



RHI Inquiry

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Mr John Robinson
C/o Mr John McBurney
John McBurney Solicitors
Bannside Chambers
3-7 Church Square
Banbridge
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By email to: johnmcburneysolicitors@gmail.com

13 November 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 know that you are very familiar with the work of the Inquiry and its Terms of Reference from your previous engagement with it and the Inquiry remains grateful for the witness statements and oral evidence you have already provided.

However, as you may be aware, the Inquiry continues to seek some further written evidence from witnesses and participants, particularly where issues have arisen in

evidence recently provided in respect of which it is necessary, or appropriate, to provide an opportunity for further response. The Inquiry Chairman also retains the right to require witnesses to attend to provide further oral evidence, and consideration will be given to whether that is necessary in light of additional written evidence which is received.

In the circumstances, 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 further written statement addressing the matters identified in the Schedule to the Section 21 Notice.

Where you have been asked about a matter which has been addressed to some degree in your previous written or oral evidence and you are clear that there is no further evidence which you can provide, please simply say so.

In the interests of fairness, you are also encouraged to provide, through the further written statement now being requested of you, any additional information that you can which is relevant to the Inquiry's investigation of the matters falling within its Terms of Reference in relation to any of its phases, in light of any additional matters which have emerged during the course of the Inquiry's evidence-gathering processes, particularly in the period since the completion of your oral evidence on 26 September 2018.

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

As before, it is vital that the further 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.

In the event that you require or desire access to some documentation, not already in your possession, in order to assist you in preparing your statement, the Department for the Economy (DfE) can make arrangements to permit such access, at least in the

first instance, and you should contact Terence Coyne at DfE, who is the Department's RHI Task Force Information Manager.

The questions in the attached notice refer to various documents. For the most part, these documents have already been provided to you. Where they have not, a copy of the relevant document is enclosed with the Notice.

I also remind you, as before, of the restriction orders made by the Chairman of the RHI Inquiry, which affect how you may deal with this correspondence and its enclosures (which are also provided to you under a duty of confidentiality to the RHI Inquiry). You may, of course, share the correspondence and the enclosed Notice and documents with your legal representative(s), under the same conditions as I set out in my previous 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.

A copy of this correspondence has also been provided to your legal representative, John McBurney (by email only).

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 215 of 2018]***Disclosure of Emails*

1. In his evidence to the Inquiry Dr Andrew McCormick stated that, in January and February 2017, he received an anonymous envelope in the mail containing a number of emails dating from July 2015 which appeared to show DETI officials had been advising industry members of proposed alterations to the RHI scheme (see **WIT-10516-7, WIT-26310 and TRA-16683 to 16688**). The Inquiry has received further evidence which appears to show that, in or around the same time as Dr McCormick received this anonymous envelope, the same emails were leaked to the media. In his oral evidence to the Inquiry, at **TRA-16217 to 16224**, Simon Hamilton was referred to these incidents and gave evidence that you “got a copy” of the emails and, following discussions with him, sent the emails anonymously to Dr McCormick and to members of the media. As to this:
 - a. State whether you take issue with any of Simon Hamilton’s oral evidence on this topic, and if you do, clarify those parts of it with which you take issue and your reason(s) for doing so;
 - b. If, as Simon Hamilton states, you sent the emails to Dr McCormick, please address the following issues in detail:
 - i. From whom, when, how, and for what purpose(s) did you originally receive the emails;
 - ii. When receiving the emails, did any person direct or advise you, or make a request of you, as to what you should do with the emails and, if they did, please provide full details of this (including the identity of each such person);
 - iii. With whom, when and for what purpose did you discuss the emails prior to speaking to Simon Hamilton about them;
 - iv. Give a detailed description of any and all conversations you had with Simon Hamilton about the emails, including the date,

- location, who else was present, and what was said by each of you;
- v. What considerations did you take into account in deciding whether or not to pass the emails to Dr McCormick;
 - vi. What considerations did you take into account in deciding whether or not to do so *anonymously* (including details of the reasons why the emails were ultimately sent to him on an anonymous basis);
 - vii. Set out any steps you took to ensure that Dr McCormick received the emails;
 - viii. In sending the emails anonymously to Dr McCormick, what regard did you have to the Civil Service Code of Ethics or any other Code, protocol or contractual obligation placed upon you by virtue of your temporary employment as a civil servant;
 - ix. Clarify whether you believe you had any actual or potential conflict of interest between your allegiance to the DUP and your obligations as a temporary civil servant when considering what to do with the emails (please include your reason(s) for holding such a belief);
 - x. Clarify whether you believe you placed the interests of the DUP, or any individual or group of individuals (whether within the DUP or otherwise), ahead of the interests of the NI Civil Service or the public interest when considering what to do with the emails (please include your reason(s) for holding such a belief);
- c. If, as has also been stated, you sent the emails to members of the media, please address the following issues:
- i. Provide details of all discussions you had, prior to sending the emails to the media, regarding their possible disclosure to the media, including when and with whom such discussions took place;
 - ii. Prior to sending the emails to the media, did any person direct or advise you, or make a request of you, that the emails should be

