

Chapter 45 – Ofgem as the NI RHI scheme administrator

- 45.1 In chapter 15 of this Report the Inquiry examined the creation of the relationship between DETI and the Gas and Electricity Markets Authority (GEMA – Ofgem for the purpose of this Report) in respect of the administration of the NI RHI scheme. Ofgem continues to be the administrator of the NI RHI scheme, albeit the scheme is now closed to new applications. In this, and the next chapters, the Inquiry examines some particular issues and problems that arose during Ofgem’s administration of the NI RHI scheme.
- 45.2 Ofgem’s principal role and mainstream activity was as regulator of GB gas and electricity markets, but it had also established an internal division, E-Serve, to respond to a demand to administer payments for government-backed energy schemes, such as the NI RHI scheme. During the course of the Inquiry a substantial amount of evidence was received and considered which related to issues concerning the nature of the relationship between DETI (latterly DfE) and its appointed scheme administrator, Ofgem E-Serve.
- 45.3 As discussed elsewhere in this Report, the relationship between DETI and Ofgem was set out in the ‘Arrangements’ finally agreed between them in December 2012. Reaching agreement had proved difficult and unresolved issues continued to cause problems as the scheme developed. These issues are summarised and analysed below, with particular regard to the benefits that Ofgem, in its December 2011 Feasibility Study, had indicated that DETI could expect to receive by engaging and relying upon Ofgem as the scheme administrator.

Ofgem’s provision of scheme information to DETI – data sharing

- 45.4 The issue of the sharing of information, or data sharing, proved particularly problematic for a long period of the RHI relationship between DETI and Ofgem E-Serve.
- 45.5 Ofgem provided DETI with weekly spreadsheets and monthly reports which contained information about the NI RHI scheme. Ofgem also produced internal summary reports in a more accessible format, but these were for internal use and were not shared with DETI.²²⁹⁷ On one occasion, in 2013, Ofgem produced a brief annual report that it did share with DETI, but this was not repeated in future years.
- 45.6 None of the material that was provided to DETI included information about the identities, precise location/address or industry sector of the RHI scheme applicants, although some limited postcode information was included in the 2013 annual report. DETI quickly became aware of this data-sharing problem when, in January 2013, after the first application to the NI RHI scheme had been received, it asked Ofgem for the name of the applicant but was told that this information could not be provided until the applicant had signed a privacy document.²²⁹⁸
- 45.7 As a consequence, Ms Hepper of DETI wrote to Keith Avis, then RHI Project Manager at Ofgem, on 17 January 2013 pointing out that the 2012 NI RHI regulations clearly stated that:

“...all applications for accreditation must be made in writing to the Department where the Department is defined as DETI.”²²⁹⁹

2297 OFG-60504

2298 DFE-86970

2299 DFE-86975

- 45.8 She went on to point out that there was no mention of Ofgem in the regulations and that since the application was to be made to DETI, that is where the legal power and responsibility in relation to the application resided, and that Ofgem was carrying out the work on DETI's behalf, so there should be no issue in providing DETI with any information provided by an applicant.
- 45.9 Ms Hepper then made it clear that, if the Arrangements between DETI and Ofgem were at any stage terminated, Ofgem would immediately be obliged to provide DETI with the very information that it would not share while the Arrangements were in place.²³⁰⁰
- 45.10 Mr Harnack of Ofgem agreed on 29 May 2013 during a meeting at DETI that:
- “Ofgem was willing to share information and data as long as the requests are reasonable and have a purpose.”²³⁰¹
- 45.11 Nevertheless, email exchanges between Ms Hepper and Mr Harnack of Ofgem in July 2013, and between Ms Hepper and Ms Clifton of Ofgem in January 2014, revealed differences relating to the sharing of information.²³⁰² In particular, requests were made for the names and postcodes of applicants and the standard industrial classification of businesses.
- 45.12 In respect of the July 2013 request, the purposes for which the information was requested included the need to co-ordinate the NI RHI scheme with the spending initiatives of other NI Departments to ensure no double funding and the need to monitor take-up in relation to other projects such as gas extension. On both occasions it was made clear that the information was also required to brief the DETI Minister properly. Ms Hepper pointed out that the view of DETI's solicitors was that, as the specific public authority with statutory responsibility for the NI RHI scheme, DETI had a legitimate interest and, as such, there should be no difficulty in disclosing the data for a “legitimate purpose”.²³⁰³ On these and other occasions, it appears to the Inquiry that DETI had perfectly reasonable grounds to request the information, but that these were not necessarily communicated clearly to Ofgem, exacerbating the situation.
- 45.13 This was explored in oral evidence with Ms Hepper of DETI.²³⁰⁴ Ms Hepper told the Inquiry that the information that she had sought in July 2013 would have been useful for the then anticipated first review of the scheme in 2014, although she had not specified that as a reason in her request to Ofgem.²³⁰⁵ She also indicated that a legitimate reason for DETI to seek the information was to brief the Minister properly when visiting various NI companies in her role as Enterprise, Trade and Investment Minister.²³⁰⁶
- 45.14 In the course of his oral evidence Ofgem Chief Executive, Dr Dermot Nolan, referred to DETI seeking information needed for the Minister to make a speech and Ofgem raising doubts about such a purpose in terms of data protection. He continued:

“Then a process took place with Ofgem – which took too long, and I think much of that lies with Ofgem....I think there were genuine concerns about what DETI did want it for; data protection concerns are not trivial. But it took too long to put the DSP [the Data Sharing Protocol of February 2015] in place.”²³⁰⁷

2300 DFE-86975

2301 DFE-86998

2302 OFG-148029 to OFG-148035

2303 OFG-148029

2304 TRA-05287 to TRA-05292

2305 TRA-05285 to TRA-05286

2306 TRA-05286

2307 TRA-14873

- 45.15 Dr Nolan also told the Inquiry that the agreement about data sharing could have been completed more quickly but his sense was that, for quite a while, Ofgem had no idea, or no clear idea, as to why the information was wanted by DETI.²³⁰⁸
- 45.16 Various initiatives to resolve the issue continued but it was not until 10 February 2015 that a Data Sharing Protocol between DETI and Ofgem was finally signed by both parties with implementation from March 2015, more than two years after scheme launch.
- 45.17 During his oral evidence to the Inquiry, Marcus Porter, the Ofgem lawyer who had advised Ofgem’s RHI team on the approach to data sharing, was questioned about this, although without examining whether Ofgem’s interpretation was right or wrong. In his evidence he stated that:

“No. I mean, I think that joined-up government demands that, if, in the course of our administration of the scheme, something arises that looks as if it’s gonna [sic] cause a problem, whether it’s tiering or anything else – something we perceive to be significant – then, yes, we should pass it on.”

And later:

“I think it’s part and parcel of our obligation as a government Department administering a scheme in conjunction with another government Department to be on the alert for issues arising, problems that may have long-term implications and, at the very least, considering whether they should be raised with the other Department, and almost certainly I would have thought doing so, but it’s rather difficult in the abstract.”²³⁰⁹

- 45.18 It was pointed out to Mr Porter that his views on Ofgem’s obligation as a public body were not in line with how matters played out in practice.²³¹⁰
- 45.19 This evidence also appeared to be in stark contrast to Mr Porter’s original view set out in an internal email on 17 January 2013 when briefing his colleagues in the following terms:

“Thus we are not obliged to *volunteer* any information to DETI under the Arrangements but rather only to provide it as and when they *reasonably request* it under the provisions referred to above [Mr Porter’s emphasis]. Moreover, I would strongly advise against choosing to volunteer such information as it is doubtful that we have the necessary legal powers to do so.”²³¹¹

- 45.20 As indicated above, Mr Porter accepted in evidence to the Inquiry that there was an obligation on Ofgem to be alert for issues arising on the NI RHI scheme, including problems that may have long-term implications, and to communicate these to DETI. The Inquiry considers this was particularly so with issues like multiple boilers where DETI was significantly hampered without the information that Ofgem possessed and was withholding.²³¹²

2308 TRA-14877

2309 TRA-06347 to TRA-06349

2310 TRA-06349 to TRA-06350

2311 OFG-215501. Any claim for legal privilege in the text of the document OFG-215501 quoted in this report, or any claim for legal privilege in the copy document from which the quote is taken (and which is published by the Inquiry along with this Report), is waived by Ofgem purely for the purposes of the Inquiry, but not otherwise. In addition, it is not intended that any confidentiality or legal privilege in any other related material is waived as a result of the limited waiver in respect of the subject material.

