
Chapter 30 – Communications with the market

- 30.1 One of the issues that the Inquiry had to consider related to officials working on the NI RHI and the communications they had with individuals, organisations and companies that had a commercial interest in RHI. It is the case that throughout the life of the NI RHI scheme officials working on RHI had interactions with external stakeholders, particularly, but not exclusively, through the RHI consultation processes.
- 30.2 This chapter, however, concentrates particularly on the period from late 2014 and examines communications which primarily involved Mr Wightman and Mr Hughes. The Inquiry was keen to understand what form the communications took, what their purpose was and whether they should have occurred. A further important question is whether the communications, inadvertently or otherwise, had helped fuel the ongoing increase in applications, particularly throughout the summer of 2015 onwards.
- 30.3 In December 2014 there was an exchange between Mr Hughes and a Mr David Hamilton about multiple boilers.¹⁷⁹⁰ Mr Hamilton was, at the time, a potential applicant to the NI RHI scheme. Mr Hamilton had been referred to Mr Hughes by Cathal Ellis and he wished to know whether five 99kW biomass boilers installed on separate pipework to heat the same building would each attract a separate subsidy in circumstances where expert assessment had advised the installation of one or two larger boilers. Mr Hughes referred him to Ofgem adding:
- “What I can say is that RHI tariff would be based on the total heat requirement in this instance 500kW and therefore the applicable tariff would be 0.015 pence per kWh [sic].”
- 30.4 If Mr Hughes’ understanding had been correct the tariff would in fact have been 1.5p/kWh, but the essential point was that Mr Hughes, perhaps understandably, considered it would be the combined capacity of the five boilers that would be used to determine the tariff, rather than the scheme permitting multiple boilers, owned by the same person, to each receive the attractive medium biomass tariff. As discussed elsewhere in this Report, when Mr Hughes was subsequently informed by Ofgem that in fact each boiler would receive a separate higher tariff he was clear that this was not DETI’s intention for the scheme and wanted the rules changed.
- 30.5 In any event, on 27 January 2015 Mr Hughes emailed Mr Hamilton to bring him up to date with regard to the Phase 2 review of RHI. Mr Hughes told Mr Hamilton that consideration was being given to extending the then current 20-99kW medium biomass tariff band up to 199kW and that, if agreed, any changes would be in place by October/November 2015.¹⁷⁹¹
- 30.6 On 24 February 2015, approximately a month before the first cost control template had been sent to Ofgem (reflecting the initial DETI suggestion of stepped annual reductions in the medium biomass tariff, rather than the budget control mechanism consulted on in 2013), Mr Wightman sent an email to Mr Hughes confirming that he had discussed their plans for Phase 2 of the NI RHI scheme with David Mark of Moy Park.
- 30.7 Mr Wightman had informed Mr Mark during their discussion of the DETI proposal to increase the upper end of the band for the medium biomass tariff from boilers of 99kW to boilers of

1790 DFE-106803 to DFE-106804

1791 DFE-106825

199kW.¹⁷⁹² Mr Mark subsequently passed on this information to colleagues, along with other information he had clearly been told by Mr Wightman relating to intended new legislation in October that would allow for a mechanism to reduce the medium biomass RHI tariff payment depending on uptake. Mr Mark's email to his colleagues concluded that:

"I think we have a firm basis for RHI investment going forward until at least October 2015 with a positive look forward after that."¹⁷⁹³

30.8 Mr Wightman recorded in his own email to Mr Hughes, summarising the discussion he had with Mr Mark, that he had been told that Moy Park could have up to 200 new broiler houses in 2015, each with 99kW boilers. The email continued:

"Assuming around 350MWh/boiler/yr this equates to an additional 70GWh of renewable heat (or £4.4 million/yr of RHI funding). We will need to liaise with DECC about future RHI funding a.s.a.p."¹⁷⁹⁴

30.9 Later the same day Dan Sinton, also working in the DETI Energy Efficiency Branch, but more with the domestic RHI scheme, received an email from a Mr Lyttle of Green Energy Engineering Limited, a private company, enquiring if there was a planned cut to the non-domestic RHI scheme coming in April because some of his competitors were said to be spooking some farmer clients. Mr Sinton replied that "happily" there were "currently no plans to reduce the RHI rates in N Ireland". A couple of days later Mr Lyttle sent Mr Mark the email exchange with the message: "Good news".¹⁷⁹⁵

30.10 This is one early example of the degree of co-ordination the Inquiry saw in communications between commercial entities over potential changes to RHI, and about which officials in DETI appeared to have been unaware. The DETI officials appear not to have realised that the information they gave to one individual had the potential to be, and often was, quickly disseminated to other commercial operators with an interest in RHI.

