

**The Renewable Energy Consumer Code
Appeal Panel Hearing**

In the matter of

Solartech NE Ltd

held on

14 September, 2016

at

1 Wood Street, London

Panel Members:

Amanda McIntrye (Chair),

Elizabeth Stallibrass,

Helen White.

In attendance:

Andrew McIlwraith (panel secretary)

Grace Blackwood (observer)

In attendance

Lorraine Haskell, RECC,

Rebecca Robbins, RECC.

Solartech NE Ltd representation:

None.

Appeal to be heard

The Appeal Panel (“the Panel”) convened to hear the appeal of Solartech NE Ltd (“the Member”) against the determination of the Non-Compliance Panel following the hearing held on 13 July.

Under Bye-Law 11 of the Renewable Energy Consumer Code (“the Code”), a Member can appeal the decision of the Non-Compliance Panel (“NCP”) on the grounds that the decision or part thereof was irrational, based on a fundamental error of fact or on a clear misinterpretation of the Code or the RECC Bye-Laws, or a serious procedural irregularity, or if the sanctions imposed are not in reasonable proportion to the findings made by the Non-Compliance Panel or if the Appeal is in relation to costs, the order for costs was based on a fundamental error of fact or law and/or based on a clear misinterpretation of the code of the bye-laws or was unjust because of a serious procedural irregularity.

Although the scheduled start time for the hearing was 10.30am, the Member had not appeared by then and had not notified either the Panel or RECC of a delay or inability to attend. The Panel waited until 11am, and the Chairman exercised her discretion to proceed with the hearing in the Member’s absence. The Chairman asked the Regulator to confirm that the Member was notified of the time and location of the hearing. Ms Haskell for the Regulator pointed to documents 45 and 46 of the bundle, which were email read-receipts and a Royal Mail delivery receipt of notifications and also provided a copy of an email from the Member of 6 September to Ms Haskell that confirmed receipt of details of the hearing.

In all the circumstances, the Panel was satisfied that the Member had been properly notified of the hearing and considered that it was appropriate to proceed with the appeal hearing.

Evidence before the Panel

The Panel had before it all the evidence provided to the NCP at its hearing of 13 July, 2016, together with the NCP’s determination, a transcript of the hearing, and the Member’s notice of appeal of 2 August 2016 and the Regulator’s response.

As the Member was not present, the Panel relied upon the letter of 2 August from the Member setting out its grounds for appeal. The Panel considered that the sentence in that letter “We feel that the severity of the Appeal Panel’s decision and the consequences following that decision are unjust and unfair” constitutes grounds of Appeal under clause 11.8.3 of the Bye-Laws.

Under Appeal Panel Rule 10, governed by Bye-Law 11.1, the chairman invited the Regulator’s representatives to present its case as to why the NCP’s determination should be upheld.

Ms Haskell, for the Regulator, referred the Panel to the Regulator’s response to the Appeal, dated 10 August. Ms Haskell said that in the absence of the Member, and without any clarification of the letter of 2 August or any further submission following the Regulator’s written response, she found it difficult to comment further. Ms Haskell highlighted that the Regulator was unaware of the Code Member’s theory, referred to in its letter of 2 August, about evidence “regarding the positive and negative feedback” as no explanation of this theory had been provided.

In its letter of notice of appeal, the Member had requested that certain online review documents, which had been submitted to the NCP, be taken into account as supporting evidence. These documents were included as part of the Regulator’s

submission, so the Chairman queried whether the Regulator was now relying on these online reviews as evidence. Ms Haskell responded that they were supporting evidence only, and that she was being thorough, and they were included only because they were mentioned in the Appeal letter.

Ms Haskell said that the Member had had extensive monitoring and help from the Regulator and from Trading Standards over a long period of time with many opportunities to become compliant, but the Regulator had continued to receive complaints about the Member. She said the Member still demonstrated no real understanding of the Code and, in particular, of the Consumer Contract Regulations (2013).

Ms Haskell then referred to Bye-Law 10.15, outlining the sanctions available to the NCP, and why the sanction imposed was in reasonable proportion to the findings of the NCP. In relation to 10.15.1, to decide not to impose any sanction in respect of the breaches, she said the Member had admitted the breaches, which the Regulator considered serious, and therefore it was not appropriate not to impose any sanction. In relation to 10.15.2, the Regulator had already issued a Consent Order, yet the Member continued to be non-compliant. In relation to 10.15.3 and 10.15.4, the Regulator said the Member had been subject to conditions and enhanced monitoring over a lengthy period, even if these were not formally described as such, yet the Regulator still saw evidence of non-compliance, and continued to receive complaints. In relation to 10.15.5 and 10.15.6, which related to the administrative costs of the Executive with regards to monitoring and the financial payment to consumers, she said this was not applicable. Therefore, the only remaining sanction is termination of membership.

Appeal Panel's decision

The Panel considered that the only grounds of appeal were in relation to the sanction of termination of membership.

With specific regard to the online reviews that were referred to in the Member's notice of Appeal, and which the Member asked to be taken into account as supporting evidence, the Panel noted that, at the NCP's hearing, the Member had voiced concerns about these reviews being used as evidence by the Regulator. The Panel noted that the NCP gave no weight to these reviews in reaching its determination.

In the absence of the Member at the Appeal hearing, it was unclear to the Panel how the Member wanted to rely on these reviews as evidence.

The Panel considered the matters set out in Section 11 of the Appeal Panel Rules. In particular, it took account of the written submissions provided to it by the Regulator and by the Member. With regard to the Member's written submission, which was the letter of 2 August, it considered the supporting evidence that the letter referred to, which comprised the online reviews and customer service questionnaires. These demonstrate that the Member did have satisfied customers. However, the evidence before the Panel in regards to non-compliance was unequivocal, and the fact that the member had satisfied customers does not negate that non-compliance.

The Member has produced no evidence to demonstrate compliance.

The Panel considered the oral submissions from the Regulator on the severity of the sanction.

Under 11.9.3 of the Bye-Laws, the Panel decided to dismiss the Member's appeal and uphold the determination of the NCP.

Costs

The Panel considered its power under Bye-Law 12 to make such order for costs against the Member as it considers fair and reasonable in all the circumstances.

The Regulator made a claim for the costs of the hearing in a letter dated 12 September 2016, which was served on the Member in accordance with Section 12.2 of the Bye-Laws. The Member had not responded to those costs.

The Panel therefore orders costs of the Hearing in the amount of £2,169.68 to be paid by the Member.

14 September 2016