2312 TRA 06348 to TRA-06349

Findings

- 228.** Ofgem had access to information and analysis that it did not share with DETI, e.g. its weekly internal NI RHI reports. The Inquiry notes that those weekly internal reports were in a much more accessible and understandable format than the spreadsheets with the raw data that were in fact supplied by Ofgem, and may have helped DETI to identify issues that it would otherwise not have picked up, for example low numbers of audits and high non-compliance rates. There was no good reason for the failure to share this information.
- 229.** Ofgem only once produced a very brief annual RHI report, in 2013. This was the only potential indicator DETI received before 2015 hinting at geographical groupings of boilers, but not to a level of detail that was useful in clearly identifying a multiple boiler issue. It is not clear to the Inquiry why this report failed to issue in future years.
- 230.** Ofgem, together with DETI, failed to agree a data sharing protocol until relatively late in the lifetime of the NI RHI scheme – the protocol did not become effective until March 2015. The Inquiry agrees with Dr Nolan that agreement of the data sharing protocol should not have taken so long.
- 231.** A consequence of the lack of a data sharing protocol meant that Ofgem in effect withheld information that DETI requested. Ofgem did not comply with requests for names, postcodes and standard industry codes until March 2015.
- 232.** There were disagreements about ownership of the scheme data – DETI made the point that, should the Arrangements have been terminated at any time, the data would automatically have been transferred to it, so it did not make sense that Ofgem restricted access prior to termination. Under these circumstances, Ofgem’s approach appears to the Inquiry to have been counter-intuitive and unnecessarily obstructive.
- 233.** It is clear to the Inquiry that the limited information provided by Ofgem materially impacted on DETI’s ability to monitor the scheme and identify adverse trends like multiple boilers. Whether or not DETI would have done anything with this information does not bear on the Inquiry’s finding that this was a major failure by Ofgem.
- 234.** The Inquiry finds it was justifiable for DETI to ask for information from Ofgem to meet an objective of promoting the NI RHI scheme, given that renewable heat targets were part of the Northern Ireland Executive Programme for Government 2011-15. In the circumstances it was not justifiable for Ofgem to refuse such requests.

The auditing of installations accredited to the NI RHI scheme

- 45.21 One of the functions Ofgem performed, on both the GB RHI and the NI RHI schemes, was the auditing of RHI installations to ensure compliance with the relevant regulations. Ofgem subcontracted the carrying out of the physical audits to Ricardo/AEA, a specialist engineering and environmental consultancy. In November 2013, arising from the audits it had conducted on the GB RHI scheme, Ricardo/AEA made a presentation to the Ofgem RHI team on RHI Auditing. That presentation covered trends that Ricardo/AEA had discovered during audits including the use of multiple boilers and wasted heat.
- 45.22 The presentation indicated that the audits conducted had revealed unintended developments on the RHI scheme which represented a “significant financial cost to the programme in terms of payments.”²³¹³ Photographic evidence of the types of issues were displayed as part of the presentation. It also made recommendations about changes that should be made to deal with the issues. It does not appear that the November 2013 Ricardo presentation to the Ofgem RHI team on RHI Auditing was ever supplied to DETI or discussed with DETI officials.²³¹⁴
- 45.23 In March 2014 Ofgem’s subcontractors, Ricardo/AEA, performed five audits on accredited installations in Northern Ireland. Ricardo/AEA caveated its work by pointing out to Ofgem that a sample selection of five sites was very small, so it was “difficult to comment on whether these findings are representative of the installations installed under the Northern Ireland programme.”²³¹⁵ It is not clear whether such a difficulty was passed on to or discussed with DETI. Gareth John, who took up post as head of RHI operations within Ofgem E-Serve in January 2014, told the Inquiry that he was unaware whether that Ricardo summary had been provided to or discussed with DETI. He could not see any good reason why it should not have been shared but observed: “In hindsight, potentially. It just, you know, wasn’t practice.”²³¹⁶ When pressed by Inquiry Counsel as to why such reports would not have been provided to DETI, which owned the scheme, Mr John replied:
- “I don’t know. Potentially, you know, they could’ve been. It was something that I picked up from a process point of view; I inherited. It was not something that changed until much further down the line.”²³¹⁷
- 45.24 Robert Reid of Ofgem engaged in an email exchange with Ms Clifton on 16 October 2013 referring to the small intended audit sample of five installations and asking whether DETI was satisfied with that number given that it was unlikely to identify any possible trends in non-compliance. On 28 October Ms Clifton replied, stating that:
- “They [DETI] are happy that they will get a good sample from 5 seeing as they have only had 30 accredited, so they are really looking for early warning signs and then an understanding of what that looks like against the GB non-compliances and whether there is the [sic] similar pattern emerging.”²³¹⁸
- 45.25 Across the first three full financial years of the NI non-domestic RHI scheme, beginning with the financial year 2013-14, 31 audits were performed out of 2,120 applications received,

