a change to pricing, and that detailed pricing could be found beneath the calculator. Customers could click to expand the detailed pricing if interested, as set out below.
25. We chose to present the pricing information in the calculator as a rough energy cost per month, to give customers a practical example of how the pricing would potentially affect them each month, approximately in line with billing cycles. We typically find that customers prefer to see pricing information in this manner rather than dealing with multiple individual tariffs they would have to manually calculate themselves. However, again we gave customers the option to see detailed pricing if that was preferred.

* Enter details from your bill to get a more accurate reflection of the costs of each plan for you.
The calculations are representative only. The calculator does not allow for differences in the length of bill cycles between fuels or for any levies or charges you may incur, and will not match what is on your invoice.

Click to expand pricing details ^

	Current plan	Fuel Rewards
Daily Charge (Low User)	33.33 cents/day	33.3 cents/day
Anytime (Low User)	32.344 cents/kWh	38.5 cents/kWh

All other charges remain the same
Prices exclude GST

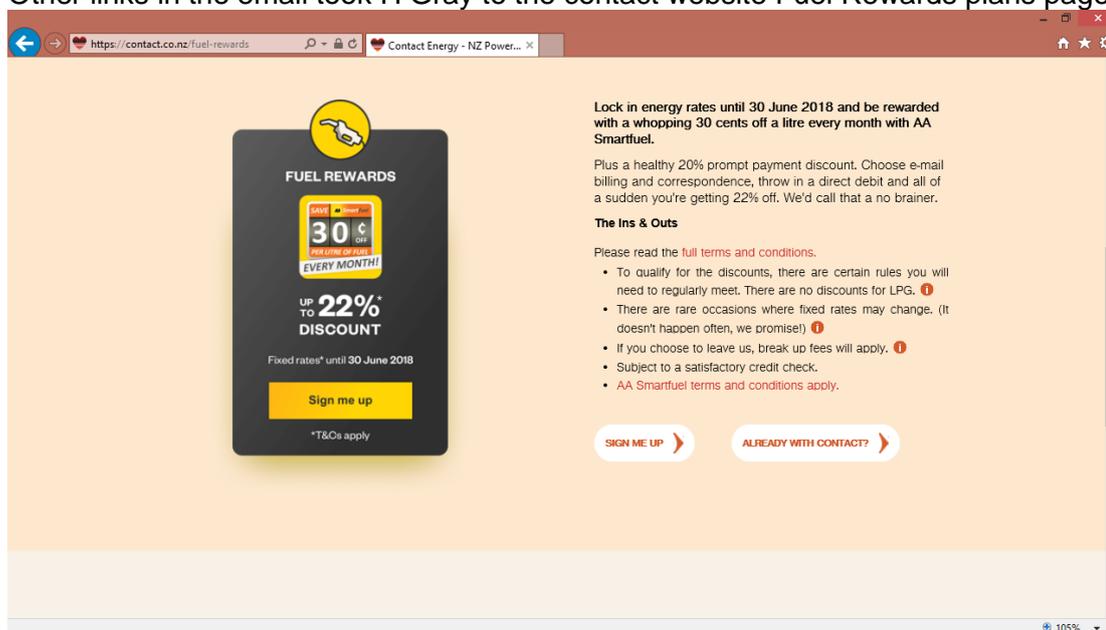
26. Immediately beneath the pricing details, was an option for customers wanting to talk it through to request a call back. This step came before asking customers to enter their AA Smartfuel details, or request a card if they were not an existing member (Section 2).
27. Each section of the microsite could only be filled out once the previous sections had been completed, so in order to get to Section 2, a customer would have to choose one of the plan options available, before providing AA Smartfuel details. The customer also had the option of doing nothing, and not completing the journey to change anything in their existing plan.

