

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

In the matter of

Precision PV Ltd (“the Member”)

held on

9 December, 2015

at

1 Wood Street, London

Panel Members:

Ms Amanda McIntyre (Chair)

Ms Sally Oakley

Mr Jim Thornycroft

In attendance:

Mr Andrew McIlwraith (Panel Secretary)

Renewable Energy Consumer Code (“the Regulator”) representation:

Ms Lorraine Haskell, RECC

Ms Rebecca Robbins, RECC

Precision PV Ltd representation:

None

1. Charges

- 1.1. The charges were set out in full in a letter dated 18 November 2015 from the Regulator to Precision PV 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 domestic consumer for the sale and installation of an Energy Generator must be certified to the relevant Microgeneration Certification Scheme (MCS) installer standards for the technology types specified in the contract. The MCS certified installer that enters into a contract with a domestic consumer must also create the MCS certificate associated with that installation on their own MCS user account." And "If a Code member obtains sales leads from any third party, the Code member must require that the third party complies with all the relevant requirements of the Code and the relevant MCS standards. The Code member will be responsible for any non-compliance with the Code by the third party."
The evidence for this breach is offered in complaint numbers 7109, 7068, 7016, 6506 and 6491.
- 1.1.2 The Member is alleged to have been in breach of Section 8.1 of the Code, which states "Code members will also make sure that consumers are provided with, at no extra cost, a guarantee against any faults that might arise as a result of the installation process and workmanship applied. This workmanship warranty must be valid for a minimum of two years, and be transferable to the new owner in the event that the consumer moves home." And "In the event that they should become insolvent or cease to trade during the term of the installer's guarantee, Code members must have arrangements in place to ensure that the full term of the workmanship warranty will be honoured. Such arrangements can include an insurance-backed workmanship warranty or a bond, for example."
The evidence for this breach is offered in complaint number 7016 and from the RECC audit of the Member of 18 February 2015.
- 1.1.3 The Member is alleged to have been in breach of Section 9.1 of the Code, which relates to consumer complaints procedures, and states "the Code member will consider the details of the complaint and report the findings clearly to the consumer within seven working days of receiving the complaint" and "if appropriate, the Code member will arrange to inspect the consumer's system, within seven days of receiving the complaint, and within 24 hours of receiving the complaint where a consumer is without heating or hot water as a result of the situation that has led to the complaint" and "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 "in the event that the complaint cannot be resolved with the assistance of the Code administrator's complaint handlers, either the Code member or the consumer may request to use the independent conciliation or arbitration services".
The evidence for this breach is offered in complaint numbers 7068, 6513, 6506, 6491 and 6408.
- 1.1.4 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 "If credit or hire purchase is part of a Code member's offer to consumers, then the Code member must ensure they hold a valid, appropriate and up-to-date credit licence and that they conform to all relevant Acts and Regulations that relate to the provision of credit."
The evidence for this breach is offered in the combined breaches of Sections 2.4, 8.1 and 9.1 of the Code, in complaint number 6664, in the RECC audit

and in the Member's credit report.

- 1.1.5 The Member is also alleged to have been in breach of several of the Code's Bye-Laws. These are: Bye-Law 4.5.4, which states "Code Members are required to keep the Executive informed in relation to changes to the Code Member's MCS certification status"; Bye-Law 4.10.3 which states "The arbitration shall be carried out in accordance with the Rules of the Renewable Energy Consumer Code Independent Arbitration Service as may be amended from time to time by the Executive at its discretion with the agreement of the Independent Arbitration Service provider, the Supervisory Panel and CTSI. Code Members agree to comply with the Rules of the Renewable Energy Consumer Code Arbitration Service"; Bye-Law 4.10.4 which states "For each unresolved Complaint passed to the Independent Arbitration Service, the Consumer and the Code Member are required to pay registration fees."; and Bye-Law 4.12.5, which states "Code Members will co-operate fully with any Audit carried out. Code Members will ensure that all employees, agents, subcontractors and any other individuals who act on their behalf also co-operate fully and provide all reasonable assistance to Auditor(s) conducting an Audit."

The evidence for these breaches are offered in complaint number 6408, an email from Certsure of 17 November 2015 and the final review of the Member's audit.

