

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

*In the matter of*

**PV Solar UK Ltd**

*held on*

**20 July 2017**

*at*

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

**Panel Members:**

Mrs Sally Oakley (Chair)

Ms Sarah Chambers

Mr Alan Wilson

**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)

**PV Solar UK Ltd (“the Member”) representation:**

None Present

**Observing:**

Bernardo Esteves (RECC Compliance Analyst)

## **1. Charges**

**1.1.** The charges were set out in full in a letter dated 21 June 2017 from the Regulator to PV Solar UK Ltd. (“the Member”). At the start of the hearing the charges were read as follows:

**1.1.1.** The Member is alleged to have been in breach of Section 2.4 of the Renewable Energy Consumer Code (“the Code”), which states “Any Code Member who enters into a Contract with a Consumer for the sale and installation of an Energy Generator must be certified to the relevant MCS Installer standards for the technology types specified in the Contract. The MCS certified Installer that enters into a Contract with a Consumer must also create the MCS certificate associated with that installation on its own MCS user account.” Complaints 8958, 8377, and 7607 are relied upon as evidence for this breach.

**1.1.2.** The Member is alleged to have been in breach of Section 5.1 of the Code which states ‘Code Members must make sure that any advertising materials they produce or use are legal, decent, honest and truthful, and that they comply with all the relevant legislation...’ and ‘All performance claims, testimonials and claims about savings, financial payback or income from Energy Generators or Related Products in Advertisements and sales promotions must be clearly attributed to a reputable source.’ It continues, ‘Code Members must make sure that any verbal statements and advertising and sales promotion materials do not mislead Consumers in any way and that they do not lead Consumers into taking decisions they otherwise would not have done.’ The audit of 23 February 2017, a recent review of the Member’s website, and complaints 8363, 7767, 7384 are relied upon as evidence for this breach.

**1.1.3.** The Member is alleged to have been in breach of Section 5.2 of the Code which states ‘Code Members, their Employees and those who sell on their behalf must act with integrity and, in particular, must respect Consumers’ right to privacy and bring any contact to an end immediately if requested to do so. They must answer Consumers’ questions honestly and clearly...’ and ‘Code Members, their Employees and those who sell on their behalf must not give false or misleading information about their business or the product, services or facilities being offered.’ It continues, ‘Code Members, their Employees and those who sell on their behalf must not use any selling techniques designed to pressurise a Consumer into

making an immediate decision.’ Complaints 9050, 9021, 8992, 8988, 8958, 8935, 8916, 8910, 8857, 8854, 8843, 8765, 8363, 8574, 8377, 8359, 6613 and 6151 are relied upon as evidence for this breach.

- 1.1.4.** The Member is alleged to have been in breach of Section 5.3 of the Code which states ‘It is very important that Code Members, their Employees and those who sell on their behalf do not ‘oversell’ Energy Generators to Consumers. For this reason, it is essential that Code Members give Consumers in writing before the Contract is signed the technical and performance information set out in the relevant MCS Installer standard and in section 5.4 below. Code Members must present the information in a format that is readily understandable by non-expert readers in line with the guidelines...’. At 5.3.3 it continues, ‘Code Members, their Employees and those who sell on their behalf must ensure that any estimate of savings, periods of recovery (‘payback’) or other measures of financial effectiveness they provide to Consumers are provided in writing and are based on Consumers’ actual energy use and pattern of energy use... Code Members may, however, provide case studies showing the effectiveness of previous installations, as long as they give full details of the size and type of the Energy Generator and any related product supplied, the type of property which it was used for, when it was supplied as well as the energy costs...’ And also, ‘Where finance, such as a personal loan or a hire purchase agreement, is part of a Code Member’s offer to Consumers, any estimate of savings, periods of recovery (‘payback’) or other measures of financial effectiveness must take account of monthly repayments as well as of the full amount payable, including interest... Code Members must not mislead a Consumer in such a way as to persuade them to enter into a finance agreement which they would not otherwise have done.’ Complaints 9050, 8992, 8958, 8935, 8916, 8854, 8843, 8765, 8363, 8574, 8377, 6613 and 6151, the audit of 23 February 2017, and 3 contracts submitted by the Member to the Executive on 12 June 2017 are relied upon as evidence for this breach.
- 1.1.5.** The Member is alleged to have been in breach of Section 6.1 of the Code which states ‘Code Members will provide Consumers with clear, unambiguous terms of business that do not disadvantage the

Consumer.’ The audit of 23 February 2017 is relied upon as evidence of this breach.

