



Frank McCullough (Solmatix Ltd)

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Solicitors

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By Post and E-Mail: Adam.Kirkpatrick@king-gowdy.co.uk

25 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 have attached a copy of the RHI Inquiry's Terms of Reference for your convenience.

As you may be aware from media reports, the RHI Inquiry is continuing to conduct its investigations into the matters set out in its Terms of Reference.

The Inquiry is also continuing its ongoing process of requiring individuals who have been, or who may have been, involved in the range of matters which come within the Inquiry's Terms of Reference to provide written evidence to the Inquiry Panel.

Therefore, please find enclosed with this letter a further Section 21 Notice requiring 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 Section 21 Notice.

As the text of the Section 21 Notice explains, you are required by law to comply with it.

It is vital that the witness statement you provide to the Inquiry is your own evidence, absent the influence of others; that it is comprehensive; and that it fully explains your involvement in the matters about which you have been asked.

I also refer you to Restriction Order No 2 made by the Chairman of the RHI Inquiry on 22 June 2017, a copy of which is enclosed for your convenience. This restriction order prohibits you from publishing any documentation received from the RHI Inquiry (save that you may show it to your legal representative) unless you first obtain the consent in writing of the Inquiry Chairman.

In addition to the restriction orders made by the Chairman of the RHI Inquiry (which you will find published on the Inquiry website) receipt of this correspondence and its enclosures also places you under a duty of confidentiality to the RHI Inquiry in respect of them. You may share the correspondence and the enclosed Notice and documents with your legal representative(s), but neither you nor they may show, communicate the contents of, nor provide this correspondence or the Notice or documents 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 also 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.

I should also indicate that just because the Inquiry has asked you to provide a witness statement it does not follow that the Inquiry will also ask you to attend to give further oral evidence. Should the Inquiry wish to hear further from you it will be in touch.

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

A handwritten signature in black ink that reads "Patrick Butler". The signature is written in a cursive style with a long horizontal stroke at the end.

Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE

[No 149 of 2018]

1 June 2015 meeting with Solmatix at McCauley Engineering

It appears to the Inquiry from information received by it that, on 1 June 2015, you and Richard Bell made a site visit, along with Seamus Hughes and Dan Sinton of DETI, to McCauley Engineering (see Seamus Hughes' diary entry at IND-04464, paragraph 30 of his witness statement at WIT-14033, and COM-06377 to COM-06384).

1. As to the above:

- a. Please confirm that you did attend the meeting with Seamus Hughes and Dan Sinton at McCauley Engineering on 1 June 2015.
- b. What discussions did you have, or are you aware of Richard Bell having, with the DETI officials (Seamus Hughes and/or Dan Sinton) about the position in relation to the NI Non Domestic RHI Scheme and any anticipated forthcoming changes?
- c. In particular (but without prejudice to the generality of the foregoing enquiry), during the meeting on 1 June 2015, were you and/or Richard Bell informed about:
 - i. any budget problems with the NI Non Domestic RHI Scheme;
 - ii. potential tariff reductions in the biomass tariff; and/or
 - iii. the potential introduction of tiering to the biomass tariff from in and about October 2015 (or some other date).
- d. Can you remember any other information about the then position of the NI Non Domestic RHI Scheme which you learnt at the meeting?

2. If you shared any information that you received (from the DETI officials at the meeting on 1 June 2015) with any other individual(s), then please set out the information you shared, with whom you shared the information and when it was shared.
3. If you shared any information that you received (from the DETI officials at the meeting on 1 June 2015) with any other individual(s) then, to the extent of your knowledge and belief, set out what you understand they did with the information which you shared.
4. What other evidence can you provide to assist the Inquiry with establishing the earliest occasion(s) when information about changes to the NI Non Domestic RHI Scheme (which were subsequently introduced in November 2015) were communicated outside DETI?

Marketing of RHI Scheme

5. It appears that at some point Solmatix prepared a commercial leaflet about the benefits of the NI Non Domestic RHI Scheme (COM-06308 and COM-06309). The leaflet, amongst other things, said that *"when you factor in your guaranteed RHI grant money, you're effectively benefiting from FREE heat plus a significant financial reward. It's cash...for ash"*. Elsewhere in the leaflet it indicated that what was being described in effect meant *"FREE HEAT for 20 yrs..."*. As to this:
 - a. When did you first realise that the way in which the NI Non Domestic RHI Scheme was set up, and operated, could effectively amount to the provision of free heat for scheme members?
 - b. When did you and/or Solmatix first market or promote the Scheme in this way?
 - c. How widely do you consider that this information was known and understood? Please explain the reasons for your answer.

- d. Are you aware of other promotional material in relation to the NI Non Domestic RHI Scheme, produced by Solmatix or others, to similar effect? If so, please provide details (including when it was first available).
6. From information provided to the Inquiry it appears that, on 8 February 2016, you sent an email (COM-06557) in which you indicated that "*the original terms of the Non-Domestic RHI provided an opportunity for exploitation*". When, and how, did you first learn about the potential for "*exploitation*" of the NI Non Domestic RHI Scheme (and please explain the nature of any exploitation about which you heard)?

Generally

7. Given the matters under investigation by the RHI Inquiry, if you know of any further information (whether about discussions you had, or information of which you came to be aware) that would be relevant to the RHI Inquiry then please set that information out.

