

New Generation Fund Round 1

2019 - 2021

FINAL EXTERNAL REPORT

To deliver LED lighting to community buildings in West Cheshire using a sustainable business model.

MARCH 2022

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**1 SUMMARY**

The purpose of this final report is to pass on learnings from the Next Generation Innovation Programme funded by Power to Change. The Next Generation programme allows new and innovative business models to be tested for the benefit of the whole community energy sector and will hopefully enable the replication of viable projects by many other community groups. CCEL proposed a business model to retrofit LED lighting in community buildings in West Cheshire that would recover the capital costs of an installation through energy savings. The programme consisted of an R&D phase from April to June 2019 and a phased delivery period from July 2019 to March 2021, later extended to December 2021. A successful programme was achieved if it was demonstrated that the project was replicable, reduced carbon emissions, had community benefit and produced a surplus without the need for subsidy.

Unfortunately, our project was not able to achieve the requirement for consumer credit authorisation within the allotted programme time period. Approval for Limited Permission Lending was finally achieved on the 8 March 2022 which will allow CCEL to implement the business model as proposed in the future. This was achieved through Ensured Compliance, a company specialising in making applications to the FCA for credit lending authorisations.

Repayment of installation capital from savings in electricity costs was central to our business plan but it was subject to consumer credit law and we found it very challenging to obtain Full Permission Lending authorisation. The consumer credit regulatory regime required CCEL to be accredited by the Financial Conduct Authority (FCA) as a provider of credit but our own several applications were unsuccessful. In the end it was our lack of resources within the group to produce the standard of documentation required and not to be able to demonstrate that we had the resources to manage ongoing compliance monitoring and consumer services, including defaults, complaints and vulnerable customer management. We tried for 18 months to satisfy the legislation or to look for legal ways to formulate an agreement outside of the regulations. We employed a consumer law barrister to look at our business case and advise us of possible ways to comply or legitimately find a workaround. The advice from the barrister is covered in section 3 and the full report and clarifications are included in the appendices. Finally, we employed Ensured Compliance who were successful in achieving Limited Permission Lending authorisation after the programme closing date.

All the other aspects of our business case and project plan were tested in practice and worked more or less as proposed. We undertook 8 separate installations in 7 buildings on a lump sum payment basis. All our customers were satisfied with their lighting, all agreeing that the lighting was improved and created a more welcoming space for their users. CCEL added to their community benefit fund so for the 8 installations completed there was a 4-fold win – adding to our benefit fund, customer’s running-cost reduced, users experience improved and the carbon savings made. Of the 8 installations completed, 4 were wholly paid for by the customer and 4 were paid for in part from a grant from the CCEL community benefit fund. The overall percentage of grant for the 4 installations was 30% of the total installation costs. The projects were managed by volunteers who in turn received remuneration from the Power to Change grant and these payments were credited to the CCEL bank account.

For CCEL there were added benefits. We are now in a position to install LED lighting in local buildings and are presently engaged with the local council in potential retrofit projects in schools. We have a greater awareness of governance and policy with regard to financial and customer service issues. Due to the experience gained in this project, we have a better understanding of the problems around energy efficiency measure implementation and will approach any that may arise in a more circumspect way. We much appreciate that we have been supported financially by Power to Change and thank them and their partners for providing the opportunity for us to tackle what turned out to be a challenging energy efficiency project.

**2 REFLECTIONS ON THE ORIGINAL PLAN**

**2.1 Need**

We had established a need for LED lighting in the original plan and this was fully justified in the project. Our list of potential customers reached a total of 70 of which we contacted 48 and of those 26 were interested enough to allow a lighting survey to be carried out.

**2.2 Scope**

The original plan was to carry out 20 LED installations in community buildings with the possibility of widening the scope to include schools and similar public buildings. Unfortunately, we were not able to demonstrate either because of problems with credit law which effectively stopped progress on actively contacting potential customers halfway through the project. In the end, 8 community buildings received a total of 7 separate installations.

**2.3 Raising capital**

Our intention was to raise capital for LED installations through a share offer. We included a sum of £15,000 for this in a share offer to fund 2 roof-top solar pv installations in October 2019 which raised the target total of £120,000 in the 6 weeks offer period. The target amount of £15,000 was to install LED lighting in 5 buildings in the first 6 months. The estimated average cost of an installation of £3,000 proved to be accurate.

**2.4 Paying for the Installations**

The business model was based on a simple repayment arrangement between CCEL and a customer whereby CCEL provided a complete lighting retrofit service including finance to install state-of-art LED lighting in community/public buildings and the customer paid back the capital invested over a number of years from savings in the cost of electricity. We were completely unaware of the implications this model had on CCEL being a provider of credit and therefore being subject to the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000. Community groups that are not incorporated as a limited company are regarded as having the same status as individual consumers. Under these regulations, we were obligated to be approved as a provider of credit by the Financial Services Authority (FCA). There was no exemption for a Community Benefit Society nor any concessions for the small number and sums involved in our business model. The FCA treated our application for full permission in the same way as a credit card company or large retailer. As a result, we found it impossible to achieve accreditation with the resources available to us. This if further expanded upon in section 3. All the lighting we installed during the programme was paid for with a single up-front payment.

**2.5 Building surveys**

We proposed to carry out surveys of the existing lighting using CCEL volunteers, supplemented by professional surveys by a lighting manufacturers rep, a service that was free of charge. This went more or less to plan. The form used to record the surveys was modified over time and a second site visit was often needed to confirm correct recording. There was learning required in the identification of existing luminaires and the equivalent LED light fitting to replace them. This proved to be very important as errors in identification would lead to errors in viability calculations, cost estimates and possibly lighting performance.

**2.6 Checking financial viability**

This required calculations to establish:

* The cost of electricity consumed by the buildings lighting over a 12-month period.
* The cost of electricity consumed by the new lighting over the same period.
* The capital cost of the retrofit installation.
* General overhead charges, community benefit and VAT.

The spreadsheet designed by CCEL at the R&D phase to calculate the above was further developed during the project. The varying requirements of buildings such as number of rooms, seasonal changes, set rotas, holidays etc meant that the spreadsheet was amended several times but the basic design remained the same throughout.

**2.7 Viability criteria**

**2.7.1** There were 2 over-riding conditions identified at the R&D stage that make an LED retrofit viable:

* The lighting is used on most days of the week and throughout the year.
* The LED lighting replaces fluorescent, halogen or incandescent lighting.

It was confirmed during the delivery stages that if a building uses its lighting for 60 hours a week it is a reliable indication that a retrofit will be viable within a 5-year repayment period.

**2.7.2** During the R&D phase we established that installations would be viable if the capital cost of the installation could be recovered from savings in electricity costs within a period of 5 years. The reasons for limiting the repayment period to 5 years were:

* To limit the general overhead charge that the customer pays to no more than 15% of the installation price incl. VAT.
* To limit the customer’s obligation to repay within a reasonable time

During the project we did not identify any reasons for changing this.

**2.8 LED installations**

Our approach to LED installations remained largely unchanged throughout the project period. The only change was that our plan to bundle 5 projects to install in sequence was not found to be practical and we dropped the idea, instead allowing our customers timescales and preferences to dictate the installation schedule.

