

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

*In the matter of*

**DHS Renewables Ltd**

*held on*

**23 August 2017 and 25 October 2017**

*at*

**1 Wood Street, London, EC2V 7WS**

**Panel Members:**

Mr Keith Richards (Chair)

Mrs Sally Oakley

Mrs Helen White

**In attendance:**

Mr Michael Thompson (Panel Secretary)

**Renewable Energy Consumer Code (“the Executive”) representation:**

Ms Lorraine Haskell (RECC Head of Independent Panels)

Ms Rebecca Robbins (RECC Head of Compliance)

**DHS Renewables Ltd (“the Member”) representation:**

Mr Alexander Jeffery (Co-Director)

Mr Joe Searle (Co-Director) (for 23 August 2017 only)

## 1. Charges

1.1. The charges were set out in full in a letter dated 2 August 2017 from the Regulator to DHS Renewables Ltd. (“the Member”).

1.1.1. The Member is alleged to have breached Section 6.2 of the Renewable Energy Consumer Code (“the Code”), which states ‘In the event that a Consumer cancels the Contract within the Cancellation Period, Code Members must refund any money to the Consumer within 14 days.’ Sections 6.4 and 7.2 also refer to the consumer’s cancellation rights in the event of variation of contract. Complaints 9161, 9146, 9153, 9102, 8951, 8938 and 8933 are relied upon as evidence of this breach.

1.1.2. The Member is alleged to have breached Section 9.1 of the Code which states ‘The Code Member will try to find an agreed course of action to resolve the dispute speedily and effectively to the Consumer’s satisfaction;’. Complaints 9161, 9166, 9146, 9153, 9102, 8951, 8938 and 8933 are relied upon as evidence of this breach.

1.1.3. The Member is alleged to have breached Section 4 of the Code which states ‘Code Members will not act in any way that might bring the Code into disrepute...’ and at 4.1 ‘When made aware of a complaint, Code Members will act to resolve the complaint as speedily and effectively as possible.’ Alleged breaches of 6.2 and 9.1 of the Code, failure to comply with a Consent Order and conditions imposed by the Non-Compliance Panel in its determination of 22 March 2017 are relied upon as evidence of this breach.

1.1.4. The Member is alleged to have failed to comply with the terms of a Non-Compliance Panel determination dated 22 March 2017 which stated ‘The Code Member must ensure full compliance with Section 6.2 of the Code and regulation 34 of part 3 of The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.’ Evidence outlined in relation to the alleged breach of Section 6.2 above is relied upon here.

- 1.1.5. The Member is alleged to have breached Term 1 of a Consent Order dated 5 August 2016. Complaints 9152, 9146, 9153, 9061 are relied upon as evidence of this breach.
- 1.1.6. The Member is alleged to have breached Term 3 of a Consent Order dated 5 August 2016. Evidence outlined in relation to the alleged breach of Section 6.2 above is relied upon here.
- 1.1.7. The Member is alleged to have breached clause 4.9.8 of the Code's Bye-Laws which states, 'Once the Complaint is allocated to a caseworker in accordance with clause 4.9.6.3, an administration fee of £500 plus VAT for each such Complaint, payable by the Code Member, will be incurred.' Failure to pay two invoices by the due dates is relied upon as evidence of this breach.

## **2. Determination of Facts and Breaches.**

- 2.1. The charges were read out to the RECC Member. On behalf of the Member Mr Searle admitted the facts relating to all of the charges brought before the Panel, and the Panel found the facts proved. Mr Searle also admitted to breaches of the Code in all of the charges apart from the allegation of breach of Term 1 of the Consent Order signed 22 August 2016.
- 2.2. The Panel therefore finds that the Member is in breach of Sections 6.2, 9.1 and Section 4 of the Code. It also finds that the RECC Member is in breach of Condition 3 of the Non-Compliance Panel's determination dated 22 March 2017, Term 3 of the Consent Order signed on 22nd August 2016 and Clause 4.9.8 of the Code's Bye-Laws.
- 2.3. On the allegation of breach of Term 1 of the Consent Order, Ms Haskell outlined the Executive's case relating to evidence of breach. She recognised the complexity of the matter in dispute between the Code Member and OFGEM but submitted that it did not take away from the failure of the Member to comply with the terms of that Consent Order. The Member agreed to comply with the Consent Order in its entirety, if they found that they could not comply they had the option to bring this to the Executive's attention before entering into contracts with consumers. The Executive had not seen evidence that the Member had tried to get written

consent from OFGEM and no evidence was produced by the Member to refute this.

