

Dr Edmund Ward
Office of the General Counsel
OFGEM
10 South Colonnade
Canary Wharf
London, E14 4PU

By post and email: mark.mills@ofgem.gov.uk

4 July 2018

Dear Sir

Re: The Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme
Provision of a Section 21 Notice requiring the provision of evidence in the form of a written statement

I am writing to you in my capacity as Solicitor to the Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme (known as 'the RHI Inquiry') which has been set up under the Inquiries Act 2005 ('the Act').

I refer to your witness statement of 9 March 2018 and to the oral evidence provided by you to the Inquiry on each of 16 March, 11 May, and 7 June 2018.

As you are no doubt aware the RHI Inquiry continues with its investigations into the matters set out in its Terms of Reference. In this context, it would be of assistance to the Inquiry to have a further statement from addressing a number of specific issues arising out of your evidence to date.

In keeping with the approach we are taking with others, the RHI Inquiry is now issuing to you a further Statutory Notice (known as a 'Section 21 Notice') pursuant to its powers to compel the provision of evidence in the form of a written statement in relation to the matters falling within its Terms of Reference.

As was the case in respect of the previous Section 21 Notice served upon you, the Notice enclosed with this letter requires you to provide evidence to the RHI Inquiry Panel in the form of a written statement addressing the matters identified in the Schedule to the Notice. As the text of the Notice explains, you are required by law to comply with it.

It remains the position that the witness statement required by the enclosed Notice is likely (in common with others) to be published by the RHI Inquiry in due course. It should therefore ideally be written in a way which is as accessible as possible in terms of public understanding.

The aim of the enclosed Notice is to require you to provide all pertinent evidence within your knowledge regarding the issues raised in the Notice. In the event that there is a category of information in respect of which you have no evidence, please state this in your response. If it is your belief that another person can provide further or better evidence in respect of a particular issue, please identify that person whilst also doing your best to provide whatever relevant evidence you can in respect of that issue.

Receipt of this correspondence and its enclosures places you under a duty of confidentiality to the RHI Inquiry in respect of them. You may share the correspondence and the enclosed Notice with your legal representative(s), and with relevant employees, servants or agents of Ofgem but neither you nor they may show, communicate the contents of, or provide this correspondence or the Notice to any other person or organisation without the express permission of the RHI Inquiry. Any breach of this duty of confidentiality is actionable at the suit of the Inquiry Chairman.

You will, as before, find attached to the Section 21 Notice a Guidance Note explaining the nature of a Section 21 Notice and the procedures that the RHI Inquiry has adopted in relation to such a notice. In particular, you are asked to provide your evidence in the form of the template witness statement which is also enclosed with this correspondence.

Given the tight time-frame within which the RHI Inquiry must operate, the Chairman of the Inquiry would be grateful if you would comply with the requirements of the Section 21 Notice as soon as possible and, in any event, by the date set out for compliance in the Notice itself.

Finally, I would be grateful if you could acknowledge receipt of this correspondence and the enclosed notice by email to Patrick.Butler@rhiinquiry.org.

Please do not hesitate to contact me to discuss any matter arising.

Yours faithfully



Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE
[No 127 of 2018]

Your Witness Statement of 9 March 2018

1. In your first witness statement at WIT-114053, paragraph 35, you stated as follows:

In addition to the headline policy areas outlined above, I have seen flaws in missing some opportunities to take forward learnings from the GB RHI Scheme. For example, Ofgem raised in November 2011 a number of concerns with DETI, not only in relation to the absence of cost controls but also on other key areas such as the lack of appropriate mechanisms to protect against gaming (as discussed later in this statement in the section on multiple boilers). While a small number of these points

In respect of this part of your evidence, please address the following issues:

- a. Clarify when precisely in November 2011, through what Ofgem official(s), and through what document(s) Ofgem raised concerns about an absence of cost controls in the RHI Scheme;
- b. If and insofar as it is your evidence that such concerns were raised in the Ofgem 'Legal Review' (WIT-1237 to WIT-1264), please identify the precise part of the said Review that raises them.

Your Oral Evidence on 16 March 2018

2. The transcript for 16 March 2018 records the following exchanges:

TRA-6591 to 6592

21 Mr Lunny: But then to leave those documents and go back to the question I said I was

22 going to ask you about that particular risk that existed in the Northern Irish scheme because

23 of the absence of tiering — the particular risk of overcompensation. So even if you weren't
24 aware of the other risk existing — the tariff being higher than the marginal cost of
25 generating an extra unit of heat — you were aware that, without tiering, there's a risk that
1 people who have legitimate high heat loads will be overcompensated. Are you aware of
2 Ofgem doing anything (a) to alert DETI to that risk and (b) to take any precautions against it,
3 even if it's just monitoring load factors, paying particular attention to them?
4 **Dr Ward:** So, as I understand it now, that is something that had been raised during the
5 development phase, for example, with the Faye Nicholls's emails, which I think have come
6 before the Inquiry before, so I won't dwell on that.

TRA-6595 to 6596

The Chairman:

...

15 The other point that I want to raise with you — we're going to have a break now — is did I
16 pick you up right when you referred to the Nicholls document warning about
17 overcompensation? Is that what you were saying? You say you knew about it: this is the
18 November document.

19 **Dr Ward:** It's a document that said — that's not me saying I knew about it, but my
20 understanding is that that was one of the issues that was raised by the development team.

21 **The Chairman:** Overcompensation?

22 **Dr Ward:** Yes.

23 **The Chairman:** From excessive loads?

24 **Dr Ward:** That's my understanding.

25 **The Chairman:** And you think that was in that document?

1 Dr Ward: [Nods.]

In respect of this part of your evidence, please address the following issues:

- a. Clarify whether your evidence was, in summary, that documents passing from Faye Nicholls to DETI in or about November 2011 warned DETI about the risk of overcompensation arising because of the absence of tiered tariffs in the RHI Scheme;
- b. If that was your evidence, please identify (i) each such document and (ii) the passage(s) within each such document that warn DETI of the said risk;
- c. Without prejudice to the generality of the foregoing request, if it is your belief that the Ofgem 'Legal Review' (WIT-1237 to WIT-1264) warned of the said risk, please identify the precise part of the Review raised that warning.

Your Oral Evidence on 11 May 2018

3. At TRA-9012 to TRA-9014 you addressed the 'WARN4' issue and the "standard operating procedure" (TRA-9013 line 20) that was available to Ofgem employees in respect of that warning message and you agreed to provide the Bates reference for that document (TRA-9014 lines 2 and 3). Please now provide the Bates reference for each of the relevant standard operating procedure document and the part of said document that addresses the 'WARN4' issue.
4. On the same 'WARN4' topic, at TRA-9015, you stated, in terms, that the warning was based upon postcode rather than postal address and it was suggested, by Inquiry Counsel, that this may be an issue that you could check and confirm to the Inquiry. Please therefore confirm whether the trigger for the 'WARN4' warning was an application being for a postcode, rather than a postal address, at which there was already at least accredited installation.

5. At TRA-9075 to TRA-9076 your evidence related to 'gaming' of the RHI Scheme and its impact upon value for money. At lines 11 to 17 on TRA-9076 you suggested that Ofgem's practices in this regard, and in particular in respect of the priority afforded to value for money issues, had changed in respect of the RHI Scheme with the passage of time. In this regard:
 - a. Please provide details of the relevant changes (contrasting, if appropriate, current practice with past practice);
 - b. Please clarify the date when the changes occurred;
 - c. Please explain the reasons for the changes.
6. Some of your evidence in respect of the AECOM report of 2012 regarding, *inter alia*, the definition of a 'heating system' is contained at TRA-9080. Arising out of the exchange at TRA-9080 lines 5 to 16 (inclusive), please clarify:
 - a. Whether (and, if so, when and how) DECC was advised that Ofgem was engaging AECOM to consider, *inter alia*, the definition of a 'heating system';
 - b. Whether (and, if so, the first date on which) DECC was provided with a copy of the AECOM report addressing, *inter alia*, the definition of a 'heating system'.
7. Arising out of your evidence at TRA-9092 to TRA-9095 (inclusive) regarding (a) work done by Ofgem for DECC relating to 'gaming' of the RHI Scheme (for example, the 'multiple boilers' issue evidenced by the poultry farm example referenced at TRA-9092) and/or (b) communications with DECC about that issue (including, for example, those referenced by you at TRA-9092 line 22 to TRA-9093 line 7), please (i) identify and (ii) provide copies of each and every document evidencing, relating to or recording such work and such communications.
8. Arising out of your evidence at TRA-9105 to TRA-9106 please confirm whether dissertation paper prepared by Katy Read of Ofgem in respect of the 'gaming' issue

drew upon any examples, or evidence, of gaming under the Northern Ireland RHI Scheme and, if it did so, please provide details of this.

