

REAL Consumer Code response to TSI consultation on New Consumer Codes Approval Scheme core criteria

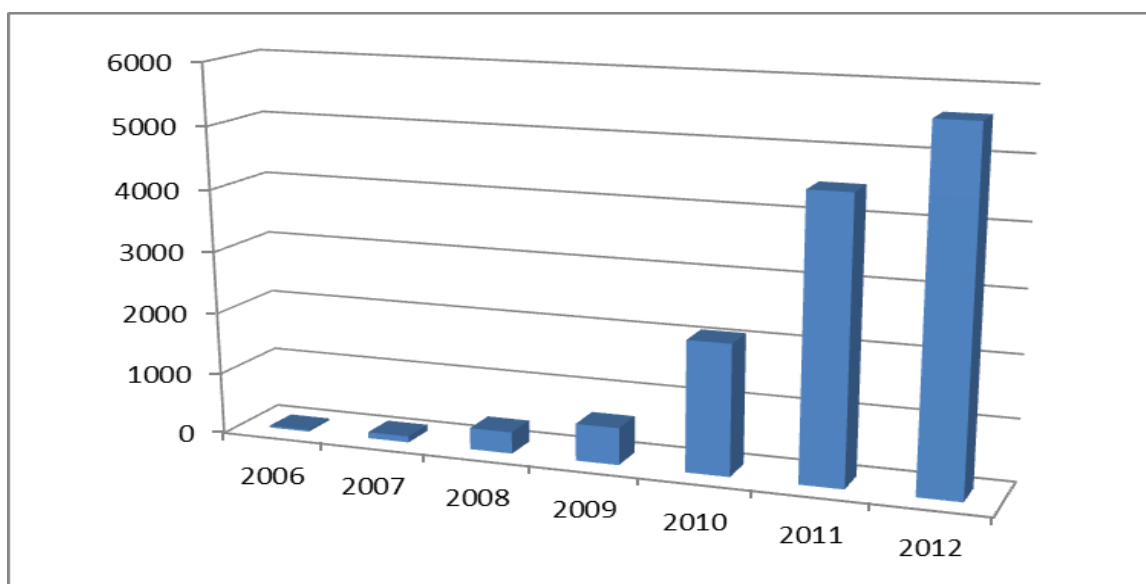
Background

The REAL Consumer Code was set up in January 2006 by the Renewable Energy Association (REA). The Code is administered by REA's wholly-owned subsidiary, Renewable Energy Assurance Ltd (REAL). The Code covers the contractual aspects of the selling or leasing of small-scale energy generating systems including solar electricity, solar water heating, small-scale wind electricity and ground and air source heat pumps.

Following extensive work with OFT the Code received Part One Approval in November 2007, and Part Two Approval in November 2011 under the Consumer Codes Approval Scheme (CCAS). It was the first code in the energy sector to receive CCAS approval.

During 2011, in parallel with the Government's introduction of the Feed-In Tariff incentive for solar PV, the membership of the REAL Consumer Code increased dramatically, and we now have around 5,000 scheme members, although this number is expected to reduce over the coming year as the level of subsidies for domestic installations reduces overall. The chart below shows the growth of REAL membership since its inception.

REAL membership by year



General remarks

REAL welcomes the announcement from the Department of Business, Innovation and Skills that TSI will take over responsibility for the CCAS from 1 April 2013. REAL is pleased to respond to TSI's consultation, issued in October 2012, setting out its proposals for amendments to the CCAS core criteria. This response also incorporates the views of the code sponsor, REA.

REAL welcomes TSI's stated intention to build on the existing OFT core criteria, which are the fundamental basis of the approved codes regime. In responding to the proposals for individual amendments set out in the consultation, REAL stresses that it is essential that the inter-relationship between the criteria also be considered. Amending one of the core criteria will have a consequence for the other criteria, and it is essential that TSI takes any potential consequence fully into account before making the amendment. Otherwise the integrity of the scheme risks being fatally undermined.