**2.9 Working with our partners**

We had 3 primary partners in the delivery stage of our retrofit installations – our client, the electrical contractor and the materials wholesaler. In each of these relationships it was our aim to form an informal working partnership with their representatives. Free from the pressures of a commercial firm to maximise turnover and profits, we were able to work in an open and honest way, with an emphasis on giving our clients best advice and value for money, even if it meant that we could lose business. Since all of our clients were providing community facilities for a diverse range of community groups, it only made sense for us to find the best and most economic solutions to retrofit their lighting. The way we formally communicated with our partners is tabulated in the Installation Checklist – see appendix 3.

**3 THE BUINESS MODEL – WHAT WE HAVE LEARNED**

**3.1 Overview**

In our experience with solar pv projects it is the legal aspect that proved to be the most time consuming, problematic and expensive. Likewise with our LED project, it was the obligations within consumer credit law to obtain FCA accreditation which prevented us from fully implementing our business model within the programme time period. All of the other elements of the business model were employed in 8 successful installations, much in-line with our original proposals. But a project succeeds or fails by its weakest link and it was the legal aspect that was the most difficult and expensive to resolve. In section 4 we suggest various possibilities in which LED lighting could be installed within the law in order to make it possible for community energy groups to install energy efficiency measures using the repayment method. It is worth noting that we concluded that to use the model as originally proposed without accreditation would be a criminal offence.

**3.2 Training**

We found the training day delivered by the Lighting Industry Association very useful. It provided us with an up-to-date comprehensive overview of LED lighting and back-ground information on older lighting technologies. It prepared us for some of the pitfalls that inexperience in LED lighting could lead to. It informed our guiding principles for the project which are included in section 3.5. In the end though, there is no substitute for the learning that comes with doing the work.

**3.3 FCA accreditation to provide credit**

The first thing to say is that full permission lending authorisation as proposed, cannot be replicated easily and without considerable expense, if the provider of the services is a community benefit society and the customer is an individual, a collection of individuals (such as a trust) or an unincorporated organisation. The consumer credit regime does not apply when the customer is an incorporated entity such as limited company or a public liability partnership.

**3.3.1 Dealing with the FCA**

Our journey to obtain authorisation and formulate a legal agreement for repayment by our customers began by seeking advise from the Consumer Credit Trade Association. They directed us to the FCA who are the financial regulatory body dealing with consumer credit. Our applications to the FCA were compiled by a volunteer director and a part time accountant and administrator. The requirements were onerous and there was a steep learning curve just to establish what was required and to produce the necessary documentation, none of which we had. In the end we withdrew our application and instead agreed that we would use the FCA’s Innovation Service which proved to be disappointingly ineffective.  The innovation team case worker took weeks to respond to our emails and did not provide direct answers to our questions.  We then looked for alternative routes to make the business model work, culminating with seeking legal opinion from a consumer law barrister.

**3.3.2** **The barrister’s legal opinion**

Below we will go into some detail on consumer credit law by quoting from the barrister’s opinion on the CCEL’s obligations under current consumer credit legislation. The barrister’s comments on consumer credit law are reproduced below.

 We include the barrister’s legal opinion in full in the Appendix 1.

*“In this advice I refer to the ‘consumer credit regulatory regime’ as that regime is comprised in Financial Services & Markets Act 2000 (the "FSMA"); the Financial Services & Markets Act 2000 (Regulated Activities) Order 2001, (the "RAO"); the Consumer Credit Act 1974 (the “CCA”), regulations made pursuant to the CCA, together with the rules and guidance set out in the Consumer Credit Sourcebook, ('CONC') contained within the Financial Conduct Authority  Handbook of Rules and Guidance, (the "FCA Handbook").*

*Applying the principles to the facts of CCEL’s business plan,****CCEL unequivocally is offering credit to its customers****by way of ‘financial accommodation’.*

*The next question that arises is to consider when the provision of credit will fall within the parameters of the consumer credit regulatory regime.*

*The consumer credit regulatory regime potentially applies where credit is made available to individual natural persons and to ‘relevant recipients of credit’ (which term basically refers to small partnerships comprising three partners or fewer and unincorporated associations, (article 60L RAO)).*

*For the purposes of the consumer credit regulatory regime, a ‘credit agreement’ means an agreement between a lender and an individual or relevant recipient of credit under which the lender****makes available credit of any amount****, (article 60B RAO).*

***A credit agreement falling within the above description will be a regulated credit agreement for the purposes of the consumer credit regulatory regime****unless a particular exemption category is available in accordance with its terms to take the agreement outside the ambit of the consumer credit regulatory regime, (article 60B(3) RAO).*

*One exemption category for consideration by CCEL is the '12 payments in 12 months' exemption, (article 60F(2) RAO). I am not sure however whether it is commercially viable for CCEL’s customers to pay the costs of the equipment and the installation of the equipment within a 12-month period.*

*I am aware of various schemes relating to the installation of and payment for energy saving equipment (such as energy efficient boilers and certain types of solar panel) whereby the consideration for the installation of the equipment is expressed to be an assignment of the right to receive certain grant monies, or where the obligation to pay is expressed to be wholly contingent on certain****savings being made as a result of use of the equipment.***

*Another alternative would be for CCEL to partner with an authorised provider of finance and either introduce CCEL’s customers to the finance provider for the purposes of financing the installation of the lighting, or for CCEL to lend in the capacity of an appointed representative of an authorised finance provider. I would caution that arrangements of this type may limit the terms on which finance can be offered to the customer”.*

**3.3.3Comment on exemptions and alternatives.**

The exemption to repay the capital in 12 months is not an option in the vast majority of cases for installing energy efficiency measures. In the majority of cases for the LED installations we calculated that 5 years would be required to repay from savings.

The alternative where capital repayments are contingent on certain cost savings being made as a result of the energy saving equipment is applicable to our business model and is definitely a possible alternative solution. Its weakness lies in the fact that only savings that are agreed by both parties will have to be repaid. In the case where a customer experiences less savings than those forecasted, it would only be obliged to pay back the lower amount. The capital would then not be paid back within the repayment period and perhaps not at all. Unfortunately, there is no way of accurately measuring the savings in lighting costs, apart from theoretical calculations, which are based on estimates of lighting use and can therefore be disputed. It is often the case that users of energy saving equipment report they do not enjoy the savings they were “promised” by the installer. It is not an alternative that we would recommend for general use by other community organisations.

The alternative of using a third party who has FCA accreditation to manage the credit agreements and repayments is covered in section 4.5.

**3.3.4 Lighting supply and installation as a service agreement**

Other community energy organisations have installed LED lighting using a “service agreement” without obtaining FCA accreditation. The barrister’s comment on this type of agreement is reproduced below.

*“It depends on the terms under which the equipment is supplied. The hire or leasing of equipment is also a regulated activity under the RAO and under the CCA, so the same problems relating to FCA authorisation and documentation will arise. However, if the agreement is structured so that the equipment is essentially provided for free and payments are referable to the supply of ongoing lighting services on a pay as you go basis, then it may fall outside the regulatory perimeter. If you can get hold of a copy of the relevant agreement, I would be happy to take a look. The risk however is that the recovery of the installation costs is simply dressed up as a service charge with the risk that the agreement would still be construed as an agreement for credit”.*

We have concluded that we cannot justify the repayments required to repay capital as payments for ongoing lighting services. LED lighting requires the minimum of maintenance and repair which is an important factor when calculating life cycle costs for LED lighting. By calling a credit agreement a “service agreement” does not make it so. A service agreement must demonstrate that the periodic service charges are commensurate with the servicing costs. It is not an alternative that we would recommend for general use by other community organisations.