30.11 On 25 March 2015, the same day on which Mr Wightman had sent his updated email to Sandra Thompson documenting the potential RHI budget problem, and so that she could seek clarification about funding from DETI Finance Branch, Mr Hughes emailed Fergal Hegarty at Alternative Heat, the firm of boiler suppliers and installers run by Connel McMullan (referred to earlier in this Report). Mr Hughes had previously informed Mr Hegarty, on 3 March 2015, that there were no plans to introduce degeneration, and that in any event it would have a lead-in time of at least six months. In his email of 25 March 2015 Mr Hughes referred to a recent telephone conversation he had with Mr Hegarty and continued in the following terms: "I can confirm that proposals for the Phase 2 review of the non-domestic RHI are under active consideration."¹⁷⁹⁶ He referred to issues not addressed specifically in the consultation, such as extending the medium biomass tariff to boilers with a capacity up to and including 199kW as being one of the matters to be considered, and he informed Mr Hegarty that it was intended to have a final policy agreed and published by the early summer, with the scheme changes being put in place by October/November 2015 subject to the required legislation. He also volunteered to keep Mr Hegarty up to date on progress over the coming months.

1792 DFE-106830; WIT-263925

1793 COM-110837

1794 DFE-106830

1795 COM-110820 to COM-110821

1796 DFE-106905

- 30.12 The Inquiry notes that this information was passed on to others by Mr Hegarty, who was the business development manager in Alternative Heat, in an email dated 27 March 2015 in which he spoke of Mr Hughes in the following terms: “He hasn’t disclosed as much as I hoped he would.”¹⁷⁹⁷
- 30.13 As discussed earlier, on 9 June Mr Hughes sent an email to Mr Ellis at CAFRE seeking assistance with regard to uptake of the NI RHI scheme in the poultry sector, including, in particular, assistance with determining the reasonable heat demands of that sector. Mr Hughes also stated: “Anecdotaly we are led to believe that some houses are running 24/7...”. In the course of his reply, Mr Ellis confirmed the existence of rumours of houses running 24/7 but “(I don’t think in NI yet!) - the reason to maximise the output of the boiler for RHI.” In turn, Mr Ellis, without the knowledge of DETI officials at that time, started to communicate with a number of market participants including Tom Forgrave and David Mark.
- 30.14 On 9 July Mr Hegarty of Alternative Heat, installers of boilers, emailed a colleague reporting that we (the biomass industry) were approaching DETI while there was “still time to influence their decision”. He reported that Tom Forgrave, who was the head of the poultry section of the Ulster Farmers’ Union (UFU), had been talking to Mr Wightman but that Mr Wightman did not tell Mr Forgrave that DETI were waiting for a paper from CAFRE. Mr Hegarty passed on this information to Mr Forgrave and gave him Mr Ellis’s telephone number.
- 30.15 Mr Hegarty said that he had subsequently been told by Mr Forgrave that he had arranged with Mr Ellis to provide him with data derived from Mr Forgrave’s poultry sheds to form the recommendations to DETI. He recorded that: “Tom was pretty happy that the information that will now be provided to DETI will echo the UFU’s recommendations.” Mr Ellis told the Inquiry that he ran the figures contained in his draft paper past Mr Mark at Moy Park. Mr Ellis did not inform DETI that the contents of his paper had been considered by Mr Forgrave and Mr Mark and he accepted that DETI should have been informed.
- 30.16 On 17 July Mr Ellis provided a paper to DETI entitled “Environmental Control in Poultry (Broiler) units”. In a covering email Mr Ellis explained that the paper provided an explanation of why the production of broilers required the levels of heat suggested and confirming that Mr Hughes and his colleagues were free to disclose this information in a series of meetings that had been arranged.
- 30.17 On 22 July 2015 Mr Hughes met a number of representatives of the Ulster Farmers’ Union, including Mr Forgrave, Mr Ferguson and Mr Osborne, who have been discussed previously in this Report in relation to the poultry paper produced by Cathal Ellis. By the date of this meeting DETI officials had decided to introduce tiering and the 8 July 2015 RHI submission had been lodged with the Minister’s Private Office. They were informed the RHI budget was overspent and that changes would be coming in October with a tiered tariff, the higher rate of which would cease after 1,314 hours.¹⁷⁹⁸ Mr Forgrave maintained that 1,314 was too low for poultry. Mr Hughes subsequently circulated the CAFRE paper without being aware of the contribution made to it by Mr Forgrave.
- 30.18 On 19 June 2015 Mr Hughes met Mr Terence McCracken from Innasol, an English renewable energy company considering entry into the Northern Ireland biomass market. Mr McCracken’s email to colleagues of 22 June 2015, summarising the meeting, recorded that Mr Hughes

