

**Cross-Party Group on Consumer Protection for Home Energy Efficiency
and Renewable Energy
Meeting 4 of Parliamentary Session 5
Scottish Parliament, Clerk Maxwell Room (CR4)
19th February 2019 at 18:00-19:30**

1. Welcome, Apologies and General Update

Tom Arthur introduced himself and welcomed members of the CPG.

Apologies Victoria Wilson (GDFC), David Rendell (GDFC), Sarah Freshwater (EST), George Arbuckle (TSS), Ivan McKee MSP, Jenifer Johnston (CAS)

Present:

MSPs	
Tom Arthur	MSP
Clare Haughey	MSP
Bob Dorris	MSP
Non MSP representatives	
Marcus Wilson	Citizens Advice Scotland
Emma Ash	Citizens Advice Scotland
Jamie Stewart	Citizens Advice Scotland
Linda Corbett	East Ayrshire CAB
Isabel McNicoll	HELMS Action Group Ayrshire
Irene Harris	Ayrshire Action Group
Marsie Stewart	Ayrshire Action Group
Angela Lowe	Glasgow NE Action Group
Shirley Buchannan	Glasgow NE Action Group
Anne Mclaughlin	Glasgow NE Action Group
Louise Hampson	Hamilton CAB
Bruce Clayson	Hamilton CAB
Jamie Apted	MBM Commercial lawyers
Ian Symington	Motherwell & Wishaw CAB
Colin Meek	Renewable Energy Consumer Code
Peter Randall	Solar Trade Association
Lindsay Restrick	SSE
David Burns	Wetherby Systems
Gerry Chambers	Office of Clare Haughey MSP
Sean Rodgers	Office of Clare Haughey MSP
Helen Melone	Energy Action Scotland
Councillor Allan Casey	Glasgow NE Action Group
Jim Eadie	Age Scotland
Adrian Simpson	Home Insulation and Energy Systems Contractors Scheme

Approval of minutes from 3rd October 2018

Minutes of the previous meeting were accepted as accurate. Linda Corbett proposed and Isobel McNicoll seconded.

Gerry Adams update

Clare Haughey's office is still heavily involved with HELMS casework. There was an uptake in media activity involving Clare Haughey and Gavin Newlands. Gavin Newlands was on STV Scotland Tonight and in January there were Daily Mail articles on HELMS. A 10 Minute Rule Bill was also introduced by Alan Brown MP in Westminster.

Tom Arthur commented that Gavin Newlands is doing a lot of work with good turnout at events. It was also noted that the volume of HELMS customers who still need to be made aware of how to come forward is significant.

Presentation 1: Citizens Advice Scotland (CAS) Marcus Wilson

Marcus Wilson gave a presentation of CAS' *Bad Company* report. Information was given as to the sources for the report: interviews from HELMS customers; case notes from CABs; the legal opinion from MBM; and the East Ayrshire Citizens Advice Bureau report - *Deal or No Deal*. The findings of the *Bad Company* report covered pressure selling, misleading information, unexpected costs, the vulnerability of some customers, mis-representation, installation issues, transfer of FIT and multiple financial tools, failure to get building warrants, long contracts and issues with redress.

The legal opinion was sought to identify the regulations and legislation that were breached by HELMS and what the redress route should be. The *Bad Company* report concluded that there was a systemic problem with HELMS and as such there is a need for collective action. The report proposed that BEIS should write to all HELMS customers, undertake an independent review and if widespread breaches are confirmed, BEIS should introduce a scheme to fast track complaints and deal with compensation. There would also need to be a bespoke solution for FITs, lack of Building Warrants and repairs.

Since the publication of the report, CAS's CEO has written to BEIS and there has been media coverage on You and Yours, BBC Radio Scotland and Timeline. The number of views of Citizens Advice Scotland's advice pages also increased by 442% during the media coverage. The issue has been raised at Prime Ministers Questions and CAS has submitted evidence into the BEIS committee's consultation on energy efficiency. Marcus Wilson had a meeting last week with Gavin Newlands, BEIS, GDFC and TSS at which Claire Perry from BEIS committed to look at resourcing for the complaints process.

Presentation 2: MBM Commercial LLP, Jamie Apted

Jamie Apted introduced himself as a private practice lawyer specialising in banking and high value litigation with some consumer focus. CAS asked MBM for a legal opinion as part of the *Bad Company* research. Jamie Apted looked at HELMS, who are now dissolved, PV Solar Ltd who are liquidated and also PV Solar Investments Ltd who are a live company, continuing to collect FIT funds.

