

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

*In the matter of*

**i-Power Systems Ltd**

*held on*

**5 June, 2014**

*at*

**1 Wood Street, London**

**Panel Members:**

Mary Symes (Chair),

Amanda McIntyre,

Sally Oakley.

**In attendance:**

Andrew McIlwraith (panel secretary).

**Renewable Energy Consumer Code (“RECC”) representation:**

Sian Morrissey, RECC,

Lorraine Haskell, RECC.

**i-Power Systems Ltd representation:**

**Also present:**

Abena Simpey, RECC.

## Charges

The Charges were set out in full in a letter dated 29 April 2014 from RECC to i-Power 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. They must not make any statement that is likely to mislead the consumer in any way" and "Sales employees and representatives... must not use any selling techniques designed to pressurise the consumer into making an immediate decision. The evidence for this breach is from a mystery shopping exercise undertaken in 2013 and from complaint numbers 3071, 3591, 3737, 3951, 3954, 4078, 4143, 4207, 4307 and 4339.
2. The Member is alleged to have been in breach of Section 5.3 of the Code, which states "It is essential that members give certain technical information... in writing to consumers before the contract is signed". The evidence for this breach is from two mystery shopping exercises, undertaken in 2013 and 2014, and from complaint numbers 2984, 3071, 3275, 3591 and 3737.
3. The Member is alleged to have been in breach of Section 5.4 of the Code, which states "Members will provide consumers with a written cost estimate based on the information the consumer has given them... Members will also provide consumers with the method used for calculating the price". The evidence for this breach is from a mystery shopping exercise, undertaken in 2014, and from complaint numbers 3737 and 3812.
4. The Member is alleged to have been in breach of Section 9.3 of the Code, which states "An award made under the independent arbitration service shall be final and binding on both the consumer and the Member". The evidence for this breach is from complaint number 3071.
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 alleged breaches of Sections 5.2, 5.3, 5.4 and 9.3 of the Code. Section 4 of the Code also states "If credit or hire purchase is part of a Member's offer to consumers, then the Member must ensure they hold a valid up-to-date credit licence with the appropriate categories". The evidence for this breach is from complaint numbers 3071, 3591, 3954, 4143 and 4307, and from the credit licence registers of the Office of Fair Trading and the Financial Conduct Authority.

## **Determination of facts and breaches**

The Panel had before it a bundle of documents from the regulator.

Ms Morrissey, on behalf of the regulator, outlined the facts of the case and drew the Panel's attention to Document 17 of the bundle, which she said contained the key evidence of the alleged breaches. She particularly emphasised that there were consistent and multiple complaints with the same issues, and that complaints had been increasing over 2013 and 2014.

Ms Morrissey said that complaints were arising at the same time as the regulator was conducting an audit, which raised significant issues but which the Member had responded to positively. This suggested that a very different picture was emerging "in the field".

Mr O. on behalf of the Member stated that the Member accepted some of the facts, in particular those relating to consumer complaints, but disputed some aspects of the mystery shopping exercises and the Consumer Credit Licence.

Mr T made a statement in respect of the mystery shopping exercises. Mr O presented to the Panel documents relating to guidance from the Office of Fair Trading on credit broking and canvassing off trade premises.

The Panel took into account the representations of both parties and the bundle of documents available to it.

### **Section 5.2**

The Panel finds the facts proved. There is strong evidence from seven complaints, 3071, 3594, 4143, 4078, 3951, 4307 and 4339, indicating that misleading information had been given to consumers regarding payment and payback details. There appeared to be a theme running through all the complaints showing similar issues.

There is also evidence from complaints, 4307, 4207, 3737 and 3591, that discounting took place. Mr T on behalf of the Member stated that discounting had never been the company's practice. However, the Panel finds that there were sufficient numbers of complaints to suggest that inducement in the form of discounting had on balance occurred.

The Panel therefore finds that there has been a breach of Section 5.2 both in respect of misleading information and in respect of pressure selling by inappropriate discounting.

