



RHI Inquiry
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Jim Allister QC MLA
38 Henry Street
Ballymena
Co Antrim
BT42 3AH

By post and email (info@jimallister.org)

13 November 2017

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 enclose a copy of the Inquiry's Terms of Reference for your information. These are also available on the Inquiry's website at www.rhiinquiry.org.

You will no doubt be aware from media reports that the RHI Inquiry is conducting its investigations into the matters set out in its Terms of Reference. In addition to having commenced its public hearings, the Inquiry is continuing with the process of gathering all of the relevant documentation from relevant departments, organisations and individuals; and the 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.

From information received by the Inquiry, it appears that you may have had some involvement with, or may have relevant information pertaining to, the Non Domestic Renewable Heat Incentive Scheme in Northern Ireland ('the Scheme') or matters falling within the Inquiry's Terms of Reference.

In keeping with the approach we are taking with others, the RHI Inquiry is now issuing to you a 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.

The Section 21 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 Section 21 Notice. As the text of the Section 21 Notice explains, you are required by law to comply with it. This should allay any concerns you might otherwise have had in relation to confidentiality or data protection.

The aim of the enclosed Notice is to require you to provide all relevant evidence you have within your knowledge, information or belief which is pertinent to the Inquiry's Terms of Reference. The Schedule to the enclosed Section 21 Notice provides further detail as to the matters which should be covered in the written evidence which is required from you. In the event that there is a category of information in respect of which you have no evidence which you can provide, please state this in your response. Where you can provide evidence, the more comprehensive your statement is, the less likely it is that the Inquiry will have to revert to you at a later stage for clarification, although in many cases this is likely to be necessary to some degree.

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), 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. In addition, a similar restriction is contained in Restriction Order No 2 of 2017 made by the Inquiry Chairman and available on the RHI Inquiry website.

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.

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 532 of 2017]

General involvement with the RHI Scheme

1. Explain in detail (identifying any relevant documents) any direct or indirect involvement you had in the RHI Scheme or any aspect of it prior to its suspension in February 2016, including, in particular:
 - a. any interactions or communications with constituents or members of the public;
 - b. any interactions or communications with Scheme applicants, or potential applicants, or companies or organisations in the renewable heating or biomass industries or supply chains; and
 - c. any interactions or communications with civil servants, Ministers, special advisers, other MLAs or politicians, or public bodies (including in particular, but not limited to, DETI, DFP and/or Ofgem);regarding, relating to or touching upon the RHI Scheme.

2. Without prejudice to the generality of paragraph 1 above, please provide full details of:
 - i. any communications with, or instances of lobbying or encouragement of, any of the above classes of person in relation to the terms of the RHI Scheme and/or the introduction, non-introduction, variation, or delay of the introduction of cost controls into the Scheme (including, but not limited to, the amendment of tariffs, tiering, degression and Scheme suspension or closure);
 - ii. any communications between you and any of the above classes of person in which you sought and/or were provided with information

concerning the likelihood of costs controls being introduced in the RHI Scheme and/or the nature, extent, and effective date of such controls (providing in respect of each such communication the name of the relevant civil servant, politician, special adviser, etc., the date of each communication, the mode of each communication, the place at which each communication occurred, if applicable, and the authorisation [if any] you and, if known, the other person had to engage in such communications);

- iii. any other instances of information passing between you and any of the above classes of person regarding, or of relevance to, the RHI Scheme.
3. Please identify any risks, flaws, problems, anomalies, loopholes, or other issues regarding the Scheme which came to your attention, setting out details of when this occurred, how it occurred, by whom any relevant communication was made, and how you dealt with such knowledge and/or communications (including, in particular, the steps [if any] taken by you to alert other persons or bodies such as the Department for Enterprise, Trade and Investment ['DETI'] and/or Ofgem to the said risks, flaws, problems, anomalies, loopholes, or other issues with the Scheme).
4. Please identify any instances of whistle-blowing to you in relation to the Scheme, or any disclosures made to you raising concerns about the Scheme, setting out details of when such communications occurred, by whom each such communication was made, and how you dealt with each such communication.
5. Specify whether you promoted the Scheme and/or encouraged any third party to seek accreditation under the Scheme, assisted any third party in so doing, or provided any third party with information to the end that they might apply, or consider applying, for accreditation under the Scheme. In respect of any such instance, please provide full details including (but not limited to) the third party concerned and the date of any steps taken by you in that regard.