- 2.4. In addressing the Panel Mr Searle understood that the intent of Term 1 of the Consent Order was to protect against customer detriment, and since the Consent Order had been signed no applications had been rejected by OFGEM on account of the processes the Member had implemented. These included photographing the systems before and after refurbishment and submitting this to OFGEM. Mr Searle stated that OFGEM will never confirm eligibility prior to an application being made and he felt that he had received no assistance from anyone to support the Member's wish for clarification of the guidelines in relation to the refurbishment of existing solar thermal systems.
- 2.5. The Panel understands the points made by the Member. Nonetheless the Panel finds that there is a breach of Term 1 of the Consent Order.

### **3. Determination of Seriousness**

- 3.1. The Panel heard from the Executive as to the seriousness of the established breaches of the Code. With reference to the established breach of Section 6.2 of the Code, Ms Haskell highlighted complaints received by the Executive that detailed the failure by the Member to return deposits to customers after the bonafide cancellation of a contract. She underlined the importance of Section 6.2 by describing it as a cornerstone of the Code and as having been drawn directly from legislation. 7 complaints were identified, and Ms Haskell drew specific attention to two of these, complaint 9153 and 8951. Both detailed significant and repeated efforts by the Consumer to contact the Member in order to obtain a refund of their deposit. In each, the deposit took more than 2 months to be forthcoming. The Member was accused of repeatedly breaching this Section of the Code, without communicating with the consumer and involving large sums of money. 6 of the 7 complaints were resolved only after the Executive became involved. Ms Haskell suggested the complaints indicate that the Member has taken insufficient steps to protect deposits and is using them to fund the business. Regardless of assurances and a cash injection to the company, the Executive continues to receive complaints of this nature. Ms Haskell stated that attempts by the Executive and the Panel have endeavoured to prevent this behaviour in

the past, therefore the Executive feels that the Member has had its chance to rectify the issue and that consumers should not continue to be the victim.

- 3.2. With reference to Section 9.1 of the Code, Ms Haskell said that complaint handling was an important aspect of the Code and identified 8 complaints which detailed failure on the Member's part to adequately deal with and respond to consumers' concerns. Reports from consumers included failing to get a response, being lied to, feeling worried about losing their money, and unanswered or unreturned calls. Complaints continue to be received by the Executive since the previous Panel hearing of 22 March 2017 despite the apparent appointment of a Customer Services Manager and the implementation of a CRM system.
- 3.3. In relation to Section 4 of the Code, Ms Haskell asserted that the established breaches suggest an unwillingness on the Member's part to uphold the values of the Code. The evidence put forward by the Member to establish insurance for deposits was not satisfactory and caused the Executive further concern that the Code was being brought into disrepute. Ms Haskell highlighted that the Panel's written warning in its determination of 22 March 2017 stated that 'The Member should be under no illusion about the seriousness of the situation, and that failure to comply with the conditions set out in the Panel's determination will lead to a further Non-Compliance Hearing and the likelihood of termination of Membership.' There has been no sign that this warning has had an effect.
- 3.4. The Executive deemed the established breach of Terms 1 and 3 of the Consent Order to be indicative of a Member who is unwilling to cooperate with the Executive or comply with its standards.
- 3.5. In relation to Clause 4.9.8. of the Bye-Laws Ms Haskell highlighted the Executive's right to terminate Code Membership in the event that any sum due to REAL is unpaid 28 days after the due date.
- 3.6. The Executive has received 82 complaints placing the Member in the top 10 member companies with the most amount of complaints registered. In summary, the Executive supports termination of Code Membership. Allowing continued membership would not inspire consumer confidence in the RECC Executive.