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 149 of 2018 & Notice 150 of 2018

DATE: 14th August 2018

Witness Statement of: Frank McCullagh

I, Frank McCullagh, will say as follows: -

RHI REF: Notice 150 of 2018 – Requiring the production of documents

Any document relating to or touching upon any of the issues raised in the Schedule to Section 21 Notice No 149 of 2018

I do not possess any document relating to or touching upon Notice 149 of 2018.

Any other documents, whether in electronic or hard copy, which relate to a matter in question at the RHI Inquiry, or which might be relevant to the matters the RHI Inquiry is investigating

Since October 2016, I no longer have been employed by Solmatix. On departure, I left all hard copy documents in the possession of Solmatix. Since then I have had no access to electronic documents (including emails) and I do not possess any.

RHI REF: Notice 149 of 2018 – Requiring the provision of evidence in the form of a written statement

1 June 2015 meeting with Solmatix at McAuley Engineering

It appears to the Inquiry from information received by it that, on 1 June 2015, you and Richard Bell made a site visit, along with Seamus Hughes and Dan Sinton of DETI, to McAuley Engineering (see Seamus Hughes' diary entry at IND-04464, paragraph 30 of his witness statement at WIT-14033, and COM-06377 to COM-06384).



1. As to the above:
 - a. Yes, I did attend this meeting. I was instructed by Solmatix Managing Director Richard Bell to arrange this meeting. I believe Richard Bell and Dan Sinton know each other in a personal capacity.
 - b. The purpose of the meeting was to provide a demonstration. There was no discussion about the position or forthcoming changes in relation to the NI Non Domestic RHI.
 - c. In particular (but without prejudice to the generality of the foregoing enquiry), during the meeting on 1 June 2015, were you and/or Richard Bell informed about:
 - i. No, budget problems was not discussed
 - ii. No, potential tariff reductions was not discussed
 - iii. No, potential tariff tiering was not discussed
 - d. Although I am unable to define the date, prior to 1 June 2015 I recall asking Seamus Hughes to provide clarity on the installation of multiple 99kW boilers on the same site. During this meeting I believe I asked for clarity again and I received the same response; although not the intention of the scheme, multiple 99kW boilers on the same site was possible provided they are hydraulically separate.
2. No information was shared
3. No information was shared, therefore, not applicable
4. Fergal Hegarty, Alternative Heat contacted me in July 2015 to discuss rumours which were circulating among the renewables industry and applicants about changes to the NI Non Domestic RHI. Via a formal letter sent by email, I requested a meeting with Seamus Hughes, DETI which was accepted. On 22nd



July 2015 Fergal Hegarty and I met Seamus Hughes and Stuart Wightman. The primary purpose of the meeting was to seek clarity because Solmatix had a pipeline of contracted customers whom could be impacted by changes to the scheme. My minutes were recorded in a diary which I believe Solmatix has shared with the inquiry.

Marketing of RHI Scheme

5. It appears that at some point Solmatix prepared a commercial leaflet about the benefits of the NI Non Domestic RHI Scheme (COM-06308 and COM-06309). The leaflet, amongst other things, said that “*when you factor in your guaranteed RHI grant money, you’re effectively benefiting from FREE heat plus a significant financial reward. It’s cash...for ash*”. Elsewhere in the leaflet it indicated that what was being described in effect meant “*FREE HEAT for 20 yrs...*”. As to this:

- a. In the 1st quarter of 2015, sales material was prepared as Solmatix tried to diversify from Solar to wood pellet Biomass boilers. RHI was paid in £/kWhr, therefore, an equivalent £/kWhr rate was defined for the cost of fuel. This enabled a direct comparison between RHI income and fuel cost. It is, but not always, possible to have a RHI income higher than operating costs. Variables to consider include:
 - i. Fuel supplier and price (Prices reduced over 2015-16)
 - ii. Size of fuel store (Larger store achieves economies of scale)
 - iii. Installation efficiency (Pipe runs etc.)

Calculations were based on the spreadsheet provided by governing body Microgeneration Certification Scheme (MCS))

- b. 1st quarter of 2015
- c. Knowledge of the potential for a higher RHI income compared to operating costs was widespread. Evidence of this includes competitor marketing material at trade shows and informal feedback from potential customers.

However, although not achieved through a tiered tariff, Solmatix assumed

abuse of the scheme would not be possible because inspections etc.

would take place to ensure generation was for useable heat only.

Moreover, practical limitations of the boiler meant that Solmatix advised maximum running hours of 2500 hours approx. per annum in order for the boiler to last the required 20 years of the scheme. This was reflected in all Solmatix quotations which included payback models.

- d. In regards to the phrase “It’s cash...for ash” among others, Solmatix did not intend to promote or support the overcompensation of NI Non Domestic RHI recipients. Naively Solmatix used this phrase in response to Amber Green Energy who presented their Biomass offering at Balmoral Show 2014 using the phrase “Earn as you Burn”.

Solmatix fully supported the responsible use and the subsequent changes to the NI Non Domestic RHI (as expressed in correspondence to DETI on 10th July 2015).

6. Due to frustration that another renewable energy support scheme had ceased abruptly (similar to Renewable Obligation Certificates), my choice of phrasing was very poor. A more appropriate term would have been “overcompensation” rather than “exploitation”. I have no evidence of exploitation of the NI Non Domestic RHI. In terms of overcompensation, rumours circulated in Summer 2015 that poultry and wood chip producers were receiving large RHI incomes but again I have no evidence of this. Solmatix installations were not within these sectors (excluding 1no. installation at a new poultry farm).

Generally

7. I have no further information.



Statement of Truth

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

Signed:  _____

Dated: 14th August 2018