2313 OFG-87882

2314 OFG-87866 to OFG-87887

2315 OFG-94268

2316 TRA-08981

2317 TRA-08981

2318 OFG-24124

an overall percentage of 1.46%. The number of audits carried out in each of those financial years in percentage terms, when compared to the number of applications received, was 4.20% in 2013-14, 2.76% in 2014-15 and 0.89% in 2015-16²³¹⁹ – a diminishing sequence never approaching a sample size of 7.5%.

- 45.26 Ofgem did offer to do additional audits from time to time, provided DETI bore the cost. However, those offers were not linked to explanations of the audit strategy being adopted by Ofgem, nor to any warnings that the percentage number of audits being conducted did not reach the sample size Ofgem had set for itself for the RHI schemes. Ofgem also did not provide any advice as to the sample size from which a satisfactory level of confidence might be drawn. When additional funds were provided for the 2015-16 year, Ofgem did carry out additional audits.

Ofgem's audit strategy for installations on the RHI schemes

- 45.27 The relationship between DETI and Ofgem with regard to external auditing of Ofgem's administration of the NI RHI scheme is dealt with in detail later in this Report, with particular reference to the evidence of Ms Dolan, DETI's Head of Internal Audit at the time when the scheme was set up. This part of the Report is concerned with the Ofgem strategy in respect of the actual site audit of installations for which applications were made to the NI RHI scheme.
- 45.28 Ofgem commissioned advice from Deloitte, its external auditor, as to the most appropriate methodology for audit sampling in relation to the non-domestic RHI scheme in GB. Deloitte recommended the Monetary Unit Sampling (MUS) method as providing a direct linkage between the financial value of payments and sample size – this was to be determined by the confidence level and level of materiality required.
- 45.29 Ofgem operated a site audit sample size of 7.5% of applications per annum to the GB RHI scheme. Dr Ward told the Inquiry that the figure of 7.5% was an Ofgem figure arrived at "... with reference to experience on some of the other E-Serve schemes at the time" and an "understanding of the likely sort of risk factors associated with the scheme".²³²⁰ Dr Ward had not been personally involved in the early stages of the GB RHI audit programme but he told the Inquiry that his understanding, from the documents he had read, was that the amount of funding and resources available for the audit programme had been based on a "nominal sort of 7.5% of applications".²³²¹
- 45.30 The 'Ofgem E-Serve Non Domestic Renewable Heat Incentive Audit Strategy'²³²² of 20 February 2014, a document which was supposed to apply to both the GB and NI RHI schemes, but which was not provided to DETI, recorded that Ofgem had correlated with Deloitte's recommended sample size as much as possible but that numbers and types of installations had not matched the original forecast. It recognised that modification of approach was required but, in the interim, Ofgem planned to maintain its site audit sample size at 7.5% for new applications in the GB scheme for 2014-15.
- 45.31 Prior to the production of the above audit strategy, on 16 December 2013, Ofgem's Robert Reid gave a presentation to suppliers in which he stated that 7.5% of new applications received each

2319 WIT-95078; TRA-10479

2320 TRA-10460 to TRA-10461

2321 TRA-10460

2322 OFG-97828 to OFG-97835

year was the sample size Ofgem had adopted.²³²³ This clearly shows that, prior to 2014-15, Ofgem was operating a site audit sample size of 7.5% on the GB RHI scheme.

