

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

In the matter of

Genius Energy Ltd (“the Member”)

held on

29 June, 2015

at

1 Wood Street, London

Panel Members:

Ms Mary Symes (Chair),

Ms Elizabeth Stallibrass

Mr Jim Thornycroft.

In attendance:

Mr Michael Cusick (panel secretary).

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

Ms Sian Morrissey, Head of Panel Liaison RECC

Miss Lorraine Haskell, Panel Manager RECC

Genius Energy Ltd representation:

Also present:

Ms Fiona Flynn, Witness (called by the Regulator)

1. Charges

1.1. The charges were set out in full in a letter dated 8 June 2015 from the Regulator to Genius Energy Ltd. ("the Member"). At the start of the hearing the charges were read as follows:

1.1.1. The Member is alleged to have been in breach of Section 5.1 of the Renewable Energy Consumer Code ("the Code"), which states "Code members must make sure that any advertising materials they produce or use are legal, decent, honest and truthful" and "All performance claims, testimonials and claims about savings, financial payback or income in advertisements or sales promotions must be clearly attributed to a reputable source." Section 5.1 continues, "Code members must make sure that any advertising and sales promotion materials do not mislead consumers in any way and that they do not lead consumers into taking decisions they otherwise would not have done." The evidence for this breach is found in claims from the company website and other promotional material reviewed in the audit of 24 February 2015.

1.1.2. The member is alleged to be in breach of Section 5.2 of the Code, which states "Employees must not give false or misleading information about their business or the product, services or facilities being offered. They must not make any statement that is likely to mislead the consumer in any way." Section 5.2 continues "Sales employees and representatives... must not use any selling techniques designed to pressurise the consumer into making an immediate decision" and "Code members must not follow up sales visits by further visits or telephone calls offering further discounted prices or other information intended to pressurise consumers into signing a contract." Evidence for this breach is offered in complaint numbers 3506, 3528, 3651, 4108, 4356, 4518, 4531, 4567, 4810, 4866, 4874, 4930, 4992, 5207, 5412, 5551, 5812, 5824, 5825, 5819, 5944, 5965, 6128, 6236, 6248, 6278, and the 2015 audit and follow up report.

1.1.3. The member is alleged to be in breach of Section 5.3 of the Code, which states "It is very important that Code members do not 'oversell' energy generators to consumers" and that "Any estimates of savings, periods of recovery ('payback') or other measures of financial effectiveness... must be based on the consumer's actual energy use. Any assumptions that have been made (for example, of energy prices, interest rates or inflation) must be set out and clearly explained. Such estimates must not mislead the consumer in such a way as to persuade them to take any action they would not otherwise have done." Section 5.3 continues "Any calculations Code members or anyone acting on their behalf present to consumers must be based on the standards that have been developed for the MCS installer standards for individual technologies." Evidence for this breach is offered by reference to consumer complaints cited as evidence for breach of section 5.2, also complaints not previously cited 5123, 4578, and the 2015 audit.

1.1.4. The Member is alleged to have been in breach of Section 5.4 of the Code, which states "Quotations must show... the price of goods and the price of the services to be supplied, shown separately" and "Prices should be itemised clearly and broken down as far as possible. The quotation must be clear and easy to understand." Evidence for this breach is submitted in the form of complaints 5123, 4866, 4930, 4356

and 4810 with specific reference to the contracts in each case, and the 2015 audit.

- 1.1.5. The Member is alleged to have been in breach of Section 9.1 of the Code, which states “the Code member will try to find an agreed course of action to resolve the complaint speedily and effectively to the consumer's satisfaction” and “Code members will not take action through the courts without first trying to solve the problem as set out in this section”. Evidence for this breach is submitted in the form of complaints 5412, 4866, 6236, 4810, 6128, 4356, 5123, and 6248.
- 1.1.6. 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 an arbitration award of 17 February 2015 which was in favour of the consumer, however, the company has failed to comply with the award.
- 1.1.7. 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 5.1, 5.2, 5.3, 5.4, 9.1 and 9.3 of the Code.

