The Renewable Energy Consumer Code ("RECC")
Non-Compliance Panel Hearing

In the matter of

i-Power Systems Ltd

held on

10 December, 2014

at

1 Wood Street, London

Panel Members:

Mary Symes (Chair),

Elizabeth Stallibrass,

Helen White.

In attendance:

Andrew McIlwraith (panel secretary).

Renewable Energy Consumer Code ("RECC") representation:

Sian Morrissey, RECC,

Lorraine Haskell, RECC.

i-Power Systems Ltd representation:

Charges

The Charges were set out in full in a letter dated 11 November 2014 from RECC to i-Power Systems 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." This section of the Code also specifies that discounts of more than £200 can only be permitted where "the discounts apply to everyone irrespective of postcode, region, date, house type or any other limiting factor clearly intended to pressurize the consumer into signing a contract". The evidence for this breach is from complaint numbers 4529, 4571, 4643, 4642, 4657, 4845, 5076, 5004, 4968, 5047, 5167 and 4372, and from consumer postings on a website.

2. 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 a 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 is from complaint numbers 4643, 4642, 4845, 5076, 5004, 4968, 5047, 4529, 4372, 5076 and 4968, and from an audit undertaken by RECC.

3. The Member is alleged to have been in breach of Section 9.1 of the Code, which states "The Code Member will try to find an agreed course of action to resolve the complaint speedily and effectively to the consumer's satisfaction" and "Code members will not take action through the courts without first trying to solve the problem as set out in this Section". The evidence for this breach comes from complaint numbers 4643, 4642, 4640, 4710, 4845, 5072, 5076, 4372, 5004, 4968 and 4657.

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 is from the evidence of the alleged breaches of Sections 5.2, 5.3 and 9.1 of the Code.

5. The Member is alleged to have been in breach of the Conditions 1(a), 1 (b), 1(c) and Condition 2 set by the Non Compliance Panel at a hearing that took place on 5 June 2014. Conditions 1(a), (b) and (c) required the Member to provide specified documentation to the Regulator; Condition 2 required the Member to undergo a full audit by no later than August 31 2014. Condition 3 stated that "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." The evidence for this breach is from the Regulator's account of the paperwork provided by the Member and the results of the Audit held on August 12 2014.

Determination of facts and breaches

1. The Panel had before it a bundle of documents from the Regulator. The Member had not submitted a bundle, but just prior to the hearing papers were presented by the Member commenting on a number of complaint cases, to which the Regulator did not object. The Panel therefore admitted these papers in addition to the bundle.

2. Ms Morrissey, on behalf of the Regulator, outlined the facts of the case. She first dealt with the breaches of the Code alleged to have arisen since the Panel's Determination of 5 June 2014.

3. She outlined the importance of Section 5.2 of the Code, which she said, set the standard of behaviour of sales representatives. Consumers must be able to trust the information provided by sales representatives and have confidence that they are not being pressurised into signing a contract. Ms Morrissey suggested that the member had oversold the systems, giving misleading information about how loan payments would be covered by Feed-in Tariff payments (FiT) received. She stated that any loan payments were never covered from the outset and in fact the first few payments were not covered at all. She referred the Panel to complaints 5004, 4642, 4845 and 5076. She also referred to postings on a website which she said gave a real flavour of how frustrated and upset consumers can feel, which does not always come through from RECC's complaints reports.

4. She then went on to refer to the alleged pressure selling, discounting and overstaying, using the complaints numbers 5167,4372 and 5320 as examples, and again the website postings as evidence of frustration.

5. In relation to Section 5.3, Ms Morrissey suggested that if the Panel found the facts proved in relation to Section 5.2, this would suggest a breach of Section 5.3 as well. She emphasised that it was very important that consumers had clear and accessible performance information so that they can make an informed decision. She referred in particular to complaints 4529, 4372, 5076 and 4968. She also stated that these complaints were supported by information obtained during RECC's audit visit.

6. Ms Morrissey then referred to Section 9.1 of the Code, relating to the expeditious dealing with complaints by members. She referred the Panel to the upsurge of complaints since April 2014, and stated that many of the complaints would not have come to the Regulator if the Member had dealt with them appropriately. She made the point that it was fundamental to good customer service to respond speedily and effectively to complaints. She particularly referred to complaints 5076 and 4640.