6. Identify any instances, to your knowledge or belief, of lobbying or encouragement of Ministers, special advisers, civil servants or other relevant persons in relation to the terms of the Scheme and/or the introduction, non-introduction, variation or delay of the introduction of cost controls into the Scheme (including, but not limited to, the amendment of tariffs, tiering, degression and Scheme suspension or closure) at any stage but, in particular, at the creation of the Scheme and in the period from mid-2015 to early 2016.
7. Please specify when you first became aware that there may have been an incentive in some cases to produce heat merely to make profit from the Scheme; how you became so aware, and the actions (if any) you took in respect of such knowledge (such as, for example, communicating with DETI, DFP or Ofgem, or with persons in the renewable energy sector, or others).
8. Specify whether, to your knowledge, you have any connection to a person or body receiving payment under the Scheme or benefiting commercially from the Scheme in some other way (for instance, by supplying equipment, plant, fuel or other goods or services used by Scheme claimants). In this request, a 'connection' includes (but is not limited to) circumstances where the Scheme claimant or beneficiary is a relative, friend, close acquaintance, business associate or (in the case of politicians or special advisers) donor or supporter (either to or of you or your political party).

Specific instances of involvement

9. Without prejudice to the generality of question 4 above, it appears to the Inquiry from information received by it that, on 17 December 2016, you contacted Robin Swann and informed him that you had been "*told by an insider that [the] DFP supply officer should not have approved [the] initial RHI proposal on the basis that it was not value for money. However, it is likely he was pressurised to pass it*". (A copy of your email of that date, contained within the Inquiry evidence bundle at CAG-01813 to CAG-01814 is enclosed for your convenience). As to that, please address the following matters:

- a. Please identify the “*insider*” who provided you with this information; and
- b. Insofar as you can recall, please specify precisely what you were told by the insider generally about the RHI Scheme and, in particular, in relation to the suggestion that the DFP Supply Officer had been pressurised to approve the initial RHI proposal (including who applied any such pressure and in what form).

General

10. Considering the RHI Inquiry’s Terms of Reference, please identify any other representations made to you about the RHI Scheme (which you regard as significant and about which you consider the RHI Inquiry should be aware), whether those representations were made by colleagues, or otherwise. In respect of any such representations please indicate when they occurred, where they occurred, who was involved, and what was said or communicated to you.
11. Considering the RHI Inquiry’s Terms of Reference, please identify any other conversations or discussions you had about the RHI Scheme (which you regard as significant and about which you consider the RHI Inquiry should be aware), whether those conversations or discussions involved colleagues, or otherwise. In respect of any such conversations or discussions please indicate when they occurred, where they occurred, who was involved, and what was said to you.
12. Provide any further evidence within your knowledge or belief which is relevant to the matters which the RHI Inquiry is investigating as set out in the RHI Inquiry’s Terms of Reference.

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.

O'Neill, Brian

From: Wilkinson, Tomas
Sent: 22 December 2016 10:22
To: O'Neill, Brian
Subject: FW: As per conversation 19.12.16 : RHI

From: Donnelly, Kieran
Sent: 20 December 2016 17:56
To: robin.swann@ Personal information redacted by the RHI Inquiry
Cc: Wilkinson, Tomas
Subject: RE: As per conversation 19.12.16 : RHI

Robin

This is another interesting angle which we would be happy to look into.