- 1.1.6.** 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.’ Complaints 8992, 8988, 8974, 8935, 8916, 8910, 8903, 8857, 8854, 8843, 8818, 8765, 8598, 8574, 8377, 8221, 8086, 8058, 7942, 7821, 6738 and 6151 are relied upon as evidence for this breach.
- 1.1.7.** 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...’. Breaches of sections 2.4, 5.1, 5.2, 5.3, 6.2.2, 7.2 and 9.1 of the Code are relied upon as evidence of this breach. The Code continues at 4.1, ‘Code Members will not engage in high pressure selling techniques and will ensure that any individual or third party organisation they contract with does not engage in high pressure selling techniques...Code Members will deal with Consumers politely and quickly, and take steps to make sure that important information is passed to them clearly. When made aware of a complaint, Code Members will act to resolve the complaint as speedily and effectively as possible.’ Breaches of Sections 5.2 and 9.1 of the Code are relied upon as evidence for this breach.
- 1.1.8.** The Member is alleged to have breached Section 4.9.8 of the Code’s Bye-Laws which state, ‘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... The Code Member will pay such invoices by the Due Date.’ 3 unpaid invoices relating to complaint administration fees are relied upon as evidence for this complaint.

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

- 2.1.** The Panel convened at 10am in the absence of representation from the Member. The Panel received evidence from the Executive that the Code Member had been served appropriately with the charge letter dated 21 June 2017 and had indicated that it did not intend to attend.
- 2.2.** The Panel members were satisfied that the Code Member had been properly notified of the hearing in accordance with 6.4 of the Non

Compliance Panel (NCP) Rules. However, to ensure that the Code Member was not simply delayed, a short adjournment was agreed so that the Panel Secretary could telephone the representative of the Code Member.

- 2.3. Following the short adjournment, the Panel Secretary confirmed that a representative of the Member had been reached via telephone. The representative stated that no-one from the Code Member would be attending the hearing, but that the Panel should rely on documentation previously submitted that forms part of the bundle.
- 2.4. Ms Lorraine Haskell appeared on behalf of the Executive, assisted by Ms Rebecca Robbins.
- 2.5. Ms Haskell took the Panel through the charges individually, referring to some evidence in detail and drew the Panel's attention to particular witness statements, the Audit of 23 February 2017, the mystery shopping exercise, and complaints/feedback received.
- 2.6. In the absence of the Code Member, and to promote fairness and transparency, the Panel took account of the points made by the Code Member in its letter dated 28 September 2016 and its undated letter to RECC in response to RECC letter of 28<sup>th</sup> March 2017, as it appeared that these set out the position of the Code Member.
- 2.7. The Panel considered each of the charges in turn, taking into account all the written and oral evidence.
- 2.8. **Section 2.4 of the Code: Microgeneration Certification Scheme**
  - 2.8.1. The Panel finds the facts proved and that there was a breach of this section of the Code.
  - 2.8.2. There were three complaints providing evidence of this breach, the most recent dated 28 April 2017. Each of the complaints provided documentary evidence to confirm that the contract had been signed by a third party but the MCS certificate was generated by the Code Member in breach of this Section.
  - 2.8.3. In responding to these complaints in its letter of 28 September 2016, the Code Member provided inadequate explanation as to why it had generated MCS certificates for contracts held by a third party.
- 2.9. **Section 5.1 of the Code: Advertising and Sales**
  - 2.9.1. The Panel finds that the facts were proved and that there was a breach of this section of the Code.

- 2.9.2. The Panel considered the evidence provided by the Executive relating to the Code Member's Air Source Heat Pump Sales Presenter, the promotional air source heat pump leaflet of the Code Member, dated 28 April 2017, the Code Member's website, and three consumer complaints.
- 2.9.3. The Panel also took into consideration the Code Member's response in their undated letter responding to the Executive's letter dated 28 March 2017, in which they stated there had been significant revision of the documents and website. Nonetheless, the Panel found many of the statements remained misleading, unsourced and/or incorrect.

**2.10. Section 5.2 of the Code: Behaviour of sales representatives**

- 2.10.1. The Panel finds the facts proved and that there was a breach of this section of the Code.
- 2.10.2. Evidence was presented by the Executive of 18 complaints, many supported by witness statements, which identified behaviour that misled consumers and/or constituted pressure selling as to one or more of the following: benefits of battery storage; benefits of voltage optimisers; energy savings and return on investment; mis-sold finance.
- 2.10.3. Despite considerable support from and intervention by the Executive to facilitate compliance with the Code, the number of complaints remains high and a persistent pattern of complaints is clearly identifiable.
- 2.10.4. The Code Member asserted in its letter of 28<sup>th</sup> September 2016, that its training should prevent bad behaviour, but that they nevertheless encounter 'rotten apples'. They claimed to have taken measures to control this and state that they will ensure all their representatives are compliant.
- 2.10.5. Complaint 9050 in respect of a contract signed in October 2016 demonstrates that sales personnel are still giving misleading information to consumers.