9. Clarify, in respect of the various documents attached to Katy Read's email of 6 January 2015 at WIT-114691, the following:

- a. What was done with those documents within Ofgem including, in particular, whether they were the subject of any discussion, analysis, further work, and/or communication with DECC or DETI;
- b. What work (if any) was done to quantify the impact of 'gaming' of the RHI Schemes;
- c. Which of the recipients of the 6 January 2015 email were DECC officials and which were Ofgem officials;
- d. Whether a meeting of the type referenced in 3rd paragraph from the end of the email took place and, if it did, provide full details of same (including details of when it occurred, who attended, what was discussed and/or agreed, and where any of this information is recorded in writing in any documents within the custody or control of Ofgem);
- e. Whether Ofgem was provided with copies of, or was provided with details of the outcome of, the "separate pieces of work going on in DECC in relation to gaming" and, if it was, provide details of same (including details of any relevant documents within the custody or control of Ofgem);

10. In Katy Reid's paper '*Gaming – Wasting Heat*' (beginning at WIT-114696) she considers Regulation 34(p) (the GB equivalent of Regulation 33(p) of the NI RHI Regulations) at pages WIT-114697 and WIT-114700, references legal advice received by Ofgem in respect of it, and comments upon the likely ineffectiveness of it as a tool for addressing Scheme 'gaming'. In this regard:

- a. Clarify when, and from whom, such legal advice was obtained (identifying any relevant document within Ofgem's custody or control);
- b. Clarify whether such legal advice was obtained in respect of the GB RHI Scheme or the NI RHI Scheme or both Schemes;
- c. Clarify whether this advice was communicated to each of DECC and DETI and, if it was communicated, please provide details of the relevant interaction with each department including when it was first communicated to each one, the official to whom it was communicated, each department's response, and any documents relevant to this issue;
- d. If it was not communicated to DECC and/or DETI, please explain the reasons for this.

Your Oral Evidence on 7 June 2018

11. In respect of your evidence at TRA-10468 to TRA-10473 and the email from Keith Avis to Joanne McCutcheon of 3 December 2012 at OFG-11206 to 11208, it appears that Mr Avis advised DETI that it would be appropriate for 3% of audits to be carried out on NI RHI installations and that the GB sample size was based on a monetary unit sampling approach. In respect of this:

- a. Clarify whether DETI was ever advised that the number of audits of NI RHI installations would not, either directly or indirectly, be based upon a monetary unit sampling approach (providing, if applicable, full details of when, by whom, to whom, and in what format such advice was given);
- b. Clarify whether there was, prior to 2016, ever any discussion between DETI and Ofgem about the adoption of a monetary unit sampling approach to NI RHI audits and/or any other approach that might produce statistically significant results (providing, if applicable, full details of when, between whom, and in what format such discussion occurred);

- c. If the answer to either or both of the previous questions is in the negative, then please provide an explanation why no such advice was given and/or no such discussion took place.

12. In your evidence at TRA-10537 to 10542 you covered a number of specific issues arising out of an audit which disclosed that an installation that was providing heat to a not wholly enclosed building had been wrongly accredited under the NI RHI Scheme. Arising out of this evidence, please address the following:

- a. Confirm whether (and, if so, when, through what officials, and through what documents) Ofgem advised DETI of its mistaken accreditation of the installation in question and of the reasons for its error;
- b. Confirm whether Ofgem performed a search, audit, analysis or other similar exercise to determine whether the same error had been made in respect of other accreditation applications and:
 - i. if such an exercise was performed, provide full details of it;
 - ii. if such an exercise was not performed, please explain this.

13. Arising out of your evidence at TRA-10550 to TRA-10556 (inclusive) concerning the email at OFG-113487, please address the following issues:

- a. (TRA-10551 lines 5 to 17; TRA-10552 lines 4 to 12) Identify when it was clarified by you, or by other Ofgem officials, that resources were not a reason for failing to act in response to a complaint of potentially fraudulent activity in respect of an installation (providing full details of the actions taken, with reference to any relevant documents within Ofgem's custody or control);
- b. Provide full details of any actions taken by you, or by other Ofgem officials, to address the other reasons for failing to act that were advanced in the email at OFG-113487 (i.e. the reasons other than resources / capacity),

whether by way of communications with the relevant staff, re-training, or otherwise;

- c. (TRA-10552 lines 13 to 17; TRA-10554 lines 16 to 18) Provide full details of any action that was in fact taken in respect of the complaint recorded in the email at OFG-113487 and, if no action was in fact taken, please explain this.

14. Arising out of your evidence at TRA-10567, lines 6 to 9, please confirm when the audit policy changed so that unannounced site visits could occur.

15. Arising out of your evidence at TRA-10614 to TRA-10616, and to the best of your knowledge, please address the following issues:

- a. Identify the organisation which provided advice to DfE and/or Ofgem regarding the number of site audits that should be completed in the 2017-2018 financial year in respect of NI RHI installations;
- b. Set out the number of site audits recommended by that organisation for the year 2017-2018;
- c. Set out the number of site audits actually performed in that year;
- d. Explain the reason for any difference between the number actually performed and the number recommended.

Miscellaneous

16. A document provided to the Inquiry by the Ulster Farmers' Union ('UFU') at COM-2008 to COM-2009 records a meeting in London between Ofgem officials and the UFU about, *inter alia*, the RHI Scheme on 4 December 2013. Other documents relevant to this meeting can be found at OFG-13894, OFG-24207 / 8, and OFG-15233. Please clarify:

- a. whether you were involved in this meeting;
- b. whether UFU were, in summary, exploring how they might influence policy in respect of renewable energy and whether lobbying Ofgem would be one means of doing so;
- c. what information about the RHI Scheme, beyond the fact that there was a large number of 99kW biomass boilers awaiting accreditation (COM-2008), was shared with UFU;
- d. whether there was any discussion about actual or likely uptake of the RHI Scheme (including, for example, its actual or likely uptake amongst the agricultural sector or aspects of it, such as poultry);
- e. whether any further meetings took place between Ofgem and UFU representatives regarding the RHI Scheme (providing full details of such meetings, if they occurred);
- f. whether DETI was advised of this or any other meeting between Ofgem and UFU including:
 - i. if it was so advised, full details of when, and through what officials, it was advised;
 - ii. if it was not so advised, the reasons for this.

17. Clarify whether Ofgem officials ever had meetings with any other person or body with an interest in the NI RHI Scheme (such as, for example, Moy Park or any group representing poultry or mushroom farmers) and, if it did do so, please provide full details of same.

18. In respect of the issue surrounding Carbon Trust loans that developed in respect of the NI RHI Scheme from in or about the autumn of 2013, the Inquiry has been provided with a number of handwritten notes prepared by you. In respect of these notes, please address the following issues:

- a. At OFG-53267 in a note dated 26 November 2013 the following text appears near the middle of the page: "alert GB". Please clarify whether this reflects an intention on your part or on the part of Ofgem to ensure that DECC, with its responsibility for the GB RHI Scheme, was alerted to the Carbon Trust Loan issue arising in respect of the NI RHI Scheme and:
- i. If it does reflect such an intention, whether you (or some other Ofgem official) duly alerted DECC to the issue;
 - ii. If it does not reflect such an intention, please explain the note;
- b. At OFG-53270 in a note dated November/December 2013 the following text appears approximately one third of the way down the page: "discuss with DECC (Bob keen)". Please clarify whether this reflects an intention on your part or on the part of Ofgem to ensure that DECC, with its responsibility for the GB RHI Scheme, was kept informed of the Carbon Trust Loan issue arising in respect of the NI RHI Scheme and:
- i. If it does reflect such an intention, whether you (or some other Ofgem official) duly kept DECC informed as to the issue;
 - ii. If it does not reflect such an intention, please explain the note;
 - iii. In either event, provide the full name and role of the person named in the note as "Bob";
- c. At OFG-53271 in a note also dated November/December 2013 the following appears in the second line of text on the page: "discussion with DECC". Please clarify whether this reflects an intention on your part or on the part of Ofgem to ensure that DECC, with its responsibility for the GB RHI Scheme, was kept informed of the Carbon Trust Loan issue arising in respect of the NI RHI Scheme and:
- i. If it does reflect such an intention, whether you (or some other Ofgem official) duly kept DECC informed as to the issue;
 - ii. If it does not reflect such an intention, please explain the note;

- d. At OFG-53274 in a note also dated week commencing 16 December 2013 the following appears approximately one third of the way down the page: "DECC aware – they are considering implications (Head of Policy)". Please clarify whether this reflects the fact that DECC, with its responsibility for the GB RHI Scheme, were being kept informed of the Carbon Trust Loan issue arising in respect of the NI RHI Scheme and that Ofgem considered it important to ensure that this was so or, if it does not reflect such a fact, please explain the relevant entry in the note.

