



Catherine MacArthur

Personal information
redacted by the RHI Inquiry

By Post and Email

Personal information redacted by
the RHI Inquiry

3 October 2017

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 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



Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE**[No 485 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 485 of 2017****DATE: 20 October 2017****Witness Statement of Catherine McArthur**

I, Catherine McArthur, will say as follows:

Background

1. I have a Bachelor of Arts (Honours I) from the University of Sydney. Prior to arriving in the UK in 2011, I worked for the University of Sydney's Centre for Continuing Education coordinating the delivery of a program of educational courses, the Australian Broadcasting Corporation in Radio Policy and Administration, and as a Special Advisor in the New South Wales State Government. In my time as a Special Advisor I worked on a number of portfolios including Environment and Climate Change and Energy, which included introducing cost controls into the Solar Bonus Scheme (a state-based feed-in tariff scheme).
- 2.1. I started working for Ofgem in September 2011 as a Policy Development Manager, New Scheme Development on a temporary contract basis to undertake a Feasibility Assessment on the implementation and administration of the NI RHI Scheme. This was a three (3) month project that concluded in December 2011.
- 2.2. From January 2012 to June 2012 I continued to work in New Scheme Development on the Energy Company Obligation (ECO) and Electricity Market Reform (EMR):
 - 2.2.1. The ECO project involved the production of a Scoping Study that entailed analysis of the costs, risks (reputational, financial and legal) and potential benefits to the Gas and Electricity Markets Authority (GEMA) of administering the ECO scheme, and formulating a strategy for Ofgem's handling of ECO.
 - 2.2.2. The EMR project involved writing a Feasibility Study on behalf of the Department of Environment and Climate Change (DECC), assessing the viability of Ofgem taking over EMR delivery from National Grid under various scenarios throughout the design, development and operational phases of EMR.
- 2.3. From June 2012 to November 2012 I held the role of Senior Manager Offshore Coordination Policy, Offshore Transmission. I was responsible for policy development of Ofgem's framework for anticipatory and wider works investment offshore. I also continued to advise on the development of EMR as required.

- 2.4. From November 2012 to April 2013 I was on loan from Ofgem to the Department of Energy and Climate Change to work on the design of the Contracts for Difference (CfD) Counterparty body, a component of EMR implementation.
- 2.5. From April 2013 to June 2014 I returned to Ofgem and worked as Senior Manager, Offshore Transmission, working on implementation of the legislative frameworks for the offshore transmission regime including the Generator Commissioning Clause, development of the Offshore Transmission Owner (OFTO) build model and the third round tender process for licensing of OFTOs.
3. In the time that I worked on the NI RHI Feasibility Study, I reported to Jonah Anthony. I did not have any direct reports but did coordinate input from colleagues in other departments (IT, Legal, GB RHI, etc).

Involvement with Northern Ireland RHI Scheme

- 4.1. My role working on the NI RHI Scheme involved conducting a Feasibility Assessment of the implementation and administration of the NI RHI Scheme, including:
 - 4.1.1. Delivery options analysis (including assessing whether and to what extent we could use the GB RHI development work, systems and business processes to prevent duplication of effort and save costs), assessment of the IT needs of the project, negotiation of a development budget (particularly with IT and Legal, and advice from the GB RHI team), assessment of the risks/issues, and formulation of our recommendations for how the NI RHI should be developed and implemented.
 - 4.1.2. Writing a series of papers provided to Department of Enterprise, Trade and Investment (DETI) including a Progress Report: High Level Options Analysis, Governance Paper, Enforcement Paper, and the Feasibility Study itself.
 - 4.1.3. At DETI's request and to ensure the cost-effectiveness of the NI RHI Scheme we made some adjustments in resource planning to the needs of the project (eg. deferring an independent risk assessment until the final policy position had been determined, prioritising resources based on project needs.)
- 4.2. The project concluded under budget.
- 4.3. Once the Feasibility Study was completed and delivered in December 2011, to the best of my recollection, I had no further formal involvement with the NI RHI Scheme.
- 4.4. Given at the point at which my formal role on the NI RHI Scheme ended there were still ongoing approvals that the project relied on (from DETI and GEMA), I continued to serve as a point of contact with DETI for several weeks.
- 4.5. From the time that the NI RHI Development team was put in place to work on the implementation of the scheme early in 2012, my involvement was limited to

responding to occasional questions from the team about project background, and in those instances I provided background emails or information to which I had access when requested to do so.