**3.3.5 Limited Permission Lending (LPL)**

We have been advised by a company who specialise in FCA accreditation that a limited accreditation is possible but it comes with conditions that may not be acceptable:

* The loan is made interest free. This means that for any new lighting quotation, a single payment contract and a pay as you save contract will have to amount to the same total price.
* The agreement can’t be a conditional sale, meaning that the installed lighting becomes the property of the customer at the point of installation.

We applied for LPL in July 2021 and were authorised in March 2022. The application was made on our behalf by Ensured Compliance, a firm specialising in such applications. Their fee for making the application was £600+VAT and the FCA application fee £100+VAT. The process involved naming an approved person for CCEL who had to undergo a background check for criminal activity. Being an authorised firm imposes strict responsibilities on the firm and approved person. The firm must make reports on time according to their reporting schedule. Late reporting incurres a £250 fee. Approved policy documents must be in place and kept up to date. All promotional material must meet the standards set by the regulations. The approved person must inform the FCA of any notifiable changes and conform to regulatory requirements, including a knowledge of all the relevant regulation relating to LPL. There is also an annual fee payable to the FCA based on the amount of outstanding credit the firm supplies.

In addition, an approved credit agreement, with all required supporting documents, must be used for each project. Again, we have decided to pay Ensured Compliance to provide the agreement and have it checked by a lawyer as we expect this will be cheaper than instructing a lawyer to write it. Ensured Compliance’s fee for this is £350+VAT.

In view of the amount of work and financial/legal knowledge required, we have decided to pay Ensured Compliance to provide compliance monitoring services of £25/month, at least for the forthcoming year. This removes all the above responsibilities from our own volunteers.

**3.3.6** **Key learnings in applying for FCA accreditation**.

* Acknowledge when you do not have the knowledge, skill or expertise in matters of law and regulation and when it’s time to seek specialist legal advice.
* Seek expert advice sooner rather than later.
* Consumer credit law is complex and obtaining accreditation requires specialist training and knowledge.
* When dealing directly with the FCA, do not expect them to give useful help or advice. They will only point to their handbook and/or source book (CONC). Interpreting the regulations and guidance is onerous for a person without legal/financial background knowledge.
* We were referred to the FCA innovation team. They didn’t seem to understand what we were requiring and or to respond appropriately to our emails. It may have been because of reduced staffing during the covid 19 restrictions.

**3.4** **Raising capital**

3.4.1 We raised the necessary capital of £15,000 to complete the first 5 LED installations by share offer as proposed in the project plan. The share offer for LED project capital was combined with a solar pv share offer. The full amount was raised in the 6 weeks application period. The share offer was advertised in the following ways:

* Posted on our website and in member’s newsletter
* Presented to the Chester Sustainability Forum, an umbrella organisation for environmental and sustainability organisations in and around Chester
* Circulated to local environmental and sustainability organisations to announce at their meetings and post on their websites.
* Posted on the website of Cheshire West Voluntary Action, an umbrella organisation for charities and voluntary organisations in West Cheshire.
* Using our Facebook account.
* Placing an advert in the local paper for 3 consecutive weeks.

**3.5** **Offering Customers value for money**

We listed the criteria most likely to lead to a viable project in section 5 of the Project Plan and repeat it below as the principal methods used to minimise our costs.

* Project management, co-ordination, surveying and estimating functions are carried out by volunteers receiving no remuneration for their time.
* A solicitor is not required for each individual contract
* CCEL can recover the VAT charged on the materials and installation work. We have had confirmation from HMRC that as a Community Benefit Society we can recover VAT charged by contractors and there is no VAT on repayments to CCEL.
* CCEL to purchase materials to obtain discounts (which may not be passed on by a contractor)
* Community benefit is limited to 10% of the net cost

**3.6 Surveys**

**3.6.1** The lighting survey is a key element in the project delivery. Below we list key learnings in conducting surveys:

* Make the appointment for the survey with the person who best knows the building and when the building is being used. This could be the caretaker, committee chairperson or booking secretary.
* Be well prepared for the survey. Take a tape, digital distance meter and a suitable form. We also carried a light meter.
* Allow plenty of time and do not rush.
* Establish the hours of use for each room in the building on a daily basis. Make adjustments for school holidays and the seasons.
* Record existing lighting in each room of the building. For each luminaire note the mounting surface and mounting method, height above floor level, technology (fluorescent, halogen, incandescent), shape (linear, bulkhead, panel, downlight, floodlight), luminaire dimensions and if possible, the power rating.
* Record the dimensions of each room.
* Note the emergency lighting provision. Emergency lighting is usually independent of the main lighting but can be incorporated in the main lighting luminaires.
* For external lighting, establish if the lighting is controlled by a timer or if it has an internal or external sensor (passive infra-red (PIR))
* For toilet and corridor lighting, establish if it is controlled by a PIR sensor.
* Make a note of the heating system and other electrical appliances in the building.
* Establish the tariff rate that is being charged and request copies of the electricity bills over a period of one year.

**3.7** **Calculating energy savings and installation price**

**3.7.1** CCEL has produced a spreadsheet that quickly calculates if an LED installation is financially viable, using the arbitrary viability criteria that requires full repayment of the installation price incl. VAT within 5 years from theoretical energy savings. It does this by inputting the following data recorded during the lighting survey:

* Hours of use for each room in the building, with options for winter/summer and school term/school holidays data input.
* Description of existing light fittings in each room with power ratings.
* Proposed LED replacement fittings with power ratings.
* Electricity company’s tariff rate.
* Unit cost of all the proposed LED fittings used in the retrofit.
* The electrical contractor’s price for the labour only retrofit.

**3.7.2** There are options on the repayment calculation sheet to change the following variables:

* Repayment period in years
* Community benefit
* Consumer price inflation rate for electricity – taken from latest Office for National Statistics data.
* Annual repayments as a percentage of the annual energy saving i.e., the customer does not repay the theoretical saving each year (averaged over the repayment period) but a lesser amount e.g. 90%.

**3.8 Procurement**

**3.8.1** We decided from the start that we would procure LED materials ourselves and engage an electrical contractor to provide labour for the installation. Directly procuring materials from the lighting manufacturer/approved wholesaler was primarily used to reduce costs and to have control over the selection of fittings. Wholesalers give discounts to approved customers and we generally received a 62% discount on the manufacturers catalogue (trade) prices. We think this fully justified the extra time required to order the materials and arrange delivery. It also necessitated an in-depth knowledge of the LED fittings which builds through experience and results in better decision making when specifying retrofit fittings. The fittings were originally obtained from a local wholesaler, then later from an online lighting supply company. The reason for this was that the online supplier was offering recognised lighting brands with a 5-year warranty at more competitive prices than the manufacturer’s approved wholesaler. The service provided by the online supplier was efficient and we will probably purchase this way in the future

**3.8.2** We selected an electrical contractor from a list of 5 local contractors who provided us with quotations for our first installation. Thereafter, we used the same contractor for all subsequent installations. For each installation, we requested and received a written fixed price quotation, priced from a schedule of lighting fittings which we provided. As the electrical contractor provided a reliable service and did not increase prices in subsequent installations, we were happy to retain their services. This greatly reduced time on selection of a contractor for each installation.

