

**THIS LETTER CONTAINS IMPORTANT INFORMATION ABOUT YOUR MEMBERSHIP OF THE  
RENEWABLE ENERGY CONSUMER CODE AND A WRITTEN RESPONSE FROM YOU IS REQUESTED.  
PLEASE READ IT CAREFULLY AND DO NOT IGNORE IT.**

Mr E Scallan  
Scallan Renewables  
8-10 Langlands Street  
Dundee  
DD4 6SZ

10 June 2015

Dear Mr Scallan,

**Request for Scallan Renewables to agree to a Consent Order**

I am writing to you in accordance with clause 7 of the Bye-Laws to invite Scallan Renewables to agree to a Consent Order. The Bye-Laws are available at <http://www.recc.org.uk/scheme/bye-laws>.

This Consent Orders refers to "the Code Member" meaning RECC member 00019465. Its Code membership commenced on 22 April 2010 and is still active today. For reference purposes only this Consent Order distinguishes between E Scallan Ltd ("ESL") and Scallan Renewables. At no point has there been a change to the Code Member's RECC membership other than a name change executed on 25 January 2012. As a result, and in the circumstances described below, the RECC Executive considers that for the purposes of the Code and the Bye-Laws, action taken from 22 April 2010 to date by Mr Edward Scallan, as director of ESL and sole partner of Scallan Renewables, to be the action of the "Code Member" as referenced in this letter, regardless of what name the membership was recorded under at the time of the action.

**Background**

In a letter dated 10 February 2015, the Code Member was informed that the RECC Executive had received information which gave it reasonable grounds to consider that provisions of the Renewable Energy Consumer Code ("the Code") had been breached. Having investigated the information in accordance with clause 6 of the Bye-Laws, the RECC Executive informed the Code Member of the reasons for its concern and invited the Code Member to provide its written comments in response. The content of these communications is considered below.

**Summary of information received**

The following information was received from the source identified below.

<b>Issue</b>	<b>Source</b>	<b>Breaches of the Code</b>
Code Member gave the RECC Executive inaccurate information when making a transfer of membership from E	Complaint information	Section 4

Scallan Ltd to Scallan Renewables by failing to disclose that it was a change of legal entity as well as a change of name. Code Member did not take steps to inform consumers that the legal entity they had entered a contract with no longer existed and that the Code Member did not consider itself responsible for ESL contracts.		
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A full narrative, including details of the information received, the response from the Code Member, and the details of the breach the RECC Executive has identified is included in **Appendix 1** to this letter to which we suggest you refer carefully.

### **Review of the Code Member's Response**

The RECC Executive has reviewed the Code Member's written response dated 20 February 2015 (summarised in the attached appendix) in accordance with clause 6 of the Bye-Laws. The Code Member's response dealt mainly with a complaint raised by Mrs H ("the Consumer") and it maintained that it acted reasonably, and that it had not tried to avoid its responsibility for the complaint at Arbitration by relying on the Consumer's contract being in the name of ESL rather than the Code Member's. The Code Member's response did not deal with the fact that it did not give the RECC Executive the correct information when making its application for a name change thus denying the RECC Executive the opportunity to ask the Code Member to indemnify ESL for all future obligations. For the avoidance of doubt, in circumstances in which an existing Code Member seeks to transfer its Code Membership to another entity, it is the RECC Executive's standard practice to ask for such an indemnity.

The RECC Executive considers that by (a) providing the RECC Executive with inaccurate information about a membership transfer and (b) compounding this by failing to take responsibility for ESL's obligations under the Code following a transfer of membership, the Code Member has committed a serious breach of the Code. The RECC Executive therefore considers that section 4 of the Code has been breached and that the Code Member has brought the Code into disrepute.

Following its review of the Code Member's response, the RECC Executive considers that there is a case to answer and accordingly it has decided to request the Code Member to agree to a Consent Order in accordance with clauses 6.4.3 and 7 of the Bye-Laws. The RECC Executive has decided that a Consent Order requiring the Code Member to take action is necessary in order to ensure the Code Member's compliance with the Code, and to prevent the risk of consumer detriment in the future.

