Minutes of 33rd Meeting of the Supervisory Panel
Renewable Energy Consumer Code
Wednesday 17 September 2014

Present:
David Laird (Chair)
Amanda Clark – Certsure
Heather Kerr – MCS Licensee
Steve Lisseter
Dave Sowden – Sustainable Energy Association and Ecuity
Chris Wood – Ofgem (Observer)

In attendance:
Mark Cutler – RECC
Virginia Graham - RECC
Sian Morrissey - RECC
Sarah Rubinson - RECC (minutes)
Sarah Langley – TSI (part - dial in)

Apologies:
Bryn Aldridge - Former Director of Trading Standards and Veterinary Services for the City of London
Walter Carlton – Deloitte
David Frise - B & ES
Gretel Jones - Independent Social Issues Expert
Liz Laine - Citizens Advice
Jim Thornycroft - Independent Solar PV expert
Alistair Boon – DECC (Observer)

1. Welcome, introduction and apologies

The Chair welcomed attendees to the 33rd meeting of the Supervisory Panel. Panel Members introduced themselves and noted apologies for absence received.

Dave Sowden welcomed attendees to the Sustainable Energy Association and Ecuity offices and provided an overview of the roles of the two organisations for the benefit of attendees.

2. Minutes of the 32nd Supervisory Panel Meeting

Panel Members agreed the Minutes of the 32nd Supervisory Panel Meeting as being an accurate record of the meeting.

3. Matters arising

The Executive ran through those matters arising from the Summary of Actions from the 32nd Meeting which were not picked up elsewhere on the agenda. The Executive informed the Panel that:

- the quarterly RECC Newsletter had been published in July 2014, the next edition was due to be published in October 2014; and t
- a RECC auditor would be attending the next Panel meeting rather than this one.

The Executive agreed to the Panel's request to report on its work to promote the Code at the next meeting on 10 December 2014.

4. Highlight report

Panel members considered the Highlight Report that had been tabled. Panel members thanked the Executive for providing a clear and succinct report. Some discussion ensued.

Membership

The Executive reported that RECC membership was increasing compared to the equivalent period the previous year, due to the introduction of the Government's domestic RHI incentive; but that there had been a net reduction in membership owing to the continuing consolidation in the solar PV sector. The Executive explained that any members that had not renewed their membership by the end of April 2014 had had their membership terminated for non-payment. The majority of members had declared that they had either 1 - 6 or 7 - 25 employees employed in the sector.

The Panel asked whether members who did not renew were likely to return to the sector later. The Executive stated that, for example, some small companies decided to hold off on renewing their RECC membership until they had an active customer, but that re-applying for membership could take time.

Monitoring

The Executive reported that the 8th round of audits had been completed and that arrangements were in hand for the 9th round. Some of the audits had been supplemented by mystery shopping. The Executive reported that the completed Consumer Satisfaction Questionnaires continued to show a high level of consumer satisfaction with renewable systems installed.

Panels

The Executive explained that, in 2013, 2% of applicants had been referred to the Applications Panel, and 1% had had their application rejected. These figures were likely to be higher in 2014 with many companies previously involved in solar PV now looking to reposition themselves across other technologies.

Complaints

The Executive reported that an 8-week cut-off for in-house mediation had now been implemented, in line with the TSI core criteria; and it was anticipated that this would help reduce the backlog of complaints, currently also around 8 weeks. Replying to questions the Executive reported that the majority of ongoing complaints were about mis-selling in one form or another. They explained that whistle-blowing reports were logged on the system as feedback and acknowledged as such, with the confidentiality of whistle-blowers' identity always respected.

5. TSI Approved Codes – update from Sarah Langley

The Chair asked Sarah Langley, representing TSI by telephone, for an update on the prospect of multiple Codes being approved in the small-scale renewables sector. She explained that TSI had had several meetings with DECC and MCS about this issue. The Consumer Codes Approval Board (CCAB) had invited Ian Manders from MCS and Paul Rochester from DECC to attend their Board meeting to talk about current issues in the sector and problems that could arise with multiple approved Codes in the same sector.

In summary Sarah reported that two organisations, Glass and Glazing Federation (GGF) and Home Insulation and Energy Systems Quality Assured Contractors Scheme (HIES), had applied for Stage One TSI-approval. She explained that GGF covers solar PV and possibly solar thermal as part of its wider role in the windows sector, and that HIES already had members and was actively selling its insurance products in the sector. CCAB were looking to agree a Memorandum of Understanding which would outline the way multiple codes would interact with each other in the sector. This would include areas such as applications, complaints and enforcement. CCAB had stated that they were looking for robust systems in each of these areas.

All parties had agreed that it was essential to ensure that standards were maintained consistently across the board and that businesses were not permitted to game the system by moving to the Code with the lowest standards of consumer protection and thus the lowest cost of compliance. Sarah reported that it had been agreed in principle that businesses should not be allowed to leave a Code if there were outstanding complaints, audit issues or if there was money owed to the Code administrator. Further it had been agreed in principle that members should be responsible for any non-compliance committed by third parties and sub-contractors, and that mystery shopping would be a requirement to help detect non-compliant practices.