1797 COM-05087

1798 COM-00641

informed him that the biomass scheme was a “great success”, that growth in the last 12 months had “exploded”, with applications “tracking ahead of budget”, and that 700 applications were expected in the current year, almost entirely from the poultry sector.

- 30.19 Mr McCracken noted that the changes to the scheme were being proposed because applications were “way above forecast” and officials felt that there was a need to “cool the market down”. He was told that a concern had been raised by a finance official about the 20-year payment outflow and noted a review of the scheme was shortly to take place with a consultation document being issued “to myself and others”.¹⁷⁹⁹ Mr McCracken informed his colleague that he thought that there would be a rush to get measures (which the Inquiry equates to applications) through before re-banding with “a short-term opportunity for volume probably up to Nov 15.”¹⁸⁰⁰
- 30.20 When speaking of this exchange in his oral evidence to the Inquiry Mr Wightman accepted that the information Mr McCracken had gathered from Mr Hughes was “more open and frank” than he would have expected but emphasised that, to be fair to Mr Hughes, it was hard to strike a clear balance between assisting stakeholders and giving too much away to particular interested commercial parties.¹⁸⁰¹ He conceded that he had not provided Mr Hughes with clear and concise guidance. Mr Wightman confirmed that he himself had not received any such guidance.¹⁸⁰² He also conceded the officials had been “a bit too open” in their contacts with commercial operators and that, with hindsight, they had displayed “a sense of naivety” in sharing information.¹⁸⁰³
- 30.21 On 30 June Mr Hegarty of Alternative Heat circulated to his colleagues an email recounting a conversation with Mr Wightman. He said that he had been told that re-banding from 99kW to 199kW was still proposed for October 2015, that DETI had overspent their budget due to the operating hours of poultry sector boilers and that a two-tiered tariff would be introduced in line with GB. Mr Hegarty noted that they would have to “do all we can” to have the Moy Park boilers commissioned and RHI applications submitted before 1 October or any other date announced by DETI.¹⁸⁰⁴ He said that he had been told that “things were moving fast” and that “Stuart has welcomed that I call him weekly for an update so that we are aware of what way things are going to go.”¹⁸⁰⁵
- 30.22 On 1 July Mr Hegarty circulated the information that he had obtained from Mr Wightman to John Smyth who worked for CHP, a firm of installers, and to a number of other commercial colleagues.¹⁸⁰⁶ On the same date another commercial operator (FG Plumbing, Heating and Renewables Limited), which seems likely to have received the Hegarty update, circulated the same information to one of its customers, Dennison Commercials, drawing attention to the changes proposed by DETI to take place in October, including a possible consultation on degression and confirming that since such changes would only affect subsequent applications clients considering installing biomass systems should move “a.s.a.p. to avoid missing out on the best rates from RHI.”¹⁸⁰⁷

