

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

In the matter of

Solartech North East Ltd

held on

13 July, 2016

at

1 Wood Street, London

Panel Members:

Mary Symes (Chair),

Sally Oakley,

Alan Wilson.

In attendance:

Andrew McIlwraith (Panel secretary).

Renewable Energy Consumer Code (“RECC”) representation:

Lorraine Haskell,

Rebecca Robbins.

Solartech North East Ltd representation:

Jeffrey Hall,

Christopher Snaith.

1. The charges

- 1.1. The Member is alleged to have been in breach of Section 2.5 of the Renewable Energy Consumer Code (“the Code”), which states *“Code members must put in place and process and training for its employees and those working on its behalf to check whether a consumer they contact is vulnerable in any way. Consumers may be vulnerable as a consequence of mental or physical infirmity, age, credulity, learning difficulties, illiteracy or if their first language is not English.”* The evidence for this breach is offered in complaint numbers 2424, 4623 5196, 5843, 6186, 6387 and 7426; from online customer reviews of the Member; and from a “Cancellation details” document provided by the Member to RECC.
- 1.2. 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 business 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 offered in complaint numbers 2272, 2424, 3417, 3491, 3731, 5196, 5348, 5843, 6059, 6112, 6186, 6387, 6698, 6812, 7327, 7426, and 7855; from two “mystery shopping” exercises conducted by RECC; from online customer reviews of the Member; and from a “Cancellation details” document provided by the Member to RECC.
- 1.3. The Member is alleged to have been in breach of Section 6.2 of the Code, which states *“where consumers sign contracts in the home, away from trade premises or by distance... Code Members must give the consumer the right to cancel without penalty within 14 days of the date on which the goods were all delivered to the consumer’s home”* and *“Code members who install an Energy Generator at a consumer’s home during the cancellation period must first have obtained the consumer’s express written permission to do so, for example by letter or email. In such a case, the Code member will make the consumer aware that, should they later decide to cancel the contract within the cancellation period, they may be responsible for the costs of goods and services already supplied, and of making good the property.”* The evidence for this breach is offered in complaint numbers 2272, 2424, 2592, 3417, 3673, 3731, 3913, 3938, 4282, 4556, 4623, 5196, 5348, 5384, 5584, 5843, 6112, 6186, 6387 6812, 7426, 7792, 7855 and 7972; from two “mystery shopping” exercises conducted by RECC; from online customer reviews of the Member; from emails to RECC from the Member of June and July 2016; and from training logs of October 2015.
- 1.4. The Member is alleged to have been in breach of Section 4 of the Code which states *“Code members will not act in any way that might bring the Code into disrepute”* and *“Code Members will not engage in high pressure selling techniques... In the case of vulnerable consumers, Code Members are expected to provide extra care and support”*. The evidence for this breach is offered in the combined breaches of Sections 2.5, 5.2 and 6.2 of the Code, in RECC’s audits and monitoring exercises; from the Consent Order the Member agreed with RECC and an undertaking given to the Trading Standards Service.

