

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

*In the matter of*

**ESE Services Ltd**

*Held on*

**16<sup>th</sup> August 2018**

*at*

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

## **Panel Members:**

Mr Keith Richards (Chair)

Ms Michelle Peters

Ms Helen White

## **In attendance:**

Ms Grace Blackwood (Panel Secretary)

Ms Mary Pearson

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

Ms Lorraine Haskell (RECC Head of Independent Panels)

Ms Rebecca Robbins (RECC Head of Compliance)

## **ESE Services Ltd (“The Member”) representation:**

Mr Gary Fredson (Director, ESE Services Ltd)

## **1. The Charges**

- 1.1 The Member is alleged to have breached Section 5.1 of the Renewable Energy Consumer Code (known as “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...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 evidence relied upon comes from complaints 8447, 8928, 9252, 9265, 9274, 9447, 9432, 9426, 9393, 9473, 9505, 9589, 9596, 9857, 9858, 9873, 9883, 9937, 9998, 10046, 10032, 10051, 10070, 10075, 10083, 10106, 10184, 10190, 10212, 10206, 10208, 10211, 10220, 10217, 10226, 10225, 10229, 10233, 10251, 10257, an article in the Stroud District Council News and the Code Member’s telesales script.

- 1.2 The Member is alleged to have breached Section 5.2 of the Code which states in Section 5.2.1 *'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. They must not make any statement that is likely to mislead a Consumer in any way. Providing misleading information is prohibited by this Code and the law. In line with the Consumer Rights Act 2015 any statements or information which the Consumer relies on in making a buying decision are now considered an implied term of the Contract. If such statements or information are false or misleading in any way they are likely to be considered as a breach of contract.'*

The evidence comes from complaints 9103, 9252, 9265, 9589, 9718, 9983, 9910, 9937, 9998, 10046, 10032, 10051, 10190, 10206, 10208, 10225, 10257 and also the Code Member's response of 26<sup>th</sup> February 2018.

- 1.3 The Member is alleged to have breached Section 6 of the Code which states in Section 6.1 *'Code Members will provide Consumers with clear, unambiguous terms of business that do not disadvantage the Consumer. Code Members will ensure that they carry out their contractual obligations without excluding their liabilities. All terms must conform to the Consumer Rights Act 2015 and the Consumer Protection from Unfair Trading Regulations 2008 ('CPRs'). All terms of business must be effectively communicated in writing to the Consumer and form part of the quotation (as set out in section 5.4 above). The written terms of business must include details about...the price and main features of the Goods to be supplied...cancellation rights...payment methods, timing and deposits.'*

The Code Member's response of 26 February 2018 and documents submitted for review on 28 March and 3 April 2018 are all relied upon as evidence of this breach. Further evidence comes from complaints 9103, 9252, 9910, 10032, 10225 and contracts Ref BD, JC and LL.

- 1.4 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.'* Evidence of breaches of sections 5.1, 5.2 and 6 all contribute to a breach of section 4.

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

- 2.1 The charges were read out to Mr Fredson. Mr Fredson admitted the facts relating to the charges brought before the Panel and the Panel found the facts proved. Mr Fredson also admitted to breaches of the Code in all of the charges apart from the allegation of the breach of section 5.1 of the Code. The Panel therefore finds that the Code Member is in breach of Sections 5.2, 6 and 4 of the Code.

- 2.2 On the allegation of breach of section 5.1, Ms Haskell, representing the Executive, referred to the terms of RECC's proposed Consent Order of 2<sup>nd</sup> May 2018 that related specifically to the need to seek prior approval of all future direct mail marketing. The Code Member had declined to sign the Consent Order and had asked for a hearing by the Non-Compliance Panel.
- 2.3 Ms Haskell outlined the Executive's case relating to evidence of the alleged breach of 5.1. She relied upon complaints received and the Code Member's telesales script as evidence of unsolicited calls from the Code Member, which misled consumers into thinking they needed to sign up to a health check of their existing solar PV systems, a maintenance package or to agree to new warranties. She relied on further complaints and documents (including copies of the unsolicited letters) as evidence of letters sent by the Code Member's lead generation company to consumers. She pointed out that although the unsolicited letters were sent by ESE Consultants Ltd rather than the Code Member, under Section 2.4 of the Code the Member remains fully responsible for any non-compliance of the Code by that third party lead generator. She presented these as evidence of false and misleading information being given by the Code Member to consumers about the trading status of the companies that had installed their existing solar PV systems and the expiry date of the existing warranties they might have.
- 2.4 Cases were also presented by Ms Haskell as evidence that consumers had been given false information that the Member had taken over the maintenance of their original system. Cases were also produced as further evidence that the Code Member had sold or attempted to sell products or services under the pretence of improving the consumer's existing system's performance when that product or that service was not effective or necessary. Ms Robbins for the Executive said that the main issue with the unsolicited letters is the impression that consumers must contact the Code Member or risk losing out in some way. The Executive also produced summaries and a witness statement showing ongoing complaints received since the charge letter of 12<sup>th</sup> July 2018.
- 2.5 Representing the Code Member, Mr Fredson told the Panel that the company had stopped making cold calls in April 2018. Mr Fredson said that the downturn in the market had led to many installers going out of business and that ESE Services had tried to profile consumers whose inverters would now be coming to the end of their typical five- or ten-year warranty period. He explained why the company had developed a maintenance package as a valuable addition to consumer's existing protection. Mr Fredson agreed that the first version of the unsolicited letter should never have been sent out and indicated where some of RECC's suggested changes had been incorporated into subsequent versions. He said that he intended to continue using the letter in its current form unless he was told that he was breaking the law. He

further said that the Member did not send the letters and that they were sent by ESE Consultants Ltd.