19. In respect of the 'spike' in applications during the period between 1 July 2015 and the implementation of the amendments to the NI RHI Scheme on 18 November 2015, please address the following issues:

- a. On 6 July 2015 Seamus Hughes alerted you to the possibility of an increase in application volumes due to an awareness in industry of the possible Scheme changes (DFE-120653). Clarify what steps (if any) were taken by Ofgem in response to this warning including, but not limited to, monitoring of application numbers, monitoring of the estimated running hours of new applicants' installations, more frequent and/or more detailed communications with DETI.
- b. In its first corporate witness statement at WIT-121, paragraphs 321-322, DfE suggests that there was a short time delay in the flow of information from Ofgem to DETI during the 'spike' period. Clarify whether this is correct and, in particular, whether there was any change in practice adopted by Ofgem to improve the flow of information between it and DETI during the period 1 July 2015 onwards.
- c. Without prejudice to the generality of the foregoing question:
 - i. At PAC-5477 in the second paragraph of your first answer to the Committee you make reference to daily discussions regarding the 'spike' between Ofgem and DETI. In this regard, please confirm:

1. When these daily discussions began;
2. When these daily discussions ceased;
3. Between which officials these discussions took place;
4. What data was shared during these discussions (for example, did it include details of the number of additional applications received each day);
5. Whether, at any point, Ofgem ever advised DETI to consider bringing forward its proposed date for implementation of Scheme changes (for example, because of the increasing numbers of applications for accreditation).

ii. At WIT-196013 in the second paragraph Alan Hegan states as follows: *"I was telephoned by Stephen in Ofgem NI team in August or early September 2015. I was asked how many jobs the Company on-going that were not submitted for RH1 accreditation yet and at that stage advised that the figure was around 70"*. In this regard:

1. Clarify whether Ofgem was, during the 'spike' period, taking steps to assess likely application volumes by, for example, contacting installers and/or suppliers of biomass boilers;
2. If it was taking such steps, clarify:
 - a. When it began doing so;
 - b. The persons or bodies it contacted (and the number of times it contacted each one);
 - c. The information it obtained;
 - d. The steps it then took to make use of such information (for example, alerting DETI);
3. Clarify whether, to your knowledge, DETI was itself taking any similar information-gathering steps and, if it was, provide details of same.

20. In the spreadsheet document at OFG-134930 (27 November 2013 RHI Scheme Risk Register), at cell 'K8', in the context of the risk of Scheme 'gaming' (including, but not limited to, the issue of gaming through multiple small boilers in place of

larger boilers), there is reference to the need for site audits to include checks to consider whether heat is being generated in the spirit of the RHI Regulations. On this issue:

- a. Explain what steps Ofgem took with RHI site auditors to instruct, train, educate, brief, or otherwise equip them with knowledge on this particular issue so as to ensure that they identified and recorded gaming, or suspected gaming, of this type;
- b. Explain why, at cell 'E8', gaming of this type is noted to pose a risk of "reputational damage" without any mention of financial loss or damage (particularly given that financial loss or damage is recorded as a potential consequence flowing from other risks identified in the same spreadsheet – see, for example, cell 'E3' in this regard).

21. Finally, please address any further issue arising out of your oral or written evidence in respect of which you consider it is necessary, having regard to the Inquiry's Terms of Reference, to provide confirmatory or clarificatory evidence of the type requested in the foregoing paragraphs of this Schedule.

NOTE:

It is important for the efficiency of the RHI Inquiry that the issues identified above are addressed as fully as possible and by reference, where available, to the dates and locations of specific incidents to which reference is made. The statement should be broken down into paragraphs, which should be numbered sequentially from '1' to the end. The use of appropriate section headings or sub-headings is also encouraged. A template witness statement is provided with this Notice for your assistance and should be used as the format for your response.



INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 127 of 2018

DATE: 20 July 2018

Witness Statement of: Edmund Ward

I, EDMUND PETER WILLIAM WARD, will say as follows: -

Introduction

- 0.1 This witness statement responds to the Inquiry's Notice (No 127 of 2018 – '**the Notice**'), made pursuant to Section 21(2) of the Inquiries Act 2005.
- 0.2 The Inquiry has already received my responses to Notices 236 and 237 of 2017, to Notice 13 of 2018 (dated 9 March 2018 - '**my first witness statement**'), and a voluntary supplementary statement of 22 June 2018. I have provided oral evidence to the Inquiry on 16 March, 11 May, and 7 June 2018. I have also provided some input into Ofgem's first and second corporate statements, although I was not involved in the final drafting, review or sign-off associated with those documents. Where relevant, I have referenced the above in this statement to avoid undue repetition. However, for the avoidance of doubt my position in answer to the questions presented in this notice are as set out in this statement.
- 0.3 I have prepared this statement in response to the Inquiry's request of 4 July 2018, within a period of 12 working days. While I am satisfied that I have addressed each question to the best of my recollection and belief, in the time available there are some areas where I have not been able to review all background documents in full in order to draw out references for Inquiry's attention. I have focussed on providing a full account of matters with which I have direct personal experience and knowledge and for which I have direct access to relevant documentation.

- 0.4 I note that the Notice contains a number of questions which relate to the actions or communications of staff within Ofgem generally. I confirm that the answers provided in this statement are based on my own personal knowledge and belief, and on the review of relevant materials within my possession. I have also reviewed relevant materials brought to my attention by Ofgem's internal lawyers to address some of the matters raised in the Notice.

My Witness Statement of 9 March 2018

Q1. In your first witness statement at WIT-114053, paragraph 35, you stated as follows:

In addition to the headline policy areas outlined above, I have seen flaws in missing some opportunities to take forward learnings from the GB RHI Scheme. For example, Ofgem raised in November 2011 a number of concerns with DETI, not only in relation to the absence of cost controls but also on other key areas such as the lack of appropriate mechanisms to protect against gaming (as discussed later in this statement in the section on multiple boilers). While a small number of these points

In respect of this part of your evidence, please address the following issues:

- a. Clarify when precisely in November 2011, through what Ofgem official(s), and through what document(s) Ofgem raised concerns about an absence of cost controls in the RHI Scheme;
 - b. If and insofar as it is your evidence that such concerns were raised in the Ofgem 'Legal Review' (WIT-1237 to WIT-1264), please identify the precise part of the said Review that raises them.
- 1.1 I have now reviewed the Ofgem 'Legal Review' (WIT-1237 to WIT-1264) and acknowledge that, while the document references key NI RHI Scheme (**Scheme**) concerns, including 'gaming', it does not address the specific issue of cost controls. I now believe that the reference to 'cost controls' in 'November 2011' in my first witness statement was made in error. I note here that my first witness statement was prepared within a period of 13 working days, and this may have contributed to the error.
- 1.2 The absence of cost controls was however noted in Ofgem's feasibility study of December 2011 (DFE-168080). Specifically, the study states:

6.9 At present there are no mechanisms in place to control costs of the scheme in the event that uptake is considerably higher than anticipated.

**Cost Control**

6.10 DETI have expressed some concerns around the need for controls to be developed to ensure the costs of the NI RHI remain within budget.

- 1.3 I also understand from the evidence of other Ofgem witnesses that there were ongoing discussions about this issue from mid-2012 onwards (see WIT-95060 and WIT-95099 to WIT-95100).

My Oral Evidence on 16 March 2018**Q2. The transcript for 16 March 2018 records the following exchanges:****TRA-6591 to 6592**

*21 Mr Lunny: But then to leave those documents and go back to the question I said I was
22 going to ask you about that particular risk that existed in the Northern Irish scheme because
23 of the absence of tiering — the particular risk of overcompensation. So even if you weren't
24 aware of the other risk existing — the tariff being higher than the marginal cost of
25 generating an extra unit of heat — you were aware that, without tiering, there's a risk that
1 people who have legitimate high heat loads will be overcompensated. Are you aware of
2 Ofgem doing anything (a) to alert DETI to that risk and (b) to take any precautions against it,
3 even if it's just monitoring load factors, paying particular attention to them?*

*4 Dr Ward: So, as I understand it now, that is something that had been raised during the
5 development phase, for example, with the Faye Nicholls's emails, which I think have come
6 before the Inquiry before, so I won't dwell on that.*

TRA-6595 to 6596

The Chairman:

...