Regards
 Kieran

Sent from my iPad managed by BlackBerry Enterprise Service

----- Original Message -----

From: Robin Swann <robin.swann@ Personal information redacted by the RHI Inquiry>
Date: 20 December 2016, 14:28 GMT
To: Donnelly, Kieran <kieran.donnelly@niauditoffice.gov.uk>
Subject: As per conversation 19.12.16 : RHI

Kieran,

Please find attached an email I received from Jim Allister MLA, as discussed on the 19th Dec 2016, is this a line of inquiry the NIAO could follow up on.

regards,

Robin Swann MLA
 Chief Whip Ulster Unionist Party.
 Chair Public Accounts Committee.

----- Original message -----

From: J H Allister <jhallister@ Personal information redacted by the RHI Inquiry>
Date: 17/12/2016 17:04 (GMT+00:00)
To: Robin Swann <robin.swann@ Personal information redacted by the RHI Inquiry>
Subject: RHI

Robin,

I don't know if PAC has covered this aspect yet, but I'm told by an insider that DFP supply officer should not have approved initial RHI proposal on the basis that it was not value for money. However, it is likely he was pressurised to pass it.

The question that should be pursued is whether there was any SPAD contact urging approval of the scheme. Supply officer was probably Stewart Stevenson and his boss (now retired) Jack Layberry.

Isn't life interesting!!!!

Jim Allister

INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 532 of 2017

DATE: 27 November 2017

Witness Statement of: James Hugh Allister

I, James Hugh Allister, will say as follows:-

1. I am a member of the Northern Ireland Assembly for the constituency of North Antrim.
2. I am not connected or related to any beneficiary of the RHI Scheme, nor have I any personal interest in the scheme.
3. As a member of the Northern Ireland Assembly I have spoken about the scheme in Assembly debates and tabled multiple Assembly Questions.
4. With something of a reputation for challenging government I am often the recipient of anonymous information on a variety of subjects. RHI issues have on occasions come to my attention in this way.
5. It is my custom and practice upon receiving anonymous allegations to pass them on to the appropriate authorities. Generally, I have no means of knowing the truth or accuracy of any allegation made but regard it as my public duty to inform the relevant authorities.
6. On 7th October 2016 I received an anonymous letter making allegations of abuse of the RHI scheme by Mr Stephen Brimstone of [Personal information redacted by the RHI Inquiry] Mr Brimstone was known to me to be a Special Adviser in the First Minister's Office.
7. On 10th October 2016 I copied the said anonymous letter to the PSNI, OFGEM and the Northern Ireland Audit Office. I invited these bodies to take such action as was deemed appropriate.
8. I received a response on 17th November 2016 (dated 11th November 2016) from the PSNI. Believing the PSNI had misinterpreted some of the content of the anonymous letter I wrote further to the police on 29th November 2016. I have no record of receiving a response to this further letter.
9. Having received no response from OFGEM I sent a reminder on 21st December 2016. In that reminder I included a further allegation in respect of Mr Brimstone which had been made to me by a constituent on 13th December 2016. This informant, [Personal information redacted by the RHI Inquiry] (whose name I believe should be redacted) had made an appointment to see me in my office. I made a note of what he told me. I received a response from OFGEM dated 13th January 2017.
10. I received a response from the Comptroller and Auditor General on 11th October 2016.
11. I received two further emails on 24th January and 25th January 2017 respectively on the subject of Mr Brimstone, [Personal information redacted by the RHI Inquiry]
12. All correspondence referenced at paragraphs 6-11 above is bundled together and included at Appendix 1.
13. In or about mid December 2016 I received a phone call from a person who did not give their name but presented as 'DFP Insider'. The allegation made to me was that the initial approval

by DFP Supply in 2012 should not have issued because the scheme was not value for money. The caller postulated that the Supply Officer, whose likely identity they provided, may have been pressurised to issue approval. This then formed the basis of the email which I sent to Mr Robin Swann MLA on 17th December 2016. I sent the information to Mr Swann because he was Chair of the ongoing PAC Investigation, which at the time was the only investigatory process in existence.