### **Terms of Consent Order**

Accordingly, the RECC Executive invites the Code Member to agree to a Consent Order on the following terms:

*In this Consent Order, "Consumer" means "A consumer who has signed a contract for the purchase or lease of an Energy Generator acting in a domestic capacity with E Scallan Ltd".*

*From the date on which this Consent Order is signed by Scallan Renewables, Scallan Renewables agrees to:*

*a) perform such of E Scallan Ltd's obligations as existed under the Code and the Bye-laws when E Scallan Ltd ceased to be the named Code Member. This agreement will be in respect of all complaints received or issues reported to the RECC Executive concerning contracts sold by E Scallan Ltd. This includes all obligations in the Code and the Bye-Laws, including resolving Consumer complaints and complying with disciplinary processes; and*

*b) to indemnify Consumers of E Scallan Ltd, and E Scallan Ltd itself, in respect of E Scallan Ltd's obligations under the Code and the Bye-Laws as existed when E Scallan Ltd ceased to be named as Code Member, to honour any contractual commitments to Consumers of E Scallan Ltd in accordance with and covered by the Code (including the laws, guidance and codes that apply to it as set out in Appendix C11 of the Code) and its Bye-Laws only and, in relation to any Consumer complaints, to take part in the Independent Arbitration process in the place of E Scallan Ltd and to comply with any awards pursuant to the Independent Arbitration Service on behalf of E Scallan Ltd.*

*Scallan Renewables further agrees that:*

*(c) this Consent Order may be referred by the RECC Executive or any Consumer to any arbitrator considering an arbitration which involves E Scallan Ltd or Scallan Renewables under the Independent Arbitration process as evidence that Scallan Renewables has accepted and takes responsibility for complying with any award against E Scallan Ltd;*

*(d) Scallan Renewables hereby indemnifies E Scallan Ltd for the purposes of the Independent Arbitration process and the fact that E Scallan Ltd no longer exists is irrelevant to that process; and*

*(e) the RECC Executive may publish this Consent Order or a summary of its terms on RECC's website.*

### **Breach of this Consent Order**

In the event that the Code Member agrees to the Consent Order and subsequently breaches it, the RECC Executive shall convene a disciplinary Hearing before the Non-Compliance Panel in accordance with clauses 7.5 and 8.12 of the Bye-Laws.

### **Next Steps**

I have set out below the next steps if (1) the Code Member wishes to request a Hearing, (2) the Code Member does not agree with, or respond to the Consent Order, or (3) if the Code Member agrees to the Consent Order.

#### **(1) If the Code Member wishes the matter to be considered by the Non-Compliance Panel at a Hearing**

In accordance with clause 7.6 of the Bye-Laws, following the RECC Executive's invitation to the Code Member to agree to this Consent Order, the Code Member may request that the matter be considered by a Hearing of the Non-Compliance Panel instead of being addressed by a Consent Order. In such a case, the Executive will convene a Hearing in accordance with clauses 7.6 and 8.12 of the Bye-Laws. Please make any such request by 17 June 2015.

In the event of a Hearing being convened before the Non-Compliance Panel, the provisions of clauses 8 and 10 of the Bye-Laws will apply. The Code Member should be aware that the Non-Compliance Panel may make such order for costs against the Code Member or the Executive as it considers fair and reasonable in the circumstances.

**(2) If the Code Member and RECC Executive are unable to agree the terms of the Consent Order, or if the Code Member does not respond to the Consent Order**

Should the Code Member fail to respond to this request by 17 June 2015, or should the Code Member and RECC Executive be unable to agree the terms of the Consent Order, the RECC Executive shall convene a disciplinary Hearing before the Non-Compliance Panel in accordance with clauses 7.5 and 8.12 of the Bye-Laws in order to address the breaches of the Code identified in this letter.

In the event of a Hearing being convened before the Non-Compliance Panel, the provisions of clauses 8 and 10 of the Bye-Laws will apply. The Code Member should be aware that the Non-Compliance Panel may make such order for costs against the Code Member or the Executive as it considers fair and reasonable in the circumstances.