*15 The other point that I want to raise with you — we're going to have a break now — is did I
16 pick you up right when you referred to the Nicholls document warning about
17 overcompensation? Is that what you were saying? You say you knew about it: this is the
18 November document.*

*19 Dr Ward: It's a document that said — that's not me saying I knew about it, but my
20 understanding is that that was one of the issues that was raised by the development team.*

21 The Chairman: Overcompensation?

22 **Dr Ward:** Yes.

23 **The Chairman:** From excessive loads?

24 **Dr Ward:** That's my understanding.

25 **The Chairman:** And you think that was in that document?

1 **Dr Ward:** [Nods.]

In respect of this part of your evidence, please address the following issues:

a. Clarify whether your evidence was, in summary, that documents passing from Faye Nicholls to DETI in or about November 2011 warned DETI about the risk of overcompensation arising because of the absence of tiered tariffs in the RHI Scheme;

2.1 I wish to re-emphasise to the Inquiry that I had no material involvement with the Scheme in or around November 2011. My oral evidence to the Inquiry (extracted above) was based on material that I had reviewed, and material that was brought to my attention, prior to giving evidence. The extracts above represent my understanding of the material I had reviewed, which I sought to summarise in order to best assist the Inquiry.

2.2 I otherwise refer to and repeat my answer to Q1 above.

b. If that was your evidence, please identify (i) each such document and (ii) the passage(s) within each such document that warn DETI of the said risk;

2.3 See paragraphs 1.1 – 1.3 (above).

c. Without prejudice to the generality of the foregoing request, if it is your belief that the Ofgem 'Legal Review' (WIT-1237 to WIT-1264) warned of the said risk, please identify the precise part of the Review raised that warning.

2.4 See paragraphs 1.1 – 1.3 (above).

My Oral Evidence on 11 May 2018

Q3. At TRA-9012 to TRA-9014 you addressed the 'WARN4' issue and the "standard operating procedure" (TRA-9013 line 20) that was available to Ofgem employees in respect of that warning message and you agreed to provide the Bates reference for that document (TRA-9014 lines 2 and 3). Please now provide the Bates reference for each

of the relevant standard operating procedure document and the part of said document that addresses the ‘WARN4’ issue.

- 3.1 The document referred to above was titled ‘Exceptions Guidance’. I am advised by Ofgem’s internal lawyers that this document has not previously been produced to the Inquiry.
- 3.2 From my understanding, the Exceptions Guidance is a living document amended from time to time by Ofgem staff. While the Guidance will have changed over time (for example, as a result of IT system updates for processing applications), to the best of my knowledge the approach documented in November 2016 is consistent with the approach taken throughout the life of the Scheme.
- 3.3 A November 2016 version of this document is now produced with this witness statement (OFGEM14803955). Specifically, I draw the Inquiry’s attention to row 8 of page 4, which provides guidance for circumstances where there have been multiple applications for ‘multiple installations [on] the same site’.
- 3.4 I also set out below the warning message displayed to an applicant in such circumstances (OFGEM14803956):

WARN4: Same technology installation already exists at this address registered under a different account

An RHI accredited installation of this technology type is already registered at this address. If the installation that you’re making this application for is part of the same heating system as that original installation, you’ll need to apply for additional capacity. You can do this by selecting the “Apply for additional capacity” option on your RHI homepage. If the installation that you’re making this application for is not part of the same heating system as that original installation, you can continue with this application. If possible, please explain why this installation is not additional capacity when answering [HK120] later in the application. We may request further information or evidence that this installation is not additional capacity when reviewing your application.

Q4. On the same ‘WARN4’ topic, at TRA-9015, you stated, in terms, that the warning was based upon postcode rather than postal address and it was suggested, by Inquiry Counsel, that this may be an issue that you could check and confirm to the Inquiry. Please therefore confirm whether the trigger for the ‘WARN4’ warning was an

application being for a postcode, rather than a postal address, at which there was already at least accredited installation.

4.1 The trigger is raised when an application for accreditation has the same technology type, postcode and first line of address as at least one other application. The warning will be invoked whether or not the earlier application has yet been accredited.

Q5. At TRA-9075 to TRA-9076 your evidence related to ‘gaming’ of the RHI Scheme and its impact upon value for money. At lines 11 to 17 on TRA-9076 you suggested that Ofgem’s practices in this regard, and in particular in respect of the priority afforded to value for money issues, had changed in respect of the RHI Scheme with the passage of time. In this regard:

- a. Please provide details of the relevant changes (contrasting, if appropriate, current practice with past practice);**
- b. Please clarify the date when the changes occurred;**
- c. Please explain the reasons for the changes.**

5.1 In answering this question, I would like to reiterate some of the points I previously made to the Inquiry during my oral evidence (see TRA-9075). As a civil servant I feel it is my duty to act in line with the public interest, which includes considering value-for-money. Also, I understand that there is a balance to be struck between individual or day-to-day delivery, versus the wider point of having the right governance, controls and feedback loops in place. I also recognise the importance of fostering in every individual the ability to raise issues.

5.2 On the specific Scheme changes referred to in my oral evidence, I will set out four examples below:

5.2.1 Firstly, I would draw a distinction between the approach taken to raising concerns or issues between Ofgem and the Department for Enterprise, Trade and Investment (DETI and later the Department for the Economy, together ‘**the Department**’) during the early years of the Scheme (from 2012 to 2015) with the period following Scheme suspension (February 2016 onwards). Prior to late 2015, there was no formal governance mechanism between Ofgem and the Department through which concerns or issues could be raised. From late 2015 onwards, Scheme governance was far more proactive in a number of areas. In particular, in relation to value-for-money issues, there was more formal engagement between the Department and Ofgem, including (from late 2016) via the Department’s attendance at Ofgem’s monthly Scheme board

meetings. This provided opportunities to discuss, in practical terms, the likely impacts of the Department's policy decisions and the approach to administering the Regulations. As a result, I understand that the Department updated its external messaging to Scheme applicants and participants, was able to provide additional insights to Ofgem to support robust administration and later provided further resourcing to support compliance and audit activity. This included additional resourcing for up-front triage checks on applications submitted during periods which might present increased risks to compliance, and therefore to the overall value-for-money of the Scheme. The extent of value-for-money issues with the Scheme, and the increased awareness of those issues in early 2016, was a driver for this improvement in governance.

- 5.2.2 Secondly, I observed a change in the Department's apparent approach in delivering the Scheme, which impacted Ofgem's administration. In 2012 and 2013, we were aware of the Department's desire to increase Scheme uptake. This was apparent to me from the Department's response to the Carbon Trust issue which arose. The Department's focus later became, and has continued to be, 'value-for-money' considerations or what I would call an 'appropriately minimal compensation' position, above broader goals such as building a supply chain or increasing uptake.
- 5.2.3 Thirdly, and as referenced elsewhere in my evidence, I think there should be a degree of acceptance, with this Scheme in particular, but more generally with any scheme of this nature, that a range of returns on investment will be available due to scheme design. This is a direct consequence of incentivising a broad range of scenarios with a limited range of tariffs. As with any new initiative of this nature, there will be early adopters, and in many cases, those early adopters may receive a higher return on investment.

The arrangements currently in place between Ofgem and the Department (established during 2016-17), provide more opportunities than previously existed to consider emerging trends and themes. In addition, the Department (supported by Ofgem) has procured additional studies and further assessments of the tariffs and drivers of Scheme uptake.

- 5.2.4 Finally, I note the difficulty, particularly early in the life of the Scheme, in assessing what may represent an overall saving on value for money. In the absence of a significant cohort of applications, and while a range of sectors and usage patterns were emerging, there may have been limited benefit in investing significant resource in, for



example, sectoral studies to understand where some Scheme supported practices might not represent value-for-money. In contrast, the Department and Ofgem now have a fuller picture of Scheme uptake, Scheme supported installations and relevant trends. As a result, Ofgem and the Department are able to focus on key areas that may impact the Scheme's value-for-money. For example, if there is scope for a refined interpretation of certain terms which have been illustrated in guidance, but never defined in the Regulations, such as 'useful heat'.

Q6. Some of your evidence in respect of the AECOM report of 2012 regarding, *inter alia*, the definition of a 'heating system' is contained at TRA-9080. Arising out of the exchange at TRA-9080 lines 5 to 16 (inclusive), please clarify:

a. Whether (and, if so, when and how) DECC was advised that Ofgem was engaging AECOM to consider, *inter alia*, the definition of a 'heating system';

6.1 As is apparent from my oral evidence (TRA-9080), I was unsure if and when Ofgem advised DECC that they had engaged AECOM to consider, *inter alia*, the definition of a 'heating system'.

