

Chapter 47 – Other factors influencing Ofgem’s approach to the NI RHI

47.1 Although the role E-Serve was to carry out for Ofgem was not a regulatory activity and, in any case, Ofgem did not have a regulatory function in Northern Ireland, it appeared to the Inquiry that E-Serve acted according to the practices and culture of a regulator. This played out in a number of ways which adversely impacted on the relationship with DETI and which are summarised and analysed in this chapter.

E-Serve’s expansion strategy

47.2 DECC’s Delivery Review in 2010-11 had confirmed that E-Serve, the service delivery arm of Ofgem, was to remain as part of Ofgem under the governance of the Gas and Electricity Market Authority (GEMA). E-Serve’s Managing Director at that time, Paul McIntyre, was considering the potential impacts and opportunities from this and, in a paper for the July 2011 Board meeting, sought guidance from the GEMA Board on expansion options that would allow E-Serve to bid for new work, including from Departments other than DECC.²³⁸⁹ In a separate presentation Ofgem indicated that among the potential new areas for work under consideration was the Northern Ireland Renewable Heat Incentive.²³⁹⁰

47.3 The paper was considered by the GEMA Board at its July 2011 meeting and the Board agreed that a set of criteria should be established to govern its choices in expanding E-Serve’s role.²³⁹¹ The paper to the Board had set out the need for independence in exercising any statutory functions it administered²³⁹² and this became one of the evaluation criteria adopted, e.g. when specifically considering the administration of the NI RHI scheme.²³⁹³

Independence

47.4 The Inquiry heard evidence from a number of witnesses that raised a question of whether, and how, Ofgem’s insistence on ‘independence’ adversely impacted on its attitude to DETI and the carrying out of its functions in the NI RHI scheme.

47.5 With regard to the development of the relationship between DETI and Ofgem in summer 2012, Ofgem’s senior lawyer, Ruth Lancaster, raised serious concerns in regard to the relationship with DETI:

“...about importing services agreement terminology into the agreement lest it compromise the Authority’s actual and perceived independence.”²³⁹⁴

47.6 This was repeated in an email from another Ofgem lawyer on 17 July 2012:

“The decision to prepare a non-legally binding form of the administration arrangements arose from Ruth Lancaster’s concern that the administration arrangements should avoid contractual language lest the agreements be construed

2389 OFG-215097 to OFG-215103

2390 OFG-215105 to OFG-215124

2391 OFG-215130

2392 OFG-215103

2393 OFG-17373

2394 OFG-205568

as a private law Administration Services Agreement...and compromise the Authority’s independence.”²³⁹⁵

47.7 This concern about independence was not limited to interactions with DETI. In the same 17 July 2012 email it is stated with regard to service standards that:

“DECC’s advances were rejected by the Authority on the basis that such performance setting would compromise the Authority’s independence.”

47.8 In August 2012 Mr Cook, the then Managing Director of E-Serve, sought the views of the “independence team” of senior Ofgem managers on “independence work”.²³⁹⁶ This was part of consideration of a draft E-Serve paper on independence (in respect of its relationship with DECC), which appears to have been submitted in final form to the GEMA Board in December 2012.²³⁹⁷ On one of the key topics, KPIs (Key Performance Indicators), Mr Cook stated his belief in an email of 15 August 2012 that E-Serve should:

“...be willing to embrace performance measures...so long as we lead the development of the KPIs (and these are not imposed upon us)...these should not be in any MOU (Memorandum of Understanding), because they would be ‘cast in stone’ and imply a greater role for DECC than is appropriate.”²³⁹⁸

47.9 Although it was not written specifically with regard to DETI, this August 2012 email showed the background to some of the difficulties that emerged during 2012 when Ofgem and DETI were trying to agree the form and nature of their relationship in respect of the NI RHI scheme. This can be seen first in the letter sent by Bob Hull, then Ofgem Commercial Managing Director, to Ms Hepper on 31 October 2012, enclosing a copy of the draft Arrangements, in which he stated:

“Within the framework for independence set out in our statutory duties...we have set out our proposed internal performance measures and targets in the attached document.”²³⁹⁹

47.10 A similar point was made in a further Ofgem letter sent to DETI by Mr Hull in December 2012 regarding the Arrangements for the NI RHI scheme:

“In respect of KPIs I know that Matthew has highlighted that there is a legal requirement on us to operate independently of Government. Our duty is to be accountable to the public and as such we consult publicly on KPIs through our Corporate Plan process and report on our performance in our annual report.”²⁴⁰⁰

47.11 Thus Ofgem made it clear to DETI that these measures would be open to public consultation and that, as with other stakeholders, DETI could respond to the consultation process. The Inquiry notes that on this issue DETI effectively had been relegated to being a mere stakeholder in its own scheme for which it was providing the funding.

2395 OFG-205601

2396 OFG-215302

2397 OFG-215426

2398 OFG-215302

2399 OFG-81442 to OFG-81443

2400 WIT-16189

- 47.12 In its closing submission Ofgem emphasised that, ultimately, it cannot be dictated to in the exercise of its functions where its legal interpretations differ from those of DETI and that this had led to revised Arrangements under which DETI was able to give notice that it wished to exercise any of the functions conferred on Ofgem, in particular with regard to inspection and enforcement.²⁴⁰¹
- 47.13 Mr Harnack of Ofgem told the Inquiry that the need for independence may have been a factor in why the joint project board with DETI was not set up. Whether or not this was correct, the Inquiry considers that for a senior manager in Ofgem to even countenance this, in the context of acting as a scheme administrator and not as a regulator, was a reflection of the culture within Ofgem around the question of independence.
- 47.14 Ms Hepper from DETI referred to this in her oral evidence:
- “Ofgem held the view that they should not be in a position of ‘reporting’ on performance to another government body.”²⁴⁰²
- “...there was this overarching issue of independence which they did guard quite jealously.”²⁴⁰³
- 47.15 These examples illustrate a lack of consideration being given by Ofgem to the fact that DETI was only seeking an organisation to carry out non-regulatory administration activities which could have been done by any properly experienced commercial entity. Moreover, Ofgem was not the statutory regulator in Northern Ireland.

Attitude towards DETI

- 47.16 The Inquiry saw some evidence that Ofgem officials were dismissive of DETI and that DETI’s requirements were not considered important. Looking back at the experience of developing the Arrangements in February 2013, Mr Harnack referred to DETI as “such small fry ... not worth the hassle”, although he explained in oral evidence this reference was to the low take-up in NI.²⁴⁰⁴
- 47.17 According to an internal Ofgem email from Richard Kayan relating to a meeting on 1 August 2012, the Environmental Programme Board minutes of a month earlier had classified the NI RHI scheme as “relatively low priority”.²⁴⁰⁵
- 47.18 The Ofgem E-Serve Senior Management Team (SMT) did not categorise the NI RHI scheme as a major project so (from January 2012) there was no need for the Senior Responsible Officer (SRO) of the project to report to the SMT, only for the project manager to comment to the Operations Committee. On this basis Mr Harnack decided not to review the NI RHI scheme because it was not going to SMT.²⁴⁰⁶ The Inquiry notes that the GB RHI scheme was classified as a major project in Mr Harnack’s area of responsibility.

