



RECC Response to BEIS Consultation on Reforming Competition and Consumer Policy

Introduction

Renewable Energy Consumer Code (RECC) is pleased to submit this response to the BEIS Consultation on Reforming Competition and Consumer Policy.

In submitting this response RECC has drawn on its experience in administering a Consumer Code in the small-scale renewable energy sector. The Code sets out high standards of consumer protection and is approved by the Chartered Trading Standards Institute (CTSI) under its Consumer Codes Approval Scheme (CCAS). For the most part, the Code mirrors consumer protection legislation in force. It contains the following sections: general business standards, pre-sales activities, contracts, completing the order, after-sales activities, in case of problems and monitoring performance.

The value of the small-scale renewable energy generating sector was £385,325 in 2020. Within this, the value of individual transactions was high, estimated to be between £6,000 and £20,000 per contract. This represents an enormous outlay on the part of domestic consumers, many of whom are in the vulnerable category. It is therefore essential that, in this sector, there is a high level of consumer protection. It is our role to: educate and inform installers; provide installers with the tools they need to comply with the Code; and to monitor that they are in fact doing so. Where they are not, it is our role to take disciplinary action against them.

RECC supports its members by providing a suite of technology-specific model documents which they are free to use (proposal, quotation, performance estimate, contract, cancellation notice, workmanship warranty &c). All our model documents have been approved by our Primary Authority, Hampshire Trading Standards. RECC also supports its members by providing an online training resource which covers the full consumer journey. It is CPD-certified and installers may submit an exam at the end of each module to demonstrate understanding. RECC provides one-on-one advice to installers who have a question.

RECC provides a dispute resolution service in cases where domestic consumers have a complaint against one of our members. This is in two parts. The first part consists of mediation which our experienced dispute resolution case handlers oversee. RECC is accredited by the Competent Authority under the Alternative Dispute Resolution (ADR) Regulations 2015 as a provider of these mediation services. Since 2015 consumers have recovered £500,000 through our mediation services. The second part consists of independent arbitration. This is provided on our behalf by CEDR completely independently of us. It is an end-point for the dispute resolution process. CEDR is also accredited under the ADR Regulations 2015. Since 2015 consumers have been awarded a total of £1,042 through the independent arbitration service provided for us by CEDR.

It is one of the CCAS core criteria that all Code Members must agree to take part in and comply with RECC's ADR services. RECC is permitted to terminate membership of any member who does not comply with an arbitration award. Many of those who register complaints fall into the vulnerable category and are at a loss as to how to proceed.

RECC has a highly experienced compliance and enforcement team. Where there is evidence of breach of the Code, RECC team members will carry out an investigation and prepare a summary of non-compliance for the installer concerned. The installer has a right of reply. Once the facts are established, RECC team members decide what the appropriate sanction is, based on a menu of options. Where we find systematic breach of the Code, we can terminate membership.

Unfortunately, owing to the high value of each transaction in the sector, and the vulnerable nature of many consumers, there has been a level of unscrupulous trading and mis-selling including instances of widespread fraud. RECC works hard to ensure that unscrupulous traders are not permitted membership of the Code. We are particularly watchful of ‘phoenix’ companies linked to companies which have ceased trading owing consumers large sums of money. Where there is evidence of fraud we work closely with the relevant trading standards department.

Since RECC was first set up in 2006 our evidence has been instrumental in convicting many individuals who had been engaging in fraud and taking advantage of vulnerable consumers. A proportion of these have received a custodial sentence. In all these instances we have worked very closely with trading standards departments and, in one case, we worked very closely with the Serious Fraud Office. In that case 7 defendants were given custodial sentences.

This experience means that we are well-placed to comment on BEIS' consultation. In particular, we have addressed BEIS' proposals to promote consumers enforcing their rights more effectively.

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Q68. What changes could be made to the role of the ‘Competent Authority’ to improve overall ADR standards and provide sufficient oversight of ADR bodies?

RECC is accredited as a provider of ADR services under the ADR Regulations 2015. We are audited by the Competent Authority on an annual basis and have found the process to be adequate. We consider that we carry out our role impartially, professionally and with integrity. We have detailed processes in place to ensure that all our case handlers comply fully with our process. It may be that not all accredited providers have the same standards as we do. To this end, we would not object to a tighter standard of accreditation, perhaps backed up by a Code.

However, we would not favour scrapping the existing system which appears to us to be working well. We consider that any changes to the role of the Competent Authority could be introduced incrementally, for example when the role is re-tendered from time to time.

Q69. Do you agree that government should make business participation in ADR mandatory in the motor vehicles and home improvements sectors? If so, is the default position of requiring businesses to use ADR on a ‘per case’ basis rather than pay an ADR provider on a subscription basis the best way to manage the cost on business?

