

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

In the matter of

Efficient Living Ltd

held on

25 March, 2014

at

1 Wood Street, London

Panel Members:

Mary Symes (Chair),

Amanda McIntyre,

Alan Wilson.

In attendance:

Andrew McIlwraith (panel secretary).

Renewable Energy Consumer Code (“RECC”) representation:

Sian Morrissey, RECC.

Efficient Living Ltd representation:

Also present:

Lorraine Haskell, RECC.

Sam Bourne, RECC,

Helen White, observer,

Sally Oakley, observer.

Charges

The Charges were set out in full in a letter dated 12 November 2013 from RECC to Efficient Living 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 5.2 of the Renewable Energy Consumer Code ("the Code"), which states "Employees must not give false or misleading information about their company or the product, services or facilities being offered..." and that "Sales employees and representatives... must not use selling techniques designed to pressurise the consumer into making an immediate decision". The evidence for this breach is from a "mystery shopping" exercise conducted by RECC in early 2014; from complaint numbers 3989, 4048 and 4254, which are "whistleblower" complaints from former sales representatives working for the Member; and from consumer complaint number 4247.
2. The Member is alleged to have been in breach of Sections 6.1 and 6.2 of the Code. Section 6.1 states "All terms of business must be effectively communicated in writing to the consumer and form part of the quotation" and that these terms must include details about the customer's cancellation rights. Section 6.2 of the Code specifies the cancellation rights, including Section 6.2.3 of the Code, which states "Members will not start installing the system during the cooling-off period". The evidence for these breaches is from a "mystery shopping" exercise conducted by RECC in early 2014; from an audit of the Member by RECC carried out on 4 February 2014; and from consumer complaint number 4247.
3. The Member is alleged to have been in breach of Section 6.3 of the Code, which states "Members must protect any deposit and any further advance payment, such that, if they should fall into receivership, administration or bankruptcy before the contract has been completed, the consumer will be able to have his or her contract completed at no additional cost by another Code member"; and "Members can place such funds in a client or other third-party account or use the protected payment scheme... arranged for members; and "Any deposits and advance payments must be insured". The evidence for this breach comes from an audit of the Member by RECC carried out on 4 February 2014.
4. 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 comes from the alleged breaches of Sections 5.2, 6.1, 6.2 and 6.3 of the Code.

Determination of facts and breaches

Mr H [redacted] of Efficient Living Ltd, represented the Member company. At the outset, after the charges were read, Mr H [redacted] explained that he had no information about the allegations of the breach of Section 6.3 of the Code. The chairman explained that, as the charge was in front of the Panel, it would be dealt with today, which Mr H [redacted] accepted. The Panel accepted that no admission had been made in relation to the facts of the charge of the alleged breach of Section 6.3.

Mr H [redacted] on behalf of the Member, did not admit any of the facts relating to the other charges.

Ms Morrissey, on behalf of RECC, outlined the evidence in relation to each alleged breach. In relation to the alleged breach of Section 5.2, Ms Morrissey referred the Panel to the four complaints and the results of the mystery shopping exercise.

In relation to Section 6.1, Ms Morrissey relied on the evidence from the mystery shopping exercise that no information was provided regarding customers' cancellation rights.

In relation to alleged breach of Section 6.2, in particular Section 6.2.3, Ms Morrissey relied on the evidence of a consumer complaint that solar panels had been installed during the cooling-off period without the required process, and also referred the Panel to another example in the audit.

In relation to the alleged breach of Section 6.3, Ms Morrissey relied on the statement provided during audit that there was no insurance of customers' money and the fact that no details of a client account had been provided at the time of the audit.

Mr H [redacted] on behalf of the Member decided to give a witness statement. He outlined the history of the company, explaining that there had been a business disagreement between Mr W [redacted] and the company for which he had previously worked, which resulted in him establishing Efficient Living Ltd. He gave evidence that there were ongoing problems. While the Panel noted this, it is not the Panel's function to involve itself in business disputes.

Mr H [redacted] gave details of the expansion of the company, which he said was faster than anticipated and had caused problems. Mr H [redacted] explained that they had taken on staff from another company who had "brought with them some bad practice". He also explained that the company has now introduced a three-day training course for sales consultants and a two-day training course for telesales staff. He explained the structure of the company in terms of employed and contracted staff. He gave evidence that the company installed 15 to 20 systems per week.

The panel considered all the papers, the submissions of RECC and the evidence provided by Mr H [redacted] on behalf of the Member.