Sarah explained that CCAB was very concerned about doorstep selling and cold calling in the sector. In particular CCAB would be looking for assurances as to how applicant Code sponsors police the way members train their staff (which is something that RECC already does). She explained that it would be necessary for DECC and CCAB to monitor Codes in the sector more closely going forward. She explained that the MCS installer standards only accepted membership of Codes that had achieved Stage 2 (full) TSI approval. Sarah reported that CCAB did not want to lower the threshold of consumer protection in the sector.

Sarah explained that the next CCAB meeting would be held in mid-October. It was possible that the two applications for TSI approval from HIES and GGF would be considered at that meeting. This was a decision for CCAB. The following CCAB meeting was scheduled for February 2015.

In response to questions Sarah replied that CCAB had given DECC the option to have one Code in the sector, but that DECC had agreed that there could be multiple Codes operating in the interests of a free market and open competition. So long as a Code could show that it complied with CCAB's core criteria it should be permitted to apply for TSI approval.

The Chair commented that if the system was managed perfectly, any other Codes would essentially have to be identical to RECC. However if the system was managed imperfectly, particular aspects of the marketplace could be exploited. He asserted that RECC intended to maintain its high standards. Sarah replied that CCAB would not expect each Code to be exactly the same, but that they would be looking for assurances from Code administrators that checks, balances, standards and processes were being effectively maintained.

The Panel commented that TSI's purpose was to promote high standards of consumer protection rather than the dilution of standards. On this basis they suggested that CCAB should be looking for applicant Code sponsors to demonstrate that they have will bring innovation, new ideas and added value to the sector. Sarah agreed that TSI's vision for CCAS was to raise standards in the sector. As part of the discussions with other applicant Code sponsors, CCAB would be challenging them to identify what they could add to the mix.

In response to the Panel's question about the role of TSI's Consumer Advisory Panel (CAP) Sarah explained that the CAP was there to provide an independent consumer voice. The CAP has representatives from key stakeholders. TSI invited the CAP to comment on all applicant Codes as a matter of course. In doing so the CAP would expect a Code to go further than the legislation required, in line with the CCAS core criteria, and could take account of sector complaints data from Citizens Advice consumer helpline, for example. One issue the CAP was very concerned about was cold calling and so they would be looking for detailed evidence of how a future Code sponsor would protect consumers who were exposed to cold calling or doorstep selling. However, she explained that it was not the CAP's role to veto applicant Codes' approval. That was a decision for CCAB.

In response to the Panel's comment about increased consumer confusion that would result from having multiple approved codes in the same sector, Sarah responded that it would be essential for consumers to be signposted to the correct organisations going forward. The Panel explained that consumers were already confused about how the various organisations involved in the sector regulatory framework dovetailed, without the added complication of having multiple Codes as well.

Finally, the Panel highlighted that the potential for mis-selling in the renewable heat sector given the complexity of the RHI and the MCS standards for heat pumps and biomass boilers. RHI payments for these technologies were limited by the heat demand of a property determined by the Energy Performance Certificate. The payments were also made for 7 years only, while the technology was expected to operate for 20 years and the majority of finance agreements were for 10 or 15 years. This potential for mis-selling thus presented a very challenging landscape for Code administrators.

The Executive pointed out that RECC was already dealing with a high number of complaints regarding the mis-selling of the RHI. The Executive also pointed out that DECC had developed a calculator for potential RHI payments which was available on its website. Sarah concluded by saying she would be happy to receive further details on the potential for mis-selling in the domestic RHI sector.

The Chair thanked Sarah for participating in the meeting and asked if she could provide an update at the next meeting which she agreed to do.

6. Proposed Code Changes

The Panel considered the additional proposed amendments to the Code before them. The Executive explained that the changes were principally designed to bring the Code up to date with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 which had come into force on 13 June 2014. At the time that the other amendments to the Code had been agreed the Executive had not had a very clear understanding of the implications of these Regulations. It had since become clear that the Regulations were further-reaching than the previous Doorstep Distance Selling Regulations had been and that they were, in places, difficult to understand and difficult to apply in practice to the small-scale renewable generation sector. For these reasons the Executive had redrafted the proposed amendments to this important section of the Code taking account of advice from the Primary Authority, the Department of Business, Innovation and Skills and the European Commission, following agreement with TSI.

The Executive explained that the term 'off-trade premises' covered contracts signed in the home in the presence of a representative of the business. However, the Regulations were also likely to apply to a quote, rather than a full contract, which a consumer signed after a representative of a business had visited their home to carry out a technical site survey. The Regulations could also apply to contracts or quotes which were left with a consumer who then returned them the following day or the day after, particularly if the business had applied any pressure, such as a follow-up telephone call, in the meantime. This would depend on how the word 'immediately' in the Regulations was interpreted.

The Executive explained that, if a consumer signed a contract with a business off-trade premises or by e-mail, the business must give the consumer a cancellation notice in a durable form and explain that they had the right to cancel the contract any time from the day it was signed up to 14 days after the last piece of equipment had been delivered to the their property. Once the last piece of equipment had been delivered the consumer would have to arrange for the delivered goods to be stored and insured for 14 days before the installation could start.