45.32 The approach was designed to provide Ofgem with a level of confidence of 86% that no more than a relatively small amount of money was being wasted on the scheme. However, there does not seem to have been any suggestion that 7.5% of applications automatically represented a statistically significant sample from which reliable conclusions about all the applications might be drawn.²³²⁴ Indeed, Dr Ward told the Inquiry that, in the early years, after consultation with Deloitte, it was the budget that determined the number of audits that needed to be done. In his oral evidence to the Inquiry Dr Ward said:

“Ofgem cut its cloth in terms of the confidence level to fit the available funding to a degree.”²³²⁵

To make best use of resources and to be cost effective Ofgem decided that the audit sample would consist of both targeted and randomly selected installations.

45.33 In its December 2011 Feasibility Study for the development and implementation of the NI RHI, whilst asserting that the broad principles of the GB RHI audit strategy should be applied to the NI RHI, Ofgem recognised, in paragraph 5.26, that: “To determine the approach most suited to the NI RHI it will be necessary to undertake a separate risk assessment during the development phase.”²³²⁶ However, the Inquiry found no evidence that Ofgem carried out such an assessment or gave any specific thought to whether the 7.5% approach operated for the GB RHI scheme was appropriate for the NI RHI scheme, a scheme that was distinct and had different risk factors.

45.34 In the course of replying to a number of questions from Ms McCutcheon, just after the launch of the NI RHI scheme, Mr Avis of Ofgem stated in an email of 3 December 2012:

“I should say that the number of audits carried out for NIRHI will be dictated by the percentage of scheme costs that DETI is paying, and hence by the value of tariff payments made in NI as a portion of total RHI payments. In other words, if DETI were paying for 3% of total scheme costs then that would mean that 3% of tariff payments were being made to NI installations, so for both of these reasons it would be appropriate to ensure that 3% of audits were conducted on NI based installations.”²³²⁷

45.35 There was no assessment by Ofgem of the actual audit requirements with regard to the NI RHI scheme. In any case, it appears to the Inquiry that setting the number of NI RHI audits as a percentage of GB RHI audits could never have guaranteed even a fixed number, let alone guaranteed a statistically significant sample of NI RHI applications.

45.36 Nonetheless, almost by default (arising from the read across methodology that was adopted), this became the approach that applied to the NI RHI scheme as well. The effect of the Ofgem approach was that:

- in GB there was an intended sample size of 7.5% of all applications per annum to be audited.

2323 OFG-27107 to OFG-27109

2324 OFG-97828 to OFG-97835

2325 TRA-09142

2326 OFG-126037

2327 DFE-86713

- based on population share, Northern Ireland would be paying about 3% of the costs of RHI audits conducted on behalf of Ofgem; therefore
- if 3% of the number of GB applications were audited in Northern Ireland, this would be equivalent to 7.5% of NI applications.

However, that would only hold good for as long as the number of Northern Ireland RHI applications constituted 3% of the number of GB RHI applications.

45.37 Dr Ward told the Inquiry that he understood the problem with this to be that the number of audits for which funding in Northern Ireland was available was too small for the audits to be statistically significant, but he understood that this had been agreed between Ofgem and DETI at the point when the NI RHI scheme was established.²³²⁸

45.38 Dr Ward also agreed that it was not possible to draw statistically significant results from the Northern Ireland sample, but it is not clear whether that was ever discussed in detail with DETI officials.²³²⁹ However, as mentioned previously, internal Ofgem emails passing between Mr Reid and Ms Clifton during October 2013 suggest, in the context of an Ofgem concern that a sample of five installations was unlikely to identify any trends, that DETI was content with that sample size at a time when it had only 30 accredited installations.²³³⁰

45.39 It seems that neither Ofgem nor DETI actively monitored whether the assumption of 3% of GB RHI audits (in order to produce a 7.5% audit of NI RHI applications per annum), regardless of whether it was an appropriate basis upon which to calculate the number of audits appropriate for the NI RHI scheme, was occurring in practice. This work, which was primarily the responsibility of Ofgem, was not carried out. Consequently, no steps were taken to assess the significance for the NI RHI scheme and its audit strategy of the fact that Northern Ireland RHI applications were beginning to track ahead of the 3% of GB assumption.

45.40 During 2015 Ofgem did work with external experts on further developing its RHI audit strategy, but at no time did it involve DETI. Ofgem did not even provide DETI with a copy of the applicable audit strategy for the NI RHI scheme until 2016, after the NI RHI scheme had closed.