**3.8.3** **Key learnings on procurement**

* Procuring materials directly from a manufacture’s wholesaler will almost certainly reduce the overall cost of an installation. The alternative is to request a labour and materials price from a contractor. The contractor will not usually give the customer the full benefit of wholesaler’s discount and will apply a mark-up on the materials element. VAT will then be added to these additional costs. Procuring materials does require some knowledge of LED lighting and experience in buying.
* To know when you need an LED fitting i.e., a unit with integrated lamp, driver (control gear) and housing and when a replacement lamp is suitable. Lamps are much cheaper than fittings but they have to be compatible with the light unit they are fitted into. Beware of fitting an LED lamp to replace a fluorescent tube. Best practice is to always replace a fluorescent tube with an LED batten i.e., a fitting with a driver and diffuser compatible with the LED light source.
* Purchase fittings, lamps and accessories from recognised lighting manufactures based in the UK.
* Check the manufacturer’s warranty period and the efficacy of the fittings/lamps. The gold standard for good quality fittings is a warranty period of 5 years and an efficacy of 120 lumens per watt.
* Check prices for good quality fittings from the manufacturer’s wholesaler and online sources. There are obviously poor online suppliers but we have found prices can be lower than a wholesaler for the same product. Check how long the online supplier has been trading.
* Read quotations carefully, especially the contractor’s quote. Check for standard exclusion clauses and cost items not covered by the supplier or contractor.
* Be aware of delivery times. We found that some LED fittings had a delivery time of over 6 weeks, although the covid lockdown may have been a delaying factor. Most items are kept in stock by a reputable manufacturer. Nearly all manufacturing is carried out in China for all manufacturers.

**3.9 Installations**

We established a number of guiding principles after our LED training day at the Lighting Industry Association in Telford that informed our decisions on technical matters. These were mostly unchanged over the period of the project.

* To only use lighting products from established UK manufacturers that typically offered a 5-year warranty on their products.
* To use the services of manufacturers who offered free estimates and technical assistance. The use of technical assistance declined over time as we became more confident choosing lighting products and the levels of illumination they provided.
* To aim for replacing lighting with state of art LED technology with a target efficacy of 120 lumens/watt, efficiency above 90% and a colour rendering index above 80.
* To understand that LED technology is fundamentally different from older lighting technologies and that replacement with an inappropriate LED lamp can result in premature failure or be a fire hazard.
* For the most common types of luminaires that we would deal with in community centres (linear, bulkhead and panel), we would change the whole fitting and not just the lamp.
* To use automation, such as movement sensors in toilets, when the cost could be accommodated in a viable installation.
* To consult with our customers on their preferred requirements for lighting levels, lighting colour and robustness (impact and ingress ratings)
* To use only electrical contractors who are NICEIC approved.

**4 THE BUSINESS MODEL – HOW IT COULD WORK**

**4.1 Overview**

As outlined in the introduction to this report it was only the failure obtain FCA authorisation that prevented our project from succeeding within the allotted programme period. All other aspects of our project plan were successfully implemented in the delivery stage. In this section we concentrate on how the obstacles to providing a legal agreement could be overcome. A key factor in our failure to obtain FCA accreditation was our lack of paid staff and a larger organisation with a bigger budget may well succeed to obtain full permission lending. The business model we proposed is one that many community energy groups could use for a range of energy efficiency measures and it seems completely irrational that a small community benefit society working voluntarily for their community is treated in the same way as a credit card company with millions of customers and outstanding loans of billions of pounds. We think that our project has highlighted an important obstacle that prevents the installation of energy efficiency measures and remedies need to be found so that community energy organisations can use a “pay-as-you-save” business model more easily.

**4.1 Amending the consumer credit regulatory regime.**

The consumer Credit Act 1974 and more recently the Regulated Activities Order include certain activities that are exempt from the consumer credit accreditation. We think that providing an energy saving service that that is repaid from savings in energy should also be exempt for the following reasons:

* The service offered produces a contribution to CO2 emission reductions and a reduction in energy demand.
* The customers are usually unincorporated organisations managed by community minded volunteers who are respected in their community i.e., they are a low-level credit risk.
* Repayments of the “loan” are provided by a reduction in future costs and do not have an overall negative effect on the customers bank balance.
* The number of “loans” and the amounts are extremely small compared to most regulated activities.

 **4.2 When your customer is a limited company**

The consumer credit regulatory regime does not apply to limited companies.

Our proposed business plan can be used when the customer is a charity registered at Companies House (Charitable Incorporated Organisation – CIO), a limited Liability Partnership (LLP) or a Community Interest Company (CIC), all of which are limited companies. A CIO can be an Association CIO if it has a wider membership or a Foundation CIO if it does not.

**4.3 Obtaining FCA accreditation using a specialist firm**

An option is to engage a solicitor or specialist firm to make the application. This can be done online and will remove most of the work and time required to make an application using group resources. Firms who have made applications for their clients in the past will have the necessary documentation to hand. There will be a fee of course and it will be costly. We have obtained a quote to undertake a full application from Ensure Compliance for £6,000 + VAT. The FCA application fee would be a minimum of £800 (which includes the first year’s payment) and there is no guarantee of approval. We can’t recommend this as an option. In contrast, the fee charged by Ensured Compliance for limited permission lending was £600+ VAT. This service could be used by other groups and we would recommend them to do so.

**4.4 Training a member of staff to make an application for accreditation**.

Training courses exist for consumer credit regulation including making an application for accreditation. The cost is going to be a lot lower than engaging a firm and would require that a staff member with some background in law/finance is available to take the course. On-line courses begin at £150 + VAT.

**4.5 Out-sourcing the client-customer agreement to a FCA accredited firm.**

We made contact with an FCA accredited community bank based in Welshpool that offered a service to write a loan agreement and manage the payments from our customers. They already offered this service to local authorities and were keen to help us so that the project could be kept alive. Unfortunately, their minimum charge was 8% on all outstanding balances and it would have rendered the majority of installations unviable using our viability criteria of a 5-year repayment period. An 8% fee on outstanding balances increased the overall cost of a project by over 20%.

**4.6 Keep looking for possible exemptions within the regulations**

Article 60G of the RAO exempts a borrower-lender agreement when the interest rate does not exceed 1% above base and the loan is offered to promote a public good. This possible exemption needs to be checked out by a lawyer as it offers a possible exemption for a community benefit society.

**4.7 Using community benefit fund to incentivise LED retrofits**

CCEL have installed 4 LED retrofits by providing part funding from the community benefit fund. In these cases, the customer paid the balance of the installation price on completion of the work.

**4.8 Limited Permission Lending**

This limited accreditation requires that interest is not charged on the loan. In this case the total price of repayments charged to a customer would have to be exactly the same as a single price offer charged at the point of sale. This is the option we will be using for the immediate future.

**4.9 Complying with the Consumer Credit Act**

Even if a community energy organisation found itself exempt from the requirement for FCA accreditation it can still be governed by the rules of process and form of documentation if it is providing credit. This means that a client-customer agreement would still have to be in a prescribed form according to the Act which still presents a challenge to a small community benefit society. From our experience dealing directly with the FCA, we would seek professional help in obtaining a compliant agreement if it was necessary. We will be using a credit agreement written by Ensured Compliance.

