

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

In the matter of

The Green Energy Company MCS Ltd

held on

8 October 2013

at

21 Dartmouth Street, London

Panel Members:

Mary Symes (chair),

Amanda McIntyre,

Alan Wilson.

In attendance:

Andrew McIlwraith (panel secretary).

Renewable Energy Consumer Code (“RECC”) representation:

Virginia Graham, Chief Executive, RECC.

The Green Energy Company MCS Ltd representation:

None.

Also present:

Sian Morrissey, RECC.

Charges

The Charges were set out in full in a letter dated 16 August 2013 from RECC to The Green Energy Company MCS 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 2.3 of the Renewable Energy Consumer Code (“the Code”), which states “Any Renewable Energy Consumer Code member who enters into a contract with a domestic consumer for the sale and installation of a small-scale heat or power generating system must be certified to the relevant MCS installer standards”, in that the member had signed customer contract documents at a time when it was not MCS certified, and from information from a RECC audit undertaken in February 2013
2. The Member is alleged to have been in breach of Section 5.1 of the Code, which states “Members must make sure that any advertising materials they produce are legal, decent, honest and truthful”, in that the member’s website falsely claimed, in August 2013, to be MCS accredited.
3. The Member is alleged to have been in breach of Section 5.2 of the Code, which states “Sales employees and representatives, whether employed directly, sub-contracted or selling on the company's behalf, must not use any selling techniques designed to pressurise the consumer into making an immediate decision’, in that the members’ sales representatives had stayed in customers’ homes for longer than the permitted time, had offered discounts for early signing of contracts, had followed up sales visits with calls offering further discounts, had given misleading information to customers about products, and had made inappropriate sales to vulnerable people.
4. The Member is alleged to have been in breach of Section 6.1 of the Code, which state that “All terms of business must be effectively communicated in writing to the consumer and form part of the quotation. The written terms of business must include details about cancellation rights”, and Section 6.2 of the Code, which states “Members who ask consumers to sign a contract during a sales visit in their home are covered by the Doorstep Selling Regulations”, in that the Members’ sales representative had not provided information about cancellation rights and procedures.
5. The Member is alleged to have been in breach of Section 6.3 of the Code, which states: “Members will repay [monies paid] promptly if the contract is cancelled”, in that some customers who had cancelled contracts had not been repaid promptly.
6. 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”, in that the Member had been in breach of Sections 2.3, 5.1, 5.2, 6.1, 6.2 and 6.3 of the Code.

Preliminary Issue

The Panel has reviewed all the papers before it relating to the hearing date and was satisfied that the Member had been served notice of the hearing in accordance with the Bye Laws and Code.

The Panel noted that the matter had originally been due to be heard on 10 September 2013 but was postponed at the request of the Member to allow more time to prepare its case. The Member had been allowed 14 days from an email dated 4 September 2013 to send in its response, and a new hearing date was set for 8 October 2013. No response was received from the Member within the timescale.

On 27 September 2013 RECC wrote to the Member by email sending details of two further complaints it had received.

In response the Member, by an email dated 30 September wrote the following:

“We are sorry we were unable to submit our supporting documents on time even though we requested an extension to the deadline. The reason we haven't been in touch is that we have been going through the long and very difficult decision making process of whether or not we can (of) afford to continue trading in this tough competitive industry. After weeks of thought we have now decided to stop trading so we will no longer need our RECC membership”

By an email dated 1 October 2013 RECC responded as follows:

“I refer to your email dated 30 September 2013 timed at 12 noon.

I have put this matter before the chairman of the hearing panel and she has asked me to say that the hearing will not be postponed or cancelled at this late stage. The full circumstances, including your email will be put before the hearing panel for their decision.

We consider your membership to be in place until disciplinary action is complete”.

Whilst a Member does not have to attend a hearing there is an implication in the September exchange of emails that this Member wished to respond in some manner.

There is no evidence before the Panel that the Member has ceased trading. In any event a member can remain a Member of the Code whilst not actively trading.

The Panel noted that the member has not formally resigned from the Code and the email dated 1 October 2013 from RECC has affirmed that it considers its membership to still be in place.

Therefore in all the circumstances the Panel has decided that the hearing should go ahead today. It is in the public interest that the alleged breaches should be dealt with expeditiously and any further delay is, in the Panel's view, unlikely to result in a response or attendance from the Member. The Panel finds the Member has not resigned from the Code.

Determination of charges

Ms Graham on behalf of RECC set out the circumstances relating to the case. The Member was not present and was not represented and had sent limited responses to some of the documents. The Panel took into account all the documentation before it together with the oral representations.

The Member had been admitted to the code at the end of 2011. There was an audit of the company in February 2013, which revealed a significant number of areas of non-compliance. There was also a mystery shopping exercise in early 2013, which highlighted a number of potential breaches of the code by the Member. RECC has received a large number of complaints from consumers and ex-employees.

The Panel considered each alleged breach of the code in turn.

Section 2.3 of the Code

Ms Graham on behalf of RECC alleged that the Member was not a certified by the Microgeneration Certification Scheme (MCS), in accordance with Section 2.3 of the Code.

During the audit in February 2013 it was disclosed that there was no paperwork to show that the member was certified by the MCS. The auditor also checked the MCS website, which indicated that the member was not certified. Under Section 2.3 of the Code the Member must achieve MCS certification within six months of joining the Code. The Panel finds that the member had failed to achieve this, and had at no point given a valid explanation as to why this had not been achieved as required by the Code. The Panel finds that the member was not MCS certified and therefore there was a breach of Section 2.3 of the Code.

