



RENEWABLE HEAT
INCENTIVE INQUIRY

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WIT-102101

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10 October 2017

Dear Sir

Re: The Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme
Provision of a Section 21 Notice requiring the provision of evidence in the form of a written statement

I am writing to you in my capacity as Solicitor to the Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme (known as 'the RHI Inquiry') which has been set up under the Inquiries Act 2005 ('the Act').

I know that you will be familiar, from my previous correspondence, with the RHI Inquiry's Terms of Reference, which remain available on the Inquiry's website. You will also be aware that the RHI Inquiry is conducting its investigations into the matters set out in its Terms of Reference. The Inquiry is continuing with the process of gathering all of the relevant documentation from relevant departments, organisations and individuals.

In addition, the Inquiry is also engaged in the process of requiring individuals who have been, or who may have been, involved in the range of matters which come within the Inquiry's Terms of Reference to provide written evidence to the Inquiry Panel.

In keeping with the approach we are taking with other individuals, the RHI Inquiry is now issuing to you a Statutory Notice (known as a 'Section 21 Notice') pursuant to its powers to compel the provision of evidence in the form of a written statement in relation to the matters falling within its Terms of Reference.

The Section 21 Notice enclosed with this letter requires you to provide evidence to the RHI Inquiry Panel in the form of a written statement addressing the matters identified in the Schedule to the Section 21 Notice. As the text of the Section 21 Notice explains, you are required by law to comply with it.

The aim of the enclosed Notice is to require you to provide all relevant evidence you have within your knowledge, information or belief which is pertinent to the Inquiry's Terms of Reference. The Schedule to the enclosed Section 21 Notice provides further detail as to the matters which should be covered in the written evidence which is required from you. In the event that there is a category of information in respect of which you have no evidence which you can provide, please state this in your response. Where you can provide evidence, the more comprehensive your statement is, the less likely it may be that the Inquiry will have to revert to you at a later stage for clarification, although in many cases this is likely to be necessary to some degree.

It is vital that the witness statement you provide to the Inquiry is your own evidence, absent the influence of others; that it is comprehensive; and that it fully explains your involvement in the matters about which you have been asked.

As you may be aware, the Inquiry has already required the provision of a statement setting out the corporate position of Ofgem in relation to the Northern Ireland RHI Scheme. However, the Inquiry Panel is also interested in the roles played by individual officials from Ofgem who were involved with the Scheme. Moreover, the Inquiry Panel recognise that individual officials may have a different perspective from, or may even disagree with certain aspects of, the position adopted by the organisation they work for. The statement, which is required from you pursuant to

the enclosed Notice, is your opportunity to explain what you did in relation to the Northern Ireland RHI Scheme and why you did it; and also to make the Inquiry aware of any concerns you may have about the actions of others.

I appreciate that you may require or desire access to some documentation in order to assist you in preparing your statement. In particular, you may wish to see documentation to which you previously had access but now no longer have access in your current post. If that applies in your case, I understand that Ofgem will assist you, at least in the first instance. You should contact Mark Mills, Principal Legal Advisor at Ofgem. He is contactable at Mark.Mills@ofgem.gov.uk. I have informed Mark Mills that you may be making contact with him to arrange access to documentation, or for general assistance and support; but there is, of course, no obligation upon you to do so. If you encounter any difficulties, of whatever kind, you should not hesitate to get in touch with me.

I also refer you to Restriction Order No 2 made by the Chairman of the RHI Inquiry on 22 June 2017, a copy of which is enclosed for your convenience. This restriction order prohibits you from publishing any documentation received from the RHI Inquiry (save that you may show it to your legal representative) unless you first obtain the consent in writing of the Inquiry Chairman.

In addition to the four restriction orders made by the Chairman of the RHI Inquiry (which you will find published on the Inquiry website) receipt of this correspondence and its enclosures also places you under a duty of confidentiality to the RHI Inquiry in respect of them. You may share the correspondence and the enclosed Notice and documents with your legal representative(s), but neither you nor they may show, communicate the contents of, nor provide this correspondence or the Notice or documents to any other person or organisation without the express permission of the RHI Inquiry. Any breach of this duty of confidentiality is actionable at the suit of the Inquiry Chairman.