7. In relation to Section 4, she suggested that if the Panel found breaches of Sections 5.2, 5.3 and 9.1, it naturally followed that the Code would have been brought into disrepute and therefore there was a breach of Section 4.

8. Ms Morrissey then dealt with the issue of the evidence in relation to the alleged breach of conditions imposed under the Determination of 5 June 2014. She referred to the fact that, when documents were missing in the first instance, the Regulator had given the Member a second chance to provide the documents. She stated that it was only a partial breach of this condition, but that the missing documents were crucial, and would have allowed the Regulator to make an assessment of the Member's controls and processes.

9. Mr O spoke on behalf of the Member. He made the preliminary point that there were only 50 complaints to the Member's approximately 3,000 completed fittings between February 2013 and November 2014, therefore the percentage of

complaints was very small. He challenged the acceptance of posts on the website as supporting evidence for the RECC complaints, and asked that they be struck out.

10. In relation to Section 5.2 of the Code, he suggested that, where the sales included finance, there was a conflict between the rules relating to the Financial Conduct Authority (FCA) and those of the RECC Code, and that it was almost impossible to satisfy both within a two-hour sales visit. He suggested the Member might be guilty because they satisfied one code and not the other. He referred the Panel to complaints 5167, 5372 and 5320, although he did say there were others.

11. In relation to complaints, he stated that he dealt personally with any complicated issues, and he usually found when investigating these that there was a misunderstanding on the part of the customer. He worked closely with the customer service team and he often found that one of the reasons the customer appeared to have a shortfall in their FiT payments was because they had not followed the checklist left with the customer. He further suggested that whenever he looked at a customer's file, written estimates were present. Mr W added that the quotation given was never about what the customer *would* save but what they *could* save, but customers often took the figures "as gospel".

12. In relation to Section 9.1, Mr O suggested that there were now weekly internal meetings with the customer services team to satisfy all Regulators.

13. Mr B went through the Member's complaints system, stating that the Member treats every complaint as a matter of urgency. They log the time the complaint comes in, send it to the relevant department and, if it is not resolved within four to six weeks, they offer to remove the system from the customer's home, at the Member's cost. He suggested that the majority of complainants had not understood that a renewable energy installation was a long-term investment, that they would be paid a tax-free index-linked sum for 20 years, that the electricity company would buy any unused electricity, and that the customer might get an amount of free electricity during the day.

14. Mr W dealt with the audit and made a serious complaint to the Panel about the conduct of the audit. The Panel was told by Mr W , confirmed by Mr O , that during the course of the audit the auditor had been invited to look at the e-Works management system, but she had not done so. He went through various points in the audit. Also, during the course of his statement, it was accepted by the Member that some specified paperwork had not been sent.

Decision of Facts

15. In coming to its decision on facts, the Panel took into account the bundle of papers and the statements of both parties made at the hearing. In reaching its decisions it applied the civil standard of proof, that is, the balance of probabilities. The Panel considered Mr O point about the website postings. It accepted that they were not evidence, but equally it accepted Ms Morrissey's statement that she was not seeking to rely on them as evidence, but rather to give a flavour of the frustration of consumers. The Panel did not consider the website postings relevant to the determination of the facts.

Alleged Breach of Conditions set on 5 June 2014

16. The Panel has decided to deal with the alleged breach of conditions first in this determination.

17. As stated above, the Member accepted, during the course of the hearing, that they had breached 1(a) of the Conditions in that they have failed to provide all the paperwork required. The Panel finds the facts proved in relation to Condition 1(a), which amounts to a breach of Condition 3.

18. In relation to Condition 1(b), Ms Morrissey on behalf of the Regulator explained the detail that the Regulator would expect to see in any complaints log. The Panel, having examined the log that was produced by the company, finds that although it includes a list of customers who had made a complaint, it fails completely to give details of the history of the complaints, or how contacts with customers had been managed. Therefore it is impossible to assess the effectiveness of the Member's complaints process.

