

**From:** [Wightman, Stuart](#)  
**To:** [McCormick, Andrew \(DFE\)](#)  
**Cc:** [McCoy, Laura](#); [Stewart, Chris \(DFE\)](#); [Marten, Lucy](#); [Hughes, Seamus](#); [McCann, Brendan](#); [Woods, Michael \(DFE\)](#)  
**Subject:** FW: Outstanding Information - NI RHI [OFFICIAL ]  
**Date:** 18 October 2016 12:38:04  
**Attachments:** [image001.png](#)  
[image002.gif](#)  
[Category 4 PwC cases - summary of Ofgem Actions.xls](#)  
[Briefing Note for Andrew \(181016\).docx](#)

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Andrew

I attach a list of discussion points for your telephone call with Chris Poulton. One of the key issues is Ofgem's proposed handling of the Category 4 cases (attached). It is disappointing to see that in five of the cases, Ofgem are not expected to have payment holds put in place. Our initial view is that that the PWC findings alone should be enough to place a hold on payments for all the Category 4 cases unless Ofgem has very strong grounds not to do so. We're seeking legal advice around this.

In terms of logistics for your call, we understand that Chris Poulton should be available today. Please let me know your availability today and tomorrow and we can arrange the call.

Happy to discuss.

Thanks, Stuart

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**From:** Edmund Ward  
**Sent:** 14 October 2016 15:49  
**To:** Wightman, Stuart  
**Cc:** Chris Poulton; Gareth John; Stewart, Chris (DFE); McCann, Brendan; Teri Clifton; Jane Pierce  
**Subject:** RE: Outstanding Information - NI RHI [OFFICIAL ]

Stuart

Thanks for your email. As you say, we have been in daily dialogue over the last few weeks on a number of topics, but thanks for flagging via email your current priorities. You acknowledged when we spoke briefly on Wednesday that we are currently providing a level of engagement significantly above our overall resourcing profile, but we confirmed that we would continue to support in this regard and that we're happy to continue to go over and above to ensure that these matters are progressed as a priority.

I've responded in detail below but you'll note that we are on track to provide the further detailed summaries of category 4 cases (and the immediate actions we understand are appropriate in this regard in line with regulations), and notes flagging possible areas where you may wish to carefully consider changes to DfE guidance, later today [post-email note – apologies, as per detail below this should have referred to Monday, not Friday].

### Category 4 reports

For clarity, we only received the Category 4 reports on 5 October, and as mentioned in our meeting in Belfast on 6 October and in our follow-up email update on 11 October, there are a

number of reports where there is insufficient clarity to put payments on hold. For example, some key findings are caveated such as being described as ‘appears *unlikely*’, ‘not used *during the audit*’, ‘*probably* a commercial space’. We are still expecting to provide a summary of all Category 4 cases later today, so we can confirm that this is on track as per your email below.

We will of course support any instruction the Department may wish to make regarding payments to installations under the scheme, but we would suggest this is discussed (we are happy to prioritise this) following your considerations so that we can clarify how this would be implemented in practice, and to reflect any impacts this might have on our administration in line with Administrative Arrangements currently in place.

## **Category 2 and 3 reports**

I received the detailed category 2 and 3 reports on 12 October 2016, and we are preparing a view on these. However, as per our agreed prioritisation we are focusing on providing an update on category 4 reports today, and I can confirm we will provide an update on Category 2 and 3 reports by Wednesday of next week. Please advise if you would like us to prepare anything in advance of that. However, we do need to reiterate as per previous dialogue and correspondence that while there are certainly a number of areas where it may benefit us to discuss next steps in line with the Departments view, given the nature of the reports and the issues identified it seems at this stage that there will be many sites where it would not be appropriate for us to take actions involving holding payments until, at the least, we had contacted participants to confirm information.

## **Revised guidelines**

To be clear, we have not agreed to provide “revised guidance” – as you are aware, while we are happy to support and engage on this, Guidance is published by DfE. We did agree to highlight areas of the guidance which could be potentially strengthened ( e.g. on defining commercial use and proportion of non dom usage in a single building) – subject to legal input on both sides. There was originally no deadline on this but we will provide an initial overview of some potential areas by COP Monday.

## **Arrangements and information**

We note we sent through revised arrangements and provided suggested areas for us to discuss, before receiving this email yesterday. We have attached our current governance schedule highlighting methods of communication and governance that are already in place. We have previously discussed the draft Terms of Reference for the monthly Board, and expect these to be finalised shortly.

As you will see, there are a number of KPI measures already in place which are reported through the Board pack and we would welcome a conversation, in line with the admin arrangements, as to any other key measures you feel are appropriate. We are intending to include this information as part of a supplementary document to the Administrative Arrangements which sets out the practical engagement and deliverables between the two parties.

I’m conscious we’ve had a number of emails from DfE over the last 24 hours and we will respond

separately on these for clarity.

Regards

Edmund

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**From:** Wightman, Stuart [<mailto:Stuart.Wightman@economy-ni.gov.uk>]  
**Sent:** 13 October 2016 18:07  
**To:** Edmund Ward  
**Cc:** Chris Poulton; Gareth John; Stewart, Chris (DFE); McCann, Brendan  
**Subject:** Outstanding Information - NI RHI

Edmund

### **Outstanding information from Ofgem**

There are now several pieces of work which have been requested from Ofgem over the past couple of weeks that are still outstanding. You have agreed to provide this information several days ago, but despite our follow up, these remain unresolved. I realise we have all been working on briefing for the PAC, etc and appreciate everyone's efforts in this regard. However, there are two crucial items outstanding which were requested from you – most recently at our meeting last Thursday (6 October).