6.2 In the material I have since reviewed, I have not seen any evidence that I communicated this fact to DECC, nor any evidence that I was included in such a communication.

b. Whether (and, if so, the first date on which) DECC was provided with a copy of the AECOM report addressing, *inter alia*, the definition of a 'heating system'.

6.3 In the material I have reviewed in preparing this statement, I have not seen any evidence that I provided to DECC a copy of the AECOM report addressing, *inter alia*, the definition of 'heating system', nor any evidence that I was included in such a communication.

Q7. Arising out of your evidence at TRA-9092 to TRA-9095 (inclusive) regarding (a) work done by Ofgem for DECC relating to 'gaming' of the RHI Scheme (for example, the 'multiple boilers' issue evidenced by the poultry farm example referenced at TRA-9092) and/or (b) communications with DECC about that issue (including, for example, those referenced by you at TRA-9092 line 22 to TRA-9093 line 7), please (i) identify and (ii) provide copies of each and every document evidencing, relating to or recording such work and such communications.

- 7.1 The discussion at TRA-9092 to TRA-9095 related to Ofgem's December 2013 Fraud Prevention Strategy (OFG-88523), and in particular section '7. Threats and Prevention Measures' and the sub-heading 'Gaming', where the following text appears:

At present no remedy is available within the RHI regulations to address the issue of over/under sizing boilers. Information has been provided to DECC and consideration is being given to regulatory amendments.

- 7.2 I am advised by Ofgem's internal lawyers that the 'information' referenced in the Fraud Prevention Strategy was the subject of an earlier request from the Inquiry. I am further advised that material relevant to this request, and therefore also relevant to Q7, has been, or shortly will be, produced to the Inquiry.

Q8. Arising out of your evidence at TRA-9105 to TRA-9106 please confirm whether dissertation paper prepared by Katy Read of Ofgem in respect of the 'gaming' issue drew upon any examples, or evidence, of gaming under the Northern Ireland RHI Scheme and, if it did so, please provide details of this.

- 8.1 I am not the author of this paper, and noting that the interviews on which the study was based were confidential, I am unable to provide a definitive answer. I am otherwise unaware if the paper drew upon any examples, or evidence, of 'gaming' under the Scheme.

Q9. Clarify, in respect of the various documents attached to Katy Read's email of 6 January 2015 at WIT-114691, the following:

- a. What was done with those documents within Ofgem including, in particular, whether they were the subject of any discussion, analysis, further work, and/or communication with DECC or DETI;**

- 9.1 As is clear from the email, these documents were shared with DECC, and there was an offer for the documents to be distributed more widely. Summarising my previous evidence to the Inquiry on this matter, there had been ongoing dialogue on gaming between Ofgem and DECC, and also work on some particular issues highlighted here, such as on multiple boilers. I am advised by Ofgem's internal lawyers that documents relevant to this question have been, or will shortly be, produced to the Inquiry.
- 9.2 I am otherwise unable to comment on any discussion, analysis, further work or communication with DECC or DETI, with which I had no personal involvement.



b. What work (if any) was done to quantify the impact of ‘gaming’ of the RHI Schemes;

9.3 To the best of my knowledge, the work which culminated in the ‘Gaming – Multiple Heating Systems’ paper (WIT-114693 onwards) represents the only quantification of ‘gaming’ during the lifetime of the Scheme. It is possible that further work on this topic was done by others, either within Ofgem, DECC, or the Department, but I have not identified any other examples in the course of preparing this statement.

c. Which of the recipients of the 6 January 2015 email were DECC officials and which were Ofgem officials;

9.4 All those recipients in the ‘To:’ field of the email were DECC officials. All those recipients in the ‘Cc:’ field of the email were Ofgem officials.

d. Whether a meeting of the type referenced in 3rd paragraph from the end of the email took place and, if it did, provide full details of same (including details of when it occurred, who attended, what was discussed and/or agreed, and where any of this information is recorded in writing in any documents within the custody or control of Ofgem);

9.5 At this time, Ofgem systems do not provide details of meetings that I attended during the period January to April 2015. However, I have conducted a search of electronic documents in my custody and control, and from that review I understand that a meeting was scheduled to be held on 24 April 2015. In the time available I have not located the minutes or identified the attendees of the meeting held on this date. I have provided an extract from an action log (OFGEM14803957), shared with me on 16 July 2015, which identified that this action had been completed (closed item 183). I also note that closed items 133 and 184 from the same document may be relevant to this topic.

e. Whether Ofgem was provided with copies of, or was provided with details of the outcome of, the “separate pieces of work going on in DECC in relation to gaming” and, if it was, provide details of same (including details of any relevant documents within the custody or control of Ofgem);

9.6 I have not been able to identify any such material in the course of preparing this statement.

Q10. In Katy Reid’s paper ‘Gaming – Wasting Heat’ (beginning at WIT-114696) she considers Regulation 34(p) (the GB equivalent of Regulation 33(p) of the NI RHI

Regulations) at pages WIT-114697 and WIT-114700, references legal advice received by Ofgem in respect of it, and comments upon the likely ineffectiveness of it as a tool for addressing Scheme ‘gaming’. In this regard:

- a. Clarify when, and from whom, such legal advice was obtained (identifying any relevant document within Ofgem’s custody or control);
- b. Clarify whether such legal advice was obtained in respect of the GB RHI Scheme or the NI RHI Scheme or both Schemes;
- c. Clarify whether this advice was communicated to each of DECC and DETI and, if it was communicated, please provide details of the relevant interaction with each department including when it was first communicated to each one, the official to whom it was communicated, each department’s response, and any documents relevant to this issue;
- d. If it was not communicated to DECC and/or DETI, please explain the reasons for this.

10.1 I was not the author of this paper, and in the course of preparing this statement, I have been unable to locate the particular legal advice that is referenced.

My Oral Evidence on 7 June 2018

Q11. In respect of your evidence at TRA-10468 to TRA-10473 and the email from Keith Avis to Joanne McCutcheon of 3 December 2012 at OFG-11206 to 11208, it appears that Mr Avis advised DETI that it would be appropriate for 3% of audits to be carried out on NI RHI installations and that the GB sample size was based on a monetary unit sampling approach. In respect of this:

- a. Clarify whether DETI was ever advised that the number of audits of NI RHI installations would not, either directly or indirectly, be based upon a monetary unit sampling approach (providing, if applicable, full details of when, by whom, to whom, and in what format such advice was given);

11.1 In answering this question, I note from the outset that I had no material involvement with the Scheme until early 2013 and I am unable to comment on any matters with which I had no personal involvement.

11.2 With the above caveat, I think it ought to have been, and probably was, apparent to the Department that a ‘targeted’ approach to audits was being adopted (cf. a ‘monetary unit sampling’ approach). From the correspondence I have seen (see for reference



OFG-24139 to OFG-24140, OFG-23313, OFG-14500 and OFG-14588), I consider it to be clear that Ofgem were adopting a 'targeted' approach.

- 11.3 In particular, I note the correspondence between Teri Clifton and Robert Reid in October 2013 (OFG-24139 to OFG-24140). In Mr Reid's email to Mrs Clifton, he asks, *inter alia*:

Are DETI satisfied that the small sample size of five installations is unlikely to identify any possible trends in non compliance or observations?

And in her response, Mrs Clifton stated:

They [DETI] are happy that they will get a good sample from 5 seeing as they have only had 30 accredited, so they are really looking for early warning signs and then an understanding of what that looks like against the GB non-compliances and whether there is the similar pattern emerging.

- 11.4 I would also note that the details of the audits undertaken were highlighted in an email from Keith Avis (Ofgem) to Joanne McCutcheon (the Department) on 3 December 2012 (OFG-83646 to OFG-83648).

- b. Clarify whether there was, prior to 2016, ever any discussion between DETI and Ofgem about the adoption of a monetary unit sampling approach to NI RHI audits and/or any other approach that might produce statistically significant results (providing, if applicable, full details of when, between whom, and in what format such discussion occurred);**
- c. If the answer to either or both of the previous questions is in the negative, then please provide an explanation why no such advice was given and/or no such discussion took place.**

- 11.5 As noted above, my view is that it ought to have been, and probably was, clear to the Department that Ofgem was not conducting a 'monetary unit sampling' approach to auditing.

- 11.6 On the possibility of introducing further statistical audits, I note that due to the nature of my role, I would not have considered this issue or been party to any such discussions, prior to 2015.

- 11.7 As I stated in my first witness statement (see WIT-114060 to WIT-114061), the handover I received in 2015 from Jacqueline Balian addressed the absence of a



statistical audit programme for the Scheme. There were two key reasons for this, first, the relatively low number of accredited installations, and second, the available resourcing to conduct audits resulting in insufficient audits to deliver a statistical programme.