1. Influence in the sector

The existing core criteria require a Code sponsor to have 'significant influence in the sector'. TSI is proposing that it should be up to would-be Code sponsors to define the scope of influence for their code and, in doing so, to demonstrate how they exercise significant influence over their members. TSI envisages that, as well as trade associations, local authorities, or even shopping sectors, should be able to apply to be Code sponsors. In this way TSI hopes to increase the number of approved codes substantially.

REAL response:

REAL is open to some changes being made to the manner in which influence in a sector is defined. However, REAL is very concerned that, as a result, it will be possible for multiple codes to apply to the same businesses. We consider that this will lead to consumer confusion.

For example, if an installer eligible to join the REAL Consumer Code is based in a local authority that has an approved code, and if the member distributes fliers in a shopping centre that has an approved code, then the businesses concerned will be able to select which of the 3 codes they sign up to, and consumers will not know which of the 3 codes is relevant to them. This would be undesirable given that the CCAS is intended to provide consumers with reassurance and a high level of consumer protection.

There is a risk that each of the relevant codes in one area or sector is faced with a different level of enforcement. Businesses would thus have the option of opting for the code with the lowest level of enforcement. Equally, if one business has access to one code by virtue of the local authority in which it is based, while a competitor just over the border in another local authority does not, this could be discriminatory between businesses operating in the same sector but faced with different levels of enforcement. This would be difficult for the businesses in competitive terms and confusing for consumers.

Finally, REAL urges TSI to consider whether very small businesses, such as B&Bs or small farms for example, should in future be capable of being covered by a code.

2. High-pressure selling

TSI is proposing to tighten up the criteria around high-pressure selling in the home. The proposed new core criterion is for approved codes to 'address the important responsibilities of members while dealing with people in their own home'. TSI has provided some examples of what this might mean in practice.

REAL response:

REAL is supportive of TSI's proposals to tighten the core criteria relating to selling in the home. However we question how effective the proposals will be in practice, given that high pressure selling techniques are already outlawed in the REAL Consumer Code. We are particularly concerned that, in a situation where there is more than one code operating, there could be differences between the code requirements on selling in the home.

REAL points out that small-scale generation systems, whether for electricity or for heat, are complex and expensive pieces of technology that are not suitable for all domestic properties or patterns of energy use. As such these systems do not lend themselves readily to 'on the night' purchasing decisions in the home ('Doorstep Selling') but rather such purchases require careful consideration and reflection before consumers commit to a purchase. We would like the core criteria to recognise this.

For this reason REAL consistently advises consumers to get at least three quotes, to compare them carefully, to check out any testimonials and to read the REAL Top Tips and Consumer Guide and Energy Saving Trust website before signing a contract or paying a deposit for a small-scale generation system. (See here for REAL's guidance for consumers: <http://www.realassurance.org.uk/consumers> .)

REAL has the following comments on the individual examples provided in this section of TSI's consultation:

- REAL agrees that the Code should require members specifically to respect the Telephone and Mailing Preference Services, 'cold calling control zones' and notices of any sort indicating that doorstep sellers are not welcome.
- The REAL Consumer Code already bans high pressure selling techniques, including the scenarios outlined by TSI, but unfortunately they do persist in some parts of the sector (<http://www.realassurance.org.uk/scheme/consumer-code#tag5.2>) .
- The REAL Consumer Code already requires members to leave a consumer's home immediately if requested to do so – section 5.2 states: '*Members' sales employees, representatives and any-one acting on their behalf must act with integrity and, in particular, they must respect the consumer's right to privacy and to bring any contact to an end if requested to do so*' .
- REAL already has a robust definition of vulnerable consumers: '*Consumers may be vulnerable as a consequence of mental or physical infirmity, age, credulity, learning difficulties, illiteracy*

or if their first language is not English. The member must have been able reasonably to foresee this vulnerability. The information members provide should be appropriate to the consumer's needs. Members should take special care to ensure that the consumer understands the key documents, including the quotation, the contract and the guarantee arrangements. Where appropriate, members must seek the involvement of a trusted friend or relative.' Further guidance on vulnerable consumers is available on the REAL website: <http://www.realassurance.org.uk/pdf/guidance-on-dealing-with-vulnerable-consumers.pdf>

TSI is proposing that each code's guidance should be 'relevant to the sector'. However, if a Code covers more than one sector, as TSI is proposing that it could do, going forward, consumers could be faced with differing definitions of vulnerability. In REAL's experience vulnerable consumers are disproportionately targeted in the small-scale generation sector. A robust definition has definitely not had the effect of persuading businesses to avoid these consumers. On the contrary it has served to redress the balance to a certain extent.