#### **(i) Ofgem Response to PWC Site Visits**

Firstly, you agreed to provide the Department s with a **detailed breakdown** of what action Ofgem would be taking with the **Category 4 site inspections**. To date, you have provided lines for PAC confirming that payments might be withheld for some of these installations pending further investigation. We have yet to be provided with a table stating the action being taken against each Category 4 site. You agreed to provide this by cop on Friday. You have all the detailed Category 4 site inspection reports so there should be absolutely no reason why you can't provide this. Please confirm if further information is required.

In addition, you agreed to examine the Category 2 and 3 site inspection reports and advise what Ofgem will be doing with these – again you have not provided us with this, or a valid reason why this request has not been met.

Given the seriousness of the PWC findings the levels of expenditure involved, we must be in a position to confirm to PAC what we (DfE/Ofgem) are doing about the Category 2, 3 & 4 cases. I recognise that each case must be considered on their individual merits but it is disappointing that only some of the Category 4 Cases are considered serious enough for further investigation (and a hold placed on payments). Given the evidence and level of public expenditure involved, I have now been asked to secure an opinion from Senior Legal Counsel on the Department's ability to stop making payments to these installations.

#### **(ii) Revised Guidelines**

Secondly, you agreed to provide suggested **revised guidelines**. This information is necessary, not only to PAC preparation but also for vital strategic planning going forward including options on how best to reduce the multi-million pound block grant deficit. You have now agreed to provide this by cop tomorrow. We must come to an agreed position on what changes/improvements might be possible.

Clearly the PWC, NIAO and Internal Audit reports have highlighted a number of significant issues for the Department and Ofgem to address going forward. Once the ongoing PAC Hearings are over, it is imperative that we revise our current arrangements and look at how we can improve certain areas, including governance, KPIs, communication and inspections but obviously these discussion will be for another day.

I trust these matters will be dealt with as a matter of urgency and I look forward to hearing from you.

Regards

Stuart

**Stuart Wightman**

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**DISCUSSION POINTS FOR CALL WITH CHRIS POULTON (OFGEM)**

- I wish to thank your team for all their input to the PAC briefing over the past few weeks and for their cooperation with the PWC Investigation.
- In advance of next week's PAC, I thought it would be useful to discuss our preparation and summarise the outstanding issues that we need to discuss and agree before the hearing.
- There are clearly many lessons to be learned from the issues that have been highlighted by the ongoing NIAO, PAC and PWC Reviews. Our priority must now be on how we can work together to address these issues going forward.

**[ENFORCEMENT]**

- Firstly, Enforcement Action. We must reach an agreed position on eligibility and how the Category 2, 3 & 4 cases identified by PWC (and other cases identified through future inspections) will be managed / addressed.
- We must take as tough a line as possible with all these cases Category 2, 3 & 4 cases. Given the significance of the findings from the PWC work and the levels of public funds involved, I can confirm that we are exploring the legal position of DfE stopping payments to category 2, 3 & 4 cases. The Department's initial view is that the PWC findings alone should be enough to place a hold on payments for all the Category 4 cases until Ofgem are reassured of eligibility for each case.
- I was therefore surprised to see that Ofgem are not expecting to have payment holds put in place for 5 of the category 4 cases. It is not clear from the supporting narrative provided by Ofgem how the PWC concerns have been addressed in the 5 cases in question. Before next week's PAC, it is imperative that we reach an agreed position on how the Category 2, 3 & 4 cases will be handled.

**[AUDIT / INSPECTIONS]**

- We must also reach an agreed position on our future audit / inspection strategy. Given the significance of the issues raised through the NIAO Report and the PWC work, we will have to significantly increase the level of inspections. This could mean 100% inspections initially. It might therefore be appropriate for future inspections to be procured directly by DfE. I understand our teams have already discussed this as an option.

**[GOVERNANCE AND OVERSIGHT]**

- I understand that our teams have already discussed the need for improved governance and control arrangements and that DfE have already sat in on a new NI RHI Board.
- I have asked Stuart Wightman to work with Edmund Ward and his team to prepare a short paper on proposed Governance and Reporting arrangements including a new MOU, NI specific KPIs and formalised reporting structures (including a DfE Performance Review Board).

**[IMPROVED COMMUNICATIONS]**

- We also need to improve communication channels between our teams. This is clearly a two way process but we must ensure appropriate issues are escalated such as possible whistleblowing cases, etc. I would therefore be keen for a communication plan / strategy to be prepared an agreed.

**[NEXT STEPS]**

- I understand that we've provided Ofgem with a list of possible PAC questions to aid preparation. I recognise the time pressures on your team, but I would strongly recommend participating in one or more Mock Hearings. We can arrange Mock sessions for later this week and for next Tuesday.
- To aid our briefing to the PAC, I have asked Stuart to liaise with Edmund to prepare a list of agreed actions under the headings of Enforcement, Site Inspections, Governance & Oversight and Communications

Category 4 PwC cases - summary of Ofgem Actions - separate Excel Attachment