Section 5.1 of the Code

Ms Graham alleged that the Member had persistently claimed to be MCS certified, which was misleading to consumers. She noted that a company (My Green Energy) had for a short period been certified and that some consumers were shown an MCS certificate relating to this company. She told the Panel that the Member used various company names, including My Green Energy, as well as its proper name. This amounted to a breach of Section 5.1 of the Code, which requires all advertising materials to be "legal, decent, honest and truthful". In addition in the paperwork there was a website screenshot which showed that the member claimed to be MCS certified.

The Panel noted that the screenshot was undated but it is dated "copyright 2013".

The Panel finds that the Member is in breach of Section 5.1 of the Code by claiming to be certified when it was not.

Section 5.2 of the Code

Ms Graham alleged that the breach of Section 5.2 arose because sales representatives had stayed in customers' homes for more than two hours; offered discounts for early signing of contracts; provided misleading information to consumers; and targeted elderly vulnerable consumers. Ms Graham also referred to the audit report from February 2013, which noted that no records were being kept of cancellations or length of sales visits.

The Panel finds that the Member is in breach of Section 5.2.

There was a breach of Section 5.2 in respect of length of sales visits. The Panel had before it four complaints of visits that were longer than two hours, including one of

four hours (complaint numbers 3086, 3424, 3423, 3383). In addition, the mystery shopping visit lasted over two hours.

There was a breach of Section 5.2 in respect of discounting. The mystery shopper was offered a discount, as shown in complaints 3007, 3078 and 3424.

There was a breach in respect of targeting vulnerable elderly people and proceeding with sales visits without the consumer being accompanied by a trusted relative or friend. Ex-employees had complained to RECC that the company deliberately targeted older vulnerable consumers (complaints 3269, 3480, 3493). The Panel finds that there were a number of complaints from vulnerable elderly consumers (or their relatives) (complaints 3222, 3495, 3383), showing that visits had taken place in contravention of Section 5.2.

There was a breach of Section 5.2 in respect of misrepresenting the member's status. The employees gave false or misleading information about the company in that some consumers were shown MCS certificates relating to another company, and which was out of date (complaints 3078, 3079, 3306 and 3424).

Section 6.1 of the Code

Ms Graham alleged that consumers had not been told about the seven-day cooling-off period and their cancellation rights. The Panel finds that there was a breach of Section 6.1. During the mystery shopping exercise, the mystery shopper as shown in the letter dated 7 May 2013 to the Member, reported that he had not been provided at any point with a cancellation form or verbal or written information explaining how to cancel, the right to cancel and the length of cooling-off periods. The contract provided to the Panel shows the incorrect cooling-off period (seven days, not seven working days). An ex-employee stated that the company did not offer cooling-off periods (complaint 4359), and another ex-employee said that sales staff were not to mention cancellation rights or cooling-off periods (complaint 3482).

Section 6.3 of the Code

Ms Graham alleged that a number of consumers had experienced difficulties obtaining prompt repayment of deposits, although after intervention from RECC some deposits were refunded. The Panel noted that by an email dated 21 May 2013, the Member accepted that at times when the customer cancelled outside the cooling-off period, they "dragged their feet a little when it came to refunding money". On balance the Panel find the breach proved. There was evidence of such delays in complaints 1432, 1972, 3189 and 3480.

Section 4 of the Code

Ms Graham stated that if breaches were found of all the above sections of the code, then this amounted to a breach of Section 4, namely that the member had acted in a way that brought the Code into disrepute.

The Panel finds this breach proved because of the number, nature and extent of the breaches, the Code has been brought into disrepute.

Determination of level of seriousness

Ms Graham on behalf of RECC suggested that the breaches were persistent the deliberate and not remediable and that the Member had no regard for consumers and no inclination to change its practice. The Panel considered all the circumstances and finds that there have been a large number of extremely serious breaches. It agrees with Ms Graham's earlier statements that the Member had cynically and systematically disregarded the rights of consumers and the code. The Panel has therefore decided that the breaches amount to a severe breach of the code both individually and collectively.

Determination of sanctions

The Panel find that these severe breaches of the Code are irremediable, and therefore a written warning or imposition of conditions are wholly unsuitable sanctions in this case. The Member has shown little inclination to become compliant. It appears to have largely ignored the issues raised by the RECC audit and has made very little response to its regulator over the last few months when complaints and other issues have been raised with it. Rather than improvement, complaints have been increasing dramatically since the audit.

The Panel can therefore have no confidence that consumers would be properly protected by any other sanction than termination of the Members' membership of the Code. The Members' conduct was such as to be grossly prejudicial to interests of the Code and the interests of consumers.

The Panel noted that under Section 7.4 of the Bye-Laws the termination of the membership of the Code is without prejudice to the obligations of the Code Member that have accrued prior to that termination occurring. There are a number of outstanding issues in this case relating to the return of deposit, satisfactory resolution of complaints, and installation of products. The Code member must resolve these matters forthwith and the Member is reminded that the Bye-laws remain in force to the extent required to allow RECC to enforce any of the outstanding obligations of the Member.

On receipt of this Notice, The Green Energy Company MCS Ltd and any other trading name of the company, must immediately cease to:

1. describe itself as a member of the code;
2. use the logo; or
3. hold itself as a Code Member, or as being in any way connected with the Code, as required by Bye-Law 7.1.

If the Code member does not lodge an appeal, the Members' membership of the Code will be deemed to have been terminated at the end of 14 days following the issue of this determination, as required by Bye-Law 7.2.

Appeal Period

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

Addendum

The Panel recommends that the regulator refers potential breaches of other consumer protection provisions to the appropriate authorities.

10 October 2013