- REAL agrees that the Code should require that members do not 'create, obtain, distribute or maintain lists of specific consumers that are susceptible to responding to cold calling approaches'.

3. Protection of prepayments

TSI is proposing a more pragmatic approach to the core criterion that covers protection of prepayments. Once again, TSI is requiring arrangements that reflect 'sector-wide trade practices'. TSI states that it would be for code sponsors to propose the arrangements they consider appropriate, and for the TSI to decide whether they accept these. By way of example, TSI suggests that a looser protection regime for prepayments might be acceptable if there is also a tight cap on the percentage of the total contract price that can be required as a deposit.

REAL response:

REAL supports this proposal so long as codes operating in the same sector are not permitted to have diverging requirements in place. REAL Consumer Code members are required to protect monies taken in advance by a mechanism such as insurance or a bond, in the event that they cease to trade. They are also required to place consumer deposits in a third party 'client' account. In a sector such as ours, in which many businesses are ceasing to trade, these requirements have safeguarded many consumers' funds over the past year.

In REAL's experience the protection of prepayments is the most challenging core criterion to enforce. It is therefore likely that this will be the area in which differential approaches between codes are pursued. This will affect the level of consumer protection between codes. REAL urges TSI to ensure that codes operating in the same sector are not permitted to have different approaches to prepayment protection.

It is not practical for REAL to check that every advance payment has been effectively protected, although we carry out frequent compliance checks to ensure that members have accounts in place, and that deposits are being made. In addition, members have found that some banks, or some branches, do not offer them the facility of a third party account. REAL urges TSI to ensure

that these accounts are widely available to all businesses since they are an effective means of protecting advance payments.