1799 WIT-198223

1800 WIT-198224

1801 TRA-10697 to TRA-10698

1802 TRA-10697; TRA-10702

1803 TRA-10703

1804 COM-05121

1805 COM-05121

1806 COM-05125 to COM-05128

1807 SCH-00421

- 30.23 On 2 and 3 July 2015 Mr Wightman and Mr Mark of Moy Park had another telephone conversation and subsequent email exchange. Mr Mark confirmed the up-to-date position in relation to expected RHI applications from Moy Park growers, and Mr Wightman shared the plan for re-banding the medium biomass tariff and introducing tiering by October 2015. Mr Mark noted that any reduction in support for the scheme was a concern but that the proposals would still allow the payback to work for most growers, although the payback would be reduced.¹⁸⁰⁸ In response to the suggestion of a transition period for the new rates Mr Wightman confirmed that there was severe budget pressures and the need to introduce cost control measures as soon as possible.¹⁸⁰⁹
- 30.24 When initially updating colleagues about his 2 July exchange with Mr Wightman, Mr Mark explained that the proposed changes would be “OK for normal use but restrictive for ‘opportunistic’ RHI harvesting.”¹⁸¹⁰ He went on to say that:
- “On a broader point it indicates the budget implications of RHI and I recon [sic] we only have 18 months of this left and towards the end of that 18 months rates may/ will fall further.”
- 30.25 The Inquiry notes that all of the foregoing information about scheme changes set out over preceding pages had been shared before the submission was sent to the Minister on 8 July 2015. Mr Wightman told the Inquiry that at the time of the telephone call from Mr Hegarty on 30 June he was putting together the policy proposals for the submission to the Minister on 8 July and he wanted to “sound out” Mr Hegarty.¹⁸¹¹ Mr Wightman said it was done in the context that he believed the scheme was still a worthwhile venture for Northern Ireland and that they were doing really well.¹⁸¹² He said that he had also run the proposals past Moy Park - “one of the big players”.¹⁸¹³ He told the Inquiry that he was not aware of the risk of over incentivisation nor did he expect the industry to be so mobile and act so quickly.¹⁸¹⁴
- 30.26 Two days after the lodgement of the submission of 8 July, on 10 July 2015, and as mentioned elsewhere in this Report, Mr Hughes received a letter from Solmatix informing him of “unscrupulous beneficiaries” not only taking advantage of the RHI scheme but “in many cases, notably in the poultry sector, actively exploiting it”.¹⁸¹⁵
- 30.27 The day before, on 9 July 2015, Mr Hegarty had a further conversation with Mr Wightman which included reference to potential changes to address multiple boilers and hydraulic separation (a subject covered in detail later in this Report). On 10 July Mr Hegarty sent an email to Mr Wightman seeking confirmation that he had understood the proposed changes correctly during their conversation.¹⁸¹⁶ Seamus Hughes replied to that email on 10 July confirming the intended changes, and stating that the current interpretation of hydraulic separation had not been the policy intent. In turn, Mr Hegarty disseminated that information almost immediately to his commercial contacts, including to FG Renewables.¹⁸¹⁷

1808 DFE-107109

1809 DFE-107108

1810 COM-112004

1811 TRA-10725

1812 TRA-10725

1813 TRA-10726

1814 TRA-10726

1815 DFE-107131 to DFE-107132

1816 DFE-107127 to DFE-107128

1817 WIT-199186

30.28 On the afternoon of 10 July FG Renewables again contacted Dennison to inform them of the expected changes relating to multiple boilers on separate hydraulic systems. That email concluded in the following terms:

“If you were thinking of proceeding with the biomass boilers, having them commissioned, RHI applications completed and with Ofgem before the 1st October '15 deadline, to allow you to receive 6.4p/kWh, we would need to order as soon as possible (preferably next week). I don't want to put you under pressure, but this has come to a head very quick and we are receiving multiple orders for boilers each day.”¹⁸¹⁸

30.29 The Inquiry notes that the installation of multiple separate 99kW boilers, each attracting the best subsidy in order to maximise return, was an extremely attractive commercial development. It is dealt with in detail in chapter 48 of this Report. By DETI informing suppliers and installers of its intention to change the NI RHI scheme in this regard, and prior to its having any definitive plan in place to do so and about which it might have to consult, it thereby increased the likelihood that it would receive more applications of this type before any changes could be introduced.