2. Determination of facts and breaches

- 2.1. Ms Lorraine Haskell and Ms Rebecca Robbins appeared on behalf of the Regulator. Mr Christopher Snaith and Mr Jeffrey Hall, directors of the Solartech North East Ltd, appeared on behalf of the Member.
- 2.2. Mr Snaith, on behalf of the Member, admitted all the charges. The Panel found the facts proved.
- 2.3. Ms Haskell said that the Member joined the Code in July 2012. She stated in her opening address that there had been a pattern of non-compliance, with a large number of complaints, and that there was a consistency within the complaints that continued despite the Consent Order agreed by the Member, and a legal undertaking given to Trading Standards. The company had received advice and help from Trading Standards as well as considerable advice from the Regulator. Ms Haskell particularly referred the Panel to the number of complaints. There had been 44 complaints since 2012, but the Regulator was relying for the purposes of this hearing on the 7 in 2014, 10 in 2015 and 10 in 2016.
- 2.4. Ms Haskell took the Panel through each of the charges individually, referring in detail to a number of complaints as well as using various online customer reviews as subsidiary support to the fact that there were continuing issues.
- 2.5. Mr Hall and Mr Snaith explained the working methods of the company and were particularly concerned that, as directors, they were not present at every sales interview and felt that there was a negligible chance that they knew exactly what had happened in each case. Therefore they admitted all of the charges and accepted that they were in breach of the Code.
- 2.6. Mr Hall explained that the Member has door-to-door canvassers and telesales people who are not trained in any aspect of the Code, whose task is to persuade consumers to agree to a sales interview. If this is achieved, the office then makes two calls to the prospective customer, the first to make a date and time for the visit, and the second, about an hour before the sales appointment, to confirm the appointment is to go ahead. There were five sales representatives, which the Member describes as surveyors, who undertake the sales pitch. These members of staff, together with all the office staff and, to a certain extent, the directors, are trained in the Code. The office administrator is principally responsible for the training.
- 2.7. If a sale is made during a visit, there is a secondary survey undertaken by the company to ensure that the correct information has been obtained by the sales representative. Mr Hall particularly focused on the number of cancellations and said there were economic reasons for the high cancellation rate, both in respect of the tariff drops and the recent economic uncertainty. He said that recently, in order for the Member to remain in the solar industry, the company has reduced its profit margins and employed more staff for canvassing and telesales.
- 2.8. Mr Hall also focused on the express consent forms and, on reflection today, he and Mr Snaith had concluded that the sales staff might be applying pressure to consumers because they do not get paid until the installation is complete. He suggested that the directors might consider whether they need to change the way their sales staff are paid.

2.9. The Member was very concerned that the Regulator had introduced evidence from online review websites. The Panel has decided to place no weight on this evidence.

2.10. The Panel considered each of the charges in turn.

2.11. Section 2.5

2.12. The Panel finds that there was a breach of this Section of the Code. Whilst the Panel listened carefully to the steps that Mr Snaith and Mr Hall said were in place to identify those consumers who could be vulnerable – four initial stages – the Panel has come to the conclusion that the number of complaints from families of vulnerable consumers (5 since 2014) suggests there is a fundamental problem with the manner in which the company approaches potential customers. If all salespeople were fully aware of Section 2.5 of the Code, a number of issues would not have arisen.

2.13. Ms Haskell particularly pointed out complaint 6186 where the complainant was the son-in-law of an 81-year-old woman who not only left the sales representative in her house when she suddenly remembered an errand for 20 minutes, but also stayed for three hours to make the sale. The fact that a member of the public was prepared to let a stranger remain in her house on their own should have alerted the sales representative that the client was vulnerable, and the sale should not have proceeded. The Panel was also concerned that, in complaint 5843, a vulnerable person, with a partner present, signed a document purporting to be a waiver of cancellation rights when the partner was out of the room; when challenged, the salesperson said it was too late to change this. The Panel regards these as particularly extreme examples of a breach of Section 2.5.

2.14. Section 5.2

2.15. The Panel finds that there was a breach of this Section of the Code. The Panel finds that there were 17 complaints since 2012, including 12 since 2014, of which 4 were after the signing of the Consent Order. There was clear evidence from complaints 6186, 6387 and 6812 that sales representatives had remained for longer than two hours in customers' homes. The company had produced an overstay log, however none of the above complaints seems to be shown in the log, or had a form for reasons for overstaying completed. The company did have the name of the consumer who made the complaint in complaint 6186, so it should have been able to supply an overstay form in relation to that complaint.

2.16. There was clear evidence that the company was offering discounts in respect of sales, from complaints 6812, 6698, 6112, 5348. There was also supporting evidence from the mystery shopping exercise that took place at some point in autumn 2014, which was declared to the company by a letter dated 1 September 2015, that a discount was offered to the mystery shopper for signing on the day. The Member did not deal with this matter in its submissions.