You will also find attached to the Section 21 Notice a Guidance Note explaining the nature of a Section 21 Notice and the procedures that the RHI Inquiry has adopted in relation to such a notice. In particular, you are asked to provide your evidence in


the form of the template witness statement which is also enclosed with this correspondence.

Given the tight time-frame within which the RHI Inquiry must operate, the Chairman of the Inquiry would be grateful if you would comply with the requirements of the Section 21 Notice as soon as possible and, in any event, by the date set out for compliance in the Notice itself.

Finally, I would be grateful if you could acknowledge receipt of this correspondence and the enclosed notice by email to Patrick.Butler@rhiinquiry.org.

Please do not hesitate to contact me to discuss any matter arising.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Patrick Butler', with a stylized flourish at the end.

Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE**[No 506 of 2017]***Background*

1. Set out a description of your occupational history, qualifications and experience.
2. Set out a summary of your role or roles within Ofgem. Please provide details of dates between which you held the role/s, and what the role/s entailed. In each instance, describe how this role related, if at all, to the Non Domestic Renewable Heat Incentive (RHI) Scheme in Northern Ireland ('the NI RHI Scheme').
3. Explain, insofar as is relevant to any involvement you had with the RHI Scheme, to whom you were accountable and/or reported in Ofgem and who, if anyone, was accountable and/or reported to you.

Involvement with Northern Ireland RHI Scheme

4. Please summarise any involvement you had with the NI RHI Scheme, whether in respect of its creation, operation, administration, or otherwise, and during what period you were so involved.
5. In respect of your particular role or position:
 - a. Explain what proportion or percentage of your role was devoted to work on the NI RHI Scheme (giving details, if applicable, of how this altered over time or at different periods);
 - b. Explain how you carried out your roles or responsibilities in relation to the NI RHI Scheme on a day-to-day basis; and
 - c. Specify whether you consider you were adequately trained and/or resourced in respect of your roles or responsibilities in relation to the NI

RHI Scheme. (If not, please specify clearly in what respects you contend this was not so and, if applicable, what steps you took in relation to this).

6. Identify, in your view, any actual or potential problems, flaws, anomalies, or difficulties with the NI RHI Scheme and/or its operation or administration, explaining in each instance, so far as you can, how those problems, flaws, anomalies, or difficulties manifested themselves, how they came about, and with whom (if anyone) responsibility or accountability for them lay.
7. Please identify when, and how, you first became aware of each of the aforementioned problems, flaws, etc..
8. Please identify and explain any difficulties you encountered within Ofgem in respect of the operation of the administration of the RHI Scheme.
9. Please identify and explain any difficulties you encountered in the relationship between Ofgem and the Department of Enterprise, Trade and Investment (DETI) (later, the Department for the Economy) in Northern Ireland in respect of the operation of the administration of the NI RHI Scheme.

Involvement with Great Britain RHI Scheme

10. If you had any involvement in the Northern Ireland RHI Scheme (as addressed above), please also address the following issues:
 - a. State whether you were also involved in the analogous RHI Scheme which operated in Great Britain ('the GB RHI Scheme');
 - b. If you were involved in the GB RHI Scheme, summarise briefly the extent and nature of your involvement in it;
 - c. If you were involved in both RHI Schemes:

- i. state whether, based upon your experience of each, there were lessons to be learned for the NI RHI Scheme from the GB RHI Scheme and, if there were, clarify what those lessons were, whether they were learned, and, if they were not learned, what you understand to be the reasons for this;
- ii. state whether, based upon your experiences of each, there were differences in how Ofgem dealt with each Scheme and if there were such differences, clarify whether any of them impacted adversely upon the NI RHI Scheme (in particular, concerning the proper administration of that Scheme), clarify what those particular differences were, and set out the reasons for those differences as you understand them.