28. In section 3, customers were then asked to agree to the terms and conditions, before confirming their information.
29. Following confirmation, customers were then sent to a “review page” which showed them the plans they selected, and the information they had provided, before giving the customer the option to edit those details, submit the change, or decide against choosing one of the plans presented to them.
30. Contact does not consider that it pushed customers to agree to the plans without providing them:
 - a. sufficient information about the potential implications of selecting a plan
 - b. the opportunity to review their selection before submitting it
 - c. the opportunity to discuss their options with a customer service representative.
31. On that basis, Contact refutes D Repko’s assertion that the complainant was pushed to commit before being provided with all relevant information first.
32. All customers who have been communicated with and directed to the microsite or Contact’s website are provided with the call centre number so that if they choose to, they can call the contact centre to talk through their options.
33. The customer service representatives are trained to take the customer through exactly the same process that the customer would have gone through in the microsite and the same pricing comparison is carried out.
34. As D Repko initially asked about the generic terms and conditions when first calling, the call centre representative started with that aspect of concern, rather than an immediate price comparison.
35. Contact does not agree that the overall implication of the advertising in the eDM or DM is that **all** customers will be better off, or that the availability of the “30c off per litre of fuel” combined with the tag line “no tricks, no waiting, no surprises” in relation to that discount is misleading. Contact considers this is supported by:
 - a. the fact that customers were invited in both the eDM/DM to compare their existing plan with the Fuel Rewards plan in the microsite;
 - b. the first section of the microsite clearly refers to “the offers and comparisons below” alerting the customer to the ability to compare;
 - c. the calculator heading stating “Check out how your current plan compares to our Fuel Rewards plan”, conveying that there were differences in the plans;
 - d. the preamble to calculator clearly stating that “Upgrading to an AA Smartfuel plan could mean changes to your plan prices and discounts” and inviting customers to “compare your costs for both plans” and stating that “detailed pricing information is set out below the calculator”;
 - e. providing an opportunity for customers to request a call back, to talk through the Fuel Rewards plans and the benefits or otherwise of them to the customer;
 - f. the emphasis in all communications being on the value of the fuel discounts and potential savings on fuel.

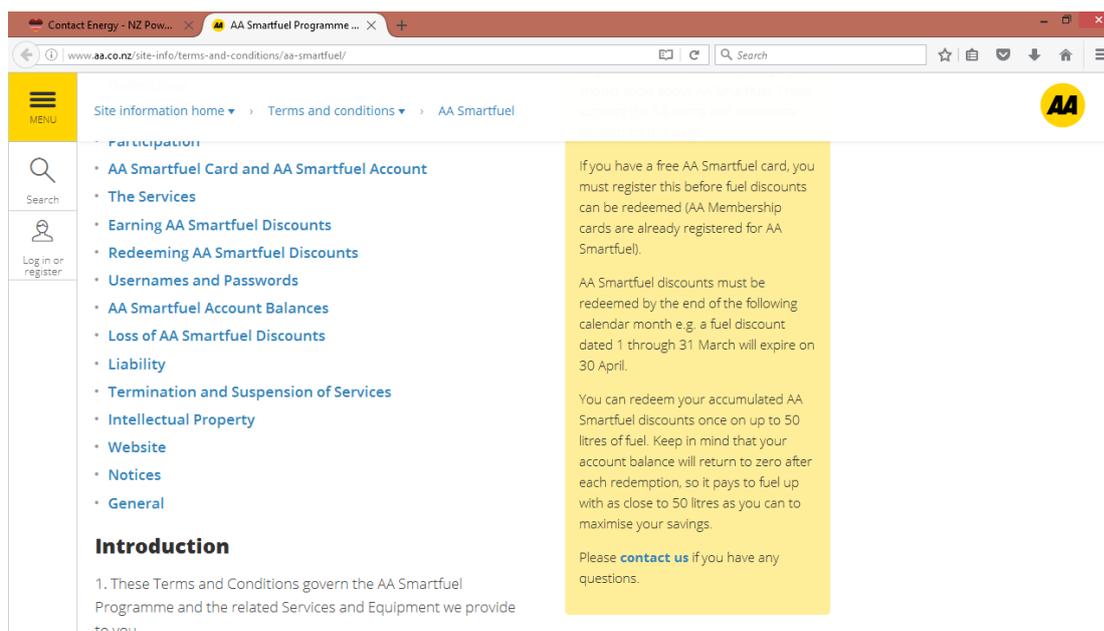
Gray Complaint:

Contact considers that the essence of H Gray's complaint is that:

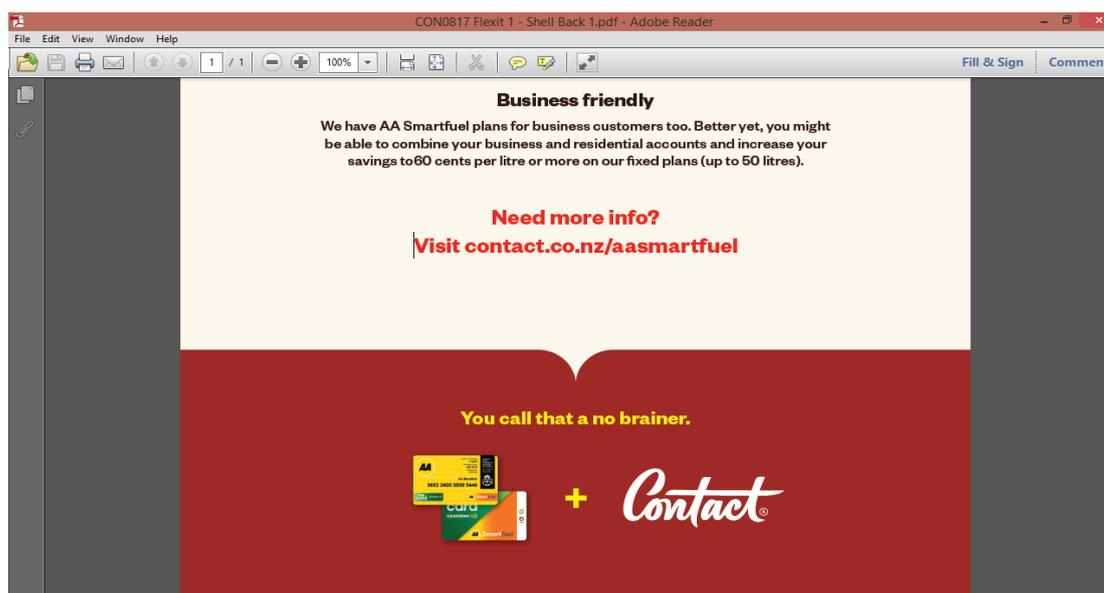
- Contact did not make it clear in the eDM that the 30c per litre discount per month, is applied once during the month, and can only be redeemed on a maximum of 50 litres of petrol purchased.
36. Contact does not agree that the implication of the advertising is that the 30c off per litre would be every time a customer filled up.
 37. If the 30 cents off per litre was an ongoing discount, then there would have been no need to specify and emphasise throughout the advertising that the discount was “every month”, it would have been sufficient to state that it was 30 cents off per litre of fuel.
 38. In all of the advertising referred to by H Gray, we have noted that terms and conditions apply.
 39. Like D Repko, H Gray was directed to a microsite which compared the benefits of the plans, and included all the terms and conditions, **attached**.
 40. Other links in the email took H Gray to the contact website Fuel Rewards plans page:



41. The plans page highlighted, in red, in the ins and outs section that “AA Smartfuel terms and conditions apply”, which linked straight through to the AA Smartfuel terms and conditions, (already provided by H Gray, screenshot below) on the front page, in the section highlighted yellow and headed “Important information” it is clearly stated that the discounts are for up to 50 litres.

