

From: [McMurray, Stephen](#)
To: [Woods, Michael \(DFE\)](#)
Subject: FW: reply ltr to Robin Swann MLA re PAC Inquiry on RHI Scheme
Date: 18 January 2017 09:37:23
Attachments: [reply ltr to Robin Swann MLA re PAC Inquiry on RHI Scheme\(2\).DOCX](#)
[FW Dept of Justice documents relevant to Sunday World article dated 18 December 2016.msg](#)

For info

Stephen McMurray

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From: McCormick, Andrew (DFE)
Sent: 17 January 2017 15:18
To: Johnston, Iris
Cc: Coyne, Terence; McCann, Brendan; McMurray, Stephen; Marten, Lucy
Subject: FW: reply ltr to Robin Swann MLA re PAC Inquiry on RHI Scheme

Please print with attachments – this is 1 of 3 emails.

Many thanks.

From: Gregg, Phil [<mailto:Phil.Gregg@justice-ni.x.gsi.gov.uk>]
Sent: 17 January 2017 13:16
To: McCormick, Andrew (DFE)
Subject: FW: reply ltr to Robin Swann MLA re PAC Inquiry on RHI Scheme

Another attachment to letter to Andrew.

Phil

From: Gregg, Phil [<mailto:Phil.Gregg@justice-ni.x.gsi.gov.uk>]
Sent: 17 January 2017 12:09
To: pac.committee@niassembly.gov.uk
Subject: reply ltr to Robin Swann MLA re PAC Inquiry on RHI Scheme

Phil Gregg
PS/Nick Perry
Permanent Secretary's Office/Department of Justice
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This e-mail message has been scanned for Viruses and Content and cleared

FROM THE PERMANENT SECRETARY
Nick Perry

Robin Swann MLA
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By e-mail to: pac.committee@niassembly.gov.uk

17 January 2017

Dear Mr Swann

Thank you for your letter of 12 January. You sought information from this Department in relation to three specific areas; the response to each is set out in turn below.

- 1. “Please provide the committee with a copy of the correspondence referred to above where it is alleged the department was made aware of the “loophole” and its response to the applicant.”**

A copy of the documentation requested is attached. It begins with a letter (Attachment 1) from one of the directors of an engineering company to the then Justice Minister, David Ford. The company had been invited to tender in respect of the NI Community Safety College (NICSC) project but was unable to do so as the company’s system involved the use of wood pellets, whereas the NICSC design specified wood chips. In the letter, the company expressed a view that there were weaknesses in the overall design of the NICSC which would result in unnecessarily high costs. The heating plant proposed for the NICSC exceeded the size for eligibility for the Renewable Heat Incentive (RHI) scheme. The letter proposed instead installing multiple small boilers, thus qualifying for access to the scheme.

The correspondence was passed to the NICSC Programme Team for consideration. The Programme Director, from the Strategic Investment Board (SIB), replied (Annex A to Attachment 3) that deliberately splitting the heating load as proposed could be interpreted as a rather cynical attempt to circumvent the intent of the RHI scheme which

was to give priority to smaller installations. This was the potential “loophole” that the Department was apparently being invited to exploit.

The company director’s letter suggested that the running costs of the company’s proposed system would be less than the RHI income, thus yielding a profit. However, the Programme Director noted (Annex A to Attachment 3) that the company’s proposal would incur significant duplicate capital costs; he considered that the running cost calculations could not be accurate, noting that they ignored maintenance costs, and he expressed concern about the veracity of the calculation methodology. He contended that the proposed solution was less resilient than the then current design.

The Programme Director’s advice was reflected in the Minister’s reply to the company (Attachment 4), which stated that the Minister was content that the design had been through the due process of consultation and discussion, had been evaluated and approved by client parties and was both appropriate and met the criteria for installation. The Minister’s reply also noted that, given the technical nature of the correspondence, the company might wish to meet representatives of the Programme Board.

There was a further exchange of correspondence, copies of which are attached. While there is no further reference to any potential profit element of the RHI scheme, the Committee may wish to note in particular that, in an e-mail to the company dated 1 February 2013 (Attachment 8), the NICSC Programme’s procurement project manager advised that OFGEM (the regulator responsible for administering the RHI scheme in Northern Ireland) was particularly concerned about attempts to access the RHI scheme via system manipulation, using multiple boilers below the requisite threshold. The e-mail provided a link to the relevant documentation on the DETINI website.

2. Confirmation of who dealt with this in the department and at what staffing level within the department was this information shared.”

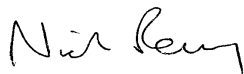
I can confirm that the correspondence was received in the Minister’s Office and passed to the Division responsible for the sponsorship of the NICSC project for processing. In terms of the staffing levels involved, this would have included staff at all grades up to

and including the relevant Director (Grade 3). There were two submissions to the Minister. The first (Attachment 3), was prepared by an Executive Officer and the second (Attachment 10), was prepared by the head of the sponsor branch (Grade 7). Both were cleared with the head of the sponsor Division (Grade 5). In line with normal practice for dealing with Ministerial correspondence, the submissions were circulated to all relevant staff, including colleagues in finance, the press office and the Special Adviser, at grades up to and including myself.

3. “Which other departments [were] made aware of this issue and if so, when.”

As noted above, the NICSC procurement project manager, having researched the issue, was satisfied that OFGEM, the regulator of the RHI scheme, was already aware of, and concerned about, the issue raised with us (i.e. the potential to seek to manipulate the RHI scheme by using smaller, multiple boilers) and referenced the guidance available on the DETI website at that time. For this reason, the Department did not consider it necessary to approach departments not directly involved in the NICSC project to make them aware of this correspondence. However the issue was considered by the NICSC Programme Board which included representatives of the two sponsoring Departments, Justice and Health, along with representatives of the Strategic Investment Board, the Centre for Procurement Excellence and the three Services who were a party to the project (the PSNI, NI Fire & Rescue Service and the NI Prison Service).

Yours sincerely



N P PERRY