- 3.7. The Panel heard from the Code Member in response to the Executive's submissions on seriousness and sanction. Mr Searle identified the uncertain political and economic climate, the increased costs for equipment, and the slow business this year as having caused financial problems within the company. Mr Jeffery identified their obligations to corporation tax and VAT as having further stretched the company. Mr Searle and Mr Jeffery have taken a personal loan to inject funds into the company and Mr Searle asserted that customers have had their money refunded to them in full. Mr Searle felt that the complaints identify a financial problem not a customer service problem. He admitted that deposits are placed into the company's bank account and are not kept separate and that their running of the business and cash flow has caused general business standards to fall. The Member expressed a desire to be audited and for guidance from the Executive, although admitted that the financial problems would not be solved by an audit and were the responsibility of the Member to resolve through better governance. In an effort to resolve those financial problems staff have been cut, negotiations with suppliers have been entered into, and Mr Searle and Mr Jeffery have not taken a salary. Cash injections would allow for a float for the company and as such deposits would not be relied upon to fund the business. The Member expected that such stability in the finances could be achieved within two months.
- 3.8. The Member accepted the need to pay the outstanding invoices although had concerns that the Executive was raising invoices without having carried out any substantive work to incur the fee.
- 3.9. After hearing from both parties as to seriousness and sanction, the Panel adjourned the hearing issuing the following notice:
- 3.9.1. The seriousness of the breaches in this case are accepted by the Panel and this was also reflected in the Warning Letter issued following the NCP hearing on 22 March 2017. The Panel is persuaded by the Member's submissions that the efforts it has put in to date and the willingness to accept advice need a short period of time in order to demonstrate effectiveness. In short the Panel thinks there is a period of time required for the Member to finally get its house in order. Rather than make a formal determination now

the Panel feels it is important for this Panel to see the evidence available after a short but realistic period of time to make the financial changes the Member has said it will make. If, when this Panel reconvenes these types of breaches are continuing then the Member is aware of the sanctions available to the Panel.

- 3.9.2. The Panel decided to adjourn the hearing of 23 August 2017 in order to give the Member a final opportunity to take critical steps to ensure compliance with the Code. Those steps shall be undertaken by 23 October 2017, after which the Panel shall reconvene and receive evidence of such compliance and make its final determination.
- 3.9.3. The Panel is seeking evidence by way of a spot check to be carried out by the RECC Executive. The spot check will be at the expense of the Member and will cover the following:
  - i. That a separate designated bank account has been set up with the sole purpose of holding customers deposits;
  - ii. That evidence is provided that all customer deposits are paid into that account and remain there either until required for work under that contract in accordance with 6.3 of the Code, or are refunded to the customer on cancellation.
  - iii. That the Member maintains a schedule of client contracts showing deposit amounts and dates received, this schedule to be accompanied by bank account statements showing the amounts deposited, refunded and/or properly used for work under that contract, the balance to be reconciled against the bank statement weekly.
  - iv. That this schedule provides evidence of the routine return of customers' deposits within 14 days of cancellation in accordance with the Code and the provisions of the Consumer Contracts (Information, Cancellation, and Additional charges) Regulations 2013.
  - v. That there is evidence of effective insurance showing deposit cover included for each customer. This evidence should be maintained in a weekly schedule showing insurance purchased to cover deposit protection.

- vi. That the Member developed and published a customer service policy in order to show compliance with Section 9.1 of the Code, in particular to show that consumer disputes are dealt with speedily and effectively to the consumer's satisfaction. This must include a commitment to responding to customer communications within a defined timescale.
- vii. That the Member's CRM system is being used to record and demonstrate that customer communications are responded to in line with the new policy.

3.9.4. These measures should satisfy breaches of section 6.2, 9.1, and 4 of the Code as well as the breach of Condition 3 the Non-Compliance Panel's determination dated 22 March 2017, and Term 3 of the Consent Order signed on 22 August 2016.

3.9.5. There are no additional measures in relation to Term 1 of the Consent Order as there is no evidence of ongoing consumer detriment.

3.9.6. As a result of the breach of clause 4.9.8 of the code's bye laws payment of the costs of the future spot check must be made in advance.