- 11.8 During late 2015, it became apparent that Department officials did not understand the scope and nature of the audit programme and they were under the (mistaken) impression that a much higher level of auditing was being conducted.
- 11.9 From memory, there was discussion in late 2015 between Ofgem and the Department about increasing the rate of audits, which included discussion on how such results might be used to infer statistically significant results (see OFG-63490). I believe these discussions were had during the joint Ofgem/Department teleconference (attended by Stuart Wightman and Seamus Hughes of the Department). These discussions also continued into 2016 (OFG-114076 to OFG-114077).

Q12. In your evidence at TRA-10537 to 10542 you covered a number of specific issues arising out of an audit which disclosed that an installation that was providing heat to a not wholly enclosed building had been wrongly accredited under the NI RHI Scheme. Arising out of this evidence, please address the following:

a. Confirm whether (and, if so, when, through what officials, and through what documents) Ofgem advised DETI of its mistaken accreditation of the installation in question and of the reasons for its error;

- 12.1 To the best of my recollection, I was briefed on this case by Ofgem's senior audit manager at the time, Amy Powell-Tuck, and was told that Ofgem's policy team had discussed this case with the Department. My understanding is that it was raised in the context of a discussion about the Department's policy intent in relation to new regulatory changes that it was bringing forward. I understand that the proposed changes would have had the effect of allowing the activity recorded in this audit (namely, heating within a not wholly enclosed building to carry out commercial drying).
- 12.2 I do not recall the names of the individuals involved in these discussions as I was not party to them, but I note that these changes did indeed come into effect on 18 November 2015, as per paragraph 4 of the *Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2015*, which amended regulation 3 of the original 2012 Scheme Regulations.

b. Confirm whether Ofgem performed a search, audit, analysis or other similar



exercise to determine whether the same error had been made in respect of other accreditation applications and:

- i. if such an exercise was performed, provide full details of it;**
- ii. if such an exercise was not performed, please explain this.**

12.3 As noted above, it is (and was) my understanding that the proposed regulatory changes would have allowed heating for the purpose of commercial drying, in a not wholly enclosed building. On that basis, the decision was made not to take action against this applicant or perform a search, audit, analysis or other similar exercise to determine whether similar applications had been accredited. There would have been limited benefit in seeking to identify any similar cases (given that they would be considered compliant under the new Regulations). However, it is important to note that a different course would have been taken in the absence of the new Regulations.

12.4 I do recall that Mhairi McQuillan, who had signed off on the original decision, took steps to ensure a greater understanding of the Regulations and of the differences between the GB and NI Schemes.

Q13. Arising out of your evidence at TRA-10550 to TRA-10556 (inclusive) concerning the email at OFG-113487, please address the following issues:

- a. (TRA-10551 lines 5 to 17; TRA-10552 lines 4 to 12) Identify when it was clarified by you, or by other Ofgem officials, that resources were not a reason for failing to act in response to a complaint of potentially fraudulent activity in respect of an installation (providing full details of the actions taken, with reference to any relevant documents within Ofgem's custody or control);**
- b. Provide full details of any actions taken by you, or by other Ofgem officials, to address the other reasons for failing to act that were advanced in the email at OFG-113487 (i.e. the reasons other than resources / capacity), whether by way of communications with the relevant staff, re-training, or otherwise;**

13.1 I was on leave on 15 July 2016, but Mrs Clifton responded to this email within one hour of it being sent, confirming that (OFG-65822):

It's not true that there is no more capacity for NI audits, I think Shaneigh is referring to the ones for this month. We are currently finalising the NI strategy and expect to have a number through the remainder of the year, determined by risk, sampling, referrals etc.



- 13.2 Mrs Clifton also forwarded the email to me on the same day, flagging the item as 'Important', and asking that I pick it up with the senior manager in the audit team to ensure our messaging was clear.
- 13.3 On or shortly after my return to the office on 18 July 2016, I recall speaking to Mrs Clifton and confirming that this needed to be clarified. I recall speaking to the senior manager responsible for audits (Mark George), and the audit manager (Shaneigh Turner) who had sent the original email.
- 13.4 To the best of my recollection, this was one of two isolated occasions (the other, from memory, was raised verbally rather than by email) when it came to my attention that it had been suggested that we might not have resourcing for audit referrals. On both occasions I am satisfied that I and others took swift action to clarify the position, namely, that resources (including commissioning site audits where appropriate) would always be made available to support the investigation of alleged fraud.
- c. (TRA-10552 lines 13 to 17; TRA-10554 lines 16 to 18) Provide full details of any action that was in fact taken in respect of the complaint recorded in the email at OFG-113487 and, if no action was in fact taken, please explain this.**
- 13.5 Although I was not involved in all aspects of this, in brief, I can confirm that audits of all three installations were conducted in November 2016. The case was subject to further consideration and activity, including dialogue with other appropriate organisations. I note the sensitivity of any investigation of this nature, and I understand that the Inquiry has already had access to further information on this matter.

Q14. Arising out of your evidence at TRA-10567, lines 6 to 9, please confirm when the audit policy changed so that unannounced site visits could occur.

- 14.1 According to the version history of Ofgem's Northern Ireland Non-Domestic Audit Strategy (version 7), on 9 December 2016 the following amendment was made: 'Review of audit strategy, including considerations for unannounced audits' (see OFG-121417). My recollection is that this formally confirmed a position that had been discussed and agreed within Ofgem during the second half of 2016.

Q15. Arising out of your evidence at TRA-10614 to TRA-10616, and to the best of your knowledge, please address the following issues:

- 15.1 In answering this question, I refer to and rely on paragraphs 47.10 to 47.12 of Ofgem's



second corporate statement (WIT-95323 to WIT-95324).

a. Identify the organisation which provided advice to DfE and/or Ofgem regarding the number of site audits that should be completed in the 2017-2018 financial year in respect of NI RHI installations;

15.2 As set out at paragraph 47.11 (WIT-95323), an approach to delivering both statistical and targeted audits was recommended following input from Deloitte and using a methodology developed by Grant Thornton for 2016/17. In the absence of any change in population size due to the suspension of the Scheme, an equivalent sample size would have been identified using the same methodology for 2017/18.

b. Set out the number of site audits recommended by that organisation for the year 2017-2018;

15.3 The number of site audits necessary to determine a statistically significant sample would have been 72 (see OFG-114076).

c. Set out the number of site audits actually performed in that year;

15.4 30 site audits were conducted by Ricardo as part of Ofgem's programme of site audits that year (excluding other site inspections conducted by Ricardo as part of a parallel programme).

d. Explain the reason for any difference between the number actually performed and the number recommended.

15.5 I refer to and rely on paragraph 47.10 (WIT-95323):

Given the Department's decision to conduct a parallel audit programme in 2017/18, in that year (and as reflected in updates to our audit strategy as updated in July 2017 by the Head of Compliance for RHI) Ofgem "agreed with the Department that [it would] conduct 30 ... audits [on the basis of referrals], with the potential to increase this number should this become necessary." Ofgem further noted that review of the deployment of a possible statistical audit profile would be considered after review of the outcomes of the Department's phase 1 inspection programme. The audit strategy is disclosed as OFGEM14803493. The inspection programme is still ongoing.

- 15.6 In addition, I refer to the report of the Comptroller and Auditor General for Northern Ireland on Resource Accounts 2017-18 for the Department for the Economy (OFGEM14803958). Specifically, paragraphs 17 to 21 are relevant to the provision of both site audits and site inspections over the 2017-18 financial year. The report records that:

The Department and Ofgem carried out a “pilot” of a new inspections process to help inform the way forward. The pilot involved inspecting 33 sites (65 installations) (paragraph 17).

In addition to the pilot inspections, Ofgem carried out additional audits on 30 installations (paragraph 20).

This is consistent with my oral evidence of 7 June 2018, that ‘50-100’ installations were subject to an audit or site inspection over this period.

Miscellaneous

Q16. A document provided to the Inquiry by the Ulster Farmers’ Union (‘UFU’) at COM-2008 to COM-2009 records a meeting in London between Ofgem officials and the UFU about, *inter alia*, the RHI Scheme on 4 December 2013. Other documents relevant to this meeting can be found at OFG-13894, OFG-24207 / 8, and OFG-15233. Please clarify:

a. whether you were involved in this meeting;

- 16.1 Yes, I attended this meeting.

b. whether UFU were, in summary, exploring how they might influence policy in respect of renewable energy and whether lobbying Ofgem would be one means of doing so;

- 16.2 Having reviewed relevant internal correspondence around this meeting, and between Ofgem and the UFU, my view is that the UFU were seeking to develop an understanding of how the renewable energy schemes were administered in practice. I think this was for the purpose of being able to communicate more effectively with their members about these schemes.