**(3) If the Code Member agrees to the Consent Order**

To confirm your agreement to the Consent Order, please sign, date and return a copy of this letter. The RECC Executive requests that the Code Member provides its written agreement to the terms of this Consent Order by 17 June 2015. On receipt of your agreement, the RECC Executive will provide you with a completed and countersigned copy of the Consent Order and no Hearing before the Non-Compliance Panel will take place in relation to this matter unless the Consent Order is breached.

I look forward to hearing from you.

Yours sincerely

*SIGNED*

Rebecca Robbins  
Compliance Manager  
Non-Compliance Team

Signed by Mr Edward Scallan of Scallan Renewables to confirm its agreement to the terms of this letter which, once signed by the Code Member, will constitute the agreed Consent Order.

Dated this 17 day of JUNE 2015

Signed

*SIGNED*

\_\_\_\_\_  
Name  
Position  
Member Name Scallan Renewables

*SIGNED*

\_\_\_\_\_  
Name  
Position  
Company Renewable Energy Assurance Ltd

## **Appendix 1: Summary of information received, the response from the Code Member and details of breach of the Code**

### **Information received**

On 25 January 2012 the RECC Executive received an application from Mr Edward Scallan to change the name of the registered Code Member from E Scallan Ltd ("ESL") to Scallan Renewables. In the application Mr Edward Scallan failed to explain that it was not simply a change to the company name but rather that ESL was instead registering a separate legal entity (a partnership) in its place. As a result the application was accepted as a change of name rather than as a new application. The RECC Executive understood that ESL was in fact the same legal entity as Scallan Renewables.

On 5 December 2012, the RECC Executive received a complaint from the Consumer concerning her contract with ESL. Based on the aforementioned understanding that Scallan Renewables was the same entity as ESL, the complaint was registered under Scallan Renewables' name. On 11 December 2012, the RECC Executive notified the Primary Contact at Scallan Renewables of the complaint, making it clear that the complaint was registered against Scallan Renewables and that as a Code member Scallan Renewables was required to deal with the matter. At this point there was no indication that Scallan Renewables would not take responsibility for the consumer's complaint. Its cooperation extended to involvement in the IDRS Conciliation, in which Scallan Renewables was named as a party. There was no information in Scallan Renewables' submission for conciliation that would suggest it did not consider itself responsible for ESL's contracts.

It was not until February 2014, when the Consumer made an application to use the IDRS Arbitration scheme that the true position regarding ESL and Scallan Renewables came to light. The Consumer had named Scallan Renewables on her application and on 11 February 2014 Mr Scallan contacted the RECC Executive to inform them that the arbitration application had been made against the wrong entity and that the complaint had nothing to do with Scallan Renewables. He also explained that Scallan Renewables was not walking away from the complaint but that he was frustrated that the complaint was going 'on and on'.

On 22 May 2014 IDRS sent a request to both parties to comment on and make submissions as to whether Scallan Renewables was liable for any breach of the original contract. The Arbitration award published on 17 June 2014 reproduces both parties' submissions. Scallan Renewables stated that the contract was between the consumer and ESL and not Scallan Renewables. It said that Scallan Renewables had made numerous visits to the consumer's property to assist the consumer to deal with the complaint but that those visits, and the work done, were on a goodwill basis without liability. The Consumer's response to this submission was that Scallan Renewables is registered with RECC under the same membership number as ESL and that the business of Scallan Renewables and ESL is so intertwined that no distinction can be made between them.

The Arbitrator dismissed the Consumer's claim on the basis that the transfer of Code membership from ESL does not have the effect of transferring contractual responsibility. However, the Arbitrator did acknowledge that Scallan Renewables had not taken steps to make its position clear and had therefore caused confusion.

Had Scallan Renewables made it clear to the RECC Executive at the point of its application for a change of name that the application was not for a name change but for a change of legal entity, the application would have been thoroughly scrutinised and Scallan Renewables would have been asked to confirm it would be taking responsibility for consumer warranties and contracts in the name of ESL, and in relation to any consumer complaints. This requirement is set out in the current RECC Bye-Laws at clause 3.11.