3.9.7. We would expect the two outstanding invoices to be paid forthwith and we note the Executive's existing power to terminate membership following non-payment of such invoices.

3.9.8. The Panel makes an interim order that the Member shall pay the costs of RECC in the amount of £4,316.40.

### **Reconvened hearing**

3.10. On 25th October 2017 the Non-Compliance Panel reconvened to hear the extent to which the Member has complied with the Code in the ensuing period following the hearing of 23 August 2017.

### **Preliminary issues discussed**



- 3.11. Ms Haskell summarised the lack of any response to the Executive's attempt to carry out a spot check. She confirmed that the two outstanding invoices have now been paid albeit late, which deals with breach of Clause 4.9.8 of the Code's Bye Laws. The Costs order had not been paid. The Executive stated that it had evidence of emails and letters sent by the Executive and received by the member that had not been responded to regarding the Spot Check.
- 3.12. Mr Jeffery, on behalf of the Member, stated that Mr Joe Searle was no longer a shareholder or director of the company as of four weeks ago. Mr Jeffery explained the background and gave reasons why the Panel's requirements had not been complied with.
- 3.13. Mr Searle had been the nominated person for RECC and MCS and Mr Jeffery had only recently become aware of the lack of action that had been taken by Mr Searle during the period since the adjourned hearing.
- 3.14. RECC repeated that their main concern was around the lack of insurance for customer's deposits and for workmanship and referred to the Member's systematic non compliance with the code and a lack of understanding of the role of regulation.

### **Determination of Sanction**

- 3.15. Ms Haskell said that the Code was being brought into disrepute by the activities of the Member and consumer detriment caused as a result. The Executive repeated its recommendation that the company's membership with RECC be terminated.
- 3.16. Mr Jeffery stated that he should have been aware of his co-director Mr Searle's inactivity and acknowledged his own responsibility as a director of the company. He confirmed that a separate designated bank account had been set up but to his knowledge no deposits were being paid into that account. In relation to the Panel's requirement that a schedule of contracts be kept, Mr Jeffery stated that there was a list, but that it may not fully comply with the requirements of the NCP's request for evidence. He also stated that customer deposits were being returned within 14 days but no evidence was provided. He also stated that a complaints procedure

was in place but to his knowledge no customer service policy had been published.

- 3.17. Mr Jeffery undertook to support existing customers with any ongoing concerns and money owed whatever the outcome of the Non-compliance hearing.
- 3.18. The Panel considered sanctions from least to most serious.
- 3.19. The Panel considers this matter far too serious to either have no sanction, or issue a written warning, since neither of these would offer any form of consumer protection. Even at this late stage the Member, in spite of being given many opportunities to put in place systems that would deal with the breaches has failed to do so.
- 3.20. The Panel took into account the Consent Order dated 5 August 2016 and the previous NCP determination dated 22nd March 2017, and the period of time the current NCP had given the Member as a final opportunity to take critical steps to ensure compliance with the Code. The Panel does not feel it would be proper or proportionate in this case to impose conditions or a period of enhanced monitoring because it would allow the Member to continue trading while having not demonstrated that it fully understands the Code or the law and the need to comply.
- 3.21. Therefore, in view of the seriousness of this case, the Member's failure to take advantage of the time allowed to demonstrate ongoing compliance, and the lack of understanding of the Code and of the Law by the Member, the Panel has decided that the Member's Code Membership should be terminated.

#### **4. Determination of Costs**

- 4.1. The Panel orders the Member to pay the costs of RECC in the amount of £6806.40. This includes the amount of £4316.40 for which the Panel made an interim order on 23rd August 2017 which remains unpaid.

#### **5. Appeal period**

- 5.1. Under Bye-Law 11 the Member may appeal this determination within 14 days of the date that this determination is issued in writing.
- 5.2. At the end of 14 days or subject to any appeal DHS Renewables Ltd and any other trading name of the company must immediately cease to:
  - Describe itself as a member of the Code
  - Use the RECC logo, or
  - Hold itself out as a Code Member, or as being in any way connected to the Code.

29th October 2017