- 16.3 My view at the time, and that of a colleague’s, does not appear to have been that they were ‘exploring how they might influence policy in respect of renewable energy’. For example, the internal email from Thomas Allard summarising the meeting, noted as



just one of a number of broader points that 'UFU have a good relationship with DETI – agreed that this would be the most suitable approach for influencing policy – not in Ofgem's remit' (OFG-15233).

- 16.4 This is further supported by my view, as expressed in an email from me to a colleague from the renewable electricity team. There I stated:

[a]part from a few specific questions, they didn't really have clear goals for the meeting, so were quite easily led through our preferred ways of working, and they have good policy contacts so didn't spend too long moaning about what the Regs should be (OFGEM14803959).

- c. what information about the RHI Scheme, beyond the fact that there was a large number of 99kW biomass boilers awaiting accreditation (COM-2008), was shared with UFU;**

- 16.5 As I recall, the majority of the meeting focused on the Renewables Obligation (and I note that I was the sole attendee from Ofgem representing the Scheme, alongside three colleagues working on the Renewables Obligation). I do, to the best of my recollection, remember giving a short overview of the application process, and I believe I also explained the concept of preliminary accreditation under the Scheme. The key points recorded from the meeting (OFG-15233) only noted further in respect of the Scheme that [UFU]:

Feel the RHI has strong potential for their members but needs to offer further support to CHP systems further integration with renewable electricity generation and more support in general for small scale AD to incentivise onsite slurry treatment and will be speaking further to DETI in regards to this also.

- d. whether there was any discussion about actual or likely uptake of the RHI Scheme (including, for example, its actual or likely uptake amongst the agricultural sector or aspects of it, such as poultry);**

- 16.6 I do not recall any such discussion on uptake and nor is any such discussion reflected in the notes of the meeting.

- e. whether any further meetings took place between Ofgem and UFU representatives regarding the RHI Scheme (providing full details of such meetings, if they occurred);**



- 16.7 I did not attend any further meetings with UFU representatives regarding the Scheme prior to Scheme suspension in February 2016.
- 16.8 On 13 April 2017, I and another Ofgem colleague spoke to Christopher Osborne of the Ulster Farmers Union (see below for details and OFGEM14803961 to OFGEM14803965).
- 16.9 For completeness, I note that I was engaged in conversation by Andrew Trimble and Tom Forgrave on 7 June 2018 during a break between giving oral evidence to the Inquiry. Mr Forgrave raised some concerns about the consistency of audits, both over time and between the NI and GB schemes, but I said I was not in a position to comment on this. Mr Forgrave also asked me to pass on a query about the notification of changes to a small number of accredited installations, which I passed on to relevant colleagues.
- f. whether DETI was advised of this or any other meeting between Ofgem and UFU including:**
 - iii. if it was so advised, full details of when, and through what officials, it was advised;**
 - iv. if it was not so advised, the reasons for this.**
- 16.10 I cannot recall advising the Department of the meeting of 4 December 2013. I note that when I was originally approached by Christopher Osborne of the UFU, following my attendance at the Action Renewables event (see WIT-114060), I forwarded his contact details to Mrs Clifton who was the main point of contact for the Department. I understood that she would 'pick [this] up with the DETI guys' (OFG-13896). Ultimately, the meeting on 4 December 2013 was held in conjunction with colleagues from the Renewables Obligation and that scheme was the larger focus of the meeting. From a review of the documents surrounding this meeting, it appears that the meeting did not elicit any new information for Ofgem in respect of the Scheme, and it appeared that the UFU were already in active dialogue with the Department.
- 16.11 I did advise the Department of my call with the UFU of 13 April 2017. In particular, (and further to a verbal readout provided, as I recall, at Ofgem's Northern Ireland RHI Scheme Board held in May 2017), I emailed Jonathan McAdams (the Department) informing him of the meeting (OFGEM14803960). The email contains a short briefing of the call, including the following:

This was a fact-finding call, and we didn't discuss any particular cases. UFU were very keen to maintain ongoing dialogue, and did indicate that they were



hoping to establish similar dialogue with DfE.

It was a useful opportunity to clarify roles and responsibilities, and how this differs for between the GB and NI schemes.

UFU offered to send some case studies, and more context on what they might like to understand in advance of any ongoing or planned audit programmes, but we haven't received anything to date.

Q17. Clarify whether Ofgem officials ever had meetings with any other person or body with an interest in the NI RHI Scheme (such as, for example, Moy Park or any group representing poultry or mushroom farmers) and, if it did do so, please provide full details of same.

17.1 I have had incidental discussions with individuals at conferences, some of which have touched upon Scheme matters. However, to the best of my recollection, I have never had a meeting with Moy Park, or any group representing poultry or mushroom farmers.

Q18. In respect of the issue surrounding Carbon Trust loans that developed in respect of the NI RHI Scheme from in or about the autumn of 2013, the Inquiry has been provided with a number of handwritten notes prepared by you. In respect of these notes, please address the following issues:

18.1 The below questions, and the handwritten notes to which they refer, relate to communications between Ofgem and DECC regarding the Carbon Trust Loans issue. Before addressing each of these notes, I would like to make some preliminary observations about the broader context surrounding this issue and these communications.

18.2 It is my understanding that the Department for Business, Innovation and Skills (BIS) was ultimately responsible for ensuring state aid compliance by the UK as a whole (including NI) at the relevant time. This was a key consideration in feeding information on Carbon Trust Loans to DECC and for involving Ofgem's internal lawyers and BIS (see OFG-15197 to OFG-15202).

a. At OFG-53267 in a note dated 26 November 2013 the following text appears near the middle of the page: "alert GB". Please clarify whether this reflects an intention on your part or on the part of Ofgem to ensure that DECC, with its responsibility for the GB RHI Scheme, was alerted to the Carbon Trust Loan issue arising in respect of the NI RHI Scheme and:



- i. **If it does reflect such an intention, whether you (or some other Ofgem official) duly alerted DECC to the issue;**
- ii. **If it does not reflect such an intention, please explain the note;**

18.3 To the best of my understanding, this comment reflects an intention that DECC should be alerted to the Carbon Trust Loan issue arising in respect of the Scheme and that DECC and the Department should discuss the issue to establish whether there was a common policy intent. As I recall it, I offered to provide Joanne McCutcheon and Peter Hutchinson contact details for Andy Davey of DECC, and Ms McCutcheon confirmed that she already had his details. I also recall speaking to Andy Davey of DECC in or around November 2013, to provide an update on this matter.

b. At OFG-53270 in a note dated November/December 2013 the following text appears approximately one third of the way down the page: “discuss with DECC (Bob keen)”. Please clarify whether this reflects an intention on your part or on the part of Ofgem to ensure that DECC, with its responsibility for the GB RHI Scheme, was kept informed of the Carbon Trust Loan issue arising in respect of the NI RHI Scheme and:

- i. **If it does reflect such an intention, whether you (or some other Ofgem official) duly kept DECC informed as to the issue;**
- ii. **If it does not reflect such an intention, please explain the note;**
- iii. **In either event, provide the full name and role of the person named in the note as “Bob”;**

18.4 To the best of my understanding, this comment reflects an intention to alert DECC to the Carbon Trust Loan issue, and to understand any views they may have on this matter.

18.5 From memory, I raised this issue with DECC, and there was some contact between the legal teams of Ofgem, DECC and BIS on this issue.

18.6 “Bob” is a reference to Robert Hull, who was the Managing Director of Ofgem’s E-Serve division at the time.

c. At OFG-53271 in a note also dated November/December 2013 the following appears in the second line of text on the page: “discussion with DECC”. Please clarify whether this reflects an intention on your part or on the part of Ofgem to ensure that DECC, with its responsibility for the



GB RHI Scheme, was kept informed of the Carbon Trust Loan issue arising in respect of the NI RHI Scheme and:

- i. If it does reflect such an intention, whether you (or some other Ofgem official) duly kept DECC informed as to the issue;**
- ii. If it does not reflect such an intention, please explain the note;**

18.7 To the best of my understanding, this comment reflects an intention that DECC should be alerted to the Carbon Trust Loan issue arising in respect of the Scheme and that DECC and the Department should discuss the issue to establish whether there was a common policy intent. As I recall it, I offered to provide Joanne McCutcheon and Peter Hutchinson contact details for Andy Davey of DECC, and Ms McCutcheon confirmed that she already had his details. I also recall speaking to Andy Davey of DECC in or around November 2013, to provide an update on this matter.

d. At OFG-53274 in a note also dated week commencing 16 December 2013 the following appears approximately one third of the way down the page: “DECC aware – they are considering implications (Head of Policy)”. Please clarify whether this reflects the fact that DECC, with its responsibility for the GB RHI Scheme, were being kept informed of the Carbon Trust Loan issue arising in respect of the NI RHI Scheme and that Ofgem considered it important to ensure that this was so or, if it does not reflect such a fact, please explain the relevant entry in the note.

