

**RENEWABLE HEAT
INCENTIVE INQUIRY****RHI Inquiry**

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The Rt Hon Mrs Arlene Foster MLA
DUP Headquarters
91 Dundela Avenue
Belfast
BT4 3BU

By post and email: arlene@arlenefoster.org.uk

21 November 2018

Dear Madam

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 you will by now be very familiar with the work of the Inquiry and its Terms of Reference from your previous engagement with the Inquiry. The Inquiry remains grateful for the witness statements and oral evidence you have already provided to it.

As you may be aware, the Inquiry is now in the process of seeking some further written evidence from witnesses and participants, particularly where issues have arisen in evidence recently provided in respect of which it is necessary, or appropriate, to provide an opportunity for further response. The Inquiry Chairman also retains the right to require witnesses to attend to provide further oral evidence, and consideration will be given to whether that is necessary in light of additional written evidence which is received.

Please therefore find enclosed with this letter a further Section 21 Notice requiring you to provide evidence to the RHI Inquiry Panel in the form of a further written statement addressing the further matters, as identified in the Schedule to the Section 21 Notice.

I remind you again of the restriction orders made by the Chairman of the RHI Inquiry, which affect how you may deal with this correspondence and its enclosures (which are also provided to you under a duty of confidentiality to the RHI Inquiry). You may, of course, share the correspondence and the enclosed Notice and documents with your legal representative(s), under the same conditions as I set out in my previous 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 (or your legal representative) 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 that reads "Patrick Butler". The signature is written in a cursive style with a long horizontal stroke at the end of the name.

Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE**[No 227 of 2018]**

Discussion(s) at the time of your interview with Stephen Nolan

1. **TRA-13755, line 20 to TRA-13757, line 12** summarises Dr McCormick's evidence that he was surprised at a statement in your interview with Stephen Nolan, given that he had spoken with your team before the interview about a DUP Special Adviser or Advisers having sought and obtained a delay in the tariff reduction.

At TRA-13762 you stated that: "And then Andrew, as I recall, and, I think, Simon Hamilton, although I don't have it in my statement, but I think Simon was around as well — and Andrew sheepishly said it was his belief that Andrew Crawford had delayed the scheme. So it was after the recording, as it were, of 'The Nolan Show' that I had that direct intervention from Andrew McCormick."

You are also referred to the transcripts of your oral evidence generally at **TRA-13754 to TRA-13770** and Simon Hamilton's evidence at **TRA-16203 to TRA-16211** relating to the events of the evening of 15 December 2016 when you were interviewed by Stephen Nolan. You are further referred to Dr McCormick's evidence at **TRA-16674, line 7 to TRA-16678, line 4**; and, in particular, his evidence at **TRA-16675** as follows:

"And I had — so, there is no possibility that I had a meeting with Arlene Foster or Simon Hamilton that evening between the recording, which happened between eight and nine, and the broadcast of the Nolan interviews that evening. That could not possibly have happened. And indeed, the next day, the minutes of the NICS board record me as being at the NICS board from first thing on Friday morning. I had the conversation with Timothy Cairns in Netherleigh with Chris Stewart around lunchtime that day. I had the long phone call with Máirtín Ó Muilleoir and his colleagues later that day. I don't see any possibility — and I would remember going

to Stormont Castle to meet the First Minister. I didn't do that on the Friday, and I was at home all weekend. So, that, I'm afraid, is not poss— it's not possible for what Arlene Foster and Simon Hamilton have described to have happened."

As to this:

- a. In light of Dr McCormick's recent evidence, please summarise whether, at the time of giving your interview with Stephen Nolan, you were aware or unaware of what Dr McCormick indicates he had raised with your team; and, in either case, how you consider that came to be.
- b. In light of Dr McCormick's recent evidence, do you consider it to be a possibility that the conversation you believe you had with Dr McCormick took place at a different time than you had previously indicated? If so, please provide details.
- c. If you wish to add to your evidence relating to the conversation you have indicated you believe you had with Dr McCormick on the evening of 15 December 2015, please do so in response to this notice.
- d. Please set out any further comments you have generally on Dr McCormick's evidence referred to above.

Fiona Hepper's witness statement of 20 November 2018

2. In a witness statement of 20 November 2018 (**WIT-16732 to WIT-16772**) Fiona Hepper has provided further evidence relating, *inter alia*, to earlier evidence

which you gave to the Inquiry. Please provide any response you may wish to make in relation to the contents of that statement.

General

3. To the extent that you consider the evidence of any other witness or participant contradicts your evidence on a significant issue, or is materially incomplete in respect of any significant issue, you should take this opportunity to address those issues by way of further written evidence, but only to the extent (a) that the said issues have not already been addressed in your existing oral and written evidence and (b) that the further material you wish to provide constitutes evidence of fact as opposed to mere commentary on the evidence of another witness or participant which would be more appropriate for submissions.
4. Please set out any further significant evidence you have or of which you are aware, having regard to the Inquiry's Terms of Reference, which has not been adequately addressed in your previous written or oral evidence.

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 227 of 2018

DATE: 28 November 2018

Witness Statement of: ARLENE FOSTER MLA

I, Arlene Foster, will say as follows: -

Discussion(s) at the time of your interview with Stephen Nolan

1. **TRA-13755, line 20 to TRA-13757, line 12** summarises Dr McCormick's evidence that he was surprised at a statement in your interview with Stephen Nolan, given that he had spoken with your team before the interview about a DUP Special Adviser or Advisers having sought and obtained a delay in the tariff reduction.