2.17. The Panel also accepts that sales representatives did mislead consumers in order to obtain a sale. The Panel believes that complaints 7327 and 5348 show that those consumers had been misled. Ms Haskell also raised complaint 6059 in this respect. Personal information is not required by the Code, and the Member suggested that this was evidence showed that the sales representative was trying to establish that the consumer was not vulnerable. The Panel does not think that this adds anything either way to its conclusion

that misleading statements had been made, and attaches little weight to that particular example of a potential breach.

- 2.18. In addition, there was evidence from complaints 7855, 6112, 6059 and 5196 that consumers had felt pressurised into signing on the day.
- 2.19. Ms Haskell suggested that the rate of cancellations was also an indication of pressure selling, which the Member refuted, saying that in their view there were economic reasons for the high rate of cancellation. The Panel believes that the evidence from the actual complaints is conclusive and that it is not possible to draw conclusions about the reasons for the cancellation rate from the evidence provided.

2.20. Section 6.2

- 2.21. The Panel finds that there was a breach of this Section of the Code. There were 19 complaints in relation to consumers' ability to cancel a contract easily, and a large proportion of those also believed that they had waived their cancellation rights. 10 of these 19 complaints have been received since the change in the law with the introduction of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, ("the Cancellation Regulations") which came into force on 13 June 2014. The Panel finds that there seems to be a complete lack of understanding of these particular Regulations by the Member. All the complaints show similar concerns, that is, complaints 5843, 5884, 5348, 5196, 4556 and 4282. There are also 13 documents on pages 84, 86, 90, 94,95, 98, 99, 102, 103, 104, 105, 106, 107 and 111 of the bundle that show that consumers were purported to have waived their cancellation rights prior to the Regulations, and on pages 131, 132 and 133, three further documents that show that consumers have continued to appear to think that they can waive their cancellation rights. This is an unbelievable misunderstanding of the true position, but the Member is reminded that ignorance of the law is no defence. Not only had the Member had advice through the documents produced by its Regulator, but it had also had meetings with Trading Standards regarding this, with follow-up written advice. The Member has suggested that the waiver issue was because of the payment structure, whereby sales staff were paid on completion of the installation. The consumer detriment caused by the lack of understanding of consumers' inability to waive their statutory cancellation rights was compounded by the fact that there is evidence (from complaint 7792) that the company has asked for payment for goods not supplied after the contract is cancelled; this is staggering. The Member admitted that it had received and banked a cheque in respect of this in December 2015, and has only taken steps to repay this incorrect payment on the week before the hearing.

2.22. Section 4

- 2.23. For all the reasons above, and because the Member has made little progress since signing a Consent Order with the Regulator, nor dealt effectively with the audit conclusions, the Panel finds that the Member has brought the Code into disrepute and continued with high-pressure selling techniques and failed to provide extra care and support to vulnerable consumers.