2. Determination of facts and breaches

- 2.1. At the start of the hearing Ms R on behalf of the Member, admitted the charges in relation to Sections 5.1, 5.2, 5.4, 9.1, 9.3 and 4.0 of the Renewable Energy Consumer Code ("the Code"). The Member denied a breach of Section 5.3.
- 2.2. Ms Morrissey appeared on behalf of the regulator and Mr M. and Ms R appeared on behalf of the Member.
- 2.3. Ms Morrissey described the circumstances that gave rise to the Hearing stating that there had been an increase in complaints from consumers about the Member, which gave rise to an audit in February 2015, which the Member had not passed. She then referred specifically to the evidence in relation to a breach of Section 5.3 of the Code. She stated that the breach arose because the company had oversold generating systems and consumers had been misled by the information that had been provided because the figures and information were not as clearly presented as they should have been. Ms Morrissey said that it was fundamental to the Code that consumers should have sufficient information to understand the benefits of a renewable energy system. In this case the consumers were provided with confusing and misleading figures and could not make informed decisions. In support of this, Ms Morrissey pointed to the number of complainants who stated that they had been led to believe that their loan repayments would be covered by the income generated from the installation.
- 2.4. To support her submission Ms Morrissey called Ms Flynn to give evidence with regard to the audit she undertook in February 2015 on behalf of the Regulator. Ms Flynn gave evidence in particular in relation to her findings on the performance estimates. Ms Flynn stated that whilst the contracts might appear to contain appropriate information, on analysis it was impossible to understand the basis of that information.
- 2.5. Ms R. on behalf of the Member stated that the company had, on receiving the results of the audit, altered their documents to be in line with the model documents provided on the Regulator's website. The model documents were produced to the Panel during the hearing, agreed by both parties and accepted by the Panel (Documents 1 and 2).
- 2.6. The Panel had before it a bundle of documents. It also took into account the submissions of both parties together with the witness evidence of Fiona Flynn, independent auditor.
- 2.7. The Panel noted that whilst the Member denied that there had been a breach of Section 5.3, in the course of their submission they accepted that the contract had needed altering following the February 2015 audit. The Panel noted that there were a large number of complaints about the same issue i.e. the consumer had not understood that the money they received from the FiT payments would not fully cover the cost of loans. The Panel examined in detail the documents on pages 342 – 343 of the bundle and the contract relating to Mr M H's installation to which they were referred and found it difficult to relate the various end figures within the document to the income proposed. The Code specifically provides that the MCS information must be provided in a way that non-expert readers can readily understand. The contracts in this case combine FiT payments with all other potential savings giving an annual figure that in reality is higher than the income consumers might receive. The Panel find that this is misleading. In

addition, the Panel is concerned that the Member's contracts do not clearly set out all the assumptions that have been made.

2.8. The Panel found a breach of section 5.3 of the Code.

3. Determination of seriousness and sanction

- 3.1. Ms Morrissey, whilst acknowledging that the company had made a number of improvements, stated that the Regulator's view was that the breaches were of a serious nature. Ms Morrissey also suggested that compliance was not central to the processes of the company and they did not have a true understanding of the importance of consumer protection and regulation. They were, to quote, "tinkering at the edges". Ms Morrissey was very concerned that consumers were not getting transparent information of the regulated products that would enable them to compare like with like. Ms Morrissey acknowledged that this is the first time the Member has been found to have breached the Code and that they had already worked with the Regulator to make a number of changes. Ms Morrissey suggested that the appropriate sanction was a period of enhanced monitoring.
- 3.2. Ms R told the panel that the Member had tried to be as honest and truthful as possible and had not "shied away" from providing anything that was required. She stated that the Member does wish to work with the Regulator. Ms R stated that during a period of rapid expansion from late 2013 to June 2014, the company had lost a degree of control. They therefore made a decision in late 2014 to scale down the operation to regain total control and stabilise the company's operations. The Member has set up a dedicated compliance department and, following internal reviews, has made important changes to training and marketing material and the information given to customers. The Member has also instigated a system of call monitoring to enable them to keep a close eye on the activities of sales personnel when out in the field.
- 3.3. Mrs R also stated that they had had an audit in November 2013 in which no issues were raised. The Panel believes that this supports the Member's statement that a large number of these problems have arisen during the rapid expansion of the company.
- 3.4. The Panel took into account all the documents in front of it and the submissions made by both parties.
- 3.5. The Panel considered the sanctions as set out in paragraph 4.21 of the Bye-Laws in ascending order i.e. considered the least to the most serious.
- 3.6. The Panel find that all the breaches are of a serious nature and fundamental to the working of the Code. The Panel does accept however, that the company has shown intent to remedy the breaches.
- 3.7. The Panel first considered whether it was appropriate to impose no sanction at all or to issue a written warning. The Panel regard this case as too serious to consider either of those sanctions.
- 3.8. The Panel then considered whether it would be appropriate to impose conditions on membership. The Panel has particular concerns that consumers do not understand the contract that is produced by the Member and most complaints relate to confusion in the minds of consumers of the exact income that will be received, as against savings that might be made. It seems appropriate therefore to impose a condition on membership that requires the Member to seriously reconsider how it presents the information that allows consumers to make an informed choice. The Panel, having looked carefully at the contracts, accepts that a large portion of the information that is required is contained in the contract. However, it is presented in such a way that it is difficult for any consumer to understand

the information properly and easily, which is an absolute requirement of the Code.