2. Preliminary issues

- 2.1 The Member was not present, and had not, prior to the hearing, indicated that they would attend. The Hearing Panel ("the Panel") therefore first had to decide whether the hearing should proceed.
- 2.2 The Panel has decided on balance to go ahead with the hearing.
- 2.3 Ms Haskell for the Regulator provided Royal Mail proof-of-delivery and email delivery receipts to the email addresses used by the Member as evidence of the Member having been notified of the date, time and location of the hearing, and of the charges brought against it.
- 2.4 The Panel accepted this evidence, and considered that the Member had had the opportunity to respond to any of those communications, but had not done so. The Panel had delayed the start of the hearing by 15 minutes in order to allow for the possibility that the Member had decided to attend, but had been delayed.
- 2.5 The Panel considers that in all the circumstances it is fair to proceed with the hearing in light of this evidence and in the public interest and in the interests of consumers.
- 2.6 Ms Haskell for the Regulator asked if she could present further information on two issues. The first was to do with what she described as a "slight error" on complaint number 6513, in that the reference to Easy Eco should be a reference to Precision PV Ltd, on the grounds that a Member working with a non-certified company is responsible for a non-member's compliance.
- 2.7 The Panel chose to consider this evidence alongside the complaints evidence provided as part of the bundle.
- 2.8 Ms Haskell also asked to submit two lots of additional information on the second issue. She said that this had been sent to the Member asking if they were content to have this put before the hearing. She said no response had been received from the Member to this.
- 2.9 The Panel first asked the Regulator for evidence that the Member had received this information and been given adequate opportunity to respond to it. Ms Haskell

provided Royal Mail proof-of-delivery and email delivery receipts as evidence of this, which the Panel accepted. Whilst the Panel had not received this information in advance of the hearing, it considered that on balance it was right to allow the Regulator to present it.

3. Determination of facts and breaches

- 3.1 The Panel had before it a bundle of documents from the Regulator. The Member had not submitted a bundle. The Panel took into account the bundle of papers, the additional evidence submitted at the hearing and the statement of the Regulator made at the hearing. In reaching its decisions it applied the civil standard of proof, that is, the balance of probabilities.
- 3.2 Ms Haskell, for the Regulator, gave some background to the companies referred to in the bundle, and their alleged connections. She said that the Member had been a Member of the Code since 2014. She said the sole director of the Member was [redacted] who had once worked for Energy for Britain Ltd, a former RECC member about which RECC had received many complaints and against which there were County Court Judgements. She went on to say that [redacted] had been the director of Energy for Britain Ltd, and is the domestic partner of [redacted]. [redacted] was the director of Intelligent Solar Ltd, previously called Energy for England Ltd. [redacted] was a former director of Intelligent Solar Ltd, and [redacted]'s name had been on the company's incorporation documents. All these companies were based in Taunton. Intelligent Solar Ltd had applied for RECC membership, but had not responded to a Spot Check as part of the application process, and therefore had not been accepted as a member. This application had been in the name of [redacted].
- 3.3 Ms Haskell gave detail about the audit that was carried out on the Member at the beginning of the year, in which the auditor found numerous non-compliances. Whilst the Member did reply and did rectify some of the non-compliances, at the end of a further six-week period, there were still seven outstanding non-compliances. As a result the Member was referred to RECC's non-compliance team. As part of this, the Regulator was willing to consider a Consent Order, and the Member was given a deadline of 17 November to respond to the referral. It did not respond by this time, and so the Regulator decided to refer the Member to the Non-Compliance Panel, and issued a charge letter on 18 November.
- 3.4 The Member had never responded to any of the charges.
- 3.5 Ms Haskell then outlined the case for each breach.

3.6 Section 2.4

The Regulator asserts that the Member has breached this section, and MCS Standard 001, in that it had installed and registered installations for a non-registered company, Intelligent Solar Ltd. Ms Haskell said that consumer complaint numbers 7016 and 7068 brought to RECC's attention the fact that consumers had signed contracts with Intelligent Solar Ltd, which is not a RECC Member and is not MCS certified. She then stated that because the consumers were contacted by [redacted] of Precision PV Ltd, they were led to believe that Precision PV Ltd would complete the installation and generate an MCS certificate. She also said that there was an email from [redacted], from a Precision PV Ltd email address, to a consumer advising about warranties and using the Intelligent Solar sign-off. Ms Haskell considered that this was evidence of a connection between the two companies.