Promotion of the NI RHI Scheme

11. Specify whether you promoted the NI RHI Scheme and/or encouraged any third party to seek accreditation under the Scheme, assisted any third party in so doing, or provided any third party with information knowing that they might apply, or consider applying, or that they might advise, encourage, assist, or cause other persons to apply, or consider applying, for accreditation under the Scheme. In respect of any such instance, please provide full details including (but not limited to) the third party concerned and the date of any steps taken by you in that regard.

Lobbying and pressure

12. Identify any instances, to your knowledge or belief, of lobbying or encouragement of Ministers, Special Advisers, Civil Servants or other relevant persons in relation to the terms of the NI RHI Scheme and/or the introduction, non-introduction, variation or delay of the introduction of cost controls into the Scheme (including, but not limited to, the amendment of tariffs, tiering, degression and Scheme suspension or closure) at any stage but, in particular, at the creation of the Scheme and in the period from mid-2015 to early 2016.

13. Identify any instances, to your knowledge or belief, where influence or pressure was exerted on you in relation to any aspect of the NI RHI Scheme. In respect of any such instance specify:
- a. who provided that influence or pressure;
 - b. when it occurred;
 - c. what it consisted of and how it was conveyed;
 - d. what you believed the motivation to have been (and what you now believe the motivation to have been, if different), and why you believe that; and
 - e. how you dealt with it.
14. Identify any instances, to your knowledge or belief, where influence or pressure was exerted on someone else in relation to the NI RHI Scheme. In respect of any such instance identify:
- a. who provided that influence or pressure;
 - b. who it was exerted on;
 - c. when it occurred;
 - d. what it consisted of and how it was conveyed;
 - e. what you believe the motivation to have been, and why you believe that;
 - f. how it was dealt with; and
 - g. how and when you came to be aware of the influence or pressure.

Standards of conduct and conflict of interest

15. Identify any instances, to your knowledge or belief, where a Minister, Special Adviser, Civil Servant or any other person involved in the NI RHI Scheme (including, if applicable, yourself):
- a. breached relevant standards (including, but not limited to, the Nolan Principles, the Ministerial Code of Conduct, the Civil Service Code of Conduct, the Code of Conduct for Special Advisers and/or terms or

conditions of employment or service) or acted in a way incompatible with their duties (including, but not limited to, by means of making premature or unauthorised disclosures);

- b. acted in circumstances relating to or touching upon the Scheme in any way where they had a real or perceived conflict of interest;

in respect of any such instances, providing details and specifying the basis for any belief that there has been a breach of a relevant standard or duty or that a conflict of interest arose.

- 16. Specify whether, to your knowledge, you have any connection to a person or body receiving payment under the NI RHI Scheme or benefiting commercially from the Scheme in some other way (for instance, by supplying equipment, plant, fuel or other goods or services used by Scheme claimants). In this request, a 'connection' includes (but is not limited to) circumstances where the Scheme claimant or beneficiary is a relative, friend, close acquaintance, business associate or (in the case of politicians or special advisers) donor or supporter (either to or of you or your political party).

Whistle-blowing and raising of concerns

- 17. Identify any instances of which you are aware of whistle-blowing in relation to the Scheme, or disclosures made in the public interest raising concerns about the NI RHI Scheme, setting out details of when this occurred, to whom and by whom any relevant disclosure was made and how it was dealt with.
- 18. In particular, provide an account of how you dealt with any disclosures raising concerns about the NI RHI Scheme made or communicated to you at any time. In relation to each such instance, identify precisely how the concerns were communicated to you.
- 19. Specify when you first became aware that subsidies payable under the NI RHI Scheme exceeded the cost of biomass fuel used to produce heat (so that there

was an incentive in some cases to produce heat merely to make profit from the Scheme) and how you so became aware.