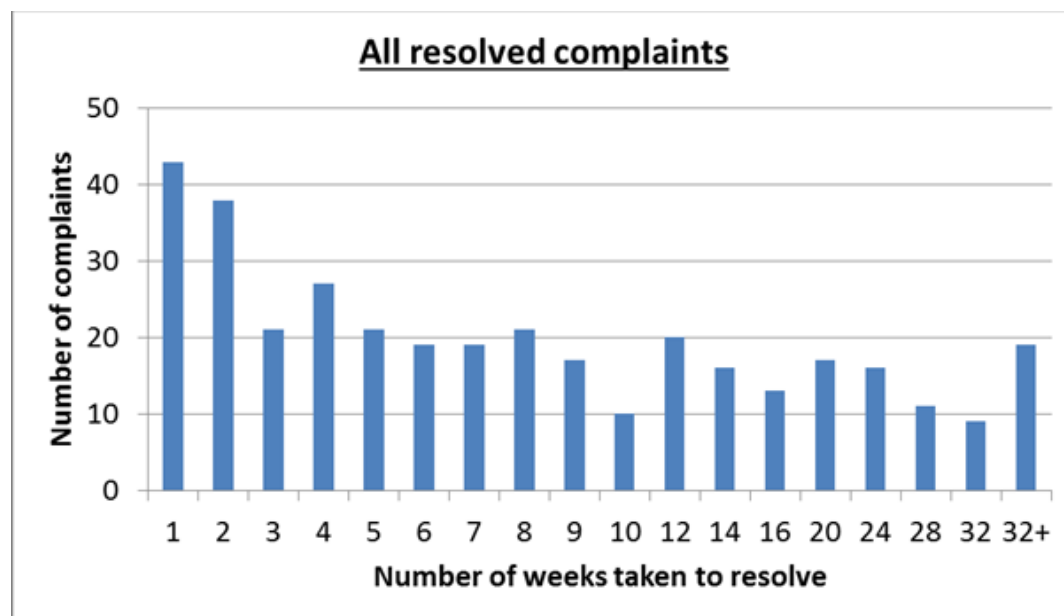
4. Conciliation and arbitration

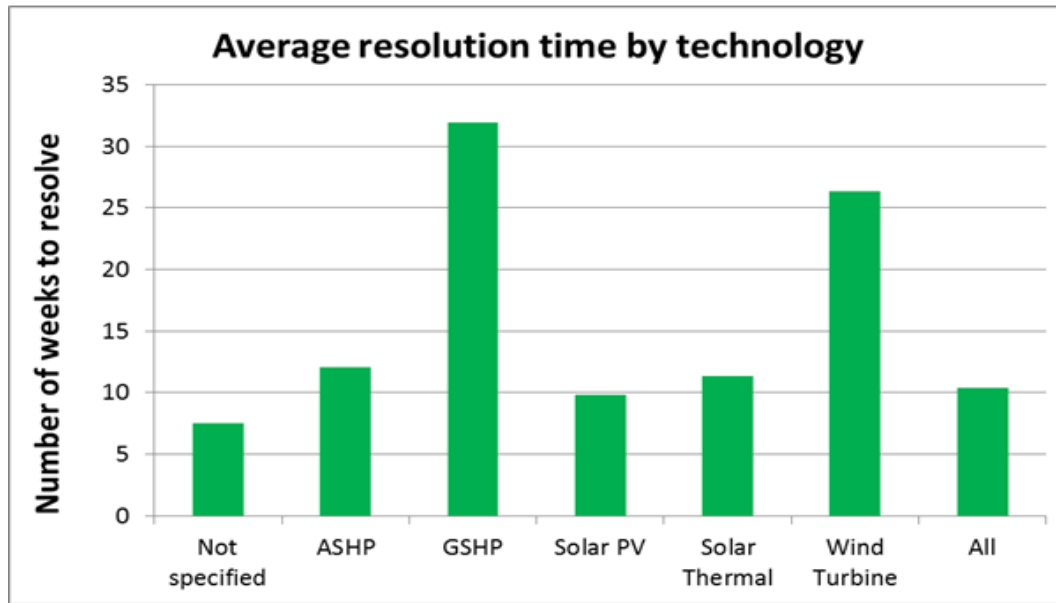
TSI is proposing to remove the existing requirement for code sponsors to have in place a conciliation procedure for consumers to make use of if they wish. TSI is concerned that the requirement for conciliation is too prescriptive, and might discourage alternative approaches such as mediation.

Rather TSI is proposing that conciliation should be an option for code sponsors, but that, if the consumer requests it, any complaint not resolved within 8 weeks of registration should be referred to the independent arbitration service, or ombudsman scheme, whichever the code sponsor has in place. TSI is proposing that the 'ADR decision maker' should be able to take into account possible breaches of the code if they consider it relevant. TSI is also proposing that the code sponsor should make it compulsory that a member complies with an ADR award, and that the 'ADR decision maker' should be able to refer a member to the disciplinary procedure if the member fails to comply with the ADR award.

REAL response:

REAL welcomes TSI's proposal to remove the requirement that approved codes offer a conciliation service. Currently the time taken to resolve consumer complaints can be very long, and the conciliation service increases this. Some relevant statistics for the past 2 years are posted below.





REAL considers that having an 8-week cut-off point for complaints will be better for all parties concerned, although we would continue to offer conciliation or mediation to consumers if they wished to use them since they can be effective means of resolving complaints. From the statistics set out in the charts above it is clear that, while the majority of complaints registered with REAL are resolved within 8 weeks, there is a considerable tail of complaints that are not. For these consumers TSI's proposals would be likely to be helpful.

REAL considers it essential that any ADR awards are binding and enforceable in the courts. It is much too much responsibility for an individual code sponsor to have the burden of ensuring that ADR awards are enforced without the parties being able to apply to the courts for an enforcement order. So long as this is the case, REAL welcomes the proposal that the 'ADR decision maker' can take into account possible breaches of the code in formulating its awards.