- 2.6 The Panel considered the evidence and representations made by RECC and the Code Member. The Panel accepts the evidence presented by RECC as proof of breach of section 5.1 of the Code.

### **3. Determination of Sanctions and Seriousness**

- 3.1 Ms Haskell emphasised the seriousness of the breaches and noted that the breach of section 5.1 is also a breach of Consumer Protection Regulations and of the Advertising Standards Authority's CAP Code. She also referred to the volume and geographical spread of the unsolicited letters, and the scale of complaints about the Member (9 new complaints have been received since referral to the Non-Compliance Panel, bringing the total to 53). She said that the Member chose to be reviewed by the Panel rather than agree to the Consent Order. Prior to the proposed Consent Order and since then the Member has shown a concerning pattern of behaviour which led to breaches being admitted or proved. Despite attempts to bring issues to the attention of the Member, none of the points were adequately addressed. The Executive considers this indicative of a Member who is not willing to comply with the Code. Ms Haskell said that there is huge awareness of the Member's behaviour and this is detrimental to the Code and the industry. The Executive has already attempted to impose conditions by way of a Consent Order but as the Code Member declined to agree to this, it now supports termination of membership.
- 3.2 Mr Fredson said that the company has grown significantly since it started and is now a voice for a large number of consumers. He said that he wanted to remain part of RECC and asked that sanctions be based on RECC's suggestions for improvement and include a clear timescale to address these points. Mr Fredson stated that if the outstanding issues were not addressed then termination of membership would be the expected outcome.
- 3.3 The Panel finds all the breaches to be of a serious nature and therefore considered sanctions from the least to the most serious.
- 3.4 The Panel considers this matter too serious to have no sanction.
- 3.5 The Panel considers that it would be proportionate to issue a written warning. The terms of this warning are set out in Annex A to this determination.
- 3.6 The Panel also considers that it would be proportionate to impose conditions specifically relating to the areas of breach. The Panel imposes the following conditions:

1. The Member shall allow the RECC Executive to carry out a full on-site audit of the Code Member, at the Code Member's expense, to assess its full compliance with the Code. This audit to be carried out within a period of two months commencing on the date of this determination, or within such time as the RECC Executive decides appropriate. The RECC Executive shall invoice the Member in advance of this audit.
2. The RECC Executive shall be entitled to carry out a full desk based audit on the Member's website at the Code Member's expense. This audit shall within be carried out within a period of 28 days commencing on the date of this determination, or within such time as the RECC Executive decides appropriate. The RECC Executive shall invoice the Member in advance of this audit.
3. The Member shall cease forthwith sending all direct marketing letters regarding 'free health checks'.
4. For the next 12 months, starting on the day of this determination, the Member shall submit to the RECC Executive for review all direct marketing material including (but not limited to) unsolicited letters, telesales scripts, and social media posts that it intends to distribute to the public or use to promote its services, and shall make any alterations the RECC Executive proposes to ensure that the material is compliant, prior to distribution or publication.
5. The Member shall agree with the RECC Executive on the design of a questionnaire to be given to every customer onsite in order to independently assess compliance with the Code. This questionnaire shall be used for 12 months and must allow the Executive to identify which service the customer has received from the Member (e.g., a free health check, purchase of maintenance contract, purchase of additional products). On completion of the questionnaires, customers shall be asked to submit them directly to RECC and the questionnaire should include a request for consent from the customer to be further contacted by RECC.
6. Subject to data protection compliance, the Member will provide RECC with customer contact details on request to allow the Executive to make ad hoc contact with individual customers to investigate Code compliance.
7. The Member must identify a member of staff accountable for compliance with the Code and other applicable consumer legislation. This member of staff must be in place within 28 days and the RECC Executive notified of their name and contact details.
8. The Member will comply with Clause 4.5.1.1 of the Bye-Laws and inform RECC of the number of its employees.

Failure to abide by any term of these conditions will lead to a further hearing before the Non-Compliance Panel.

**Determination of Costs**

The Panel orders the Member to pay the costs of RECC in the amount of £4,682.00.

**Appeal Period**

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

28<sup>th</sup> August 2018

## Annex A

### **The Renewable Energy Consumer Code Written Warning following the Non-Compliance Panel Hearing on the 16<sup>th</sup> August 2018**

*In the matter of*

**ESE Services Ltd**

#### **Panel Members:**

Mr Keith Richards (Chair)  
Ms Michelle Peters  
Ms Helen White

#### **Written Warning**

1. The Panel was invited by the Executive to terminate the Member's membership of the Code.
2. The Panel gave weight to the Member's statement of intent to be compliant with the Code and their willingness to engage with the disciplinary procedure. Therefore, the Panel decided to stop short of this ultimate sanction at this time.
3. However, the Panel shared the Executive's concern about the seriousness of the breaches found, and the potential for consumer detriment if the Member continued to fail to be compliant with the Code.
4. The Panel has therefore decided to impose a set of stringent conditions on the Member designed to ensure the Member delivers on its intent to become compliant.
5. The Member is reminded of the need to comply with Section 2.4 of the Code.
6. 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.

28<sup>th</sup> August 2018