14. I have tabled dozens of Questions in the Assembly on the subject of RHI, some prompted by anonymous information, for example, AQWs 9076/16-21, 9194/16-21, 9235/16-21 and 9290/16-21 arose from the matters addressed in paragraph 13. I also made reference to the adequacy of DFP's 2012 approval of the scheme in my speech in the Assembly on 23rd January 2017 on the Renewable Heat Incentive Scheme (Amendment) Regulations (NI) 2017.
15. With the collapse of the Executive in January 2017 all unanswered Assembly Questions were deemed to be withdrawn – and are so described on the Assembly website. However, on 12th April 2017 I wrote to the Permanent Secretary of the Department of the Economy reciting all my unanswered Questions and asking for replies. I have no record of receiving any reply from the department. On the same date I wrote a similar letter to the Permanent Secretary of the Department of Finance. By letter of 8th May 2017 I received a response with replies to my outstanding Questions.
16. All Questions asked on the subject of RHI along with the follow-up correspondence referred to at paragraph 15 above are bundled together and included at Appendix 2.
17. I also made two substantive speeches in the Assembly on RHI issues, namely on 19th December 2016 and 23rd January 2017 in which I articulated my concerns about RHI and how it was handled. These speeches are bundled together at Appendix 3.
18. On 15th December 2016 I wrote to the Minister for the Economy raising a number of queries arising from the EU Commission approval of the RHI Scheme in June 2012. I regard these as important questions, particularly on the issues of “useful heat” and “perverse incentives”. I am disappointed not to have received a reply, though the minister remained in office till March 2017. A copy of my letter is at Appendix 4.
19. I had some other RHI-related correspondence with the Department for the Economy, namely my letters of 12th December 2016 (with reply), 9th January 2017 and 26th May 2017 (with reply of 1st June 2017), which I have bundled together and included as Appendix 5.
20. During Oral Question Time in the Assembly on 6th December 2016 I asked the Economy Minister (Mr Simon Hamilton MLA) how much the RHI “squander” would cost into the future. In his reply the minister alleged I had written to him “a few weeks ago pleading for a constituent of his to be included in the scheme”. At the end of Question Time I pointed out, through a Point of Order, that rather than pleading for anyone to be included that at the request of two constituents I had written enquiring why after 7 months their applications had not yet been processed. I enclose at Appendix 6 the relevant extracts from Hansard and the relevant correspondence.
21. I also had occasion, on foot of a query from a constituent, to communicate with Action Renewables Ltd about its role, inter alia, in the commissioning of RHI boilers. I include that correspondence at Appendix 7.
22. In February 2016 I received lobbying material from Coolsky Limited, a distributor of renewable energy products, and from the Solar Trade Association. I include that correspondence at Appendix 8.
23. In the course of my work as a constituency representative I have met with several poultry farmers in my constituency adversely affected by the belated imposition of tariff tiering.

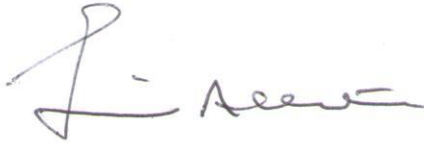
With many having relied on the promotion of the RHI Scheme as a profitable investment and

- having borrowed on the strength thereof, aided by the Economy Minister's letter to the banks, a significant number of poultry farmers in North Antrim find themselves in severe financial difficulties. So, as a local MLA several have discussed their plight with me.
24. I have made several public statements over the months on the RHI controversy. I have bundled these together at Appendix 9.
 25. On conducting a search for any other potentially relevant documentation in my office my staff came upon a record of a further anonymous note, two further emails and entries in an office notebook recording unverified information from anonymous phone calls. These are bundled together and included at Appendix 10.
 26. I verily believe that the above encompasses all my involvement with RHI issues and knowledge of same.

Statement of Truth

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

Signed:



Dated: 27th November 2017