In relation to Section 5.2 of the Code, the Panel finds the facts proved. The Panel noted that there was evidence from the mystery shopping exercise, which included telesales training material showing that telesales staff had been encouraged to use high-pressure selling techniques, including misleading statements.

The Panel noted that a number of the complaints came from whistleblowers about high-pressure selling in the home by sales consultants. In addition there was a separate complaint from a consumer that confirmed the use of the same sales techniques, including discounting that was in breach of the Code.

The Panel finds that the facts proved amount to a breach of Section 5.2 of the Code.

In relation to Sections 6.1 and 6.2 of the Code, the Panel finds the facts proved.

In relation to Section 6.1, the Panel accepts that during the mystery shopping exercise, no information was provided regarding the customer's right to cancel. The Panel therefore finds there has been a breach of Section 6.1.

In relation to Section 6.2, specifically Section 6.2.3, there was clear evidence from a consumer complaint that they had been persuaded to agree to an installation during the cooling-off period without any warnings in relation to their cancellation rights. Further, there was evidence in the audit report that at least one other consumer had had an installation effected within three working days of signing a purchase order, without any corresponding evidence of warning or request. Mr H , accepted that his company does occasionally fit installations within the cooling-off period, but he said it was always at the request of the customer, but presented no evidence that the specific requirements of Section 6.2.3 of the Code had been fulfilled.

The Panel finds that the facts proved amount to a breach of Section 6.2.

In relation to Section 6.3 of the Code, the Panel finds the facts proved. Section 12e of the audit report showed that the Member effectively admitted to this breach. Until the audit, the Member was not a member of an insurance scheme, and no evidence was provided that they were. In its submission, RECC accepted that since the audit, the Member has applied to join an insurance scheme. In addition no evidence was provided of a ring-fenced client account at the time of the audit. RECC suggested in its submission that such an account might exist.

The Panel finds that the facts proved amount to a breach of Section 6.3.

In relation to Section 4 of the Code, the panel finds that the breaches of Sections 5.2, 6.1, 6.2 and 6.3 of the Code amount to a breach of Section 4 of the Code. The particularity of the breaches of each section are sufficient in themselves to have amounted to Section 4.

Determination of level of seriousness

Ms Morrissey told the Panel that RECC regarded the breaches as very serious because the Code had been disregarded at multiple levels, the most fundamental being Section 5.2, which is a cornerstone of the Code. Cancellation rights had been disregarded, as has Section 6.3, designed to protect consumers' money. Ms Morrissey also raised the issue that RECC was not convinced by the director's written response to the concerns raised about training, and the Member's audit score was one of highest ever recorded. While RECC accepted that it is good that a company is expanding rapidly, it is not acceptable if there was a fundamental disregard of the Code. RECC asked for the most serious sanction, or if the Panel did not view this as appropriate, a firm stipulation regarding future compliance.

Mr H referred back to his previous comments and in particular taking on staff who had "bad habits". He accepted that the Member should have identified that problem sooner, but stated that as soon as they realised this, they put a training programme in place. He gave more background in relation to Mr W employment with his previous company. He urged the Panel to consider the effect if it decided to terminate his membership of the Code, and suggested that approximately 70 jobs would be lost. He also stated that the company recognised that its administration had been insufficient and had strengthened that side of the business.

The Panel considered all the submissions. In its judgment the nature and number of breaches are of the most severe kind. Consumer protection relies on companies adhering to all the provisions of the Code. The Panel considers that there was a fundamental failure by the Member to pay any regard or understand and adhere to the tenets of the Code, leaving consumers at risk.

Determination of sanctions

The Panel considered what sanction if any to impose. It was inappropriate in the circumstances of this case to do nothing or issue a Notice of Breach. Neither would offer any protection to consumers.

The Panel then considered whether it was feasible to impose a probationary period with conditions. The Panel looked carefully at the issues that were identified in the audit report, which were numerous and amounted to basic failures. The Panel considered whether it could impose workable, time-limited and reasonable conditions that would sufficiently protect the interests of the consumer. The Panel came to the conclusion that the nature and number of the breaches were so great that they were effectively irremediable in this case.

The Panel therefore decided to terminate the Code Member's membership of the Code as it considers the Member's conduct is grossly prejudicial to the interests of the Code and irremediable.

On receipt of this Notice, Efficient Living 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 RECC 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.

25 March 2014