The RECC Executive is disappointed that Scallan Renewables has not acted within the spirit of the Code, particularly in view of the fact that it continued to prevent discovery of the true position by addressing issues and complaints regarding ESL without explaining that it no longer considered them to be its responsibility.

It was of particular concern that Scallan Renewables appeared to have misled the Consumer, and other consumers, by failing to bring to their attention the fact that there had been a change in legal entity in cases where it appears that it would ultimately seek to avoid liability for their contracts. Confusion may still exist by Scallan Renewables using more than one entity name. The current website makes repeated references to ESL despite the fact the company has been dissolved, including the website address, the mobile access website address and information about its compliance with Building Regulations ADL1. There is also an image on the Home Page and About Us page which clearly shows the names E. Scallan and ESL, and Scallan Renewables, on the facade of the business premises.

As the complaint is of a technical nature, it is not the role of the RECC Executive to comment on whether the consumer would have succeeded at Arbitration. However, it is the opinion of the RECC Executive that Scallan Renewables has been obstructive by not allowing the complaint to be dealt with in line with the Code's complaints procedure. By denying its liability for the Consumer's contract at the final point of this complaints procedure, Scallan Renewables has avoided dealing further with the complaint. The RECC Executive is disturbed that Scallan Renewables has deliberately walked away from the responsibility it initially accepted: responsibility which would have been a requirement of a membership transfer had Scallan Renewables correctly disclosed the position on the application.

#### **Response from the Code Member**

The Code Member provided a response in a letter dated 20 February 2015. The Code Member stated that it 'did not intentionally mislead or confuse responsibility for [its] consumers'. It maintained that it made a strenuous effort to help resolve the Consumer's complaint and discussed this complaint and the extent of its efforts. The Code Member accepted that images on its website were out of date but explained that this is because it has not been updated since ESL went into liquidation in 2014. It accepted that the website information could cause confusion but said that it was not the Code Member's intention to mislead. The Code Member states that it did not rely on the fact that it was a different legal entity to ESL at the point of Arbitration and that although important information was not issued to consumers in the best possible way, it says this has not resulted in confusion for any past or present consumers. The Code Member avers that it did not refuse to cooperate fully with the Arbitration process and says that it does not agree that it is in breach of section 4 of the Code.

The Code Member's response did not make comment on its submission during the Arbitration that it had only dealt with the Consumer's complaint on a goodwill basis without liability or its comment prior to the Arbitration that the complaint had nothing to do with Scallan Renewables. The Code Member's response also failed to comment on the fact that it did not give the RECC Executive the correct information when making an application for name change thus denying it the opportunity to ask the Code Member to indemnify ESL for all future obligations.

### **Breaches of the Code**

Having reviewed the Code Member's response, the RECC Executive considers that there is a case to answer in relation to the following section of the Code for the reasons given below:

#### **Section 4 General business standards**

This section states that 'Code members will not act in any way to bring the Code into disrepute.'

The Code Member has breached this section of the Code by not explaining its true position to the RECC Executive and failing to take responsibility for a complaint at Arbitration when it had previously led both the consumer and the RECC Executive to believe that it was the same legal entity and that it was responsible for the complaint. The RECC Executive acknowledges the Arbitrator's opinion that a transfer of membership did not amount to a transfer of liability (at the point ESL changed its name to Scallan Renewables) and also does not suggest that the Code Member did not cooperate with the complaints process. The RECC Executive relies on its members' honesty and clarity to ensure that the protection offered to consumers is safeguarded and so that correct advice can be given to consumers about Code members.

Section 4 goes on to say that 'Code members will deal with consumers politely and quickly, and take steps to make sure that important information is passed to them clearly.'

The RECC Executive considers the Code Member's failure to disclose the fact that there had been a change in legal entity to the consumer as evidence that this part of section 4 has been breached. This is particularly evident with the Code Member's initial and ongoing cooperation with the complaints procedure, only choosing to rely on the fact that ESL was a different legal entity from Scallan Renewables at the point of Arbitration. The Code Member should have made all of ESL's customers aware of the change in legal entity so that they were fully informed in the event that a problem arose. The Code Member accepted responsibility for providing this information by continuing to communicate with consumer as if it was ESL and as if nothing had changed.