### **Section 5.3**

The Panel find the facts proved. There are five complaints suggesting that technical information had not been given to consumers before contracts were signed. Those complaints are 3737, 3591, 3275, 3071, and 2984. In addition there was corroboration from both mystery shopping exercises.

The Panel therefore finds a breach of Section 5.3 of the Code.

### **Section 5.4**

The Panel finds the facts proved. The Panel accepts that complaints 3812 and 3737 show that a written cost estimate was not provided in these cases and that the methods of calculating the price were not properly outlined to these consumers. This evidence is also corroborated by the mystery shopping exercise of 2014.

The Panel therefore finds that the failure to provide the proper information as provided by Section 5.4 of the Code amounts to a breach of the Code.

### **Section 9.3**

The Panel finds the facts proved. The Panel was provided with a copy of the arbitration that arose as a result of complaint 3071. The complainant took enforcement action in order to receive the award of the arbitration. The Member neither appealed the award, nor disputed the fact that the complainant took enforcement action. When an award of arbitration requires a payment to a consumer, this must be made without the consumer having to resort to enforcement action.

The Panel therefore finds there is a breach of Section 9.3.

### **Section 4**

The Panel finds that breaches of Section 5.2, 5.3, 5.4 and 9.3 amount to a breach of Section 4 in that the Code has been brought into disrepute.

The Panel also considered the part of the Section 4 that relates to credit or hire purchase agreements. The Panel heard from Ms Morrissey that it was the regulator's view that the Member does not hold a valid up-to-date credit licence with the appropriate categories.

Mr O went into details about the business model and explained that it was his view that the credit licence that the company held was sufficient to allow it to introduce a third-party credit provider to the consumer in their home.

It is not for this Panel to decide whether the company has the appropriate credit licence. The Panel suggests that the Member and the regulator approach the FCA to clarify this point. The Panel did note that there were five complaints, 4307, 4143, 3954, 3591 and 3071, which suggested that consumers may have been "canvassed" in their own home. Again the Panel is not in a position to judge whether or not that is the case.

### **Determination of level of seriousness**

The Panel heard representations from Ms Morrissey on behalf of the regulator in relation to the level of seriousness and the sanction. Ms B , Mr T and Ms W as well as Mr O explained the recent changes made to the company's operations, policies and procedures in mitigation, but provided with no documentary evidence of any of the changes.

The Panel considers that the number and nature of the breaches found amount to a serious breach of the Code. The Panel finds that some of the actions taken by during the early workings of the company caused considerable consumer detriment. It also finds that it is unacceptable to fail to abide by an arbitration award in a timely manner. The purpose of the Code is to ensure that consumers can trust the company they are dealing with, and the Panel finds that in this case consumers were misled, pressurised and not given clear written information to make an informed decision.

### **Determination of sanctions**

The Panel considered whether this was a suitable case to do nothing or to issue a notice. The Panel decided that, due to the numerous and serious nature of the breaches, neither of those sanctions was appropriate.

The Panel has decided to impose the following conditions on the Member's ongoing membership of the Code:

1. Within seven days of the date of this hearing, the Member shall produce:
  - a. all paperwork relating to the sales staff training programme, including all handouts to staff
  - b. The company complaints log from January 2014 to the date of the hearing
  - c. Examples of all documentation give to consumers, including the purchase contract

These will be assessed by RECC or its auditor, at the Member's expense, for compliance with the Code.

2. By August 31 2014 the Member will undergo a full audit at a time of RECC's choosing, provided RECC has given the Member at least 24 hours' notice. As part of the audit, the auditor will inspect and review the Member's Eworks system for Code compliance and the member will produce any further documentation, printout or other information required at the time of inspection.

This audit will be at the Member's expense.

3. Failure to comply with any aspect of these conditions will be a breach of conditions and may result in a further hearing of the Non-Compliance Panel.

### **Appeal Period**

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

**5 June 2014**