

**The Renewable Energy Consumer Code
Non-Compliance Panel Hearing**

In the matter of

Eurosolar Europe Ltd (“the Member”)

held on

5 May, 2015

at

1 Wood Street, London

Panel Members:

Amanda McIntyre (Chair),

Jim Thornycroft

Helen White.

In attendance:

Andrew McIlwraith (panel secretary).

Renewable Energy Consumer Code (“the Regulator”) representation:

Sian Morrissey

Rebecca Robbins.

Eurosolar Europe Ltd representation:

None.

Also present:

Margarita Vigrande-Ashe, DECC (observer)

Charges

The charges were set out in full in a letter dated 14 April 2015 from RECC to Eurosolar Europe Ltd ("the Member"). At the start of the hearing the charges were read as follows:

1. The Member is alleged to have been in breach of Section 2.4 of the Renewable Energy Consumer Code ("the Code"), which states "all Code Members should be certified, or be working towards certification, to the relevant MCS installer standards" and "Any Code Member who enters into a contract with a domestic consumer for the sale and installation of an Energy Generator must be certified to the relevant MCS installer standards for the technology types specified in the contract". The evidence for this breach is that the company has not been MCS certified since November 2014 and that the company has entered into a contract with a consumer for a solar PV installation without having the required MCS certification in place.
2. The Member is alleged to have been in breach of Section 5.1 of the Code, which states "Code Members must make sure that any advertising materials they produce or use are legal, decent, honest and truthful". The evidence for this breach is from claims from the company website as at 14 April 2015 stating that the company is MCS certified when it has not been since November 2014.
3. The Member is alleged to have been in breach of Section 9.3 of the Code, which states "An award made under the independent arbitration service shall be final and binding on both the consumer and the Code Member" and "If the arbitrator makes a decision in favour of the consumer, the Code Member must refund the fee in addition to any award made". The evidence for this breach is from an arbitration award of 17 December 2014 which was in favour of the consumer but the company has failed to comply with the award.
4. The Member is alleged to have been in breach of Section 4 of the Code, which states: "Members will not act in any way that might bring the Code into disrepute" and "Code Members must follow appropriate business practices and procedures to make sure they can meet their responsibilities to consumers". The evidence for this breach is from the evidence of the alleged breaches of Sections 2.4, 5.1 and 9.3 of the Code.

Preliminary issues

The Member was not present, and had not, prior to the hearing, indicated that they would attend. The Hearing Panel (“the Panel”) therefore first had to decide whether the hearing should proceed.

The Panel has decided on balance to go ahead with the hearing.

Ms Morrissey for the Regulator provided Royal Mail proof-of-delivery and email read receipts to the email addresses used by the Member as evidence of the Member having been notified of the date, time and location of the hearing, and of the charges brought against it.

The Panel accepted this evidence, and considered that the Member had had the opportunity to respond to any of those communications, but had not done so. The Panel had delayed the start of the hearing by 15 minutes in order to allow for the possibility that the Member had decided to attend, but had been delayed.

The Panel considers that in all the circumstances it is fair to proceed with the hearing in light of this evidence and in the public interest and in the interests of consumers.

Determination of facts and breaches

1. The Panel had before it a bundle of documents from the Regulator. The Member had not submitted a bundle. The Panel took into account the bundle of papers and the statement of the Regulator made at the hearing. In reaching its decisions it applied the civil standard of proof, that is, the balance of probabilities.
2. Ms Morrissey for the Regulator, outlined the facts of the case. She said that the Member, which had been a Member of the Code since 2011, was one of their smaller Members, but had a relatively high number of complaints: 19 since 2012.
3. Ms Morrissey then outlined the case for each breach in order of the Regulator's view of their seriousness.

Section 9.3

4. The Regulator's main concern was in regard to one particular complaint, number 3987, which formed the key focus for the Regulator instituting disciplinary proceedings against the Member. Ms Morrissey said there was a long history to this complaint, with both the MCS certification body and the Regulator being involved in attempting a resolution. However, there was no resolution, and the consumer therefore chose arbitration. The Regulator regards arbitration as a very important part of the resolution process, and one that Members are obliged to comply with under the Code.
5. The arbitrator found in favour of the consumer, having received a defence from the Member. The Member did not pay the award and did not appeal the decision. In a letter to the Regulator he stated that he did not intend to pay and said "I am not going to agree with a decision which was based on her [the consumer's] information only". Ms Morrissey said that the Regulator had written to the Member asking for evidence that it had complied with the award, but the Member did not address this point in its response. The consumer had gone to a lot of effort and expense to get the award enforced, and Ms Morrissey also pointed out that it was clear from the consumer's witness statement that the consumer had suffered stress as a result.
6. Ms Morrissey said that the Regulator's position was that by failing to pay the award, the company had shown a blatant disregard for the Code and that it was unacceptable for a member to behave like this. As a result, the Regulator had decided to refer the Member to the Non-Compliance Panel.
7. The Panel finds the facts proved and a breach of Section 9.3 of the Code.