2401 SUB-01138

2402 TRA-05246

2403 TRA-05249

2404 OFG-12531

2405 OFG-126516

2406 OFG-03076 to OFG-03077

- 47.19 In August 2012 Paul Heigl, one of the managers with responsibility for the NI RHI scheme, sent an email to colleagues asking:
- “...which reports they would **not** like to offer to NI to save on time and resources... but enough information so that ad hoc requests don’t become restrictive.”²⁴⁰⁷
- 47.20 In 2012 the Chair of the GEMA Board expressed doubts about whether E Serve should support the NI RHI scheme. In response Mr Cook, the Managing Director at the time, expressed his view that the NI RHI scheme was a small project and unlikely to add significantly to their workload or the problems they were experiencing.²⁴⁰⁸
- 47.21 As discussed in other chapters of this Report, this attitude was then reflected in practice where DETI, if at all, was considered at best as an afterthought when it came to circulating documents that contained useful and even essential information (e.g. the Fraud Prevention Strategy and audit reports). The Inquiry saw documents which referred only to the requirements of DECC and the need to inform DECC about matters. A clear indication of the divergent approach to communications from Ofgem to DECC and DETI is given in the summary analysis of communications produced by the Inquiry and utilised during its oral hearings.²⁴⁰⁹
- 47.22 When asked about why DETI was not considered or included, Ofgem witnesses²⁴¹⁰ stated that (apart from where there had been data protection concerns) there was no good reason for DETI not to receive the documents or for DETI not to be considered in important documents, such as the Fraud Prevention Strategy (discussed later in this Report).
- 47.23 Dr Ward confirmed to the Inquiry in oral evidence that DETI had not been informed about or provided with a copy of the AECOM report and the discussion about the definition of ‘heating system’ (a subject covered later in this Report). When asked by Inquiry Counsel whether DETI should have been provided with a copy of the report, he said “I think that would’ve been a very reasonable course of action to take”, adding that the report had been produced some months prior to the NI RHI scheme coming into being.²⁴¹¹ At another point in his oral evidence Dr Ward, when asked about the failure to furnish a copy of the AECOM report to DETI, said:
- “I wasn’t responsible for the relationship with DETI at that time. My reading, though, is that this fell into the, rightly or wrongly, fell into the category of documents that Ofgem was using to inform its own approach, and there was no wider discussion or engagement from DETI on the details of the scheme.”²⁴¹²
- 47.24 He agreed that the report was an example of material which would currently be routinely passed to DETI and that he could not see any “clear reason” why that had not occurred.²⁴¹³
- 47.25 Mr John confirmed that the Ofgem Fraud Prevention Strategy, with its accompanying risk registers, which had been in existence when he became head of the Ofgem RHI team, had not been provided to DETI. He was unable to think of any good reason why DETI should not have been supplied with detail of the Fraud Prevention Strategy until it was annexed to the NI RHI Phase 2 Feasibility Study in July 2015.²⁴¹⁴

2407 OFG-04628

2408 OFG-03402

2409 INQ-100980 to INQ-100989

2410 TRA-08959 to TRA-08960; TRA-10530 to TRA-10531

2411 TRA-09078 to TRA-09079

2412 TRA-10530

2413 TRA-10530 to TRA-10531

2414 TRA-08959 to TRA-08960

47.26 As discussed in other chapters of this Report, there has been evidence of a lack of clarity and understanding of the allocation of roles and responsibilities between Ofgem and DETI. Ms Hepper was expecting Ofgem to provide a service to DETI, and her successor, Mr Mills, was led to believe when he took over the role that, because of Ofgem’s involvement, the scheme would effectively run itself. He accepted that, in terms of administration, DETI relied on Ofgem, stating:

“In terms of administration, I think there’s an assertion in the DFE statement that we relied on Ofgem too much on things like monitoring, and that is, I think, that’s a fair criticism. We had experienced administrator [sic] who ran both the domestic and the non-domestic schemes in England, so we relied on that....We needed 20 people, at least, working on this area, not two.”²⁴¹⁵

47.27 Ofgem submitted to the Inquiry in its closing submission that:

- Ofgem found DETI a less engaged partner when compared to DECC and mistakenly thought that DETI officials were in regular contact with DECC.²⁴¹⁶
- Ofgem did not consider whether DETI was sufficiently competent and resourced to manage its role in the scheme and was unaware of the lack of resource, knowledge and understanding amongst DETI officials.²⁴¹⁷ However the Inquiry notes the internal Ofgem review dated 6 February 2013 in which it was stated at paragraph 5.8: “However, the team also noted that they felt at times that the DETI team was very small for the size of the project and that they were inexperienced.”²⁴¹⁸
- Ofgem assumed without carrying out any checks that DETI had the levels of governance and policy understanding needed.²⁴¹⁹

47.28 The Inquiry was told in November 2018 that Ofgem had, presumably arising from its experience with the NI RHI scheme, decided to carry out due diligence checks on the ability of a partner to govern, policy-manage or resource future schemes.²⁴²⁰ Ofgem had not carried out any due diligence checks to ascertain whether DETI was a competent Government Department for the purpose of designing and implementing the NI RHI scheme. It had only assumed that to be the case.