3.9. Guidance to consumers is that they should obtain a number of quotes, the Panel is also concerned that, with the Member's contracts in the present format, consumers cannot compare like with like.

3.10. Therefore, the Panel imposes the following condition:

- 1) Within 21 days of the date of this determination the Member shall produce to the Regulator a new form of contract based wholly on the model PV performance estimate on the Regulator's website that clearly separates the cost and benefit of the MCS technology from any other items that form part of the whole package offered to individual consumers.
- 2) The Regulator will, within 21 days of receipt of the revised contract, tell the Member whether or not the Member has fulfilled this condition.
- 3) If the Regulator is not satisfied that this condition has been fulfilled then the Regulator may convene a further hearing of the Non-Compliance Panel as set out in 8.25 of the Bye-Laws.

3.11. In addition, the Panel is concerned that there are some matters outstanding from the audit undertaken in February 2015. The Panel is also concerned that the requirements of the Code are not inbuilt into the ethos of the company. It accepts that the Member has been co-operating, however, the Member must complete all of the requirements of the audit and needs to show that its operations are wholly compliant. Therefore, in addition to conditions imposed on membership the Panel also orders a period of enhanced monitoring:

- 1) The period of enhanced monitoring will be for 8 months from the date of this determination
- 2) Within 14 days of the date of this determination the Regulator will write to the Member setting out each and every document it requires to be submitted outstanding from the audit in February 2015.
- 3) Within 7 days thereafter the Member will provide the outstanding documents set out in 2 above for review by the auditor. The auditor will provide feedback to the Member and the Member will act on any actions proposed.
- 4) Within 6 months of the date of this hearing with at least 48 hours notice the Member will undergo a full audit. The specifics of the audit will be decided by the Regulator and notified to the Member 48 hours before hand.
- 5) The costs relating to conditions, 2, 3 and 4 above will be at the Member's expense.
- 6) The Regulator will monitor compliance during the period of enhanced monitoring and following that period within 28 days:
 - a. If the Regulator is satisfied that these conditions have been fulfilled and the Member is compliant with the Code and Bye-Laws the Regulator will write to the Member to confirm this or
 - b. If the Regulator is not satisfied that these conditions have been fulfilled or that the Member is compliant with the Code and Bye-Laws, the Regulator will

convene a hearing in accordance with clause 8.26 or 8.27 of the Bye-Laws as appropriate.

- 3.12. The Panel considered the request on behalf of the Regulator to make an order under section 4.9.12 of the Bye-Laws that the Regulator may list the number of complaints registered against the Code Member on the Regulator's website. In this case, the Panel was persuaded by the Member that this might have serious commercial implications. The Panel finds that this would be a disproportionate sanction in the circumstances of this case.
- 3.13. For the avoidance of doubt, the Panel considered whether the termination of membership was an appropriate and proportionate sanction in this case but noted that the Member has taken sufficient steps to remedy the breaches to make such a sanction disproportionate.

4. Determination of costs

- 4.1. The Panel has considered its powers under Bye-Law 10 to make an order for such costs against the Member as it considered fair and reasonable in all the circumstances.
- 4.2. The Regulator asked whether it could apply for costs to require the Member to pay for the time spent working to resolve any further complaints it receives against the Member. The Panel noted that under section 10.2 in order to be eligible to make a claim for costs the regulator had to serve details on the other party at least 24 hours before this Hearing. Whilst it has served details of the actual costs of the Hearing it had failed to register this potential claim. Therefore the Panel has not considered imposing a costs order under section 4.9.12 of the Bye-Laws.
- 4.3. However, a claim for costs of the Hearing dated 25 June 2015 was served on the Member in accordance with section 10.2 of the Bye Laws. The Member made no comment in relation to those costs.
- 4.4. The Panel therefore order costs of the Hearing in the amount of £3595.08 to be paid by the Member.

5. Appeal Period

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

1 July 2015