18.8 To the best of my understanding, this comment reflects the fact that DECC (and specifically, the head of policy for the GB RHI Scheme, Andy Davey) had been alerted to the Carbon Trust Loan issue arising in respect of the Scheme, and that they were considering it further.

Q19. In respect of the ‘spike’ in applications during the period between 1 July 2015 and the implementation of the amendments to the NI RHI Scheme on 18 November 2015, please address the following issues:

- a. On 6 July 2015 Seamus Hughes alerted you to the possibility of an increase in application volumes due to an awareness in industry of the possible Scheme changes (DFE-120653). Clarify what steps (if any) were taken by Ofgem in response to this warning including, but not limited to, monitoring of application numbers, monitoring of the estimated running hours of new**



applicants' installations, more frequent and/or more detailed communications with DETI.

19.1 As Head of Operations for the Scheme, and the point of contact between the Department and Ofgem, Teri Clifton had principal responsibility for overseeing these arrangements. I understand that Mrs Clifton has addressed this issue in her witness statement (see paragraphs 19d, 26 and 32 of WIT-113028 and WIT-113029 to WIT-113030), and I can confirm that this is in line with my understanding of the steps taken. In short, the measures included more granular monitoring of application numbers and more frequent updates to the Department.

b. In its first corporate witness statement at WIT-121, paragraphs 321-322, DfE suggests that there was a short time delay in the flow of information from Ofgem to DETI during the 'spike' period. Clarify whether this is correct and, in particular, whether there was any change in practice adopted by Ofgem to improve the flow of information between it and DETI during the period 1 July 2015 onwards.

19.2 The Department's corporate witness statement at paragraph 321 states:

At the time, officials only gradually became aware of the acceleration in applications, as the formal information source was the flow of applications to Ofgem and hence there was a short time delay in the information being confirmed.

The statement then confirms that the information was received by a senior DETI official.

19.3 In any process where there are multiple steps in a chain, the total time taken for the information to pass from the source of that information to the ultimate recipient will be dependent on each link in the chain. From my perspective, I was aware that Ofgem, as part of its normal practice, had access to information on the number of submitted applications, updated daily as part of our routine internal management information. My understanding, although I was not involved in this on a daily basis, was that there was frequent discussion and sharing of application numbers with the Department. I understand that Mrs Clifton's evidence was that she 'had a very open dialogue almost daily with Seamus Hughes and Stuart Wightman' at this time (WIT-113033).



19.4 I also recall meetings during this period, where the latest application numbers, as of that morning, were provided and discussed with colleagues from the Department (namely, Stuart Wightman and Seamus Hughes).

c. Without prejudice to the generality of the foregoing question:

i. At PAC-5477 in the second paragraph of your first answer to the Committee you make reference to daily discussions regarding the ‘spike’ between Ofgem and DETI. In this regard, please confirm:

- 1. When these daily discussions began;**
- 2. When these daily discussions ceased;**
- 3. Between which officials these discussions took place;**
- 4. What data was shared during these discussions (for example, did it include details of the number of additional applications received each day);**
- 5. Whether, at any point, Ofgem ever advised DETI to consider bringing forward its proposed date for implementation of Scheme changes (for example, because of the increasing numbers of applications for accreditation).**

19.5 I have set out the extent of my knowledge of these discussions immediately above.

19.6 In relation to sub-question 5, not that I am aware of. I do note that during the summer of 2015 Department colleagues wanted to move Scheme changes through quickly and they were aware of the risk of a ‘spike’ in application numbers in the event of delay.

ii. At WIT-196013 in the second paragraph Alan Hegan states as follows: “I was telephoned by Stephen in Ofgem NI team in August or early September 2015. I was asked how many jobs the Company on-going that were not submitted for RH1 accreditation yet and at that stage advised that the figure was around 70”. In this regard:

- 1. Clarify whether Ofgem was, during the ‘spike’ period, taking steps to assess likely application volumes by, for example, contacting installers and/or suppliers of biomass boilers;**



2. **If it was taking such steps, clarify:**
 - a. **When it began doing so;**
 - b. **The persons or bodies it contacted (and the number of times it contacted each one);**
 - c. **The information it obtained;**
 - d. **The steps it then took to make use of such information (for example, alerting DETI);**
3. **Clarify whether, to your knowledge, DETI was itself taking any similar information-gathering steps and, if it was, provide details of same.**

19.7 Neither I, nor staff directly under my supervision, were responsible for contacting installers and/or suppliers of biomass boilers during the 'spike' period to gather information. However, I am aware that this was done by other Ofgem staff.

19.8 While we (Ofgem) recognised that the information gathered would be anecdotal only, we thought that it would be useful to gain an understanding of the likely future level of Scheme uptake. As I recall, this would most likely have been targeted at those companies or consultants who were known within the operations team to be regularly submitting applications for accreditation. To the best of my recollection, I think that some of this information was given to the Department as anecdotal information based on 'what we were hearing on the phones'.

19.9 I remember a comment from Seamus Hughes during a meeting in this period, likely to be around September or October 2015. I recall that Mr Hughes said that the Department were receiving a lot of calls and that there was a lot of interest in when the Regulations would come into force. I don't recall if it was mentioned whether there was any outbound calling or enquiries from the Department to elicit this information.

Q20. In the spreadsheet document at OFG-134930 (27 November 2013 RHI Scheme Risk Register), at cell 'K8', in the context of the risk of Scheme 'gaming' (including, but not limited to, the issue of gaming through multiple small boilers in place of larger boilers), there is reference to the need for site audits to include checks to consider whether heat is being generated in the spirit of the RHI Regulations. On this issue:

- a. **Explain what steps Ofgem took with RHI site auditors to instruct, train, educate, brief, or otherwise equip them with knowledge on this particular**



issue so as to ensure that they identified and recorded gaming, or suspected gaming, of this type;

- 20.1 I was not personally involved in the procurement of Ricardo's services as site auditors for the Scheme. I therefore refer to and rely on Ofgem's second corporate statement, which sets out Ofgem's quality assurance measures in respect of its engagement with Ricardo (see paragraphs 50.1 to 50.8 at WIT-95333 to WIT-95335 and TRA-10592).
- 20.2 On the specific issue of multiple boilers, this was (on some occasions) documented by Ricardo and addressed during workshops between them and Ofgem, for example in the presentation to Ofgem's RHI team from Ricardo dated November 2013 (OFG-87862 to OFG-8788). There have also been more recent workshops as I mentioned during my oral evidence (TRA-10526 to TRA-10528).
- b. Explain why, at cell 'E8', gaming of this type is noted to pose a risk of "reputational damage" without any mention of financial loss or damage particularly given that financial loss or damage is recorded as a potential consequence flowing from other risks identified in the same spreadsheet – see, for example, cell 'E3' in this regard).**
- 20.3 I neither raised nor was the owner of this risk and so am unable to provide further details and/or explanation in respect of this risk.
- 20.4 However, I would make a few observations on the basis of my personal experience and involvement with the Scheme. My understanding is that the risk register was focused on the impacts of risks to the administration of the Scheme. So, for example, the risk of collusion, as noted in E3, could lead directly to financial loss to DECC, the Department or Ofgem.
- 20.5 In contrast, the generation of heat for eligible purposes, which did not meet the spirit of the RHI Regulations (E8), was a reputational risk for DECC, the Department or Ofgem. This risk related to a lawful activity, one that was allowed by the Regulations, which Ofgem and the Department were legally obliged to administer.
- 20.6 In simple terms, E3 represents a compliance risk, where for example, participants claim for heat which is not compatible with the Regulations. Such a risk, if realised, would have a financial impact. On the other hand, E8 captures conduct which is consistent with the Regulations (although inconsistent with their 'spirit'), and therefore, there is no direct financial impact.



Q21. Finally, please address any further issue arising out of your oral or written evidence in respect of which you consider it is necessary, having regard to the Inquiry's Terms of Reference, to provide confirmatory or clarificatory evidence of the type requested in the foregoing paragraphs of this Schedule.

21.1 N/A.

Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed:

A handwritten signature in black ink, which appears to read 'Edmund Ward', is written over a light grey rectangular background.

Dated: 20 July 2018