General

20. Considering the RHI Inquiry's Terms of Reference, please identify any representations made to you about the RHI Scheme (which you regard as significant and about which you consider the RHI Inquiry should be aware), whether those representations were made by colleagues, or otherwise. In respect of any such representations please indicate when they occurred, where they occurred, who was involved, and what was said or communicated to you.
21. Considering the RHI Inquiry's Terms of Reference, please identify any conversations or discussions you had about the RHI Scheme (which you regard as significant and about which you consider the RHI Inquiry should be aware), whether those conversations or discussions involved colleagues, or otherwise. In respect of any such conversations or discussions please indicate when they occurred, where they occurred, who was involved, and what was said to you.
22. Provide any further evidence within your knowledge or belief which is relevant to the matters which the RHI Inquiry is investigating as set out in the RHI Inquiry's Terms of Reference.

NOTE:

It is important for the efficiency of the RHI Inquiry that the issues identified above are addressed as fully as possible and by reference, where available, to the dates and locations of specific incidents to which reference is made. The statement should be broken down into paragraphs, which should be numbered sequentially from '1' to the end. The use of appropriate section headings or sub-headings is also encouraged. A template witness statement is provided with this Notice for your assistance and should be used as the format for your response.



INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 506 of 2017

DATE: 25th October 2017

Witness Statement of: Andy Morrall

I, Andy Morrall, will say as follows: -

Background

1.
 - a. Ofgem - Technical Manager, Non-Domestic Renewable Heat Incentive Nov 2013 to present
 - b. Ofgem – Assistant Technical Manager, Non-Domestic Renewable Heat Incentive Aug 2012 to Nov 2013
 - c. Ofgem – Administrator, Non-Domestic Renewable Heat Incentive, Aug 2011 to Jul 2012
 - d. Keele Connect Internship Feb to Apr 2011
 - e. Wardell Armstrong LLP – Junior Ecologist, Jul to Oct 2010
 - f. Wardell Armstrong LLP – Graduate Intern, Jan to Jul 2010
 - g. Study – Cranfield University, MSc Environmental Management for Business, 2007-2008
 - h. HBOS – Insurance Consultant, Jan 2005 to Apr 2007
 - i. Study – University of Leeds, BSc (hons) Environmental Science, 2001-2004

2.
 - a. Ofgem - Technical Manager, Non-Domestic Renewable Heat Incentive Nov 2013 to present
 - Undertaking reviews and approvals of applications for accreditation and registration (GB only).



RENEWABLE HEAT INCENTIVE INQUIRY

- Providing support to team on technical and operational matters through a formalised support process (predominantly GB, very occasionally NI).
 - Inputting into changes to the policy underpinning the scheme rules, feeding back to policy setters on draft regulations (predominantly GB, very occasionally NI)
 - Designing and implementing and updating operational processes and internal procedural guidance (GB only).
 - Training and developing the skills and knowledge within the technical and wider team (GB only).
 - Line management
- b. Ofgem – Assistant Technical Manager, Non-Domestic Renewable Heat Incentive Aug 2012 to Nov 2013
- Undertaking reviews of applications for accreditation and registration (GB only).
 - Providing support to team on technical and operational matters through a formalised support process (GB only).
 - Training and developing the skills and knowledge within the technical and wider team (GB only).
- c. Ofgem – Administrator, Non-Domestic Renewable Heat Incentive, Aug 2011 to Jul 2012
- Handling telephone and email enquires (GB only).
 - Undertaking initial application reviews (GB only).
 - Identifying areas of improvement for operational processes (GB only).
- 3.
- a. I reported to (dates approximate to the best of my knowledge)
- Dora Slater, Assistant Manager RHI – from Aug 2011
 - Pharoah le Feurve, Assistant Manager RHI – to July 2012
 - Barney Merrett, Manager RHI – from July 2012
 - Tirso Gomez Guerra, Technical Manager RHI – to Nov 2013



RENEWABLE HEAT INCENTIVE INQUIRY

- Mark George, Senior Technical Manager RHI – Nov 2013 to Sept 2014
- Joe Grice, Senior Technical Manager RHI – Sept 2014 to June 2015
- Tommy Moody, Senior Technical Manager RHI – June 2015 to May 2016
- Edmund Ward, Head of Compliance and Technical RHI - May 2016 to May 2017
- Jasmine Killen , Senior Technical Manager – May 2017 to present

b. Reported to me (dates approximate to the best of my knowledge)