19. The Panel therefore finds the facts proved in relation to Condition 1(b), which amounts to a breach of Condition 1(b), amounting to a breach of Condition 3.

20. In relation to Condition 1(c), the Member produced some, but not all, of the documents it was required to produce. The Panel accepts Ms Morrissey's description of the breach as a partial breach of conditions, but as this condition had not been complied with fully it still amounted to a breach of Condition 1(c), amounting to a breach of Condition 3.

21. In relation to Condition 2, the Panel was concerned about the issues raised by the Member at the hearing, that is, that the auditor may not have properly examined all the Member's systems available on the day. However, the condition was that the Member should undergo a full audit and produce any further information. The Member failed to raise these concerns at the material time, that is, on receipt of the report, therefore the Panel has to deal with the evidence as submitted to the Audit Committee, which had not been challenged previously. Because the company failed the audit, the Panel finds the facts proved in relation to Condition 2, which amounts to a breach of Condition 3. However, the Panel will take into account the Member's complaints about the audit process at the sanctions stage.

Section 5.2

22. The Panel finds the facts proved. The Panel finds that there is a large volume of complaints with a consistent theme that suggests that some consumers have been given false or misleading information before signing contracts. The Member also, in the course of its statements, suggested that some consumers had misunderstood the financial information they had been given.

23. The Panel considered the issue in relation to overstaying, and finds that the Member had implicitly accepted that some sales visits do last more than two hours. They have not, however, complied with the Code by demonstrating that this was because of exceptional circumstances, and recorded the circumstances.

24. The Regulator also alleged that consumers had been offered discounts beyond the provisions of the Code. The Panel does not find these facts proved because the Regulator has not met the threshold of proof.

25. The Panel finds a breach of Section 5.2 of the Code in relation to the provision of misleading information, and overstaying.

Section 5.3

26. The Panel finds the facts proved. The Panel was persuaded by the evidence presented by the Regulator, the volume and nature of the complaints referred to

above, together with the Member's statements about customers who had misunderstood the information provided.

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

Section 9.1

28. The Panel finds the facts proved. It is an essential part of good customer service that consumer complaints are dealt with in an expeditious, competent and professional manner. There is a weight of complaints suggesting that the company had failed to respond to complaints in a timely and professional manner, which had reached the Regulator without any resolution.

29. The Panel therefore finds a breach of Section 9.1 of the Code.

Section 4

30. The Panel finds that the breaches of Sections 5.2, 5.3 and 9.1 do bring the Code into disrepute; therefore there is a breach of Section 4 of the Code.

Determination of sanctions

32. The Panel heard from both parties before coming to its determination.

33. Ms Morrissey addressed the Panel and stated that the Member had been given many opportunities to put all the problems right but the Regulator was not convinced that there was a will within the company to do so. The Member had undergone an audit in 2013 with unsatisfactory results, been subject to the mystery shopping exercise, and the Regulator had shared an analysis of complaints with them. At the hearing in June 2014 the Regulator accepted that the Member had acknowledged that things were not as they should be but six months later little had changed.

34. The Audit in August scored 81, which was a major failure. The scale of scoring runs from 0 and most firms score around 50. Ms Morrissey stated that a score of over 80 shows that there are problems with many of the core areas, including the sales process.

35. The Regulator was particularly uncomfortable with the fact that so many consumers appeared not to understand the benefit of the system sold. They were told one thing but the reality was different.

36. Ms Morrissey alleged that the history of the Member suggested that there had been no improvements despite the issues previously raised. They pleaded rapid expansion in June but it is the Regulator's view there should be no increase in problems and complaints due to expansion. In order to successfully expand, proper procedures should be in place. It seemed that the Member did not take the Code as seriously as it should have done. The Regulator therefore urged the Panel to consider the most serious sanction of termination of Membership. This was not necessarily forever; if the Member managed to put its house in order it could apply for readmission to the Code.

37. The Regulator was concerned that any further conditions or enhanced monitoring would only result in the same situation occurring, which would send out a message that the Code was unenforceable.