**5 REPLICATION POTENTIAL**

**5.1** The potential for replication is positive. LED prices continue to fall and electricity prices continue to rise so the savings in energy costs are now more than at the beginning of the programme in April 2019. Future potential is hard to predict due to the rapid growth in new technologies in electricity generation and storage which hopefully will have the effect of stabilising electricity costs. LED prices will eventually stop falling and then perhaps slowly increase over time. On the other hand, geopolitical events may continue to destabilise electricity prices and they will continue to rise.

**5.2** It is a fact that LED technology will dominate all lighting for the foreseeable future and that there are still huge numbers of buildings to upgrade. We therefore think that LED retrofit is something that a community energy organisation is likely to undertake, either in combination with other measures or stand alone.

**5.3** Authorisation to provide credit can be obtained at a reasonable cost as we have demonstrated. We have found a reliable firm to do this and they may be others. However, we are extremely satisfied with the service provided by Ensured Compliance at a very reasonable price and much cheaper than a solicitor.

**6 CONCLUSIONS**

Our project was dominated by one issue which we didn’t foresee at the start. It occupied our time for the full length of the programme. We used all the contingency allowance of £4580 in our budget trying to find solutions. We hope our experience will help others to avoid the pitfalls that we experienced. In order to do that this report must be easily accessible by other community energy organisations who are considering installing energy efficiency measures to individuals and unincorporated organisations on a repayment basis. We think that we have gone a long way to demonstrating our proposed business model has potential. Time ran out before we could satisfactorily demonstrate it in practice but from now on, we can be fully confident that all elements of the business case have been demonstrated – financial, commercial, technical and most importantly, regulatory and legal.

# Appendix 1 – Barrister’s legal opinion

**STEPHENS SCOWN SOLICITORS
CHESTER COMMUNITY ENERGY LIMITED**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**ADVICE
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**Introduction**

1. By instructions received on 8th March 2021, I have been asked to advise Chester Community Energy Limited, (“**CCEL**”) on whether proposed payment arrangements for the supply and installation at customer premises of energy efficient LED lighting involves the provision of credit and thus comprises a regulated credit agreement for the purposes of the consumer credit regulatory regime.

2. In this advice I refer to the ‘consumer credit regulatory regime’ as that regime is comprised in Financial Services & Markets Act 2000 (the "**FSMA**"); the Financial Services & Markets Act 2000 (Regulated Activities) Order 2001, (the "**RAO**"); the Consumer Credit Act 1974 (the “**CCA**”), regulations made pursuant to the CCA, together with the rules and guidance set out in the Consumer Credit Sourcebook, ('CONC') contained within the Financial Conduct Authority Handbook of Rules and Guidance, (the "**FCA Handbook**").

1. This advice is limited to matters of English law and the law is stated as at 8th March 2021.

**Factual background**

1. I understand from the documents presented to me that CCEL is a community benefit society. The main business of CCEL is renewable energy generation and the delivery of energy efficient measures.
2. CCEL offers customers a service whereby CCEL will replace old and/or inefficient lighting equipment with new, LED energy efficient lighting equipment and fittings. The service is provided to customers whose building serves a community purpose and the objective is to reduce energy consumption and bills for the customer, (the “**Scheme**”). The Scheme is offered in the Chester area.
3. Under the terms and conditions for the Scheme, CCEL pay the capital cost of the purchase and installation at the customer premises of the LED lighting equipment. The customer is then required to repay the cost of the equipment to CCEL over a term of years, together with interest at the rate of four percent (4%) per annum. I understand from the CCEL quotation document contained in the papers presented to me that there may also be an additional ‘community benefit charge’.
4. The benefit of the above arrangements to the customer is that the customer obviously is given time to pay for the equipment. Further, I understand from my instructions that CCEL anticipate that customers will benefit from material reductions in energy consumption and costs that will offset the installation costs of the equipment.
5. However, CCEL are concerned to understand whether the payment arrangements referred to above whereby the customer is able to spread the cost of the equipment over a term of years, comprises the provision of credit to the customer.
6. If so, I am instructed that CCEL wish to understand the circumstances in which the provision of credit would fall within the parameters of the consumer credit regulatory regime and whether an exemption is available, or adjustments can be made to the payment proposals so as to cause the arrangements to fall outside the scope of the consumer credit regulatory regime.
7. I am instructed that previously CCEL did submit an application to the Financial Conduct Authority (the “**FCA**”) for permission, pursuant to Part 4A FSMA, to undertake regulated credit activity. However, I understand that the application process was cumbersome and subject to delay and CCEL elected to withdraw their application.

**Advice**

***What is credit?***

1. The first question that arises is the question of whether, by allowing the customer to defer payment for the lighting equipment and to repay CCEL over a term of years following installation, CCEL is providing ‘credit’ to the customer.
2. ‘Credit’ is defined at s.9(1) CCA and ‘*includes a cash loan and any other form of financial accommodation*’. A financial accommodation is essentially an agreement where the obligation to pay monies is contractually deferred from the time payment would otherwise fall due, (see *Dimond v. Lovell* [1999] 3 WLR 561; and see *Goode: Consumer Credit Law & Practice, Volume I*, at 24.8).
3. Where credit is extended in respect of the supply of goods and services the financial accommodation usually takes the form of a contractual deferment of the obligation to pay. In other words, the lender extends a ‘*financial accommodation’* to the customer by allowing the customer time to pay rather than demanding payment in full at the point of sale or supply, (see s.9(1) CCA and *Goode: Consumer Credit Law & Practice, Volume I*, 24.6).
4. Authority suggests that there must be a contractual agreement to provide a financial accommodation, (*Goode, Volume I*, 24.24). The contractual element is essential: for the purposes of the CCA there is no 'credit' if payment is delayed, not pursuant to a contractually agreed deferment, but instead due to non-binding forbearance. Similarly, no credit is extended if the relevant customer is simply late in paying, or unilaterally delays payment of an invoice in the absence of any agreement allowing them to do so.
5. Applying the principles set out above to the facts of the present matter, CCEL unequivocally is offering credit to its customers by way of ‘financial accommodation’. Without the instalment payment arrangements, the customer would be required to pay in full for the capital cost and installation costs of the equipment at the point of sale and supply.
6. Instead, CCEL pay the capital costs of the lighting equipment and the installation of the equipment, thereby relieving the customer of the obligation to pay in full at the point of sale. The customer then repays CCEL over an agreed term of years by making instalment payments and therefore defers payment for the equipment. In consideration of this arrangement, the customer agrees to pay interest to CCEL at the rate of 4% per annum. The agreement between CCEL and the customer is embodied in a written contract. (See customer quotation document and customer terms and conditions contained in the papers presented to me).
7. It can be seen that all the elements of ‘credit’ are present in the proposed arrangements between CCEL and its customers.
8. Having established that CCEL will offer credit by way of financial accommodation to its customers, the next question that arises is to consider when the provision of credit will fall within the parameters of the consumer credit regulatory regime.