3. Determination of seriousness and sanction

- 3.1. Ms Haskell brought the Panel's attention to the extensive monitoring, spot checking and guidance given to the Member by the Regulator. She referred to the mystery shopping exercise of summer 2013, the audit of December 2013, and the second mystery shopping exercise of autumn 2014. She further referred to the initial disciplinary letter of 13 July 2013 and the Consent Order agreed with the Member on 7 September 2015. There was a further audit on 27 October 2015 in which there were 21 areas of non-compliance. As a result of the Consent Order, the Regulator was made aware of the guidance and help given to the Member from Middlesbrough, Stockton and York Trading Standards Services together with the legal undertaking given by the Member to Middlesbrough Trading Standards.
- 3.2. Ms Haskell stated that substantive complaints should rarely get to the Regulator, as they should be dealt with by the Member.
- 3.3. Ms Haskell said that, as a result of the information received by the Regulator, disciplinary proceedings were resumed on 12 May 2016. Ms Haskell pointed out that the Member has not complied with the undertaking given to Middlesbrough Trading Standards in respect of the Cancellation Regulations. She again reiterated the number of complaints and the escalation of complaints in 2016: there were 10 in 2015 and, to date, 10 in 2016. She said that two complaints had been referred to arbitration. She said that no number of complaints could be justified and that there were Members which had undertaken a larger number of installations than Solartech North East Ltd, but which had received fewer complaints. She said that the Regulator had exhausted its options and that the Member's behaviour was a serious ongoing concern.
- 3.4. Ms Haskell stated that the Regulator would support termination of the Member's membership of RECC. However, if the Panel decided not to terminate membership, it should ensure that, if it ordered any monitoring as a sanction, this should be specific to the breaches of the Code, and make clear that this would be a final chance for the Member to demonstrate compliance.
- 3.5. Mr Hall on behalf of the Member stated that he was fully aware of the seriousness and that the Member accepted it was in breach of the Code. He stated that in 2014 he said there were only 7 complaints, in 2015 only 3 more than the year before, although the company had grown substantially. He accepted that this year complaints were increasing but he said this was because directors had "taken their eye off the ball" because the company is "going down two different routes", having branched out into home improvement work.
- 3.6. Mr Hall said the Member had 50 to 60 members of staff who would be affected by this decision. He had two particular thoughts. First, in regards to the express consent forms, the Member was changing the way it pays sales representatives, saying it would see "what that would bring". Secondly, cancellation requests would be taken only by Mr Hall, Mr Snaith and the office administrator by a separate phone number that would be provided to customers. They would like the opportunity to put all that was wrong right.
- 3.7. The Panel considers this case to be very serious, not least because the Member despite endless advice from several sources has failed to remedy some of the fundamental errors in its system. In particular, the Panel is

extremely concerned that the lack of understanding of the Cancellation Regulations may have caused consumer harm. It is not possible for the Panel to gauge which consumers have been affected other than complaint number 7792, but it is a matter of grave concern that there may be consumers who have paid for items that they should not have paid for.

- 3.8. The Panel therefore considered sanctions from the least to the most serious.
- 3.9. 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.
- 3.10. The Panel considered whether it would be proportionate to impose conditions or a period of enhanced monitoring in accordance with clauses 10.18 or 10.19 of the Bye-Laws, and the costs of such monitoring. The Panel took into account the level of help and advice the Member had received already from the Regulator, which in many ways could be regarded as a form of enhanced monitoring, even if not so described. The Panel noted that even at this late stage the Member is only now beginning to consider the causes of its breaches, which, in the Panel's view, is too late. The Panel does not feel it would be proper and 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 or is even willing to comply with the Code or the law.
- 3.11. Further, the failure of the Member to sort out its systems and mode of operating so as to fall within the Code suggests that enhanced monitoring would not necessarily avoid any future consumer harm, or give consumers any confidence in the Code.
- 3.12. Therefore, in view of the exceptional seriousness of this case, and the lack of understanding of the Code and the law by the Member, the Panel has decided that the Member's Code membership should be terminated.
- 3.13. The Panel invited both parties to address it with respect to any stay of sanction pending an appeal being lodged in accordance with 11.2 of the Renewable Energy Consumer Code Bye-Laws ("Bye Laws"), which both declined to do. The Panel is not aware of any consumer issues that might need to be addressed before the Code membership is terminated, but note that provision is made in the Bye Laws for this to occur. Therefore, termination will be in accordance with 14.5 and 14.6 of the Bye-Laws.

4. Determination of Costs

- 4.1. The Panel considered its power under Bye-Law 12 to make such order for costs against the Member as it considers fair and reasonable in all the circumstances.
- 4.2. The Regulator made a claim for the costs of the Hearing in a letter dated 11 July 2016, which was served on the Member in accordance with Section 12.2 of the Bye-Laws. The Member had made no comment in relation to those costs.
- 4.3. Neither party made any application for any stay of order of costs, pending any appeal. The member said they would pay the costs anyway.
- 4.4. The Panel therefore orders costs of the Hearing in the amount of £4,089 to be paid by the Member.

5. Appeal Period

- 5.1. Under Bye-Law 11, the Member may appeal this determination within 14 days of the date of the determination.

20 July 2016