

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

*In the matter of*

**Big Green Company Ltd**

*held on*

**14 October, 2014**

*at*

**1 Wood Street, London**

**Panel Members:**

Mary Symes (Chair),

Sally Oakley,

Jim Thornycroft.

**In attendance:**

Andrew McIlwraith (panel secretary).

**Renewable Energy Consumer Code ("RECC") representation:**

Sian Morrissey, RECC,

Lorraine Haskell, RECC.

**Big Green Company Ltd representation:**

## Charges

The Charges were set out in full in a letter dated 30 July 2014 from RECC to Big Green Company 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 advertising and marketing material acquired at a mystery shopping exercise of the Member's sales training undertaken by RECC in early 2014.
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. Sales employees must not use any selling techniques designed to pressurise the consumer into making an immediate decision' and 'Members should keep a record of the length of time they spend in the consumer's premises'. The evidence for this breach comes from two mystery shopping exercises undertaken in early 2014, an audit undertaken in early 2014 and from complaint numbers 3578, 3642, 3826, 3991, 4321, 4390 and 3863.
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 two mystery shopping exercises undertaken in early 2014, the audit undertaken in early 2014 and complaint numbers 3991 and 4217.
4. The Member is alleged to have been in breach of section 5.4 of the Code, which states 'Members must give consumers certain financial assurances before the sale is agreed and the contract signed' 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 two mystery shopping exercises undertaken in early 2014, the audit undertaken in early 2014 and complaint numbers 3991 and 4217.
5. 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 and 5.4 of the code.

## **Determination of facts and breaches**

Ms Morrissey appeared on behalf of the regulator, with assistance from Ms Haskell. The member was primarily represented by Mr M

At the start of the hearing the Member admitted the facts in relation to all the charges which the Panel found proved.

### **Decision on breaches**

Ms Morrissey outlined the background to the case. She explained that the case arose from two mystery shopping exercises, a review of complaints since August 2013 and an audit in early 2014, plus further complaints in August and September 2014. She first referred to the alleged breaches of Section 5.2 of the Code, which she stated the regulator regarded as a key pillar of the code because when salespeople are in the home, customers are at their most vulnerable. She went through in detail the issues relating to the alleged discounting, follow-up calls, and the length of time sales staff stayed in consumers' homes. She then referred the panel to the alleged breaches of Section 5.1, suggesting the advertising material in the bundle amounted to scaremongering, and was inaccurate.

In relation to Section 5.3, she stated that it was vital that consumers had an informed choice before making a decision. In relation to Section 5.4, the regulator had concerns about the accuracy of calculations given to consumers by the Member.

Mr M referred the Panel to the context of the alleged breaches. He stated that the company was fully aware of the seriousness of the hearing but he wanted to go in to detail about the culture within the company. He stated that it was a national company and asked the Panel to consider the number of complaints in comparison with the size of the company. He went through each complaint in detail, to show that the company had an excellent track record with complaints, and he admitted that some errors had been made by several sales representatives. The company had taken immediate steps to dismiss the "rogue" sales staff. He went through in detail the offers that the company had on its website that he said were run during quiet sales periods. He suggested that any alleged discounts were in fact based on offers, which were not postcode-specific, but limited to the capacity of the installation teams.

The Panel took into account the bundle of papers and the statements of both parties in coming to its decision.

### **Section 5.1**

The Panel examined the advertising material in the bundle. It was accepted by the Member that the mystery shopper had received this paperwork and that they had produced these documents in October 2013. They normally run advertising leaflets for approximately three to six months. The Panel considers that individual sections of the advertising material are substantiated by reference to sources, as required by the Code, but the overall tone and some of the content could mislead. The Panel is particularly concerned that the material is in the public domain for a considerable period and places an onus on the Member to ensure its continuing accuracy. In addition some material contained an offer of a Solar Pack that purported to have a value of £79 but during the course of the presentation it was clear that the value was based on a notional figure for a survey, for which a charge is very rarely made. On balance the Panel find that there has been a breach of Section 5.1.

### **Section 5.2**

The Panel accepts that this section is a pillar of the Code. It is imperative that consumers can make important financial decisions of this kind without any pressure.