MBM also looked into the legislation involved:

- The Energy Act 2011 allowed for the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) (Amendment) Regulations 2013. The Regulations state how a company should operate.
- Regulation 10 of the Framework gives the Green Deal Code of Practice.

Testimony from 14 HELMS customers was sought by MBM. In reviewing client paperwork, from HELMS, calculation errors were apparent.

Some of the core obligations of the Code of Practice were not adhered to by HELMS who applied pressure to sign, targeted vulnerable consumers and left insufficient paperwork with the consumer.

The Framework states that a complaint can be made directly to the Department for Business Energy and Industrial Strategy (BEIS) which has the legal power to order energy companies to cancel green deal plans. If a consumer is not satisfied with the decision of BEIS, they can ask for a judicial review but this is expensive and should be a last resort. A group of consumers may decide to undertake this collectively.

Redress outside the Green Deal Framework could also be through the energy and financial ombudsman and the Green Deal Finance Company (GDFC) who are the company who have taken on all complaints relating to HELMS, although it was noted by attendees that the financial ombudsman was passing cases to GDFC.

Other legislation relevant to this issue:

- The Consumer Protection Regulations 2008 which cover pressure selling. An action could be raised in court for this. However, reference to this legislation in any complaint to BEIS or GDFC could add strength to a complaint.
- The Consumer Credit Act 1974 which covers misrepresentation and would allow redress for anyone who paid by credit card or other form of credit to go direct to that credit provider and show the misrepresentation.
- Common law misrepresentation which can also be added to any complaint.

The assignation of the FIT on the face of it is valid. After reading consumer statements it appears the consumer was misled so the assignation is voidable, not void. As such the legally correct route is to raise an action against PVSI to reduce the assignation.

Remedies against Mr Skillen are difficult because he always operated through a limited company which protects him.

As a summary, HELMS breached the legislation and regulations described. The view was that BEIS should set up a scheme in the interests of transparency and consistency. This could also protect BEIS from potential judicial review, thus advantageous for both parties. It was also noted that the complaints process should be more formalised.

Questions and Discussion

Question - does section 75 of the Consumer Credit Act only cover credit cards? It was confirmed that the Act covered any credit, including a loan. Bruce Clayson from Hamilton CAB also gave background information about a client who raised a simple procedure action in Hamilton sheriff court against PVSI.

Question – does the householder own the solar panels and who was the FIT applicant? It was advised that HELMS appeared to sign up the householder, so an agreement is directly between PVSI and the householder.

Question – have there been any successes contacting PVSI for repairs? The issue of a consumer being electrocuted was raised. Linda Corbett from East Ayrshire CAB said she has not been aware of any maintenance support but she had obtained Microgeneration Certificate Scheme (MCS) certificates and an Independent Warranty Association (IWA) claim was submitted and is now with a loss adjuster. She is not sure if this will lead to repair or compensation. It was advised that IWA is for when a company ceases trading.

There was discussion on the future introduction of group proceedings in Scotland from the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 as a possible route for complaints. However, as this is still to be introduced, the process in the Framework stands.

There was discussion about how to progress cases from GDFC to BEIS. CAS said that they had met with Claire Perry last week and that resources were discussed. Gerry Chambers reminded the CPG there are over 100 cases with BEIS and only two decisions and two intention notices since September 2017.

There was a question as to the status of Trading Standards Scotland (TSS)'s case and whether proceeds of crime legislation could be used? It was advised that because HELMS no longer exists, it is implausible for this to be taken forward. The case TSS built is still with procurator fiscal.

There was a question about whether a consumer who had taken out extra credit to pay off their Green Deal can get redress. While it might be worth asking BEIS, redress might be difficult to obtain.

There was a question about the poor physical quality of the HELMS paperwork. It was noted that the complaint of misrepresentation comes mainly from what salesperson said, rather than the paperwork in the HELMS cases.

One attendee said she got her FIT back under the Consumer Credit Act because her loan was with the company Creation. Creation had never heard of PVSI, considered what had occurred as fraud, and returned 100% of the funds.

AOCB

Gerry Chambers asked if the CPG could now write to BEIS confirming its support of the Bad Company report by CAS. This was agreed and Tom Arthur delegated the drafting of letter to CAS and for it to be circulated by email.

The next meeting will occur on 4th June 2019.