47.29 In Ofgem’s closing submission it said that: “Upon arrival at Ofgem, Dr Nolan noted that there [sic] work of E-Serve had expanded significantly, but was less on his ‘radar’ than the regulatory functions of Ofgem.”²⁴²¹

Budget issues within Ofgem in respect of administering the NI RHI scheme

47.30 The Inquiry saw evidence that a lack of available budget and/or a concern to avoid GB consumers having to cross-subsidise activity in NI led to tension within Ofgem, and between Ofgem and DETI, and to Ofgem not carrying out some work or delaying it.

2415 TRA-10999

2416 SUB-01099 at 357

2417 SUB-01008 at 14

2418 OFG-83204

2419 SUB-01008 at 15

2420 SUB-01008 at 16

2421 SUB-01143

- 47.31 In January 2012, Faye Nicholls the Ofgem lawyer who had authored the November 2011 Legal Review, warned colleagues in the Ofgem policy team that budget constraints would continue to impinge on the extent of legal support that they would receive on the GB and NI RHI schemes. She went on to point out that the Ofgem legal team might not be able to address some matters due to resource constraints and that management of, and decision-making in relation to, the resulting legal risks rested with the policy team.²⁴²²
- 47.32 In October 2012 there were internal discussions in Ofgem as to whether the allocation proposed for the legal budget was insufficient. Ruth Lancaster, a senior lawyer in Ofgem, made it very clear to Keith Avis, the NI RHI project manager at the time, that limiting the budget was a decision that he made at his own and Ofgem’s risk. She made clear that there was no money left beyond October.²⁴²³ Also in October 2012, Bob Hull, then Ofgem Managing Director, refused to sign off the Arrangements to formally commence Ofgem administering the NI RHI scheme, which was about to go live, following representations from Ofgem Legal.
- 47.33 As discussed earlier in this chapter, the approach to the number of audits was restricted by the budget to such a low level that meaningful or statistically significant conclusions could not be drawn about what was happening with the RHI scheme in Northern Ireland.

Value for money

- 47.34 As a Government body with both regulatory and administrative functions, the Inquiry considers that Ofgem would have been familiar with the obligation on the part of Government Departments to ensure value for money with regard to the expenditure of public funds. In such circumstances, having regard to their relationship, Ofgem should have drawn DETI’s attention to potential failures to achieve value for money of which it was aware. The Inquiry notes the following:
- (i) When DETI notified Ofgem that they intended to mirror the GB RHI scheme apart from the tariffs, Marcus Porter of Ofgem Legal raised the concern that the known deficiencies in the regulations could lead to legal and reputational risk for Ofgem²⁴²⁴ – no mention was made of the potential costs and failure to achieve value for money.
 - (ii) In the Ofgem RHI fraud prevention risk registers there were further examples where the legal or reputational challenge to Ofgem was the only, or the top, risk identified. Value for money was mentioned far less frequently.
 - (iii) Ofgem adopted an interpretation of the regulations which had the consequence of permitted gaming and led to significantly higher costs than were envisaged in the original policy intent (dealt with later in this Report). Ofgem did not inform DETI that the approach it was taking would have, or was having, that effect.
 - (iv) With regard to the issues raised by the application to the NI RHI scheme of Stephen Brimstone (dealt with later in this Report) Ofgem staff described their “nagging concerns” that the approach being taken by Ofgem may not be in the interest of the public purse²⁴²⁵ and that: “there is a difference between slavishly following the rules and doing the right thing by the public purse.”²⁴²⁶

2422 OFG-205431

2423 OFG-22783

2424 OFG-205456

2425 OFG-200296 to OFG-200297

2426 OFG-217279

- (v) One of Mr John’s initial reactions to hearing about the problems with the NI RHI scheme was to worry about whether Ofgem would get paid,²⁴²⁷ not about the waste of public money.