5. Monitoring

TSI is proposing to build on the OFT's requirement on code sponsors to measure its effectiveness. TSI proposes that the code's impact on reducing consumer detriment and raising consumer service standards also be measured by means of 5 'measures of success':

- compliance with the code
- reducing consumer detriment
- complaint trends
- customer satisfaction
- member audits.

REAL response:

REAL already measures against all of these apart from 'reducing consumer detriment'. Further details will be required before consumer detriment can be measured against in a meaningful

way, and we would welcome more information about this. TSI will need to ensure that all codes are meeting a minimum level of effectiveness against these measures of success.

6. Measuring effectiveness

TSI is proposing an approach to monitoring effectiveness that relies on ensuring that the results are statistically significant. Rather than setting a fixed percentage of members to be audited, mystery shopped &c. TSI is proposing that all monitoring results achieve a 5% margin of error to a 95% confidence interval. The result of this would be that for a code with 1,000 members, say, 278 would be audited, while for a code with 3,000 members 341 would be audited.

REAL response:

REAL supports this proposal in principle. However, REAL has been moving towards a more risk-based approach to monitoring over the past three years. For example, REAL is required to audit companies against which it has received complaints, and also those engaged in doorstep selling. TSI's proposal does not preclude such an approach, but does not appear to recognise that a risk-based approach can be a more effective than an approach based simply on statistical significance.

REAL has found that consumer satisfaction is particularly challenging to measure in a statistically significant manner. We are pleased to have achieved a 6% response rate from distributed questionnaires: <http://www.realassurance.org.uk/monitoring/surveys>

7. Annual report

TSI is proposing to maintain the requirement that code sponsors should prepare an annual report. However, TSI is proposing that it should be published or made available on the code sponsor's website rather than provided to TSI. The report would be required to be evidence-based and this evidence would need to stand up to 'external and independent scrutiny'.

REAL response:

REAL would like to see more details concerning the 'external and independent scrutiny' that TSI mentions. Without rigorous scrutiny there will be unfair competition between codes that are robustly enforced and those that are not. Particularly where there are several codes operating in the same sector it is essential that they are all scrutinised in a consistent manner, with cross checks carried out on a regular basis. Similarly where a business is covered by overlapping codes, it is important that they do not elect to be part of the most lightly-enforced code, and thus evade their responsibilities. Consistency will be an important element in establishing the reputation of an enlarged CCAS as a meaningful indicator of consumer protection.

8. Enforcement

TSI is proposing that code sponsors establish a 'disciplinary and sanctions panel' to handle members' non-compliance with the code 'effectively, impartially and as quickly as possible'. TSI proposes that panel hearings should be held in public. TSI is also proposing that the role of local trading standards be strengthened and that they should be able to trigger disciplinary action against code members directly.

REAL response:

REAL generally supports TSI's proposals in this respect. REAL has had an independent disciplinary and sanctions panel since 2006. This is an effective means of assessing non-compliance, although REAL has found it more difficult to impose meaningful sanctions on members without incurring a legal response. REAL has some reservations about the proposal that hearings be held in public. This could make the job of independent panel members more difficult and could discourage them from serving on these panels.

REAL supports TSI's proposal that a range of bodies be able to refer cases to the disciplinary panel. However, we would propose that the code sponsor should also be able to refer cases directly to trading standards departments, for example where there are problems with businesses operating in the sector that are not code members.

Finally REAL considers it essential that disciplinary panel decisions are capable of being appealed by an independent appeals panel.

9. Publicising the complaints procedure

TSI is proposing that code sponsors and their members should be obliged to publicise their complaints procedures, including the arbitration or ombudsman schemes available.

REAL response:

REAL supports this proposal. We have always made this information available in the Code, along with the top-line complaints data which are available on the website:

<http://www.realassurance.org.uk/consumers/how-to-complain>

<http://www.realassurance.org.uk/monitoring/complaints-received>

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