***Parameters of the consumer credit regulatory regime***

1. The consumer credit regulatory regime potentially applies where credit is made available to individual natural persons and to ‘relevant recipients of credit’ (which term basically refers to small partnerships comprising three partners or fewer and unincorporated associations, (article 60L RAO)).
2. It is important to note that the protections of the consumer credit regulatory regime will not apply where CCEL’s customer is a corporate entity such as a limited company or a limited liability partnership formed under the Limited Liability Partnerships Act 2000. The CCA and the consumer credit regulatory regime have no application to cases where the customer is a corporate entity.
3. A ‘relevant recipient of credit’ is defined as being a partnership comprising two or three partners not all of whom are bodies corporate, or an unincorporated association which does not consist entirely of bodies corporate and is not a partnership, (see article 60L RAO).
4. For example, I note that the sample contract contained in the papers presented to me between Community Renewable Energy Wandsworth Limited and Doddington and Rollo Community Association Limited is with a corporate customer and so falls outside the consumer credit regulatory regime.
5. However, it follows that CCEL will need to worry about the application of the consumer credit regulatory regime where the customer is an individual natural person, or a group of individuals, a small partnership comprising three partners or fewer, or an unincorporated association such as a members’ club.
6. On the basis that I understand that CCEL’s objective is to supply and instal lighting to buildings with a community purpose, I anticipate that in legal terms, many of its customers will be an unincorporated association such as a community centre or members’ club, or perhaps an unincorporated charity. Alternatively, the customer may be a group of individuals such as the board of governors of a school or the trustees of a village or community hall. (At the risk of stating the obvious, CCEL will need to check the constitutional documents of each customer to ascertain the persons or entity through which the customer can enter into contracts).
7. For the purposes of the consumer credit regulatory regime, a ‘credit agreement’ means an agreement between a lender and an individual or relevant recipient of credit under which the lender makes available credit of *any* amount, (article 60B RAO).

1. A credit agreement falling within the above description will be a regulated credit agreement for the purposes of the consumer credit regulatory regime unless a particular exemption category is available in accordance with its terms to take the agreement outside the ambit of the consumer credit regulatory regime, (article 60B(3) RAO).
2. I have discussed exemption categories below at paragraph [32] onwards of this advice. However, it can be seen that if CCEL’s customer is an individual, or a relevant recipient of credit (as defined above) the starting point is that the instalment payment arrangement between CCEL and the customer will be a regulated credit agreement, unless an exemption category can be found.
3. Under the RAO it is regulated activity i) to enter into a regulated credit agreement as lender; and ii) to administer and enforce a regulated credit agreement, (article 60(1) and 60(2) RAO).
4. CCEL is already aware that in order lawfully to carry on regulated activity by way of business in the UK, a person must either be an authorised person by the FCA, or otherwise must qualify as an exempt person for the purposes of the FSMA, (see s.19(1) and s.39 the Financial Services & Markets Act 2000). It is a criminal offence to carry on regulated activity when not authorised (or exempt) to do so.
5. Before turning to examine whether any exemption categories may be available to CCEL to take the proposed activity outside the parameters of the consumer credit regulatory regime, I would comment that having reviewed, for the purposes of this advice, the customer quotation document and customer terms and conditions proposed to be put in place between CCEL and its customers, the agreement comprised in those documents does not conform to the strict requirements as to form and content for regulated credit agreements, prescribed pursuant to the Consumer Credit (Agreements) Regulations 2010.
6. Further, I note that the agreement proposed to be put in place between CCEL and its customers contains (at clause 7.2 of the customer terms and conditions) a retention of title clause whereby ownership of the relevant LED equipment will only transfer to the customer once the customer has made all the payments under the agreement. However, for the purposes of the consumer credit regulatory regime, this means that the CCEL agreement in its present form constitutes a ‘conditional sale’ agreement which, as we will see, has consequences as to the availability of exemption categories under the RAO.

***Exemption categories***

1. Turning next to examine whether or not any exemption categories under the RAO may be available in respect of the Scheme, unfortunately there are no obvious exemption categories that would be available in respect of the Scheme as currently structured. I have discussed one possibility below, but CCEL would not be able to charge any interest on the credit extended to customers, and would have to abandon the conditional sale structure of the Scheme.
2. One exemption category for consideration by CCEL is the '12 payments in 12 months' exemption, (article 60F(2) RAO). I am not sure however whether it is commercially viable for CCEL’s customers to pay the costs of the equipment and the installation of the equipment within a 12-month period.
3. Nevertheless, this exemption category will be available where all of the following conditions are fulfilled:
4. the agreement is a ‘borrower – lender – supplier’ agreement for fixed sum credit (article 60F(2)(a) RAO);
5. the number of payments to be made by the borrower must not exceed 12, (article 60F(2)(b) RAO). In this context ‘payments’ means repayments of credit and so would exclude any deposit or advance payment, neither of which would count as one of the 12 payments, (article 60F(8) RAO);
6. the payments must be made within a period of 12 months or less, starting on the date of the agreement, (article 60F(2)(c) RAO);
7. the credit must be provided without interest or other charges, (article 60F(2)(d) RAO); and
8. the credit agreement must not be secured by a pledge; must not finance the purchase of land; or otherwise must not be a hire purchase or conditional sale agreement, (articles 60F(2)(e) and 60F(7) RAO).
9. Whilst the Scheme would qualify as a ‘borrower-lender-supplier’ agreement on the basis that the credit extended finances the purchase of goods and services (the equipment and installation) and CCEL acts as both lender a supplier of the goods and services, (s.11(1)(a) CCA) it can be seen that presently, the Scheme will not qualify for the exemption outlined above on the basis that it is structured as a conditional sale agreement.
10. Additionally, as noted above, CCEL would have to abandon the interest charge and any other charges in order to avail itself of the '12 payments in 12 months' exemption.

***Solutions and alternatives***

1. As referenced in my email dated 10th December 2020 (addressed to CCEL and instructing solicitors) I am aware of various schemes relating to the installation of and payment for energy saving equipment (such as energy efficient boilers and certain types of solar panel) whereby the consideration for the installation of the equipment is expressed to be an assignment of the right to receive certain grant monies, or where the obligation to pay is expressed to be wholly contingent on certain savings being made as a result of use of the equipment.
2. In each of these cases, the arrangements did not amount to the provision of credit. I would caution however that these issues can be finely balanced and will depend on the drafting in the contractual agreements being very clear and precise.
3. Furthermore, arrangements of the type outlined above may not be commercially acceptable to CCEL on the basis that it would require a wholesale reconstruction of the commercial terms on which the lighting was to be offered and installed and CCEL would not necessarily recover the costs and installation costs of the equipment in a timely manner (or at all).
4. Another alternative would be for CCEL to partner with an authorised provider of finance and either introduce CCEL’s customers to the finance provider for the purposes of financing the installation of the lighting, or for CCEL to lend in the capacity of an appointed representative of an authorised finance provider. I would caution that arrangements of this type may limit the terms on which finance can be offered to the customer.
5. In each case, CCEL would need to enter into a written agreement with the authorised finance provider to become an appointed representative of the finance provider either for regulated credit brokerage (where CCEL would introduce its customers to the lender) or for lending, (where, as noted above, CCEL would be the lender, but would not be authorised in its own right and would act as an appointed representative of an authorised lender).
6. I should be pleased to explore in more detail with instructing solicitors any of the alternatives outlined above.

**Conclusion**

1. Therefore, in conclusion, the news is not positive. By allowing customers to defer the capital and installation costs for the LED equipment on the terms discussed above, CCEL is unequivocally offering credit by way of financial accommodation to its customers.