38. Mr W on behalf of the Member urged the Panel to accept that it did take regulation by RECC very seriously. As far as any alleged mis-selling was concerned, if any had occurred it amounted to less than 2% of total sales. In the real world a proportion of customers will always say that they have been mis-sold.

39. The Member had to ensure that it did not fall foul of any of the various other codes under which it worked as it would not be paid any money by the finance company to which it introduced customers. It was never the Member's intention to mis-sell anything.

40. Mr W accepted that previously the complaints procedure had not been good but there was now a new complaints procedure, which the Member was trying and succeeding to get absolutely pristine. He never wanted to come in front of the Panel again and he suggested that their new procedure, which he clarified had been in place for 6 weeks, could not be bettered.

Decision on Sanctions

41. In reaching its decisions the Panel took into account the mitigation statements made by both the Regulator and the Member, and Sections 8.21 to 8.27 of the RECC Bye Laws ("the Bye Laws").

42. The Panel noted that throughout the hearing the Member had consistently made statements which made it clear that its financial brokerage activities went hand in hand with its renewable energy sales. Although sale of a system was not dependent on the customer taking out a loan, the Member had said that in practice some 80-90% of its customers did so. The Member had repeatedly stressed the stringency of the Financial Conduct Authority's rules and had urged the Panel to accept that it always complied with these. This is not relevant to the decision of this Panel, which makes its decision on lack of compliance with the Code. Considering all the factors, the statements, the Member's history and the breaches, the Panel has drawn an inference that the Code was not accorded the same priority or status.

43. The Panel considered the sanctions available to it in ascending order.

44. The Panel considered whether this was a suitable case to do nothing or to issue a written warning. The Panel decided that, due to the numerous and serious nature of the breaches over a long period with little change since the previous determination in June 2014, neither of those sanctions was appropriate.

45. The Panel then considered whether it would be appropriate to impose further conditions on the Member. The Panel decided that given the breach of the conditions imposed under the previous determination, it has little confidence in the Member's ability and willingness to satisfy any further conditions that might be imposed. The Panel noted that there had been no observable change in the culture of the company and therefore that there was a real possibility that there would be further consumer harm and loss, which was not in the public interest. The Panel therefore decided that it was not appropriate to impose further conditions on the Members' membership of the Code.

46. The Panel then considered if a period of Enhanced Monitoring would be sufficient to protect the public interest. Any Enhanced Monitoring would, in the light of the Member's history, need to be comprehensive and necessarily complicated. It is not for the Regulator to have to ensure compliance with the Code; it is the responsibility of every Member. The Panel decided that a fundamental cultural change is needed within the company, which would not be achieved by any Enhanced Monitoring however measurable, observable, actionable and time limited.

47. The Panel considered whether to require the Member to compensate any customers, but did not feel this was necessary as it appears that all complainants have been, or are in the process of being, repaid any losses prior to the hearing.

48. The Panel felt that even at the second hearing the Member did not understand fully the extremely serious nature of the breaches that were almost exactly the same as the breaches upheld in June 2014. Its acknowledgement of wrongdoing in June meant the Member had been given a chance to change its company culture, processes and procedures. However, in the intervening months the Panel finds that little progress appears to have been made and indeed many of the breaches upheld at the hearing in June 2014 have been repeated. The Panel regard this as a blatant disregard for the Code.

49. The Panel accepted that there may have been problems with the June 2014 audit but noted that the Member failed to respond to the audit report or issue any form of complaint or rebuttal at the time, therefore there was less credibility in its complaints. Even if there was a problem it was minor compared to the consumer harm that had been suffered by the complainants and it is the Panel's duty to uphold the public interest by imposing a proportionate sanction.

50. The Panel has decided that, given the duration, seriousness and breadth of the breaches upheld and the Member's history of compliance, i-Power Systems Ltd's membership of the Code should be terminated from the date of this Determination in accordance with clause 8.21.7, 12.1.15, 12.2, 12.3, 12.4 and 12.5 of the Bye Laws.

Determination of costs

51. On application by the Regulator, to which the Member did not object, the Panel orders the Member to pay the costs of the Hearing in the amount of £3,406.

Appeal Period

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

16 December 2014