**2.11. Section 5.3 of the Code: Performance information and predictions**

- 2.11.1. The Panel finds the facts proved and that there was a breach of this section of the Code.
- 2.11.2. The Panel considered evidence of 13 complaints received by the Executive, together with evidence from the Audit of February 2017

and the three solar PV contracts provided by the Code Member to the Executive on 12 June 2017.

- 2.11.3.** The complaints detailed inaccurate and misleading information concerning the payback period of the installations, and over estimations of the energy savings from batteries, voltage optimisers and solar panels. The requirement for information to be given in a format readily understandable by non-expert readers was also considered.
- 2.11.4.** The complaints also identified mis-selling of finance, where consumers were told that income and energy savings from their systems would be sufficient to cover loan repayments. This turned out to be incorrect.
- 2.11.5.** The audit discovered that information given in relation to air source heat pumps excluded critical values. In response to this the Code Member submitted a new performance estimate but this was also incorrect and contained serious errors. Ms Haskell stated this amounted to misleading or incomplete information which in turn carried the prospect of consumer detriment.
- 2.11.6.** The three solar PV contracts were also considered and it was found that in each case a shading factor of 1, meaning no shading, was incorporated. One contract dated May 2017 showed clear evidence that the performance estimate was based on the assumption of no shade (shade factor 1), however a subsequent diagram showed evidence that there was in fact shading which would have adversely affected the system performance.
- 2.11.7.** In respect of the requirement of section 5.3.1 that information be readily understandable by non-expert readers, the panel find that the format was readily understandable though it noted that the figures were inconsistent.
- 2.11.8.** The Code Member's response to this series of allegations relating to section 5.3 states that it checks the information presented to the client following sales visits and that when their representatives are found to give out false information they have addressed this by re-training, monitoring, or dismissal.
- 2.11.9.** This response fails to address most of the detail of the allegations, and the continued pattern of complaints and the problems found in the 2017 audit demonstrate that any such measures taken by the Code Member have not been effective.

**2.12. Section 6.1 of the Code: Terms of business**

- 2.12.1.** The Panel finds the facts proved that there was a breach of this section of the Code.
- 2.12.2.** The Panel noted that the Non-Compliance Panel of July 2011 had required the Code Member to adopt the RECC Model Contract.
- 2.12.3.** During the audit of February 2017 the Code Member advised the auditor that the RECC model contract was being used, but the auditor discovered that it had made significant amendments, some of which were non-compliant with the Code and had the effect of limiting consumer rights.
- 2.12.4.** The Code Member then provided a further revised pack which still contained departures from the model contract and was non-compliant.
- 2.12.5.** The Panel noted that the contract submitted on 12 June 2017 showed that unamended model terms and conditions had finally been supplied which were compliant with the Code. However, the dates of the documents on the contracts provided, indicated that the consumers had been sent the documents in the wrong order, with the effect that consumers signed order forms without sight of the terms and conditions.

**2.13. Section 9.1 of the Code: Consumer complaints procedure**

- 2.13.1.** The Panel finds the facts proved and that there was a breach of this section of the Code.
- 2.13.2.** There were 22 complaints considered, some supported by witness statements, 14 of which were received in 2017, showing a persistent pattern of failure to deal speedily, effectively or indeed at all with consumer complaints.
- 2.13.3.** The Panel gave particular weight to complaint 8916 where the Code Member refused to honour an agreement made between the complainant and the Code Member following the departure of the then Managing Director on 17 March 2017.
- 2.13.4.** In its letter dated 28 September 2016, the Code Member attributed the problems to issues involving a third party, and teething issues involving bringing battery storage technology to market. They also claim that they have now integrated the complaints team into the management structure and that moving forward there should be no more problems.



2.13.5. The number and nature of complaints received since the Code Member's response demonstrates that the problems are still occurring.

**2.14. Section 4 of the Code: General Business Standards**

2.14.1. The Panel finds the facts proved and that there has been a breach of this section of the Code.

2.14.2. In its letter of 28 September 2016 on this point, the Code Member admits to having undergone difficult circumstances over the past 2 years but has been looking for new ways to measure compliance. They say they are still dealing with a number of legacy cases.

2.14.3. The Panel believes this is no defence to the detailed allegations made especially in view of the considerable support the Code Member had received from the Executive over a number of years. In any event, there is no evidence of recent improvement.

**2.15. Section 4.9.8 of the Code's Bye-Laws**

2.15.1. The Panel finds the facts proved that there is a breach of the Code's Bye-Laws

2.15.2. The Code Member was required to pay administration fees for 3 complaints which had been allocated to case workers at the Executive. Three invoices were issued but remain unpaid as of 19 July 2017, and as far as the Panel are aware remain outstanding, which is a breach of Section 4.9.8 of the Bye-Laws.