- disclosed to the media and, if so, from whom (and for what purpose) did such direction, advice or request come;
- iii. What considerations did you take into account when deciding whether to disclose the emails to the media;
 - iv. Without prejudice to the foregoing request, please set out in full the regard, if any, that you had for the following issues when deciding to disclose, and when disclosing, the emails to members of the media:
 - a. the welfare of the civil servants named in the emails;
 - b. NICS information security;
 - c. the Data Protection Act 1998;
 - d. the Civil Service Code of Ethics or any other Code, protocol or contractual obligation placed upon you by virtue of your temporary employment as a civil servant;
 - e. anonymising personal data within the emails;
 - v. To which precise members of the media did you send the emails, when and how did you send them, and for what reasons did you select those specific persons;
 - vi. Clarify your and/or Minister Hamilton's objective in disclosing the emails to the media (and/or the objective of any person who directed, advised or requested that you disclose the emails, if known) and state whether, in your opinion, disclosure achieved that objective (including the reasons for your opinion);
 - vii. Clarify whether you believe that, by disclosing the emails to the media, you breached any the NI Civil Service Code of Ethics or any other Code, protocol or contractual obligation placed upon you as a temporary civil servant (include the reason(s) for your belief);
 - viii. To whom other than Minister Hamilton (if anyone) did you disclose that you had sent the emails to the media, and when and for what purpose did you make such disclosure (**NOTE: you are not obliged to reveal any privileged disclosures to your lawyers in answer to this question**);

- d. To whom, other than those people captured by the foregoing requests, did you send or disclose the emails, or otherwise make aware of the contents of the emails (please include details of when and for what purpose(s) you did so);
- e. Explain in detail whether you believe you had a conflict of interest, either actual or potential, between your allegiance to the DUP and the obligations you were under as a temporary civil servant when considering what to do with the emails (please include your reason(s) for holding such a belief);
- f. Explain in detail whether you believe you placed the interests of the DUP, or any individual or group of individuals whether within the DUP or otherwise, ahead of the interests of the NI Civil Service or the public interest when considering what to do with the emails (please include the reason(s) for your belief);
- g. If you did disclose the emails to either Dr McCormick or members of the media:
 - i. explain why you failed to disclose that information to the Inquiry in your written or oral evidence to date;
 - ii. clarify whether you believe your written and oral evidence to the Inquiry was, given the aforementioned failure, full, frank and candid (please include the reason(s) for your belief);
 - iii. identify for, and provide to, the Inquiry all documentation within your custody or control relating to any matter touching upon the issue of disclosure of the emails to Dr McCormick and the media and, if applicable, explain why you have not previously given such documentation to the Inquiry.

The Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland)
2017

2. Clarify (a) whether it was your belief in early 2017 and (b) whether it remains your belief now that the measures introduced by the 2017 Regulations represented the best way to mitigate the expense of the RHI scheme (providing, in each case, the reasons for your belief that they were or were not the best approach).

General

3. To the extent that you consider the evidence of any other witness or participant contradicts your evidence on a significant issue, or is materially incomplete in respect of any significant issue, you should take this opportunity to address those issues by way of further written evidence, but only to the extent (a) that the said issues have not already been addressed in your existing oral and written evidence and (b) that the further material you wish to provide constitutes evidence of fact as opposed to mere commentary on the evidence of another witness or participant which would be more appropriate for submissions.
4. Please set out any further significant evidence you have or of which you are aware, having regard to the Inquiry's Terms of Reference, which has not been addressed either adequately or at all in your previous written or oral evidence.

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 215 of 2018

DATE: 20 November 2018

Witness Statement of: JOHN ROBINSON

I, John Robinson, will say as follows: -

Disclosure of Emails

1. In his evidence to the Inquiry Dr Andrew McCormick stated that, in January and February 2017, he received an anonymous envelope in the mail containing a number of emails dating from July 2015 which appeared to show DETI officials had been advising industry members of proposed alterations to the RHI scheme (see **WIT-10516-7, WIT-26310 and TRA-16683 to 16688**). The Inquiry has received further evidence which appears to show that, in or around the same time as Dr McCormick received this anonymous envelope, the same emails were leaked to the media. In his oral evidence to the Inquiry, at **TRA-16217 to 16224**, Simon Hamilton was referred to these incidents and gave evidence that you “*got a copy*” of the emails and, following discussions with him, sent the emails anonymously to Dr McCormick and to members of the media. As to this:
 - a. State whether you take issue with any of Simon Hamilton’s oral evidence on this topic, and if you do, clarify those parts of it with which you take issue and your reason(s) for doing so;

At TRA-16220 line 10, Mr Hamilton seems to affirm that the emails which I sent to Mr McCormick were from civil servants to industry. For accuracy, the material sent were two (WIT-10601 to WIT-10604) email conversations between people in the renewable industry discussing conversations they had with civil



servants, rather than internal departmental emails or emails directly from the Department to industry.

