

**From:** [Archbold, Claire](#)  
**To:** [McCormick, Andrew \(DFE\)](#); [McMurray, Stephen](#)  
**Cc:** [McCann, Brendan](#); [Cousins, Heather](#); [Marten, Lucy](#); [Coyne, Terence](#); [Murphy, Shane](#); [Dukelow, Victor](#); [Montgomery, Paul](#); [McGinn, Paul](#); [Wimpress, Ian](#); [Attorney General](#)  
**Subject:** RE: URGENT Letter from the Renewable Heat Association Northern Ireland  
**Date:** 16 January 2017 11:30:24

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Colleagues

Here is a link to the case the letter refers to

<https://www.judiciary.gov.uk/wp-content/uploads/2015/04/decc-v-breyer-judgment.pdf>

You will see that the case is based on the legitimate expectation and A1P1 human rights argument which the AG has considered for us. It states that the rights of the applicants are engaged and breached, and at paras 88-100 the judgement makes the assessment of whether the balance reached between the public interest and the interests of the applicants is proportionate. It concludes that it is not.

While the facts of the two cases appear similar, you will see at these paragraphs a number of factual aspects of the DECC response which differentiate this case from ours. The messaging before the scheme had been congruent with the scheme promulgated, and had included assurances as to the longevity of the tariffs. There had been a widely publicised “cut off date” for the old tariffs of 1 April 2012, but the Department appears to have introduced the tariffs from a retrospective start date of 3 March, causing loss to the applicants. The economic case appears to be somewhat different to ours.

As I indicated yesterday, proportionality is a balancing of the facts in the individual case. You have carefully considered the rights of boiler owners and the public interest. You have taken advice on the legal issues and taken steps to mitigate the impact on boiler owners to what is reasonable and proportionate.

I have copied this note to the AG’s office for information. If, in due course, you would like further advice from him, let me know.

Best regards

Claire

Claire Archbold  
Deputy Departmental Solicitor

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M: Personal information redacted by the RHI Inquiry

E: [claire.archbold@dfpni.gov.uk](mailto:claire.archbold@dfpni.gov.uk)

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**From:** Archbold, Claire  
**Sent:** 15 January 2017 19:17  
**To:** McCormick, Andrew (DFE); McMurray, Stephen  
**Cc:** McCann, Brendan; Cousins, Heather; Marten, Lucy; Coyne, Terence; Murphy, Shane; Dukelow, Victor; Montgomery, Paul; McGinn, Paul  
**Subject:** RE: URGENT Letter from the Renewable Heat Association Northern Ireland

Can someone send this to me as a PDF – I can't open it. Thanks - C

Claire Archbold  
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**From:** McCormick, Andrew (DFE)  
**Sent:** 15 January 2017 13:25  
**To:** McMurray, Stephen  
**Cc:** McCann, Brendan; Cousins, Heather; Marten, Lucy; Coyne, Terence; Murphy, Shane; Dukelow, Victor; Montgomery, Paul; Archbold, Claire; McGinn, Paul  
**Subject:** Fw: URGENT Letter from the Renewable Heat Association Northern Ireland

Comments on the attached would be helpful. It ignores the one year applicability of the new Regs, and also the fact that so many are getting vastly inflated rates of return.

Will need to check we have lines on all the points raised.

Many thanks.

Sent from my BlackBerry 10 smartphone.

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**From:** Simon Hamilton <[simonhamiltonmla@the RHI Inquiry](mailto:simonhamiltonmla@the RHI Inquiry)>  
**Sent:** Sunday, 15 January 2017 13:06  
**To:** McCormick, Andrew (DFE)  
**Cc:** [johnrobinson@dup.org.uk](mailto:johnrobinson@dup.org.uk)  
**Subject:** Fwd: URGENT Letter from the Renewable Heat Association Northern Ireland

Sent from my iPhone

Begin forwarded message:

**From:** Terry Waugh <[Terry.Waugh@actionrenewables.co.uk](mailto:Terry.Waugh@actionrenewables.co.uk)>

**Date:** 15 January 2017 at 13:01:52 GMT

**To:** Michael Doran <[Michael.Doran@actionrenewables.co.uk](mailto:Michael.Doran@actionrenewables.co.uk)>

**Subject:** **URGENT Letter from the Renewable Heat Association Northern Ireland**

Dear MLA,

Please see attached letter from the Renewable Heat Association Northern Ireland.

If you wish to reply or ask any questions please **do not reply to this email**; replying to this email will copy in all the other participants who are 'BCC'd'. Instead, please email [terry.waugh@actionrenewables.co.uk](mailto:terry.waugh@actionrenewables.co.uk). If you do email you will not get a reply today.

Thank you!

Terry

**Terry Waugh BA(Hons) MBA**

Deputy Executive Director

00442890727760

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