RECC supports mandatory participation in ADR schemes in these sectors. The small-scale renewable energy generating sector is closely linked to the home improvement sector, with installers who are also plumbers and electricians often working across the piece. Our sector has benefitted enormously from mandatory participation in our services which are accredited under the ADR Regulations. Since 2015 consumers have recovered £500,000 through our mediation service and just over £1,000,000 through the independent Arbitration Service provided on our behalf by CEDR.

Linked to the Arbitration Act 1996, we favour arbitration over ombudsmen services. The process is straightforward to use and low cost while the awards are binding and enforceable through the courts. This is essential in the cases which cannot be resolved through mediation. It effectively brings to a close a dispute which may have been running for over a year and, in some cases, several years. There is a claim limit of £25,000. In the linked independent arbitration service for micro business the claim limit is £50,000.

Membership of a CTSI-approved Consumer Code, such as RECC, is an excellent way to make ADR mandatory. We depend on being able to mandate our members to participate, and to sanction those who do not. Several motoring services are administrators of CTSI-approved Consumer Codes. You can find a full list here: <https://www.tradingstandards.uk/commercial-services/code-sponsors> .

Q70. How would a ‘nominal fee’ to access ADR and a lower limit on the value of claims in these sectors affect consumer take-up of ADR and trader attitudes to the mandatory requirement?

RECC supports the charging of a nominal fee to both parties for final stage in the ADR process.

Access to RECC's mediation services is free to both parties. We consider this essential to ensure that there are no barriers to either party engaging fully with the process, which they are bound to do. If the dispute cannot be settled and the consumer applies to use the independent arbitration service there is a nominal fee for both parties. The RECC member must agree to use the service if the consumer requests it, having previously failed to resolve the dispute. In such a case each party must pay £100 + VAT. RECC pays the balance which is £150 + VAT. Should the consumer's claim succeed, the award will order that the installer refund the consumer's fee. In such an instance RECC would also require our contribution to be refunded. We have not found this level of fee to be prohibitive to either party.

Q71. How can government best encourage businesses to comply with these changes?

RECC considers that mandatory membership of a CTSI-approved Consumer Code is an effective way of ensuring that businesses are reputable and comply with any changes Government introduces relating to ADR. In our experience we have been very successful in resolving long-standing, high value disputes because our members are obliged to take part in the ADR services we offer. If they do not, they risk losing their membership which has knock-on consequences on their ability to access Government financial incentives in the sector.

Q72. To what extent do you consider it necessary to open up further routes to collective consumer redress in the UK to help consumers resolve disputes?

RECC's experience is rooted in the small-scale renewable energy generating sector. The availability of Government incentives for installers in our sector has allowed us to require Members to participate in the redress services we provide. The distinguishing factor in our sector is the very high value of individual consumer transactions, sometimes as high as £20,000, and the often-vulnerable situation of the consumers concerned. The potential for consumer detriment is therefore very high.

Q73. What impact would allowing private organisations and consumer organisations to bring collective redress cases in addition to public enforcers have on (a) consumers, and (b) businesses?

RECC is not convinced that opening up further routes to collective consumer redress would provide substantial, material benefits. We urge Government to recognise that resourcing Trading Standards services adequately must be the priority.

Carrying out these redress cases relies on detailed legal work which is resource-intensive. Generally these other organisations are resource-constrained and so the approach would not be systematic. Systematic enforcement is what is badly need. We would, however, be prepared to work with such organisations in any pilot scheme, and we would welcome understanding in more detail how it would work.

Q74. How can national enforcement agencies NTS and TSS best work alongside local enforcement to tackle the largest national cases of criminal breaches of consumer law?

RECC considers it essential that Trading Standards services are well resourced and able to react swiftly where there is evidence of serial mis-selling. We consider that this should be the first route in. Our experience of working with Trading Standards services on these cases since 2006 has been very positive.

We consider that there should be more systematic intervention by NTS and TSS where an investigation reaches a certain scale. For example, where there are more than a certain number of identified victims, or where the value of the alleged breaches is greater than a certain amount. Once again, we consider that consistent enforcement is essential, irrespective of where in the UK the trader is registered.

Q75. Does the business guidance currently provided by advisory bodies and public enforcers meet the needs of businesses? What improvements could be made to increase awareness of consumer protection law and facilitate business compliance?

RECC considers that SMEs, which makes up the majority of installers active in the small-scale renewable energy generating sector, are not well-informed about consumer protection law. RECC provides an extensive online training resource for our members, seeking to address this. We also offer training webinars to our members. However, we routinely find that our members are unaware of the substantial obligations they have. We would like to see participation in training such as this made an integral part of skills training being rolled out to those wishing to take part in the sector.