45.41 This was despite what was set out in the Arrangements at clause 3.2(e) which provided that Ofgem would:

“Take all reasonable steps to ensure that wherever possible it will facilitate the ability of DETI to operate effectively in relation to the Regulations. This may mean providing briefing or attending meetings with industry, providing resources are available to do this. GEMA [Ofgem] will communicate with DETI on matters of common interest and common concern as appropriate.”²³³¹

45.42 Clause 5.2 of the Arrangements is also relevant in this regard, which stated:

“Where either Party becomes aware of any actual or proposed amendments to or re-enactments of the Regulations or the Guidance, or that there is a need to effect such amendments or re-enactments, it will be responsible for informing the other Party as soon as reasonably practicable.”

2328 TRA-09140

2329 TRA-09140

2330 OFG-24124; OFG-24139 to OFG-24140

2331 OFG-18385

- 45.43 On 5 January 2017 Ofgem conducted an internal workshop on lessons learned from the NI RHI scheme. One of the ideas to be given further consideration as a consequence was: “Clearer audit strategy built on external expertise in statistical sampling to determine right level of checks.”²³³²

Site audits of RHI installations and the site audit reports

- 45.44 According to Mr Wightman’s written evidence to the Inquiry, DETI did not receive any copies of audits or details from Ofgem, during his time in DETI, of the number of audits being conducted until after a teleconference between the two organisations in September 2015.²³³³ That teleconference was followed by an email from Mr Hughes on 15 September about the issue, and it seems that Mr Wightman then formally wrote to Dr Ward on 19 October 2015 indicating that DETI had been wrongly of the impression that more site visits were being undertaken, probably in the order of one in ten for new installations.²³³⁴ Mr Wightman told the Inquiry that, despite repeated requests, no copies of audit reports were sent to DETI until 2 September 2016, when reports compiled by Ricardo in 2013-14, 2014-15 and 2015-16 were received. Dr Ward provided written evidence to the Inquiry stating that:

“Prior to 2015, we did not routinely share the results of audit findings with the Department. In response to a request in 2015 to share information on audit findings, I shared a summary of audit findings from the NI RHI programme to date [479]. More recently, Ofgem has been proactive in seeking to share audit findings and lessons learned. We now routinely share the completed audit reports for all site inspections, as part of our normal processes.”²³³⁵

- 45.45 The Inquiry found it difficult to understand the omission on the part of Ofgem to provide copies of audit findings to DETI until September 2016, almost four years after the initiation of the NI RHI scheme. It is particularly hard to reconcile such an omission with the Annex to the 2012 Arrangements between DETI and Ofgem which provided as follows:

“Ofgem shall notify DETI immediately in writing if any financial irregularity in relation to the NI RHI is suspected, and indicate the steps being taken in response. Irregularity means any fraud, theft or other impropriety, mismanagement, or use of funds for purposes other than that approved.

Ofgem will communicate with DETI regarding the Terms of Reference for the audit activity undertaken by Deloitte/AEA, and endeavour to ensure that any DETI concerns regarding the NI RHI are adequately addressed. Upon completion of the audits, Ofgem will share the outcomes where they relate to the NI RHI.

While being consistent with the obligations set out in the arrangements, including the requirement to comply with any legal obligations, Ofgem will provide any records, information, or explanations which may reasonably be required to enable DETI to follow scheme payments, including but not limited to information relating to accredited installations, calculation of payments and transfer of funds from Ofgem to the installer. If DETI has any issue requiring further consideration, Ofgem will

2332 OFG-131064 to OFG-131067

2333 WIT-17762

2334 WIT-17773; WIT-17693

2335 WIT-114147

provide DETI, or the Northern Ireland Audit Office, with access rights relating to the payments made to accredited installations.”²³³⁶