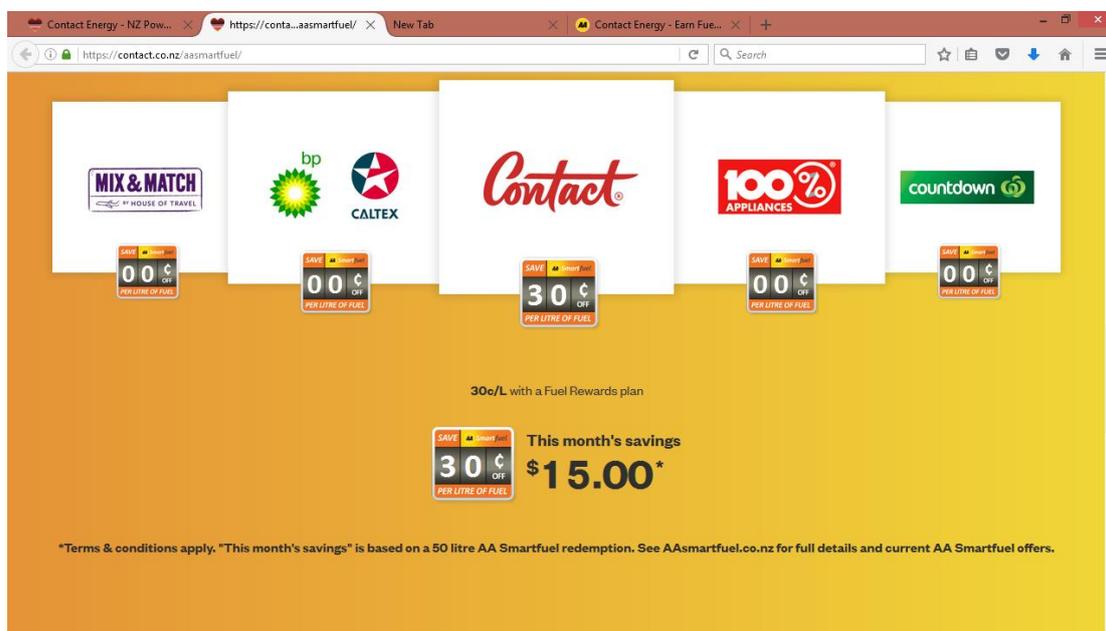


42. It appears that it is common practice³ amongst AA Smartfuel partners to simply state the value of the discount, as participants in the AA Smartfuel scheme are already subject to AA Smartfuel terms and conditions which impose the terms and conditions of the actual accumulation and redemption of discounts.
43. Contact does not consider that the information relating to the AA Smartfuel conditions was “buried”. It was clear on the plans page where customers could get information about the options available to them that AA Smartfuel terms and conditions applied, and the relevant information was highlighted at the beginning of those terms and conditions.
44. In the DM version of the communications that went to customers, on the reverse of the letter was additional information that was not able to be included verbatim in the eDM version, which noted the 50 litre limit.

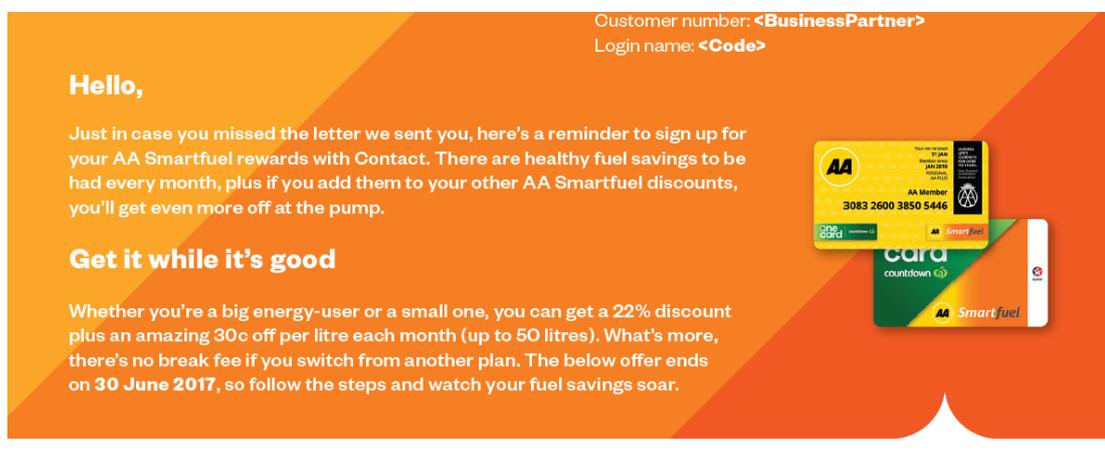


³ See attached examples of other offers not stating 50litre maximum fill.

45. Also available on Contact's website, contact.co.nz/aasmartfuel, the dedicated Rewards page, was a clear graphic showing that on our Fuel Rewards plan, customers could save up to \$15 per month based on a 30c discount, and a 50 litre maximum fill. Screenshot below:



46. While Contact does not consider that it has not made it clear that the discounts are for one discount voucher per month, for a maximum of 50 litres, in subsequent communications directly to customers, Contact has amended the wording to read (screenshot below, full copy **attached**):



47. If there is any further information that would assist the Authority in considering the complaint please do not hesitate to contact us.