- 3.7 Ms Haskell referred to several pieces of evidence from a whistleblower, including:
- An email from the whistleblower stating that Intelligent Solar had signed contracts with consumers using Precision PV Ltd to generate the MCS certificate using Precision PV Ltd's MCS registration;
 - An unattributed document stating that Precision PV Ltd had lost its MCS registration and that another company had been instructed to "carry out their MCS"; and
 - A Precision PV Ltd MCS certificate dated 23 September 2015, which included on it a consumer's address that was on an Intelligent Solar invoice.

- Ms Haskell indicated that the above demonstrated that consumers' installations were being registered with MCS by companies that were not the companies with whom the consumers had a contract.
- 3.8 Ms Haskell also said that Precision PV Ltd had had its MCS registration revoked on 17 September 2015. She then referred to two complaints, 6506 and 6491, where technical issues were experienced with the handover pack not being received in the former. Without the MCS certificate, the consumer cannot apply for the Feed-in Tariff.
- 3.9 The Panel finds the facts proved in regards to Section 2.4. In regards to complaints 7068 and 7016, the Panel finds that there is insufficient evidence that the consumer's contract was with the Member, even though the complaints did make reference to the director of the Member company. In regards to complaint 7109, there is insufficient evidence of a breach by the Member. In regards to complaint 6506, whilst the consumer did not receive their handover pack, which would have enabled them to apply for the Feed-in Tariff, there is insufficient evidence that the Member did not create the MCS certificate associated with that installation. In regards to complaint 6491, the consumer experienced technical issues with their installation, but there is insufficient evidence that there is a breach of this section of the Code. The Panel finds there has not been a breach of Section 2.4 of the Code.

3.10 Section 8.1

Ms Haskell said that RECC regards this section to be an important part of the Code. She said that evidence for this breach was primarily from the Precision PV Ltd audit, which showed that 93 out of a total of 223 installations were registered with an insurance-backed workmanship warranty, but this indicated that 130 were not. Ms Haskell referred to the notice of non-compliance action, in which RECC had asked for evidence of adequate insurance protection for all domestic installations, and had received no answer.

- 3.11 Ms Haskell said that Precision PV Ltd has a low credit rating and four County Court Judgements that have not been paid, and this could indicate that the company was struggling financially and could leave consumers unprotected, if they have no insurance-backed warranty.
- 3.12 Ms Haskell referred to complaint 7016 in which a consumer, who had signed a contract with Intelligent Solar Ltd, had been given details of the independent warranty insurance policy by M, but when the consumer had attempted to check this with the insurance company, they were told that their installation was not registered with the company.
- 3.13 The Panel finds the facts proved in regards to Section 8.1. With regard to complaint 7016, there is no evidence that the consumer's contract is with the Member. In regards to the 130 installations identified from the audit report that potentially were not insured, on the balance of probability and due to the Member not rebutting the assertion, the Panel finds that these installations were not insured. The Panel finds there is a breach of Section 8.1.

3.14 Section 9.1

Ms Haskell said the Code requires Members to follow complaints handling procedure and for Members to attempt to deal with complaints before they are referred to RECC. She referred to complaints 6513 and 6506 in which the consumers had said the Member had not responded to their complaints, and complaint 6491, in which the Member had failed to attend an appointment to investigate the problem. In complaint 7068, the consumer had signed a contract with Intelligent Solar and was given M as the contact. Having attempted to contact Intelligent Solar, without success, the consumer contacted

the Member, because they had previously arrived to install the system. However, they had said it was nothing to do with them.

3.15 Complaint 6408 was referred to arbitration. The arbitrator found in the consumer's favour, in the amount of £770. The Member had not responded to the arbitrator or paid the arbitration fee, and Ms Haskell said the consumer had recently told RECC that they had not been paid the award. Ms Haskell said that the Regulator considered non-payment of arbitration awards a particularly serious breach of the Code. She said that the Regulator has the power to terminate membership of the scheme for non-payment of arbitration awards. However, the Regulator had additional concerns about the other alleged breaches that it wished to put before the Non-Compliance Panel.

3.16 The Panel finds the facts proved in regards to Section 9.1. In regards to complaints 7068 and 6513, the Panel finds that there is insufficient evidence that the consumer's contract was with the Member. In regards to complaints 6506 and 6491, the consumer had not been able to get adequate responses from the Member to their complaints. In complaint 6408, the evidence is that the Member did not try to find an agreed course of action to resolve the complaint speedily and effectively to the consumer's satisfaction. The Panel finds a breach of Section 9.1 of the Code.