The Panel accepts that the Member has dismissed employees for not following the strict time limits for home visits imposed by the Code. However, the Panel felt that this did not mitigate the pressure to which affected consumers had been subjected. The Panel finds that there was a breach of Section 5.2 in this respect.

The Panel accepts that the Member has offers from time to time on its website. However, the Panel finds that the fact that the offers are limited by installer capacity over a short period does amount to pressure selling. The Panel finds that there was a breach of Section 5.2 in this respect.

The Panel also considered the issue of discounting and accepts that the company does offer two different price-point systems. However the Panel finds on balance that the different systems sometimes are not sufficiently clearly explained to consumers so that some consumers are under the impression that large discounts are being offered. The Panel therefore finds that there was a breach of Section 5.2 in this respect.

### **Section 5.3**

Although there was some evidence presented by the regulator to show that there had been some confusion about the estimates given by sales staff, there was no evidence that any consumers had bought equipment on the basis of inaccurate projections and the Panel was persuaded by Mr M that it is not in the company's interest to behave in this manner. There is no excuse for producing a document containing the wrong Feed-in Tariff (FIT) rate at any time, but in order to breach the Code, a Member must have oversold equipment to consumers, for which there is insufficient evidence. On balance, the Panel believes the wrong FIT rate in paperwork provided during the audit was an aberration. The Panel does not find a breach of Section 5.3.

### **Section 5.4**

The regulator relied on the quotes produced during the audit in respect of this alleged breach, and two consumer complaints, one of which Mr M explained had been successfully resolved to the satisfaction of the consumer. The Panel, on looking at the quotes provided for the audit, felt that that items listed appeared to satisfy the requirements of the Code. The Member also provided an explanation in its response to the audit. The Panel does not find a breach of Section 5.4

### **Section 4**

The Panel found that breaches of Sections 5.1 and 5.2 and the nature of the evidence in relation to those sections does bring the Code into disrepute, therefore the Panel finds there is a breach of Section 4.

## Determination of sanctions

Ms Morrissey reminded the Panel that the Member had been before a Non Compliance Panel in July 2013 and that it had been found in breach of the same sections of the Code on that occasion. The Regulator is concerned that this showed that there is an endemic problem within the company, that the controls in the field are not effective and that the Member cannot solve the problem by looking for a "scapegoat". The Regulator is not convinced that further audits or enhanced monitoring would have any effect and therefore urged the Panel to consider removing the Member from the Code, which would force it to consider why the issues are recurring.

Mr M referred to the reduction of complaints, in particular that the proportion has halved and is small in comparison to the overall level of business, and in his view there were only a handful of serious ones. He took the Panel through the new complaints process. He also explained the training that is given to the Sales Force, the new appointment of a dedicated training manager with backup from a training consultant, and the weekly meetings in local area, part of which he said was dedicated to further training matters. It was not clear who gave the training at these meetings. He gave details of the results of recent audits by NAPIT, ICO, Barclays and HIES, which the company had passed well. Mr M also referred to the customer feedback forms, which the Member is in the process of introducing to those customers who have access to the internet.

Mr M was asked by the Panel to explain the structure and remuneration of the sales team.

In coming to its determination about any sanction that should be imposed the Panel took into account the submissions of both parties and the guidance set out in the Rules for the Non Compliance Panels.

The Panel finds that the fact that the Member has twice been found to be in breach of the Code under the same sections is very serious. The Panel is particularly concerned that the sales structure and the lack of proper controls within the company are the underlying cause of the continued problems. Pressure selling is a system weakness in the business model, which results in consumer harm. The Panel also took into account that there had been an improvement with regard to the proportion of complaints received and noted that the Member has taken steps to greatly improve its training, although the lack of direct control over sales teams seems to the Panel to be a matter of continuing concern.

The Panel is particularly concerned that the self-employed sales team is heavily reliant on earning commission and has limited contact with Head Office and senior management.

The Panel considered the sanctions available to it in ascending order. The panel considers that it would be wholly inappropriate to impose no sanction in this case due to the seriousness and repetitive nature of the breaches.