47.35 Dr Nolan stated in oral evidence that Ofgem makes decisions on accreditation on a statutory rather than on a value for money basis and suggested to counter this that value for money should itself be put on a statutory basis if Ofgem were to take it into equal consideration.²⁴²⁸ The Inquiry notes in contrast that in public documents Ofgem has stated “the value for money issue...is absolutely foremost in our thoughts”²⁴²⁹ and that “We work to promote value for money...”²⁴³⁰

2427 OFG-61743

2428 TRA-16436

2429 TRA-16472

2430 WIT-285275

Findings

249. The Inquiry finds that the relationship between DETI and Ofgem was adversely affected by Ofgem’s failure to distinguish sufficiently between its roles as regulator and administrator.
250. The Inquiry considers that the treatment of DETI fell well below the level of care and attention provided to DECC. This is evidenced by, among other things, the approach to documentation and communication, where DETI was considered, if at all, as an afterthought: full consideration was not given to identifying its distinctive needs, which could have included the different tariffs and counterfactual fuel; other differences between the GB and NI schemes which may have given rise to additional risks; and DETI’s resource and capability. The Inquiry recognises that the primary responsibility for ensuring that DETI was adequately resourced with officials who had relevant expertise lay upon the NI Executive.
251. The Inquiry notes that Ofgem in its closing submissions has said that it will, in future, clearly spell out at a senior level to its public sector partners where it is having to cut corners it would not wish to because of budgetary pressure.²⁴³¹ The Inquiry finds that this should always have been common practice.
252. The Inquiry finds that Ofgem did not have sufficient regard, overall, for the value for money of the NI RHI scheme.
253. Ofgem’s internal discussions about the tension between seeking to ensure value for money and what the legislation in fact required were not communicated to DETI as they should have been.

2431 SUB-01145

Communication

- 47.36 Throughout the evidence provided to the Inquiry the issue of poor communication between Ofgem and DETI was raised many times and, in the main, Ofgem has recognised its failings in this regard.
- 47.37 By way of example, the Inquiry refers to an article in the edition of *Farmer’s Weekly* for 29 May 2013 about a GB poultry farmer who installed 11 undersized boilers.²⁴³² The pellets cost 3.8p/kWh versus 5.5p/kWh when the sheds were heated by gas, bringing a saving of 2p/kWh, regardless of RHI payment. The farmer in question, when referring to the RHI subsidy that he also received, was quoted as saying: “When I get paid 8.6p/kWh I’m quids in.”²⁴³³
- 47.38 The article was seen and considered by Ofgem. It was included in an Ofgem ‘Difficult Decisions’ log with a note to confirm that planned site inspections would explore and elaborate on whether undersizing was occurring, and that DECC had been informed and had a submission with their Minister for consideration of the policy implications.²⁴³⁴
- 47.39 When asked about the article in oral evidence, Dr Nolan accepted that the tenor of such information should have been communicated to DETI as it reflected a risk identified in the November 2011 Legal Review, adding “I suppose I go back to the general point that Ofgem did not communicate issues in relation to gaming and they should have.”²⁴³⁵
- 47.40 The Inquiry agrees with the remarks of Dr Nolan on information sharing, when he observed in his written evidence to the Inquiry that:
- “In my opinion the open exchange of information, opinions, experience, intelligence and potential solutions as between Ofgem and the Government Departments for which it delivered schemes and programmes is essential for any or all of: the effective delivery of schemes and programmes, achieving best value for money, making the schemes and programmes more effective in meeting policy objectives and/or ensuring that they take account of all prevailing circumstances.”²⁴³⁶
- 47.41 Dr Nolan added that, from the evidence in the case of the NI RHI scheme, the level of information sharing between both Ofgem and DETI “**could have been better.**”²⁴³⁷ (the Inquiry’s emphasis)
- 47.42 The Inquiry also agrees with Ofgem lawyer, Mr Porter, who told the Inquiry (as previously noted):
- “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.”²⁴³⁸

