

From: [Thomson, David](#)
To: [McCutcheon, Joanne](#)
Cc: [Johnston, Iris](#); [Hutchinson, Peter](#); [Moore, Stephen \(DETI\)](#)
Subject: RE: RHI Statutory Review
Date: 11 December 2013 15:44:11
Attachments: [image003.jpg](#)

Joanne

Thank you for your minute, which we subsequently discussed. It sets out the issues clearly.

For a very short period I was a director of the Carbon Trust, but stepped down, along with other Govt reps, when the company restructured and ceased to receive Govt grant aid from DECC. So I am very clear that the Carbon Trust itself is no longer a public sector body and under the control of Government. That seems to be an agreed position.

The more difficult issue surrounds the implications of the loans provided by Invest and their significance in the context of the phrase “provided by a public authority”.

The Carbon Trust is a legal entity in its own right and has the characteristics you set out in annex A. As I understand the situation, it is the Carbon Trust, as a legal entity, which provides the loans and the liability of a company which receives such a loan is to the Trust. What Invest, in turn appears to me to be doing, is providing finance to the Carbon Trust, to enable it, in turn, to assist companies. Therefore I think there is at least a question as to whether a loan from the Carbon Trust is “provided by a public authority”. I don’t think it is, although its ability to provide is facilitated by a public authority.

We also discussed the difference in the GB and NI position as regards grant and loan. The Carbon Trust loans are repayable and therefore, even if they were considered to be public money, the only benefit that a company is getting is the interest element. Interest rates are still currently relatively low and therefore the benefit to be gained from an interest free loan is useful but probably quite marginal. It seems perverse that the full amount of a loan would be disregarded when the “support” is only the interest differential.

Finally, we should look at the practicalities also and associated risks and what is most likely to facilitate the objectives of the RHI programme.

It’s not straightforward, but, on balance, I would be content to go along with Option 2 and, as you recommend, revoke the decision taken by Ofgem.

David Thomson

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From: McCutcheon, Joanne
Sent: 11 December 2013 11:09
To: Thomson, David
Cc: Johnston, Iris; Hutchinson, Peter; Moore, Stephen (DETI)
Subject: RHI Statutory Review

David

Please find attached, briefing on the RHI/Carbon Trust Loan issue. Under the RHI dispute resolution procedures, DETI is due to make a decision (or provide update) by this Friday.

Joanne

Joanne McCutcheon

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