1. For the reasons explained above, if CCEL contracts with customers who are individuals or relevant recipients of credit, then the resulting agreement will be a regulated credit agreement for the purposes of article 60B(3) RAO.
2. It is regulated activity under the FSMA to enter into a regulated credit agreement as lender and to administer and enforce a regulated credit agreement, (article 60B(1) and article 60(2) RAO). CCEL would need to be authorised and regulated by the FCA in order lawfully to undertake such activity.
3. There are no obvious exemption categories that would be available to CCEL under the RAO which would otherwise take the proposed activity outside the consumer credit regulatory regime. The ’12 payments in 12 months’ exemption discussed above would require fundamental restructuring of the commercial terms on which credit was offered to customers, if that exemption category was to be available in accordance with its terms.
4. The most practical course of action may be for CCEL to operate as an appointed representative of an authorised lender, either to introduce its customers to that lender as source of finance, or to lend as agent for that lender.
5. I trust that the contents of this advice are clear. Instructing solicitors should not hesitate to contact me should any additional questions arise.

**Lucy Walker**

**Guildhall Chambers**

**8th March 2021.**

# Appendix 2 – Barrister’s points of clarification

**Answers to questions arising from a request for a legal opinion on consumer credit law relating to installing energy saving measures in public buildings. The questions are in black text and the answers by Lucy Walker (barrister) are in blue.**

**From:** Graham Booth <bootyg1457@googlemail.com>
**Sent:** 15 March 2021 16:21
**To:** Lucy Walker <lucy.walker@guildhallchambers.co.uk>
**Cc:** Bedford, Sonya <S.Bedford@stephens-scown.co.uk>; energy@stephens-scown.co.uk; Joe Stayte <Joe.Stayte@guildhallchambers.co.uk>; Rachel Haycock <rachel.haycock@cse.org.uk>; Stephen Savory <stephen.savory@gmail.com>; Francesca Bourn <mooref@binnies.com>; Jo Sparke <josparke@hotmail.com>
**Subject:** Re: Consumer credit advice

Dear Lucy,

We have now reviewed your legal advice and it’s clear that our options to take the project forward are quite limited. The exemption in para 33 is not viable for us as repayment of the installation costs can very rarely be recovered in 12 months from savings in energy costs. We have also already ruled out the alternative in para 40 to partner with a finance provider on the grounds that the added cost would make nearly all projects financially unviable. We have come to the conclusion that the exemption in para 37 is the only possible solution for us. Before dealing with the implications of taking that forward, I would like to make the following observations.

·         In paragraph 16, it is concluded that we are charging interest, but are we adding interest to a loan amount or simply recovering our costs which include the interest paid to shareholders along with admin costs (or community benefit).  Could an agreement be re-structured so that these costs are paid straight away (or as a first instalment) with only the cost of the installation repaid over 5 years? [LW: the quotation document and terms and conditions provided to me expressly provide for interest to accrue on the loan at the rate of 4% per annum. There is no reason why the agreement could not be restructured so as to jettison the interest charge and instead provide for an upfront cash payment to cover administration costs and the return to shareholders, but a restructuring of this nature would not necessarily change the consumer credit analysis which hinges on whether there is a deferment of the obligation to pay – which there still would be if the customer was allowed to repay the installation costs over 5 years.]

·         In paragraph 31 it is concluded that we are requiring retention of title until all costs have been paid, however I think that in previous discussions with FCA we concluded that the usual legal position is that once fixed to the building possession of the materials passes to the building owner. Also, that in terms of Health and Safety we are not in a position to go in and take out the materials, even if it was worth the cost of doing so. This obviously leaves us at risk of default so we would have to look at how this risk can be mitigated through due diligence and any legal remedies. [The FCA analysis here is probably correct: I am not a property law expert, but once installed, the lighting would likely become a fixture and would belong to the building owner. Nevertheless, again the terms and conditions presented to me retain title to the equipment for CCEL – see term 7.2].

The question that remains is it viable for us to pursue the exemption in para 37. This would mean more legal advice and the drafting of a suitable agreement. Further questions arise from this; [LW: the discussion at paragraph 37 of my written advice dated 8th March 2021 does not refer to any formal exemption under the RAO, but instead discusses schemes that I have seen where the financial terms of the supply agreement are structured in such a way so as not to constitute the provision of credit. One scheme covered the costs of the supply and installation of biomass boilers, but in consideration of the supply and installation of the boilers, the customer assigned in favour of the supplier the right to receive certain grant monies over a term of years. This did not constitute ‘credit’ because the customer gave consideration for (or ‘paid for’) the supply and installation of the boilers upfront by the assignment of the grant monies to the supplier. Hence, the supplier was paid upfront and the customer’s payment obligations were thus satisfied. Another scheme involved the supply and installation of solar panels, but the customer was only obliged to pay for the same if and when certain energy savings were made. This did not constitute ‘credit’ because the customer’s obligation to pay was wholly contingent on savings being made and thus, any repayment obligation could not be determined at the time the agreement was made. Based on the information available to me so far, I am not sure that either of the aforementioned structures would be available or otherwise viable in the present case].

·         Can you point us to an organisation that has already used the principle of energy savings being made in a supply and install agreement? [LW: see above].

·         If we ask you to produce an agreement what are the legal fees likely to be, and [LW: see above].

·         How much certainty is there that a water-tight exempt agreement can be made. [LW: see above].

If it was required to prove by measurement of electrical current that certain energy savings had been made by the installed equipment then this would render the option a non-starter. It is not possible to isolate and measure through metering the lighting loads before and after installing the LED lights. The only practical way to measure the energy savings is by a theoretical calculation.  This is done by subtracting the power rating (in watts) of the new lamps from the old lamps and multiplying by the time of use. It would never be possible to definitively prove what actual savings had been made. It would always be an approximation. [LW: the risk would be that a customer could assert that they did not have to pay for the equipment because they had not achieved the requisite savings to trigger any repayment obligation. In practical terms, I think you would want to be in a position to prove that the required savings had been made].

Regarding para 39, we understand that the terms of our present agreement would have to be changed. What can’t be changed is that the capital costs are recovered from energy savings within a period of 5 years. For the type of buildings we are dealing with it typically takes 4 or 5 years to pay back the capital from savings. We do not take on a project unless the pay-back time is 5 years or less (based on our own theoretical calculations).

It is worth pointing out that finding a way to formulate an agreement for energy saving measures in general based on repayments made from savings without the need for FAC authorisation would benefit other community energy groups. An important requirement of our funding from Power to Change is to prove a sustainable business plan for the provision of energy saving measures which is replicable. The problem of FCA authorisation is the only aspect of our business plan that is preventing us from doing that.

Finally, could you please clarify the position on the use of a service agreement (to provide lighting) as against a supply and install agreement. We have been told that another community organisation like ours has used a lighting service agreement without the need for FCA authorisation. Is this an option? [LW: possibly. It depends on the terms under which the equipment is supplied. The hire or leasing of equipment is also regulated activity under the RAO and under the CCA, so the same problems relating to FCA authorisation and documentation will arise. However, if the agreement is structured so that the equipment is essentially provided for free and payments are referable to the supply of ongoing lighting services on a pay as you go basis, then it may fall outside the regulatory perimeter. If you can get hold of a copy of the relevant agreement, I would be happy to take a look. The risk however is that the recovery of the installation costs is simply dressed up as a service charge with the risk that the agreement would still be construed as an agreement for credit].

