

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

In the matter of

My Planet Ltd

held on

9 September, 2014

at

1 Wood Street, London

Panel Members:

Mary Symes (Chair),

Amanda McIntyre,

Alan Wilson.

In attendance:

Andrew McIlwraith (panel secretary).

Renewable Energy Consumer Code ("RECC") representation:

Sian Morrissey, RECC,

Lorraine Haskell, RECC.

My Planet Ltd representation:

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Also present:

Helen White, observer.

Charges

The Charges were set out in full in a letter dated 4 July 2014 from RECC MyPlanet 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 5.1 of the Renewable Energy Consumer Code, which states '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'; and 'Where members promote their services by direct mail or telephone, they must first check the names against the mailing preference service or telephone preference service databases for any exclusions'. The evidence for this breach is from a My Planet advertisement/mailshot made available to RECC in May 2014 and from information from complaints numbers 4333, 3988 and 3666.
2. The Member is alleged to have been in breach of section 5.2 of the Code, which states 'Employees must not give false or misleading information about their company or the product, services or facilities being offered; and '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'. The evidence for this breach comes from a mystery shopping exercise undertaken in early 2014 and from complaint numbers 4098, 3851, 3809, 3698, 3820, 3666, 4475, 4342, 3988, 4669, 3787, 3661, 3681 and 3392.
3. The Member is alleged to have been in breach of section 5.3 of the Code, which states 'It is very important that members do not 'oversell' energy generators to consumers' and 'Before the contract is signed, members must give consumers a written estimate of how the energy generator will perform in a format that is readily understandable by them.' The evidence for this breach comes from the mystery shopping exercise undertaken in early 2014.
4. The Member is alleged to have been in breach of section 5.4 of the Code, which states 'Members will provide consumers with a written cost estimate based on the information the consumer has given them... Members will also provide consumers with the method used for calculating the price'; and 'Members must provide consumers with accurate information regarding incentives available for installing small-scale generation at the consumer's property'. The evidence for this breach comes from the mystery shopping exercise of early 2014 and from complaint numbers 3384, 3392, 3488, 4214, 4593, 3972 and 4001.
5. The Member is alleged to have been in breach of section 5.5 of the Code, which states 'Members must be aware of all the permission and approval that may be needed for the energy generators they offer.... Members will agree with the consumer beforehand who will take responsibility for getting all necessary approval'. The evidence for this breach comes from the mystery shopping exercise of early 2014 and from complaint number 3787.
6. The Member is alleged to have been in breach of section 5.6 of the Code, which states 'Before the contract is signed, members will provide consumers with certain relevant information in a clearly accessible and accurate manner'; and 'Members must also provide consumers with a leaflet describing the Code'. The evidence for this breach comes from the mystery shopping exercise of early 2014.
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'. The evidence for this breach is from the evidence of the combined alleged breaches of Sections 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6 of the code.

Determination of facts and breaches

Ms Morrissey appeared on behalf of the regulator. The member was primarily represented by Mr B with assistance from Mr A and Mr D.

Mr B, on behalf of the Member, did not admit any of the charges.

The Panel took into account the representations of both parties and the bundle of documents available to it.

Ms Morrissey stated that the company had expanded rapidly, and at the same time, the number of complaints to the regulator had increased. This, together with the results of the mystery shopping exercise and online forum postings about the company, showed that there was a pattern of failure in processes at the company that resulted in consumers being subject to pressure selling and misleading information.

Mr B emphasised that his company was one of the market leaders, that compliance was key to his business and that it was a member of a number of trade bodies which each had their own compliance requirements. He outlined the training given to sales staff and gave some indication of some changes that the company had made to its systems recently.

The Panel looked at each charge separately.

Section 5.1

Ms Morrissey put before the panel a mailshot that had been sent to the regulator. She also relied on three complaints the regulator had received, 4333, 3988 and 3666, which all related to members of the public registered with the Telephone Preference Service (TPS) being cold-called by the member, in breach of the regulations. She also referred to two recent online forum postings.

Mr B stated that the mailshot had not been produced with the knowledge of the company, but had been produced by a sales representative who was no longer a part of the team when it was brought to Mr B's attention. He gave the panel details relating to how the member had both historically and now screened numbers for the TPS. He also explained that there can be and was a time lag between people registering with the TPS and appearing on the TPS databases.

The Panel does not find this charge proved. On the balance of probabilities the regulator has not been able to demonstrate that the mailshot was produced and distributed by the Member. Although the Panel accepts that the complainants were registered with the TPS and should not have been called by the Member, there is no evidence regarding when they registered. There were only three complaints in relation to this, which is a small enough number to suggest that there was no deliberate intention to make calls without taking into account the TPS system. The Panel accepts that no telesales organisation can be 100% sure that it never calls people registered with the TPS. The Panel also took into account that the company operates a manual dialling system and misdialling can occur.