- 45.46 Dr Ward accepted that the Arrangements imposed a clear obligation upon Ofgem to share with DETI any relevant information arising from audits of NI RHI installations.²³³⁷ Given the accepted omission by Ofgem to provide copies of the audit findings to DETI, it is not easy to identify the partnership element between public bodies with regard to protecting public expenditure in such circumstances. As noted earlier in this Report, clauses 3.2(i) and 5.2 of the Arrangements placed a clear obligation upon Ofgem to provide information to DETI to enable it to carry out its duties in a proper manner, including the need to effect amendments to the regulations.
- 45.47 The Inquiry notes that the names, postcodes or types of business of owners of accredited installations would not have been included until the data sharing protocol was agreed. If Ofgem had provided the audit reports to DETI when it should have done, within a short time of Ofgem receiving each audit report, it is likely that steps to ensure effective data sharing would have been expedited. Otherwise DETI would have been receiving heavily redacted documents. Dr Ward also accepted that Ofgem should have communicated any themes relevant to the NI RHI scheme arising from either GB or NI RHI audits.²³³⁸ The Ricardo/AEA November 2013 presentation was a prime example of material that should have been communicated to DETI, filled as it was with evidence of the utilisation of multiple boilers and examples of wasted heat.
- 45.48 It is also the view of the Inquiry that DETI officials had a responsibility to ensure that there was compliance with the terms of the Arrangements. DETI must accept some responsibility for not identifying and raising the failure to comply with the terms of the Arrangements relating to auditing at a relatively early stage, instead of waiting until problems started to arise.

Enhanced audits and inspections on the NI RHI scheme

- 45.49 After the emergence of the problems with the NI RHI scheme from 2015 and into 2016, and due to widespread public and political concerns as well as an anonymous allegation of widespread fraud and abuse of the scheme,²³³⁹ DETI made a commitment to an increased number and intensity of audits.
- 45.50 In February 2016, just as the scheme was closing, DETI sought to commission additional audits and inspections from Ofgem/Deloitte. On 11 July 2016, five months later, the Permanent Secretary at DfE (the successor to DETI from May 2016), Dr McCormick, wrote to Ofgem expressing his frustration about constraints being imposed by Ofgem:

“Ofgem colleagues have now advised us that there are constraints around what will be provided in terms of providing an independent view on the potential for recipients to take advantage of the scheme and the extent to which they are taking advantage of the scheme at present; expressing an opinion over the allegations of abuse; and providing an independent view which can be provided to NIAO and PAC as evidence. There is a strong concern here, not only from my perspective as Accounting Officer, but also from the Minister, that it is essential that we can secure a clear assessment of the allegations and an approach to investigation

2336 OFG-18391

2337 TRA-09125

2338 TRA-10573 to TRA-10574

2339 DFE-10408 to DFE-10410

that is proportionate and fit for purpose. I would ask you to note my concern that we have not been able to secure a satisfactory approach through the established arrangements, which is not a point I make lightly. The fact that OFGEM has not been able to commit to a process that would provide the clarity of opinion I have been seeking as Accounting Officer has had the effect of delaying the start of on-site inspections, and while it is still possible that the allegations we received were overstated, it is now increasingly likely that we will face criticism from the PAC here that we have for too long allowed potential abuse to be continued.”²³⁴⁰

- 45.51 The Inquiry considers that it was significant that Dr McCormick felt it necessary to express a strong concern, both for his part as Accounting Officer, and that of the Minister, that it was essential to secure a clear assessment of the allegations and an approach to investigation that was proportionate and fit for purpose. He also expressed his concern that it had not been possible to secure a satisfactory approach with Ofgem through the Arrangements agreement.
- 45.52 The Inquiry notes that in response to this correspondence Mr Poulton, the then Managing Director of Ofgem E-Serve, indicated on 4 August 2016 that, from the start, Ofgem had indicated that it was only able to support an approach whereby any report produced was not publishable, and must only focus on findings in line with the regulations as drafted rather than commenting upon policy matters.²³⁴¹
- 45.53 DfE subsequently commissioned PwC to carry out site inspections in August/September 2016, which found widespread exploitation of the scheme. Commercial, poultry and farm sites were included. Section 5.24 of the subsequent PwC report set out the overall site inspection outcomes. The initial 51 sites visited by the end of August 2016 were categorised as follows:
- 23% of the installations inspected showed participants to be generating heat for an eligible purpose but not one which met the original policy intentions of the scheme;
 - 13.5% of the installations inspected showed participants to be generating heat for an eligible purpose but using heat in a way that was not efficient;
 - 7.9% of the installations inspected showed participants to be generating heat which might be for an ineligible purpose and, therefore, one which might be in breach of the scheme.
- 45.54 The corresponding percentages for the installations at the 29 site inspections completed at the beginning of September were 47.9%, 6.5% and 5.3%.²³⁴² After the results of these inspections became apparent, Ofgem’s then Managing Director, Mr Poulton, expressed his concern internally to Dr Ward that PwC had found things Ofgem “didn’t know about on site and in our activities.”²³⁴³
- 45.55 In accordance with a subsequent commitment made by then DfE Minister Hamilton to carry out a programme of 100% inspections, DfE contracted directly with Ricardo in August 2017. After the introduction of this enhanced audit approach by DfE, the NIAO Report on the review of DfE Accounts for 2018-19 stated that:

2340 DFE-340867 to DFE-340868

2341 DFE-342097

2342 DFE-05571

2343 OFG-43090

“Of the 231 site visits that had been completed, the Department has told me that it is working its way through its assessment of them and that this assessment can take several months. At this stage its experience has been that around 80 per cent of cases it looks at have potentially serious compliance issues, mainly in relation to past over production of heat. Of these the Department expects that it will be able to resolve most cases through discussion and other actions short of revocation although it estimates that around 10 per cent will enter the Department’s revocation process with potential clawback of grant already paid.”²³⁴⁴

Findings

235. Having recognised, in its December 2011 Feasibility Study, the need to undertake a separate risk assessment to determine the audit strategy most suited to the NI RHI scheme, Ofgem should have carried out an area specific assessment of what the auditing requirements were for the NI RHI scheme in order to meet the level of confidence it considered was necessary to ensure it was achieving an acceptable level of error/waste on the scheme. That assessment should have taken into account the differences between the NI RHI scheme and the GB RHI scheme.
236. Not having carried out an individual assessment, Ofgem should have properly, and in writing, explained to DETI the approach it was taking to the auditing of applications on the NI RHI scheme, on what the approach was based, and what its limitations and weaknesses were. DETI would then have at least been informed of the limited nature of the auditing being carried out.
237. Ofgem should have provided DETI with a copy of the RHI Audit Strategy that applied to the NI RHI scheme from or before the commencement of the NI RHI scheme.
238. Ofgem should have provided DETI with a copy of the November 2013 audit themes presentation Ofgem received from Ricardo/AEA. This should have been provided to DETI shortly after the presentation was delivered to Ofgem. This presentation alone, from a time when there was only a small number of accreditations on the NI RHI scheme, would have alerted DETI to the extent of potential abuse that could occur on the scheme, in effect confirming some of the concerns expressed in the Ofgem November 2011 legal review. The Inquiry notes that the Ricardo/AEA presentation went as far as making recommendations as to solutions for the problems it encountered.
239. Ofgem should have provided DETI with copies of the audit reports from the inspections carried on the NI RHI scheme, at least as soon as each report was finalised.
240. Ofgem should also have provided DETI with any relevant findings and themes that emerged from audits conducted on the GB RHI scheme, and which could have a bearing on the operation of the NI RHI scheme.
241. It was a major failing that Ofgem did not provide DETI with copies of the audits it did carry out in Northern Ireland or with relevant findings from audits in GB.
242. Ofgem set the sample size for audits in the NI RHI scheme by reference to the 3% contribution it was assumed DETI would make to Ofgem in respect of the total cost of both the GB and NI RHI Schemes. Even if the number of audits of NI RHI installations in any year had reached 7.5% of the number of applications in that year (7.5% being Ofgem's intended sample size for the GB RHI scheme, which was indirectly relevant to Northern Ireland because of the assumption that NI RHI applications would constitute approximately 3% of GB RHI applications), it is doubtful whether that would have been sufficient to provide statistically significant results. In any event, Ofgem never audited 7.5% of NI RHI applications and in this regard Dr Ward accepted that the audit figures were as follows: 4.2% of applications in 2013-14, 2.8% in 2014-15 and 0.9% in 2015-16.²³⁴⁵ Ofgem should have been clearer with DETI about the differences

between the approach it adopted to audits in GB and the approach it adopted in Northern Ireland. Whilst the Inquiry recognises that on occasions Ofgem did indicate to DETI that further audits could be carried out if more money was available, Ofgem did not go on to explain to DETI why it might have been advisable to increase the number of audits or consider moving to a sampling method similar to that used in GB.

243. The Inquiry also notes that in order to understand properly the difficulties with RHI-supported installations and manage the scheme on an ongoing basis, in addition to Ofgem's audits, DfE have subsequently had to employ third party contractors to carry out an additional independent inspection programme.