30.30 Dennison Commercials confirmed to the Inquiry that on 10 August 2015 it ordered eleven 99kW boilers which were commissioned just 19 days later on 29 August, with applications to the RHI scheme lodged in October.¹⁸¹⁹ Mr Wightman admitted in oral evidence that it had not been appreciated that becoming a participant in the RHI scheme could be achieved in such a short time.¹⁸²⁰

The communications with the market continued in August

30.31 On 26 August, less than 48 hours after Minister Bell had made the decision to amend the scheme from 4 November and prior to the amended submission being signed off by him on 3 September, Mr Hegan of Hegan Biomass, emailed Mr Hughes asking him if he could confirm a rumour that the current RHI tariff would be extended to 1 November. Mr Hughes replied that they were still awaiting clearance but “the legislative process in late October/November is now a more realistic timeline.”¹⁸²¹

30.32 On 28 August Mr Hughes, at the direction of Mr Wightman, sent emails to Mr Osborne and Mr Forgrave of UFU and Mr Mark of Moy Park providing them with the same information.¹⁸²² Similar emails went to Mr Hegarty of Alternative Heat and also to Future Renewables.¹⁸²³

30.33 Mr Wightman accepted that they could have waited but felt that it was a matter of courtesy to keep in contact with those interests with which they had been previously in communication.¹⁸²⁴ He emphasised that the officials were in receipt of many telephone calls from people anxious to know likely developments.¹⁸²⁵

1818 SCH-00422

1819 SCH-00419 to SCH-00420 TRA-10739

1820 TRA-10739

1821 DFE-107218

1822 DFE-107220 to DFE-107221

1823 DFE-107223

1824 TRA-10839 to TRA-10840

1825 TRA-10841

- 30.34 After being contacted by Mr Wightman on 3 September, shortly after the submission was signed off, the Managing Director of Alternative Heat, Connel McMullan, passed on the detailed information with the observation: “In short the paybacks still work fine but obviously not just as lucrative as they have been to date with 99kW boilers running for 6,000 & 7,000 hours.”¹⁸²⁶
- 30.35 In the course of the DfE statement of 19 May 2017 Mr Stephen McMurray stated that:
- “Whilst it is important for departmental officials to engage with stakeholders when developing policies, as set out in *A Practical Guide to Policy Making in Northern Ireland*,¹⁸²⁷ the nature and form of engagement needs to reflect the specific circumstances.”¹⁸²⁸
- 30.36 The Inquiry notes that the Standards of Conduct set out in section 6.01 of the Northern Ireland Civil Service handbook prohibit officials from misusing information acquired in the course of officials’ duties or disclosing information held in confidence within Government, and Annex 1 to that handbook specifically forbids the disclosure of official information without authority.¹⁸²⁹

1826 COM-05181 to COM-05182

1827 INQ-17496 to INQ-17565

1828 WIT-00118 to WIT-00119

1829 INQ-16095 to INQ-17495

Findings

- 179.** The extent of information passed on to some market participants by officials was wholly inappropriate. It was particularly unacceptable that external parties were being informed of plans before they had been seen or approved by the Minister.
- 180.** Officials appear to have had no commercial awareness about the potential impacts of the information that they were providing, both with regard to helping participants maximise their income from the scheme and to the damaging impact that this could have on uptake and the already difficult budget position.
- 181.** There appears to have been a total lack of senior management awareness, concern or involvement in deciding what information should be provided to whom and when. The Inquiry finds that it was the job of senior management in DETI to make themselves aware of the risks of commercially sensitive information being conveyed to the market and to provide guidance to staff to help them handle these risks in practice.
- 182.** The selective nature of the officials' contacts was capable of producing significant market distortion by providing commercially sensitive information to some parties and not others.
- 183.** Market participants were very quick to share the information that they had received with their industry colleagues. However, this too was a selective process.
- 184.** The communications were predominantly one-way to the market and officials' hopes that they would receive useful intelligence from the process remained dashed.