Regards

Graham

On Mon, 8 Mar 2021 at 19:34, Lucy Walker <lucy.walker@guildhallchambers.co.uk> wrote:

Sonya, Graham,

Many thanks for the instructions in this matter this morning. Please find attached my written advice – please do let me know if you have any questions or wish to discuss further.

Best wishes,

Lucy.

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| **Lucy WalkerBarrister** |

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| --- | --- |
|  | 23 Broad Street Bristol BS1 2HG |
| lucy.walker@guildhallchambers.co.uk | [Bristol Office:](http://www.guildhallchambers.co.uk/how-to-find-us.html)  0117 930 9000 |
| [Website](http://www.guildhallchambers.co.uk/) | [Profile](http://www.guildhallchambers.co.uk/barristers/283/Lucy-Walker/) | Email  |  |

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| --- |
| [London Office:](http://www.guildhallchambers.co.uk/how-to-find-us.html) 020 3709 9100 |

# Appendix 3 – LED installation checklist

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|  | **CHESTER COMMUNITY ENERGY LTD** |  |  |
|  |  |  |  |  |
|  | **LED INSTALLATION CHECKLIST** |  |  |
|  |  |  |  |  |
| **Description of Activity/Document** | **Method of Communication** | **Requirement** | **Record** | **Document** |
| **Marketing** |  |  |  |  |
| Identify prospective Clients - initial contact | phone, email, paper | establish if there is interest on the scheme. Establish suitability of building | contact recorded on a spreadsheet and backed up | Excel file "Community Buildings" |
| Marketing materials | website, social media, face to face - green fairs | provide basic information about the scheme to prospective Clients | saved in electronic storage with backed up copy | Ppoint file "LED leaflet folded Feb 2020 , Pdf file "Brochure LED 2019 |
| **Initial Lighting Survey** |  |  |  |  |
| Survey of the existing lighting | site visit | to record existing lighting details - lamp types & hours of use | original paper copies on file | Excel file "Survey Form Template" |
| Before & after photos | site visit | photos for publicity  | saved in electronic storage with backed up copy | photo files |
| Light meter readings | site visit | record existing lighting levels in rooms with high ceilings | recorded on survey form. Forms filed | Excel file "survey form template" |
| Room measurements  | site visit | information for lighting design | record on survey form. Forms filed | Excel file "survey form template" |
| **Viability calculations** |  |  |  |  |
| Spreadsheet data input | internal document - not to be communicated to other parties | to enter data from the site survey into the spreadsheet to calculate energy savings | spreadsheet saved electronically and backed up | part of Excel spreadsheet "LED VIABILITY" |
| Estimating the net cost of the installation | internal document - not to be communicated to other parties | to establish an accurate total net cost of an LED installation | document saved electronically with backed-up copy | part of Excel spreadsheet "LED VIABILITY" |
| Viability calculations | internal document - not to be communicated to other parties | to calculate with a degree of accuracy that the pay-back period of the proposed installation is under 5 years | document saved electronically with backed-up copy | Excel spreadsheet "LED VIABILITY" |
| **Communicating with the Lighting Contractor** |  |  |  |
| Request Contractors quotation | email to Contractor's contacts manager | to request an accurate cost for the labour element of an LED installation | email saved electronically with backed-up copy | email |
| Contractor carries out site survey | email to Contractor's contacts manager | to establish an accurate cost for the labour element of an LED installation | date recorded on Project Installation Record |  |
| Contractors quotation | email attachment | provide a written record of the labour cost of the installation with stated conditions | document saved electronically with backed-up copy | Word or pdf file |
| Confirm Contractor's prices & conditions | email to Contractor | to confirm in writing the Contractor's prices and conditions if they are not clear or not expressed in writing | document saved electronically with backed-up copy | email |
| Form of Contractor's order | email to Contractor | to standardise the format of the order to employ a Contractor  | email saved electronically with backed-up copy | email with Excel fittings Schedule attached |
| Contractor's Terms & Conditions |  |  |  |  |
| Terms of Payments to Contractor | email or verbal agreement | to establish how the installation Contractor is to be paid if no contractor's T & Cs. | email saved electronically with backed-up copy | email |
| **Communicating with the LED Fittings Supplier (Lighting Manufacturer and Wholesaler)** |  |
| Request lighting manufacturer to survey the existing lighting and recommend the most suitable LED replacements  | email to the lighting manufacturer's area representative | to specify the most suitable replacement LED fittings for the existing lighting  | email saved electronically with backed-up copy | email |
| Lighting manufacturers survey results | email attachment | provide a written record of lighting manufacturers recommendations | document saved electronically with backed-up copy | Word, Excel or pdf file |
| Fittings Supplier's (Wholesaler) quotation | email with attachment | to establish an accurate cost for the material element of an LED installation | document saved electronically with backed-up copy | Word, Excel or pdf file |
| Confirm Supplier's prices are current | email to Supplier | to make sure material prices are current if more than 2 months have lapsed since the last written quotation | email saved electronically with backed-up copy | email |
| Form of materials order | email with attachment | to standardise the format of orders to Suppliers  | email saved electronically with backed-up copy | Excel file - LED Fittings Schedule |
| LED Fittings Schedule | Fittings Schedule attached to materials order email | to present the list of fittings in a clear and concise way | document saved electronically with backed-up copy | Excel file - attached to the materials order (and supplied to the Installation Contractor and Client) |
|  |  |  |  |  |
| Terms of Payment for LED fittings | email or verbal agreement | to establish how the materials Supplier is to be paid | email saved electronically with backed-up copy | email |
| **Communicating with the Client** |  |  |  |  |
| Agree LED fittings with Client | face to face. Walk through the building with Client | to make sure the Client understands what the fittings look like | document saved electronically with backed-up copy | Excel file - Project Installation Record |
| Form of Client quotation | email with attachment | to standardise the format of a quotation to the Client | document saved electronically with backed-up copy | Word file - Quotation for LED Lighting |
| Form of Contract - the quotation letter acts as the form of contract |  |  |  |  |
| Terms & Conditions | emailed to Client with quotation | to specify the non-changing conditions of the contract and the parties responsibilitiesand obligations | document saved electronically with backed-up copy | Word file - Terms & Conditions. Either fixed price or repayment method |
| Materials specification | emailed to Client with quotation | to provide the technical properties of each of the fittings to be installed | document saved electronically with backed-up copy | Excel file - included with the LED Fittings Schedule |
| View building electrical wiring condition report | email or paper copy provided | to satisfy CCEL that the Client's building electrical installation is safe and fit for purpose | document saved electronically with backed-up copy when available | normally pdf file -  |
| Payment for the Works - lump sum contract | email to Client with invoice attached | to notify the Client of the payment in full required for the installation works | document saved electronically with backed-up copy | invoice - pdf file |
| Payment for the Works - by installments | email to Client with invoice attached | to notify the Client of the term and payments required for the installation works | document saved electronically with backed-up copy | Word file |
| Warranty of materials | stated in the LED manufacturers technical data | to establish the warranty of the LED fittingss | manufacturers catalogue/data sheet serves as record | LED manufacturers product data sheets |
| Guarantee of workmanship - included in Contractor's quotation | email attachment | Included in the contrator's quotation | document saved electronically with backed-up copy | Word or pdf file |
| Financial status of each project | internal document - not to be communicated to other parties | to establish the surplus from the project to be credited to the community benefit fund | spreadsheet saved electronically and backed up | Excel spreadsheet "LED VIABILITY" |