- Keshia Gounden, Assistant Manager RHI – Nov 2013 to April 2014
- Nicola Percival, Assistant Technical Manager RHI – Jan 2014 to Dec 2014
- Jerry Orme, Assistant Technical Manager RHI – Nov 2014 to Feb 2016
- Edward Spring, Assistant Technical Manager RHI – May 2016 to April 2017
- Kasia Jozwiak, Assistant Technical Manager RHI – May 2016 to present
- Carlos Diaz-Duque, Technical Manager RHI - July 2017 to present

Involvement with Northern Ireland RHI Scheme

4. I had no involvement in the creation of the Northern Ireland Renewable Heat Incentive (NI RHI) Scheme. I did not provide any input into the administration of the NI RHI Scheme whilst I was an Administrator or Assistant Technical Manager. As a Technical Manager, I am infrequently required to provide input into specific applications for accreditation where this relates to specialisms I have developed in administering the GB RHI Scheme. These specialisms focus around biomethane, biogas and CHP, due to the less frequent occurrence of these technologies under the NI RHI Scheme when compared to the GB RHI Scheme, my input is very infrequent. I also provided feedback on one set of



draft Regulation Amendments (in Oct 2015 in respect of 'The Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2015'); this feedback was provided to Ofgem's RHI Policy team, rather than direct to DETI.

5.

- a. As mentioned, my involvement has been infrequent and has only been required since late 2015. Since then, on average, my best estimate of time spent on NI RHI Scheme related matters would be below 1% of working hours.
- b. I have no explicit day-to-day responsibilities. In respect of feeding back on draft Regulation amendments, the Ofgem RHI Policy team invited me to comment on drafts of the 2015 amendments, to which I responded by email. Similarly, members of the Ofgem RHI team will contact me via email where my input is required.
- c. My input into the NI RHI Scheme has always been in respect of areas where I have built knowledge through the GB scheme, for which I consider myself to have been adequately trained and resourced.

6. Historically I have had limited exposure to the development and administration of the NI RHI Scheme, this being the case I have limited views regarding actual or potential problems regarding the NI RHI Scheme. Areas where I have given consideration to this have been areas where the GB RHI Scheme Regulations have been amended in some way to simplify/improve the scheme, which have not been subsequently adopted by the NI RHI Scheme. Specifically, in 2013 the GB RHI Scheme was amended with a number of new regulations aimed at simplifying the metering requirements (e.g. see regulation 17A and 39A inserted to the RHI Regulations by 'The Renewable Heat Incentive Scheme (Amendment) (No.2) Regulations 2013'). I regard these regulations as having acted as intended and regarded them as a significant improvement over the previous Regulations (e.g. regulations 17 38, 39 - on which the NI RHI metering regulations were modelled). I became aware of the aforementioned issues that



the aforementioned amendments to the GB RHI Scheme Regulations were intended to address soon after that GB RHI Scheme launched. I am unsure why these amendments were not duplicated in the NI RHI Scheme Regulations.

I was also aware that the NI RHI Scheme design incentivised potential applicants to design systems such that they would have multiple, separate installations on different heating systems providing heat to the same building/heat use in order that payments be maximised (i.e. having 2x100kW installations rather than 1x200kW). I provided feedback in October 2015 to draft regulations aimed at preventing this practise; I felt that the draft Regulations would not accomplish the policy aims. I fed these views back to Ofgem's RHI policy team. I do not know if any of my feedback was passed to DETI; nonetheless the eventual NI RHI Scheme 2015 Regulation Amendments did not include any regulations attempting to prevent this practice.