2432 INQ-100759

2433 INQ-100762

2434 OFG-126980

2435 TRA-14901 to TRA-14902

2436 WIT-95269

2437 WIT-95269

2438 TRA-06349

- 47.43 The Inquiry heard evidence from Ms Clifton that DETI had to ask Ofgem for any information DETI believed it needed, and also Dr Ward’s position, summarised as Ofgem would communicate if prompted. That should not have been the case.
- 47.44 It was put to Dr Nolan that “there was a lot of introspection and internal sharing of information, but not a lot of it reaching people who could have done something with it in NI”.²⁴³⁹ The Inquiry accepts Dr Nolan’s response that Ofgem’s failures in communication are “sobering”.²⁴⁴⁰

2439 TRA-14943
2440 TRA-14943

Findings

254. Ofgem did not communicate effectively with DETI.
255. A better governance structure would have prompted Ofgem to communicate more frequently with DETI. Without appropriate governance arrangements in place, as was the case with DECC, there was little to bridge the risk of things falling through a policy/administration gap and leaving a “them and us” mentality.
256. Ofgem mistakenly believed that DETI was receiving more advice from DECC than was actually the case. However, that does not explain Ofgem’s own failure to properly communicate with DETI.
257. Ofgem had an obligation under clause 3.2(a) of the Arrangements to share with DETI the information DETI needed to enable it to carry out certain retained functions, in particular its statutory reporting function – it did not.
258. In all the circumstances where Ofgem held information relating to the NI RHI scheme that was not available to DETI, but nevertheless relevant to the NI RHI, Ofgem had a heightened responsibility to share such information. This was particularly so with regard to postcode data.
259. In accordance with the Arrangements and as a matter of principle, where a trend emerged that suggested the guidance or the regulations needed to be reconsidered, there was an onus on Ofgem to communicate this to DETI. For example, it failed to share important information when risks it had earlier warned about materialised in practice from GB as well as NI – in particular with regard to multiple boilers. It also failed to share audit findings about both the NI and GB schemes with DETI. Even audit reports specific to NI were not shared until after the scheme had closed.

Ofgem and Edward Fyfe

- 47.45 During the course of its work the Inquiry became aware of a serious allegation made against Ofgem by a former employee relating to Ofgem’s administration of the RHI schemes and the alleged destruction of relevant evidence. The Inquiry considered that the allegation should be investigated by it.
- 47.46 Edward Fyfe is a former employee of Ofgem, engaged primarily in work relating to the GB domestic RHI scheme, who initially came to the attention of the Inquiry through documents provided to the Inquiry by Sinn Féin on 9 May 2017. These documents included an email from Mr Fyfe to Sinn Féin dated 20 January 2017²⁴⁴¹ in which he stated that he felt there were “on-going moves to ‘cleanse and wipe clean all’ the damning evidence relating to Ofgem’s mismanagement of the RHI.”²⁴⁴²
- 47.47 Having become aware of Mr Fyfe and his allegations concerning Ofgem, the Inquiry took a number of steps, including the following:
- Serving a detailed Section 21 Notice on Mr Fyfe on 31 May 2017, (No. 249 of 2017),²⁴⁴³ to which he replied on 31 August 2017 with a witness statement.²⁴⁴⁴
 - Seeking from Mr Fyfe, ultimately through a further Section 21 Notice (No. 539 of 2017),²⁴⁴⁵ documentary evidence in support of his allegations, to some of which evidence he had referred in his 31 August witness statement.
 - Obtaining from Mr Fyfe, on 13 February 2018, various documents. These related primarily to the GB domestic RHI scheme²⁴⁴⁶ but included an extract from an email from Mr Fyfe to Public Concern at Work (now known, and hereinafter referred to as, ‘Protect’) dated 3 February 2017²⁴⁴⁷ in which he claimed that Ofgem employees were “wiping clean and sanitising information ahead of the meeting on NI on 24/02/2017.”
 - Persistently seeking from Mr Fyfe, from August 2018 onwards, a full copy of his email to Protect. To date, this has not been provided.
 - Seeking from Protect, on 5 March 2019, a copy of the said email. This request was declined on 20 May 2019 on the ground that Protect’s ‘advice line’ is subject to legal advice privilege.
 - Seeking, during December 2018 and January 2019, detailed responses to Mr Fyfe’s allegations from the following other Ofgem employees:
 - o Edmund Ward (WIT-280863-280908);
 - o Chris Poulton (WIT-282970-282984);
 - o Gareth John (WIT-284013-284077);
 - o Teri Clifton (WIT-285306-286325);