3.17 Section 4

Ms Haskell said the preceding breaches amounted to a breach of Section 4 of the Code. In addition, she referred to complaint 6664, in which an elderly consumer had been given advice by the Member about a loan and repayments, even though the Member was not licensed to do so. She also mentioned the Member's failure to fully engage with the audit process and the four outstanding County Court Judgements.

3.18 The Panel finds the facts proved in regards to Section 4, in relation to the alleged breaches of Sections 8.1 and 9.1, the failure to engage fully in the RECC audit process and the four County Court Judgements. The Panel finds a breach of Section 4 of the Code. In relation to complaint 6664, no evidence was provided to demonstrate that the Member was not properly licensed.

Bye-Laws

3.19 Ms Haskell said there was a breach of Bye-Law 4.5.4, in that the Member did not tell the Regulator that it had had its MCS registration revoked.

3.20 She also said that there was a breach of Bye-Law 4.10.3, in that the Member did not comply with the rules of the RECC Independent Arbitration Service, and 4.10.4, in that the Member did not pay the arbitration registration fee.

3.21 Ms Haskell stated that there was a breach of Bye-Law 4.10.5, in that the Member did not fully engage with the RECC audit process.

3.22 The Panel finds the facts proved in relation to each of the alleged breaches, and finds a breach of Bye-Laws 4.5.4, 4.10.3, 4.10.4 and 4.10.5.

4. Determination of Seriousness and Sanction

- 4.1 Ms Haskell for the Regulator submitted a letter to the Panel detailing the Regulator's view on seriousness of the breaches found and request for sanctions. That letter stated that the Member had been referred to the Panel due to a worrying pattern of non-compliance with the Code, because of complaints received and a lack of co-operation. In addition, the failure to pay an arbitration award was particularly serious. The Regulator was concerned that the Member was not taking the Code seriously and wanted to prevent any further consumer detriment.
- 4.2 The Panel considered the written submission of the Regulator, all of the evidence and all of the findings of breaches previously made. The Panel finds that the breaches are serious. The Panel finds it particularly serious for a Member not to comply with the arbitration process.
- 4.3 The letter detailed the Regulator's view that the breaches found are sufficient to warrant termination of membership. Whilst the Regulator could terminate the Member's membership of the Code itself as a result of the Member failing to pay an arbitration award and also as a result of the Member having its MCS certification terminated and failing to provide an acceptable explanation to the Regulator, the Regulator was sufficiently concerned about the other breaches to bring the Member to the Panel in the public interest, to raise consumer awareness and to deter this kind of behaviour.
- 4.4 In reaching its decisions the Panel had regard to each of the factors set out in the Non-Compliance Panel Rule 13.2 and considered the sanctions available to it under Bye-Law 10.15 in ascending order.
- 4.5 The Panel considered whether this was a suitable case to do nothing. The Panel decided that, due to the serious nature and number of the breaches and in particular the non-compliance with the arbitration process and the resulting detrimental impact on the consumer to the Member's benefit, this was not appropriate.
- 4.6 The Panel next considered whether a written warning should be issued but again decided that this was not appropriate for the same reasons.
- 4.7 The Panel then considered whether it would be appropriate to impose conditions or a period of Enhanced Monitoring on the Member's membership. The Panel considered that, given the Member's lack of engagement with the previous audit process and the disciplinary process, it does not have confidence in the Member's willingness to satisfy any conditions that might be imposed, including Enhanced Monitoring. The Panel also noted that the Member's MCS certification had been revoked, calling into question the Member's business model, as it cannot sign contracts with consumers or generate MCS certificates at present.
- 4.8 The Panel considered whether to require the Member to compensate any consumers. The Panel considered that, given the Member's failure to resolve complaints speedily and effectively to the consumers' satisfaction and its failure to comply with the arbitration process, it has little confidence that the Member would comply with any requirement to make a financial payment to consumers.
- 4.9 The Panel has decided that, given the seriousness of the breaches upheld and the Member's lack of engagement with the disciplinary process, Precision PV Ltd's membership of the Code should be terminated from the date of this Determination in accordance with clause 10.15.7 of the Bye-Laws.

5. Determination of Costs

- 5.1 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.
- 5.2 The Regulator made a claim for the costs of the Hearing in a letter dated 7 December 2015, 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.
- 5.3 The Panel therefore orders costs of the Hearing in the amount of £3,285 to be paid by the Member.

6. Appeal Period

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

17 December 2015