5. In respect of my particular role/position:
 - a. From September 2011 to December 2011 during the time I worked on the NI RHI Feasibility Study, 100% of my role was devoted to work on the NI RHI Scheme.
 - b. My role involved working with staff across Ofgem and acting as a point of contact for DETI. On a day to day basis I reviewed the written materials available relating to the NI RHI Scheme including consultation documents and draft regulations (once available). I met with relevant colleagues in New Scheme Development, the GB RHI team, Legal, IT, and management to seek input, guidance and advice relevant to the NI RHI Scheme. I sought guidance and additional information from DETI on assumptions around application volumes and likely final policy positions where gaps in Scheme design remained, and kept them apprised of progress on the project. I wrote papers, sought feedback from management and relevant colleagues, and developed the Feasibility Study, seeking input and feedback on requirements throughout the process.
 - c. I consider I was adequately trained/resourced in respect of my role in relation to the NI RHI Scheme.
6. To the best of my recollection at the point at which I was involved with the NI RHI Scheme, the major challenge was that final policy positions were not yet available on many details of scheme design. However due to the work needed to have an operational scheme in place for the 1 April 2012 launch date that we were working towards at DETI's requirement, we had to progress work by making assumptions where final positions were not known. Where possible we sought advice from DETI contacts on what they believed the likely final policy positions to be, but in many cases it was not possible to be given such guidance. I believe this to be a result of the policy development process and the timeframes we were working towards, both of which were being driven by DETI.
7. To the best of my recollection, I first became aware that there were many policy positions not yet finalised in the first weeks in the role when I reviewed the available material about the scheme. I found the scheme to be, in many respects, based on the GB RHI Scheme, however while we knew there were points of variation, the detail of these points in many cases remained to be confirmed.
8. I do not recall encountering any difficulties within Ofgem in respect of my role in the NI RHI Scheme. I was not involved with the operation of the administration of the NI RHI Scheme, only the early Feasibility Assessment.

9. I do not recall encountering any difficulties in the relationship between Ofgem and the DETI in Northern Ireland in respect of my role in the NI RHI Scheme. I was not involved with the operation of the administration of the NI RHI Scheme, only the early Feasibility Assessment.

Involvement with Great Britain RHI Scheme

10. I did not have any involvement with the RHI Scheme in Great Britain (GB Scheme). In assessing the delivery requirements for the NI RHI Scheme I did seek advice and input from colleagues working on the GB Scheme. This was in the context of assessing the differences between the NI RHI Scheme and the GB Scheme to determine how the administrative requirements would differ, and to understand how we could leverage the systems and business processes already developed for the GB Scheme so we could provide a cost-effective solution for the NI RHI Scheme. I did not look at the substance of the GB Scheme and didn't have experience with the GB Scheme beyond these discussions.

Promotion of the NI RHI Scheme

11. To the best of my recollection, I did not promote the NI RHI Scheme and/or encourage any third party to seek accreditation under the scheme, assist any third party in so doing, or provide any third party with information knowing 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. To the best of my recollection, I am not aware of any lobbying or encouragement of Ministers, Special Advisors, 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, digression 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. To the best of my recollection, I am not aware of any instances where influence or pressure was exerted on me in relation to any aspects of the NI RHI Scheme.
14. To the best of my recollection, I am not aware of any instances where influence or pressure was exerted on someone in relation to the NI RHI Scheme.

Standards of conduct and conflict of interest

15. To the best of my recollection, I am not aware of any instances where a Minister, Special Advisor, Civil Servant or any other person involved in the NI RHI Scheme:
- 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 Advisors 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.
16. To the best of my recollection, I am not aware of any connection to a person or body receiving payment under the NI RHI Scheme or benefitting commercially from the Scheme in some other way (for instance, by supplying equipment, plant, fuel or other goods or services used by Scheme claimants).

Whistle-blowing and raising of concerns

17. To the best of my recollection, I am not aware of any instances of whistle-blowing in relation to the Scheme, or disclosures made in the public interest raising concerns about the NI RHI Scheme.
18. To the best of my recollection, I did not deal with any disclosures raising concerns about the NI RHI Scheme, and no such disclosures were made or communicated to me at any time.
19. Due to my very limited involvement with the NI RHI Scheme following the completion of the Feasibility Study on behalf of Ofgem, at the time of making this Witness Statement I was not aware that subsidy payments 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).

General

20. Considering the RHI Inquiry's Terms of Reference, to the best of my recollection no representations were made to me about the RHI Scheme (which I regard as significant and about which I consider the RHI Inquiry should be aware), whether those representations were made by colleagues, or otherwise.

21. Considering the RHI Inquiry's Terms of Reference, to the best of my recollection I did not have any conversations or discussions about the RHI Scheme (which I regard as significant and about which I consider the RHI Inquiry should be aware), whether those conversations or discussions involved colleagues, or otherwise.

22. To the best of my knowledge and belief, I am not aware of any further information 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: *CMcArthur*

Dated: 20 October 2017