The Panel does wish to issue a warning to the Member in that it must consider the possibility of its business model continuing to result in serious complaints of pressure selling and, therefore, whether the present business model is fit for purpose because any future breaches of the Code in respect of this are likely to have extremely serious consequences for the Member.

In addition the Panel considered whether there were any conditions that could be imposed to rectify the matter and considered that conditions could be imposed that would help to remedy the issues surrounding the breaches of Section 5.1, advertising material.

The Panel also considered whether a period of enhanced monitoring would be sufficient to ensure compliance with the Code and provide the required level of protection for consumers. It considered that a tight and structured period of enhanced monitoring focusing on the issues within the sales team would be a proportionate sanction and satisfy the Regulator's request that the Member reflects on why the problems were recurring.

The Panel did test this by considering whether it would be more appropriate to terminate the Code membership but decided that the problems within the company lie within the structure of the sales team and ambiguous advertising offers, which can be remedied by careful control and proper monitoring of the sales teams and design of marketing campaigns. In coming to this decision the Panel took into account that there had been some improvement and that the Member had introduced further monitoring in the form of feedback forms and a dedicated training officer.

The Panel is imposing the following condition on the Membership of the Code:

1. The Member must withdraw all advertising at present circulating within 30 days of the date of the determination.
2. For the next 12 months, from the date of the determination, the Member shall submit all advertising material it intends to distribute to the public or use to promote its services to the Copy Advice Service available through the Advertising Standards Authority (ASA) and shall abide by the advice it is given, making any appropriate alterations to ensure that it is compliant with the advice given and the standards set by the ASA.
3. At the cost of the Member the regulator will appoint an independent auditor to undertake an unannounced audit to examine all the advertising material used to ensure that it is compliant with the advice given by the ASA. The Audit will take place before the end of the 12-month period but not before 3 months have elapsed.

Failure to abide by any term of the condition may lead to a further hearing before the Non-Compliance Panel.

In order to examine the sales representatives' daily practice, the Panel has also decided that the company will undergo a period of specific Enhanced Monitoring as follows:

1. The cost of the enhanced monitoring will be borne by the Member in full.
2. The regulator will engage the services of an independent auditor to monitor all sales visits made by the Member's representatives over a period of six months as in 9 below.
3. The Monitoring will be undertaken as follows:
  - a. Within 21 days of the date of the determination, the regulator will devise a questionnaire that will be sent by the Member to **every** member of the public that receives a sales visit from the Member's sales representatives together with a reply-paid envelope addressed to the regulator. This questionnaire will be posted to sales visit recipients independent of the visit.
  - b. The questionnaire will be in the form of a letter from the regulator, without any incentives and will replace any feedback questionnaire being used by the Member.

- c. The information requested will include but will not be limited to:
    - i. The length of the sales visit;
    - ii. Whether any incentive discount was offered by the sales representative; and
    - iii. Whether a sale was made.
4. Within 14 days of the date of the determination the Member will devise a unique code that can be cross referenced by the Auditor and related to a particular sales visit; or some such system agreed between the Member and the Regulator.
5. The Member will submit the numbered sales visits by the Sales Team to the Auditor in a manner that can be cross referenced by the Auditor for accuracy. This will be on the same date each month set by the Regulator in discussion with the Auditor. The Member will be informed of the date within 7 days of the appointment of the Auditor. Such information must be gathered from the date that the cross referencing is agreed.
6. The Auditor will, during the period of enhanced monitoring, pay unannounced visits to the Member to check the information received about the sales visits is wholly accurate.
7. The auditor will report immediately to the regulator and the Member any potential breaches of the Code in relation to the sales visits.
8. All questionnaires will be shown to the Member after examination by the Auditor and be available to the Regulator as requested.
9. The period it will undergo this monitoring is six months from the date of appointment of the auditor, such an auditor being appointed within 14 days of the date of the determination.

At the end of the period of enhanced monitoring the Regulator will consider the data produced by the auditor and assess the matter under Section 8.25 of the Code.

#### **Determination of costs**

The Panel orders the Member to pay the costs of RECC in the amount of £3,485.

#### **Appeal Period**

Under Bye-Law 9 the Member may appeal this determination within 14 days of the date of the determination.

**24 October 2014**