2441 POL-10095 to POL-10097; WIT-99018 to WIT-99020

2442 WIT-99018

2443 WIT-99001 to WIT-99007

2444 WIT-99008 to WIT-99020

2445 IND-79988 to IND-79999

2446 IND-80000 to IND-80060

2447 IND-80033

- o Alison Smith (WIT-286501-286539).

In summary, each of the above persons provided detailed witness statements in which they robustly denied Mr Fyfe’s allegations and provided detailed responses to the issues raised in his witness statement.

- Offering Mr Fyfe several opportunities to consider, and respond to, the statements from his five former colleagues. These offers took into account Mr Fyfe’s personal difficulties and included the following:
 - o Repeated offers to send him copies of all of the statements, none of which were accepted.
 - o An offer to meet with the Inquiry Solicitor so that he could receive a verbal précis of the Ofgem responses. Although Mr Fyfe accepted this offer, he twice failed (without any prior notice) to attend such meetings (14 and 20 March 2019).
 - o An offer to meet the cost of a lawyer in Scotland (where Mr Fyfe is based) being engaged to act on his behalf in order to consider the Ofgem responses, consult with Mr Fyfe regarding same, and to submit any further evidence he wished to submit in response. This offer, like the offers to send him the Ofgem statements, was not accepted.
 - Considering Mr Fyfe’s allegations when analysing the voluminous evidence provided by Ofgem to the Inquiry. In this particular regard the Inquiry notes that:
 - o It served 77 Section 21 Notices seeking witness statements and 50 Section 21 Notices seeking documents upon more than 50 Ofgem witnesses;
 - o Ofgem and its witnesses have provided the Inquiry with almost 200,000 pages of disclosure as well as almost 6,000 pages of witness statements;
 - o Nine Ofgem witnesses were called before the Inquiry to give oral evidence across approximately 12 hearing days.
- 47.48 The Inquiry’s engagement with Mr Fyfe has been protracted and sometimes difficult, not least because of personal difficulties experienced by him. In response to these difficulties the Inquiry has made several adjustments to accommodate Mr Fyfe including, as mentioned above, the offer of face-to-face meetings with the Inquiry Solicitor and the offer of limited legal representation at the expense of the Inquiry.
- 47.49 The Inquiry’s engagement with Mr Fyfe has also been hampered by reason of his request, expressed repeatedly from 16 October 2018 onwards, that the Inquiry delete all documents provided by him. The Inquiry refused to accede to this request, leading to a formal complaint being made by Mr Fyfe on 17 April 2019 which, following full consideration of the matter, was rejected by the Inquiry Chairman on 15 May 2019.

Findings

- 260. Ultimately, having taken all of the steps set out above and, in particular, having considered the evidence of Mr Fyfe, Dr Ward, Mr Poulton, Mr John, Ms Clifton and Ms Smith, as well as the manner in which Ofgem has engaged with the Inquiry providing, as it has done, voluminous documentary evidence, some of which is unhelpful to Ofgem, the Inquiry does not accept that Mr Fyfe’s claim that Ofgem was involved in the destruction or withholding of relevant material is supported by the evidence.**