**3. Determination of Seriousness and Sanction**

3.1. Ms Haskell addressed the Panel on the Executive's position in relation to seriousness and sanction.

3.2. The Code Member was given the opportunity to address the Panel by email but did not believe there were any mitigating factors it wished to bring to the Panel's attention.

3.3. The breaches found by the Panel show a systematic disregard by the Code member for the provisions of the Code over a number of years, despite a considerable amount of monitoring and support from the Executive over this period.

**3.4. Seriousness of the Breaches.** The Panel considered:

3.4.1. The seriousness of the breaches of the Code and Bye-Laws;



financially to the detriment of consumers who were given misleading information and whose complaints have not been dealt with effectively or promptly.

**3.4.7.** Any remedial steps taken by the Code Member to address the breaches including their promptness;

**3.4.7.1.** Whilst recognising some steps have been taken to address the breaches, it is clear that these have been delayed and inadequate, as revealed by the number of recent complaints (24 in 2017 to date).

**3.4.8.** The Code Member's previous disciplinary record either as a Code Member or as a member of any other CTSI approved code;

**3.4.8.1.** The Code Member has a history of non-compliance dating back to 2011 when the Non-Compliance Panel found various breaches of the Code and required, among other things, that the Code Member adopt the content of the model contract and demonstrate that it maintains strict control over its sales representatives.

**3.4.8.2.** The complaints considered by this Panel demonstrate that the pattern of non-compliance continues.

**3.5. Sanctions** The Panel took into account the very serious nature of the breaches as outlined above and then considered the following sanctions:

**3.5.1.** To decide not to impose any sanction in respect of the breaches;

**3.5.1.1.** The Panel found that the number, seriousness, and duration of the breaches to be such that this would not be appropriate.

**3.5.2.** To issue a written warning setting out the consequences of any future breach of the Code and/or Bye Laws and/or Conditions and/or Consent Order;

**3.5.2.1.** The Panel concluded that this was not appropriate due to the amount of support, monitoring, and advice on the consequences of non-compliance that had already been given by the Executive, with little effect on the behaviour of the Code Member.

**3.5.3.** To impose Conditions;

**3.5.3.1.** The Panel concluded that this was not appropriate due to the amount of support, monitoring, and advice on the consequences of non-compliance that had already been given by the Executive with little effect on the behaviour of the Code Member.

**3.5.4.** To impose a Period of Enhanced Monitoring in accordance with clauses 10.18 to 10.19;

**3.5.4.1.** The Panel concluded that this was unlikely to be effective and therefore not appropriate, due to the amount of support, monitoring, and advice on the consequences of non-compliance that had already been given by the Executive with little effect on the behaviour of the Code Member.

**3.5.5.** To require the Code Member to pay the administrative costs of the Executive in connection with any Period of Enhanced Monitoring imposed in an amount to be determined by the Non-Compliance Panel;

**3.5.5.1.** Given 3.3.4 was not considered appropriate, this sub-clause was not relevant.

**3.5.6.** To require the Code Member to make a financial payment proportionate to any losses caused to Consumers;

**3.5.6.1.** This was considered impractical in view of the very large number of customers likely to have been affected by the breaches, and inappropriate in view of the Panel's lack of confidence that the Code Member would improve its behaviour in future.

**3.5.7.** To terminate the Code Member's Code Membership.

**3.5.7.1.** The Panel concluded that this was the only appropriate sanction in view of the seriousness and persistent nature of the breaches.

#### **4. Decision**

**4.1.** The Panel decided to terminate the Code Member's membership of the Code. It considers the member has been given an enormous amount of support, guidance and specific advice over a long period of time but has nonetheless failed to make the required changes. The Panel considers the

member's conduct to be highly prejudicial to the interests of consumers, brings the Code into disrepute and to be irredeemable.

- 4.2. On receipt of this Notice PV Solar UK Ltd trading as Warmhome4U and any other trading name of the company, the company must immediately cease to:
  - 4.2.1. Describe itself as a member of the Code
  - 4.2.2. Use the RECC logo and the CTSI Approved logo
  - 4.2.3. Hold itself out as a Code Member, or as being in any way connected with the Code, as required by Byelaw 14.3.
- 4.3. The Code Member's membership shall be terminated with immediate effect, subject to an appeal being lodged by the Code Member in accordance with Bye Law 11.

## **5. Determination of Costs**

- 5.1. The Panel considered the Executive's application for costs for the sum of £5649.74 as set out in their letter of 19 July 2017.
- 5.2. A breakdown of costs was attached and considered reasonable by the Panel.
- 5.3. Evidence was submitted to the Panel demonstrating that the Code Member had been served with a copy of the proposed Costs application at least 24 hours before the hearing on 20 July 2017.
- 5.4. The Panel awarded the Executive costs of £5649.74.

## **6. Appeal Period**

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

31 July 2017