

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

In the matter of

Apple Solar Energy

held on

7 May 2013

at

1, Queen Anne's Gate, London

Panel Members:

Mary Symes (chair),

Amanda McIntyre,

Jim Thornycroft,

Alan Wilson.

In attendance:

Andrew McIlwraith (panel secretary).

Renewable Energy Consumer Code ("RECC") representation:

Virginia Graham, Chief Executive, RECC.

Apple Solar representation:

Also present:

Lorraine Haskell, RECC,

Sian Morrissey, RECC.

Witness (via remote video link):

Sue Bloomfield, RECC auditor.

Charges

The Charges were set out in full in a letter dated 22 November 2012 from RECC to Apple Solar Energy ("the Member"). At the start of the hearing the charges were, with the agreement of both parties, read as follows:

1. The Member is alleged to have been in breach of Section 4 of the Renewable Energy Consumer Code ("the Code"), in that the Advertising Standards Authority had upheld five complaints about the Member's advertisements. Section 4 states that "Members will not act in any way that might bring the Code into disrepute" and Section 5.1 of the Code states that "Members must make sure that any advertising materials they produce or use are legal, decent, honest and truthful, and that they comply with all the relevant legislation, including the British Code of Advertising and Sales Promotion".
2. The Member is alleged to have been in breach of Section 5.2 of the Code, in that, as part of a mystery shopping sales visit, a sales representative offered discounts at three points to sign a contract. Section 5.2 of the Code states that "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", and "They include, but are not limited to... offering consumers an inflated price followed by a discount... for signing on the day", and that "Employees must not give false or misleading information about their company or the product, services or facilities being offered. They must not make any statement that is likely to mislead the consumer in any way".
3. The Member is alleged to have been in breach of Sections 5.3 and 5.4 of the Code, in that they had failed to provide accurate performance information and predictions and sufficient pre-contractual information. Section 5.3 states that "It is very important that Members do not 'oversell' energy generators to consumers... Members must give certain technical information in writing to consumers before the contract is signed" and "Members must present calculations based on the standards that have been developed for the MCS installer standards for individual technologies. They must provide comparisons for non-expert readers, with predictions presented according to the guidelines provided by the Code administrator." Section 5.4 states that "Members must give consumers certain financial assurances before the sale is agreed and the contract signed... Members will provide consumers with a written cost estimate based on the information the consumer has given them, and make clear that the estimates are examples only and not definite figures. Members will also provide consumers with the method used for calculating the price."
4. The Member is alleged to have been in breach of Section 6 of the Code, in that insufficient pre-purchase information was provided. Section 6.1 of the Code states that "Members will provide consumers with clear, unambiguous terms of business that do not disadvantage consumers... All terms of business must be effectively communicated in writing to the consumer and form part of the quotation", and Section 6.2.2 of the Code states that "Before the contract is signed Members must explain how the consumer can cancel the contract in line with the Code".

Determination of Charges

Mr M. on behalf of the Member admitted all the charges. The Panel therefore found the facts proved.

Determination of level of Seriousness

Ms Graham on behalf of RECC set out the facts of the case. She stated that these were not isolated incidents but a pattern of non-compliance, followed by repeated assurances that matters would be rectified, but then the cycle would be repeated by the Member. In 2010, before the Member was admitted, various advertising and other material was found not to be compliant. During 2011 complaints from consumers were received and monitoring was undertaken which showed further breaches of the Code. In October 2011 the Advertising Standards Authority upheld five complaints, each from a number of consumers, about the Member's advertisements.

In Autumn 2011 RECC undertook a mystery shopping exercise. In the course of the exercise a sales representative had offered a potential customer various discounts that were in breach of the Code, including, among other things, for signing a contract on the day, and providing a reference for the company.

The Member was then required to undergo an audit during which further breaches of the Code were found, including incorrect PV performance calculations. A further mystery shopping exercise in Autumn 2012 revealed that the sales representative had failed to provide the customer with key documents, offered an initial high price followed by a discount, a free maintenance contract on PV panels (which require little or no maintenance) and little or no contractual information.

The Panel heard evidence from the auditor, Sue Bloomfield, with regard to her audit review in February 2012 and the post-audit process. She expressed concern with the sales presenter, website, calculations done in the home, the cancellation rate and the wording used in job advertising. The auditor stated that whilst she had seen evidence that showed that some of the issues had been rectified, she had not seen sufficient evidence to show that all the matters had been corrected. In particular the Member had removed the website but not rectified it, had withdrawn the incorrect sales presenter but not produced the sales presenter being used at the present time. During cross examination the auditor stated that the calculations she had seen subsequently had been correct.