The Executive explained that, further, the consumer could cancel the contract verbally or in writing either electronically or on paper. If the consumer cancelled the contract within the cancellation period after the installation had been completed the business would have to pay to uninstall the system, less any damage the consumer might have caused to it.

If the consumer had given express written permission for work to start during the cancellation period then the business could start the installation as soon as the equipment had been delivered. If the consumer cancelled the contract under these circumstances, the business would not have to refund the labour costs of the installation. The Executive pointed out that members would have to be able to demonstrate that the consumer had been active in giving their express written permission. As such RECC would not accept permission being given by means of a pro forma tick box.

The Panel commented that the legislation did not fit very well with the way business was carried out in the small-scale generation sector. The Executive stated that the Regulations applied to contracts rather than individual businesses, so a business could have some contracts covered by the Regulations and some not covered. Furthermore, no case law existed as yet, and so any interpretations had to be treated with care. The Department of Business, Innovation and Skills had consulted on the Regulations, but that there was limited scope to reinterpret the EU Directive from which they derived.

The Panel approved the additional proposed amendments to the Code before them. The Executive explained that members had been informed about the introduction of the new Regulations and had been advised to take their own legal advice if they were likely to be affected. Once the Code had been updated the Executive intended to amend any model documents affected by the Regulations and to prepare dedicated guidelines to assist members understand how they might be affected.

7. Draft RECC Annual Report

The Executive provided the Panel with a copy of the draft 2013 Annual Report. The Chair asked for any comments on the Annual Report to be provided to Virginia Graham or Mark Cutler during the next two weeks. The Executive agreed to notify the Panel when the report was published and to provide the report to the next meeting.

8. RECC Compliance Enforcement Strategy

The Executive outlined key changes in RECC's compliance enforcement processes are a result of the amended Bye-Laws which came into force in June 2014. The Bye-Laws provided a means to approach members suspected of non-compliance at an early stage rather than waiting for the full non-compliance process. In particular, it was necessary to have a means of dealing with members who failed to respond to an audit or which had a high number of complaints about systemic failures. For example, members could be invited to sign a Consent Order as a means of agreeing to comply with the Code and Bye-Laws going forward.

The Executive explained that the disciplinary process was now very clear, with several distinct stages. Before the process was formally started, the member would be likely to have received several letters warning them of potential actions. In addition it was now possible for the Executive to charge members for investigating possible breaches of the Code or Bye-Laws. The Executive explained that a full-time member of staff has been appointed to the role of Compliance Officer, and that she was already working closely with the Monitoring Manager, the Complaints Manager and the Head of Panels Liaison.

The Executive explained that Non-Compliance Panel Hearing Determinations were now published on the website, and that members were taking notice of this. Two new members had been appointed to the Non-Compliance Panel pool, bringing added areas of expertise within its remit.

The Panel asked what would happen if a member subject to non-compliance action protested. The Executive responded that there was so much detail in the Bye-Laws about the processes to be followed to give the member ample time to provide its defence, that the member would have received so much warning of the issues at stake, and that the final decisions were taken by a completely independent Panel, that they considered it unlikely. Some members did appeal against Non-Compliance Panel Determinations from time to time, as was their right, and others did threaten legal action occasionally. The Executive always defended itself robustly in these situations.

9. Charging for complaint handling – pros and cons

The Executive introduced the discussion on the pros and cons of charging for complaint handling. The document before the Panel highlighted the pros and cons of such a strategy, and had been compiled following input from the RECC team including the complaints team. The consensus seemed to be that charging for complaint handling would be difficult and might involve additional work. Some discussion ensued.

The Chair pointed out that the concept of charging for complaint-handling was a good one, that there were ways of making it work and that completing timesheets could be straightforward. Some Panel members suggested that being able to tell members they could be charged could encourage them to resolve their complaints, but that a the consumer could also be charged if a complaint was unfounded. The Chair volunteered to write under separate cover to the Chief Executive on his views.

10. Any other business and date of next meeting

A Panel member raised the issue of VAT. He explained that a decision was still awaited from the European Court of Justice in the EU's challenge against the 5% VAT rate on energy saving equipment. The UK was defending the lower rate robustly. In the meantime the reduced 5% VAT rate continued to apply to stand-alone installations of a range of energy saving and renewable equipment.

However, he explained that the interpretation of what constituted an 'ancillary supply' and a discrete, 'stand-alone supply' was very important and could affect the rate at which VAT is applied. An ancillary supply was defined as a supply of goods or services that was 'a better means of enjoying the principal supply'. Different VAT inspectors could interpret this differently. HMRC had provided a guidance note on this with some examples.

He explained that the VAT regulations allowed HMRC to recover any VAT owing for up to 3 years, and that some businesses and consumers risked receiving very large back bills for unpaid VAT. HMRC had agreed to await the outcome of the court case before taking enforcement action. The Panel asked to be kept updated on any developments.

There being no further business, the Chair closed the meeting. He confirmed that the date of next Panel Meeting was **Wednesday, 10 December at 1.30 p.m.** at REA's offices.