Section 5.2

Ms Morrissey relied on the evidence from the mystery shopping exercise and a number of complaints: 4098, 3851, 3809, 3698, 3820, 3666, 4475, 4342, 3988, 4669, 3787, 3661, 3681 and 3392. The complaints included allegations of pressure selling, through: discounting; claims of forthcoming reductions to the Feed-in Tariff; and

statements that payments from the Feed-in Tariff would cover the cost of the loan for the installation.

Mr B said that the company never actually offered discounting but it did offer different rates, depending on the system that was being installed. In relation to the Feed-in Tariff, he stated that it gave the date when the Feed-in Tariff started, and would inform the customer if a change were imminent. In relation to Feed-in Tariff payments covering the cost of a loan, Mr B accepted that in all three examples presented, the company had remedied any fault.

The Panel is not convinced by the evidence in relation to imminent drops in the Feed-in Tariffs being used as a method to secure sales.

In relation to discounting, the number of incidents was very small compared with the Member's overall number of sales, but the Code is absolute about the use of inappropriate discounting. The Member sells similar capacity systems at different prices, but the level of feedback complaints at the end of last year and the beginning of this year indicate that there was a practice in parts of the company of offering discounts in order to secure sales. Therefore the panel finds the facts proved.

In relation to the loan agreements, and the costs being covered by the Feed-in Tariff, the Member's actions amounted to an acceptance that consumers may have been misled, and therefore the Panel finds the facts proved.

The Panel therefore finds a breach of Section 5.2.

Section 5.3

Ms Morrissey relied on the mystery shopping exercise as the sole evidence to show that calculations in relation to performance prediction had been exaggerated. Mr B pointed out that the example relied on by the regulator was inconsistent, which the Panel accepts. On balance the Panel does not find the facts proved in relation to this breach.

Section 5.4

Ms Morrissey relied on evidence of this breach from the mystery shopping exercise and from complaints 3384, 3392, 3488, 4214, 4593, 3972 and 4001.

In the process of giving evidence, the Member suggested that prior to the development of new welcome pack for customers, consumers might not have received all the required information, because it was on separate sheets of paper and some could be missed out. The Panel finds the facts proved, because of the Member's evidence and the complaints presented as evidence.

Therefore the panel finds there was a breach of Section 5.4.

Section 5.5

Ms Morrissey relied on the mystery shopping exercise in relation to this breach. Mr B outlined the company's processes in relation to EPC surveys. On balance the Panel does not find the facts proved.

Section 5.6

Ms Morrissey relied on the mystery shopping exercise in relation to this breach. The Panel finds there is not enough evidence to find the facts proved.

Section 4

Having found the Member to be in breach of Section 5.2 and Section 5.4 the Panel considered whether this amounted to a breach of Section 4 and whether it had brought the Code into disrepute. The Panel heard a great deal of evidence from the Member in relation to the actions it has taken in recent months. This is highly relevant to the later stages of this process, but at this point the Panel must consider the actual facts of the case in order to come to a conclusion about Section 4. The Panel considers that any form of pressure selling to consumers and restricting information does have a negative impact on the reputation of the Code. Therefore the Panel finds a breach of Section 4.

Determination of level of seriousness

The Panel finds that the breaches of sections 5.2, 5.4 and 4 of the Code are serious breaches. But the Panel also finds that the breaches are capable of remedy and have potentially been remedied.

Determination of sanctions

The Panel considered whether this was a suitable case to do nothing or to issue a notice. The Panel decided that, due to the serious nature of the breaches, neither of those sanctions was appropriate.

The Panel has decided to impose the following conditions on the Member's ongoing membership of the Code:

1. Within 14 days of the date of this determination, the Member will give to RECC full and up-to-date details of all its branch offices, and contact details for the principals.
2. Within 14 days of the date of this determination, the Member will tell the principals of each branch office that they may be contacted by the regulator, with whom they must co-operate,
3. At the Member's expense, an auditor will be appointed by RECC to attend at least two branch offices of RECC's choosing to examine the exact paperwork used by the member's sales staff working out of that office and to listen and examine the working practices of some or all of the telesales staff, team leaders and sales managers based at that office. These audits will take place at times of RECC's choosing, before the end of December 2014.
4. Before the end of March 2015, at the Member's expense RECC will arrange at least one but preferably two mystery shopping exercises through different branch offices at a time of RECC's choosing.
5. Before the end of March 2015 at the Member's expense, RECC will undertake a full audit at head office.
6. Failure to comply with any aspect of these conditions will be a breach of conditions and may result in a further hearing of the Non-Compliance Panel.

The Non-Compliance Panel recommends that the regulator accepts the Member's offer of attending a sales training session at a mutually convenient time.

Appeal Period

Under Bye-Law 8.1 the Member may appeal this determination within 14 days of the date of the determination.

9 September 2014

NOTE: My Planet Ltd was due to attend a second Non Compliance Panel Hearing in November 2015. However, My Planet Ltd resigned as a member of RECC before the Hearing took place.