Mr M. on behalf of the Member explained that the company dealing with alternative energy was part of a larger group, the largest home improvement company in the south east dealing primarily with conservatories, windows and related products. He went through the quality of the products used and the steps that the company took with regard to vulnerable consumers. He stated that the company had responded to all the charges but he felt that this case revolved round a communications breakdown between the Member and RECC. He accepted that mistakes had been made but stated that the Member was constantly reviewing its systems. Mr M. said that the company was continually trying to uphold the rules and went into some detail about the systems that were employed to do this. He particularly brought the Panel's attention to the proposal document that is in use at present.

Both Mr M: . . . and Mr M: . . . made it clear to the Panel that Apple Energy wished to remain a member of the Code.

In coming to its decision with regard to seriousness, the Panel took into account the bundle of documents, the verbal submissions of both parties, the Code and the Bye-Laws. The Panel reminded itself that the level of seriousness was a matter of judgment for the Panel.

The Panel finds that the Member has exhibited a persistent pattern of non-compliance. Given the multiple breaches and the number of times that the breaches had been raised with the Member, the Panel considers that the Member appears to be reactive, rather than proactive, in ensuring compliance. This gives the Panel concerns about how compliance is embedded within the Member organisation at all levels. The Panel finds that none of the issues about the Member's compliance put before it is new to the Member, and none of them is any less than what is expected of all members of the Code.

The Panel looked at all the breaches to determine the level of seriousness. Taken together and separately each of these breaches put the consumer at risk and were not in the public interest. In deciding to purchase an alternative energy scheme members of the public are relying on Members providing wholly accurate and proper information, with full contract details. Part of the purpose of the Code is to protect the public against unfair and improper sales practices, in particular pressure selling. The Member appears to be aware to some degree that not all its staff have at all times worked within the ambit of the Code but in the view of the Panel still failed to take adequate steps to ensure that everyone and everything complied. Members cannot cherry pick those parts of the Code that they choose to obey. The Panel therefore finds the breaches both separately and together to be Severe breaches of the Code as in Bye-Laws 5.22.

Determination of Sanction

The Panel considered whether it should impose individual sanctions to individual breaches. However it accepted that the Member wishes to remain within the Code and therefore it would be appropriate in this case to consider a single sanction designed to ensure that the Member is fully compliant and working within the provisions of the Code.

In coming to its decision the Panel noted that the Member has gone some way to ensuring compliance (for example some of the advertising material produced and calculations) but remains concerned that there was evidence that compliance is not embedded within the whole organisation, from the top down to the bottom up. Of particular concern to the Panel was the proposal document for customers, provided by the Member at the hearing, which included information about various discount offers, at least some of which appear to be in breach of the Code. The Panel is also concerned that the Member has removed rather than corrected its website and gave evidence that it had withdrawn its sales presenter rather than producing a compliant document for use as guidance to staff. It is concerned that this shows a lack of full acceptance of the principle set out in Section 1 of the Code – that the Code is designed to help “members achieve high consumer protection standards when selling...small scale heat and power generators...to domestic consumers”

The Panel has therefore decided to impose the following sanction:

The Panel is placing the Member on probation, for a period of six months from the date of this determination, with the following conditions in accordance with Bye-laws 5.22 and 5.23:

1. The Member will forthwith stop issuing any verbal or written discounts, outside of those specified in Section 5.2 of the Code.
2. Within 14 days of the date of the determination, the Member will send all current documents relating to consumer presales and sales for review by RECC.
 - 2.1. At the Member's expense, RECC will review these documents to assess compliance and report to the Member within 14 days.
 - 2.2. The Member will make any corrections to documents required to make them compliant with the Code within 7 days, and to send revised documents, with changes highlighted, to RECC [at the end of that 7 day period].
 - 2.3. If any documents remain uncorrected as required, the matter will be referred to the Non-Compliance Panel under Section 6 of the Bye-Laws.
3. At RECC's discretion the Member will undergo a compliance audit after the completion of condition 2 above, but prior to the termination of the probationary period.
 - 3.1. The cost of this audit will be borne by the Member.
 - 3.2. The audit will include, in addition to the standard audit
 - 3.2.1. a full review of the Member's systems to ensure compliance with the Code within the organisation
 - 3.2.2. a review of the training programmes and
 - 3.2.3. all documents issued to and relied upon by sales representatives.
4. Before the end of the probationary period, RECC will produce for the Non-Compliance Panel a report on the audit and other matters it deems necessary to bring to the Panel's attention.

During the course of the hearing, the Member stated that they wished to reinstate their website, which has been taken down. If they do, whether or not this is within the probationary period, the Panel recommends that the Member, at their own cost, submit the website to RECC to ensure that its contents comply with the Code.

Under 5.27 of the Bye-Laws, the Member is reminded that the Non-Compliance Panel has discretion to call a further hearing to satisfy itself that the above conditions have been fully fulfilled. If such a hearing is deemed necessary, that cost will be borne by the Member.

Both parties are reminded that Section 6 of the Bye-Laws, Breach During Probationary Period, will apply.

Appeal Period

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

13 May 2013