7. In respect of the issue relating to simplifying metering requirements, the impact of the amendment to the GB RHI Scheme became clear fairly quickly, so I was aware this impacted the NI RHI Scheme from around late 2013. Regarding the issue relating to heating system design, this was a known issue with the GB RHI Scheme, I became aware of it in late 2012.
8. Given my limited input into the administration of the NI RHI, I do not consider myself to have encountered any difficulties within Ofgem in respect of the operation of the administration of the NI RHI Scheme.
9. I did not have any interaction with DETI or DfE.

Involvement with Great Britain RHI Scheme

10.
 - a. I was involved in the GB RHI Scheme
 - b. See response to question 2 above.



c.

- i. I was aware that there were/are difference in the scheme Regulations, however, I was aware only to a limited extend as to what those differences were/are. I am aware that the changes to metering requirements I mention in question 6 above were not made to the NI RHI Scheme Regulations. I am not aware why no change were made to the NI RHI Scheme Regulations in respect of these differences.
- ii. I am not aware of any ways in which it was treated differently to the GB RHI Scheme.

Promotion of the NI RHI Scheme

11. I did not promote the NI RHI Scheme and/or encourage any third party to seek accreditation under the Scheme, assisted any third party in so doing, or provide any third party with information knowing that they might apply, or consider applying, or that they might advise, encourage, assist, or cause other persons to apply, or consider applying, for accreditation under the Scheme.

Lobbying and pressure

12. I am not aware of any instances of lobbying or encouragement of Ministers, Special Advisers, Civil Servants, or other relevant persons in relation to the terms of the NI RHI Scheme and/or the introduction, non-introduction, variation or delay of the introduction of cost controls into the Scheme (including, but not limited to, the amendment of tariffs, tiering, degression and Scheme suspension or closure) at any stage but, in particular, at the creation of the Scheme and in the period form mid-2015 to early 2016
13. I am not aware of any instances where influence or pressure was exerted on me in relation to any aspect of the NI RHI Scheme.



14. I am not aware of any instances where influence or pressure was exerted on someone else in relation to any aspect of the NI RHI Scheme.

Standards of conduct and conflict of interest

15. I am not aware of any instances where a Minister, Special Adviser, Civil Servant or any other person involved in the NI RHI Scheme:
- a. Breached relevant standards or acted in a way incompatible with their duties.
 - b. Acted in circumstances relating to or touching upon the Scheme in any way where they had a real or perceived conflict of interest.
16. To my knowledge, I do not have any connection to a person or body receiving payment under the NI RHI Scheme or benefitting commercially from the Scheme in some other way.

Whistle-blowing and raising of concerns

17. I was asked for technical input in respect of allegations referred to Ofgem E-Serve's Counter Fraud team. These allegations were regarding the possibility of inflated meter readings being achieved by deliberately installing heat meters incorrectly (specifically, leaving the return temperature sensor exposed to air). Input was requested by the Counter Fraud team 21st August 2017; I do not know when, or from whom, the allegations were made to the Counter Fraud team. Having discussed with the issue with my team, I advised this practice was theoretically possible, however, we had no evidence this practice was being undertaken, and the issue should be flagged to the audit team to look for evidence that this has occurred. I understand these sites are awaiting a site audit.
18. See response to question 17.




General

19. Since the issues regarding the NI RHI Scheme resulted in widespread media attention, I have been broadly aware of them, however I do not feel I have ever been aware that subsidies payable under the NI RHI Scheme exceeded the cost of biomass fuel used to produce heat (so that there was an incentive in some cases to produce heat merely to make profit from the Scheme).
20. Considering the RHI Inquiry's Terms of Reference, I am not aware of any representations made to me about the NI RHI Scheme (which I regard as significant and about which I consider the RHI Inquiry should be aware), whether by colleagues or otherwise.
21. Considering the RHI Inquiry's Terms of Reference, I am not aware of any conversations or discussions I had about the NI RHI Scheme (which I regard as significant and about which I consider the RHI Inquiry should be aware), whether by colleagues or otherwise.
22. To the best of my knowledge or belief, I do not have any further evidence to provide which is relevant to the matters which the RHI Inquiry is investigating as set out in the RHI Inquiry's Terms of Reference.

Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed: 

Dated: 25/10/17