At **TRA-13762** you stated that: *“And then Andrew, as I recall, and, I think, Simon Hamilton, although I don't have it in my statement, but I think Simon was around as well — and Andrew sheepishly said it was his belief that Andrew Crawford had delayed the scheme. So it was after the recording, as it were, of ‘The Nolan Show’ that I had that direct intervention from Andrew McCormick.”*

You are also referred to the transcripts of your oral evidence generally at **TRA-13754 to TRA-13770** and Simon Hamilton's evidence at **TRA-16203 to TRA-16211** relating to the events of the evening of 15 December 2016 when you were interviewed by Stephen Nolan. You are further referred to Dr McCormick's evidence at **TRA-16674, line 7 to TRA-16678, line 4**; and, in particular, his evidence at **TRA-16675** as follows:



“And I had — so, there is no possibility that I had a meeting with Arlene Foster or Simon Hamilton that evening between the recording, which happened between eight and nine, and the broadcast of the Nolan interviews that evening. That could not possibly have happened. And indeed, the next day, the minutes of the NICS board record me as being at the NICS board from first thing on Friday morning. I had the conversation with Timothy Cairns in Netherleigh with Chris Stewart around lunchtime that day. I had the long phone call with Máirtín Ó Muilleoir and his colleagues later that day. I don’t see any possibility — and I would remember going to Stormont Castle to meet the First Minister. I didn’t do that on the Friday, and I was at home all weekend. So, that, I’m afraid, is not poss— it’s not possible for what Arlene Foster and Simon Hamilton have described to have happened.”

As to this:

- a. In light of Dr McCormick’s recent evidence, please summarise whether, at the time of giving your interview with Stephen Nolan, you were aware or unaware of what Dr McCormick indicates he had raised with your team; and, in either case, how you consider that came to be.

As stated in my oral evidence to the Inquiry on day 93, Tuesday 25 September 2018, I was aware in December 2016 that Andrew Crawford had been assisting Timothy Cairns during the Summer of 2015 and had seen emails produced by Andrew Crawford showing his involvement during that period. In his email of 31 July 2015 he advised Timothy Cairns to go with the date proposed in the submission i.e. October 2015. These emails were produced following the airing of the Spotlight programme in early December in a particularly tense period where the party were dealing with a large volume of media queries and speculation. Given the febrile atmosphere, made worse by the fact that, prior to my interview with Stephen Nolan, I had been given no clear understanding of

what Mr Bell had said in his interview, it is possible that I am wrong about the sequencing of Dr McCormick telling me his view that Dr Crawford delayed the Scheme. However, regardless of when Dr McCormick's belief was communicated to me, I was already aware of the contents of Dr Crawford's emails and would have taken the view that there was insufficient evidence at that time to draw any conclusions about the reasons for delay in the Scheme, hence my reply to Mr Nolan that "*I had no idea*". I would not have voiced publicly an unsubstantiated comment of that nature. Indeed, I remain of the view that to repeat this unsubstantiated allegation to Mr Nolan, particularly in the circumstances that prevailed at the time, would have been inappropriate. I did have no idea as to the facts of what took place and therefore I do not believe that my reply to Mr Nolan was contrary to the principle of openness within the seven principles of public life.

- b. In light of Dr McCormick's recent evidence, do you consider it to be a possibility that the conversation you believe you had with Dr McCormick took place at a different time than you had previously indicated? If so, please provide details.

As indicated in my reply to a, I believe it is possible.

- c. If you wish to add to your evidence relating to the conversation you have indicated you believe you had with Dr McCormick on the evening of 15 December 2015, please do so in response to this notice.

I have nothing further to add save what I have stated above in my reply to a.

- d. Please set out any further comments you have generally on Dr McCormick's evidence referred to above.



See reply to a, above.

Fiona Hepper's witness statement of 20 November 2018

2. In a witness statement of 20 November 2018 (**WIT-16732 to WIT-16772**) Fiona Hepper has provided further evidence relating, *inter alia*, to earlier evidence which you gave to the Inquiry. Please provide any response you may wish to make in relation to the contents of that statement.

I have nothing further to add to my previous evidence on the issues raised by Mrs Hepper.

General

3. To the extent that you consider the evidence of any other witness or participant contradicts your evidence on a significant issue, or is materially incomplete in respect of any significant issue, you should take this opportunity to address those issues by way of further written evidence, but only to the extent (a) that the said issues have not already been addressed in your existing oral and written evidence and (b) that the further material you wish to provide constitutes evidence of fact as opposed to mere commentary on the evidence of another witness or participant which would be more appropriate for submissions.

I have nothing further I wish to address.

4. Please set out any further significant evidence you have or of which you are aware, having regard to the Inquiry's Terms of Reference, which has not been adequately addressed in your previous written or oral evidence.

At the close of my evidence to the Inquiry, Mr Scoffield QC asked whether there are any lessons I thought ought to be learned from the RHI Scheme to restore or improve public confidence in government. At

the time I outlined that I believed there were general issues around governance; transparency in relation to how Special Advisers operate; and around minute-taking and processes. I would like to add that on further reflection (and as set out in my recent keynote speech to the DUP party conference), I believe that there is a strong argument for a fundamental appraisal of the Northern Ireland Civil Service. With advances in technology, the increasingly complexity of policies, and the emergence of new approaches within the private sector, there is a need for greater specialism and expertise within the Civil Service. In my view, there is a case for consideration of extending the Home Civil Service to Northern Ireland. The Inquiry has heard that DECC (a GB department devoted to climate change) had over 70 people working on the RHI Scheme; Northern Ireland had 2. That level of resource is simply not available to a Northern Ireland-specific Civil Service. There is therefore merit in giving strong consideration to how the expertise and resource available in GB could be extended to cover Northern Ireland.

Statement of Truth

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

Signed:



Dated: 28 November 2018