Section 2.4

8. Ms Morrissey said that, despite the fact that the Member was no longer MCS certified, having been suspended in November 2014, it has continued to run its business as if it were still an MCS member. She referred to a contract dated February 15 between the Member and a consumer.
9. This matter had been brought to the Regulator's attention by the MCS certification body, following a complaint from the consumer. Ms Robbins said the consumer had not been able to find the Member's name on the MCS database, and had subsequently contacted MCS direct and discovered that the Member did not have MCS certification. The consumer was concerned that they therefore would not be entitled to the Feed-in Tariff.
10. Ms Morrissey said that the Regulator had not been involved in the detail of this case, because it was being dealt with by MCS. However, it was her understanding that the matter had not yet been resolved.

11. Ms Morrissey said that the Member had not provided the Regulator with any evidence on the company's plans in terms of MCS certification, and to the Regulator's knowledge the Member was still not certified.
12. The Panel finds the facts proved and a breach of Section 2.4 of the Code.

Section 5.1

13. Ms Morrissey referred to website screenshots in the bundle, dated 14 April 2015, which clearly stated, in several places, that the Member was MCS certified, and which was obviously very misleading for consumers.
14. She said that she had checked the website again a few days ago, and the claims were still there.
15. The Panel finds the facts proved and a breach of Section 5.1 of the Code.

Section 4

16. The Regulator's view was that Section 4 had been breached because of the alleged breaches of Sections 2.4, 5.1 and 9.3 of the Code and that the Member has acted in a way that brings the Code into disrepute.
17. Ms Morrissey drew the Panel's attention to the witness statement of the consumer in complaint number 3987, in which the consumer had stated that she believed the Code would have offered her protection against any problems or malpractice.
18. The Panel finds that the breaches of Sections 2.4, 5.1 and 9.3 do bring the Code into disrepute; therefore there is a breach of Section 4 of the Code.

Determination of seriousness and sanction

19. Ms Morrissey for the Regulator said that she considered the breaches as extremely serious. The non-payment of the arbitration award was one of the most serious breaches of the Code. The consumer in complaint no. 3987 had suffered great detriment and financial loss as a result of the non-payment of the arbitration award.
20. Further, the member has continued with the pretence of being MCS certified, which is also a serious breach of the Code, with the result that consumers can clearly be misled into believing the company is providing something that it cannot.
21. The Panel finds that the breaches are very serious. In particular the Panel finds it unacceptable for a Member not to comply with an arbitration award.
22. Ms Morrissey said that the Regulator did not consider that the Member should continue to be a Member of the Code and that termination was the most appropriate sanction. She reminded the Panel that it had the authority to require financial payment proportionate to any losses to the consumer.
23. In reaching its decisions the Panel took into account the statement made by the Regulator, and Sections 8.21 to 8.27 of the RECC Bye Laws ("the Bye Laws").
24. The Panel considered the sanctions available to it in ascending order.
25. The Panel considered whether this was a suitable case to do nothing or to issue a written warning. The Panel decided that, due to the serious nature of the breaches and in particular the non-payment of an arbitration award, neither of those sanctions was appropriate.
26. The Panel then considered whether it would be appropriate to impose conditions or a period of Enhanced Monitoring on the Member's membership. The Panel considered that, given the Member's lack of engagement with the disciplinary process, it has little confidence in the Member's ability and willingness to satisfy any conditions that might be imposed, including Enhanced Monitoring.
27. The Panel considered whether to require the Member to compensate any customers. In these particular circumstances, where arbitration has already been pursued, the Panel did not consider this feasible.
28. The Panel has decided that, given the seriousness of the breaches upheld and the Member's lack of engagement with the disciplinary process, Eurosolar Europe Ltd's membership of the Code should be terminated from the date of this Determination in accordance with clause 8.21.7 of the Bye Laws.

Determination of costs

On application by the regulator, the Panel orders the Member to pay the costs of the Hearing in the amount of £3,285.

Appeal Period

Under Bye-Law 9 the Member may appeal this determination within 14 days of the date of the determination.

5 May 2015