- b. If, as Simon Hamilton states, you sent the emails to Dr McCormick, please address the following issues in detail:
- i. From whom, when, how, and for what purpose(s) did you originally receive the emails;

I received the documents (WIT-10601 to WIT-10604) from Andrew Crawford via email on 16 December 2016.

I don't believe there was any specific conversation with Andrew Crawford before I received WIT-10601 to WIT-10604. From memory, it may have been a number of days after receiving the emails that Andrew Crawford and I discussed them. His primary point was that they proved the renewable industry was being briefed in advance of tariff changes in 2015 by the civil servants rather than by political sources as had been alleged through media comment.

At that stage, I viewed the emails as relevant to what had gone wrong in the Scheme but not materially significant to the Minister's immediate task of placing new cost controls on the Scheme.

- ii. When receiving the emails, did any person direct or advise you, or make a request of you, as to what you should do with the emails and, if they did, please provide full details of this (including the identity of each such person);

Richard Bullick encouraged me to share them (WIT-10601 to WIT-10604) with the media as it counteracted a narrative being broadcast at that time.

Andrew Crawford wanted me to share them (WIT-10601 to WIT-10604) with the media but did not want the original source of the material to be disclosed.



Simon Hamilton primarily wanted them (WIT-10601 to WIT-10604) to be shared with the Departmental investigation, but he also recognised the benefit in challenging the media narrative being painted against the Party. Simon and I discussed handing them over directly to Dr McCormick but Andrew Crawford had asked me to protect the origin of emails i.e. david@rsbiomass.com rather than himself. For this reason, we knew that if we handed them over directly we would be asked as to where and how they were received. This was a consideration which seemed significant at the time but now with hindsight was really immaterial.

- iii. With whom, when and for what purpose did you discuss the emails prior to speaking to Simon Hamilton about them;

I recall speaking with the source of the emails i.e. Andrew Crawford, after receiving the emails (WIT-10601 to WIT-10604). This may have been some days after they were received as my focus was elsewhere in the Department at that time. The purpose of the discussion would have been to ascertain the rationale for them being shared with me.

- iv. Give a detailed description of any and all conversations you had with Simon Hamilton about the emails, including the date, location, who else was present, and what was said by each of you;

I would be unable to give dates but can provide locations for two conversations.

I recall a conversation in the Minister's Departmental office which continued in the canteen about how we should hand the emails over to Dr McCormick or the PWC investigations team. I made the Minister aware that the source of the emails wanted to be protected. There was concern that by handing them over we would be obligated to state how and from whom they were received. There were only the two of us present for the conversation.

Another conversation took place on the Stormont Estate in a house used by the then First Minister. Richard Bullick, Simon Hamilton, and I were due to meet the First Minister. I don't believe Mrs Foster was present. It may have been Friday 23rd December 2016.

On the telephone call arranging the meeting Mr Bullick asked why I had not shared the emails with the media yet. I indicated that I wasn't convinced by such a course but if it was felt this was the best way to proceed then we could discuss it at the meeting. He was strongly of the view we needed to share the emails with the media. During the phone call, Richard indicated he would bring envelopes to the meeting if I would print the two emails.

As a means of delaying this course of action further, I did not print the emails.

During the short walk from the Departmental building to the First Minister's house, Simon and I discussed our discomfort at handling the emails in this manner, i.e. anonymously.

During the discussion in the house, Richard, Simon and I agreed that we would not be sending the two industry-to-industry emails to the media before they were shared with the Departmental investigations team. We agreed to send the emails to the Permanent Secretary and the Chair of the Economy Committee Conor Murphy. It was agreed I would go to the Party's office in Parliament Buildings, print the emails with Andrew Crawford's and David Robinson's details removed, and post them immediately at Tomb Street so they could reach Dr McCormick before the Christmas break.

- v. What considerations did you take into account in deciding whether or not to pass the emails to Dr McCormick;

On first appreciating the significance of the material I had received, I wanted it to be shared with the relevant investigations. Passing the material to the

Permanent Secretary was the best route to do this as he could then log the documents and pass them to the relevant offices.

Simon and I considered the protection of the source. If we handed them over directly, Dr McCormick was going to ask where they came from. To avoid this, we considered leaving them on his desk without any explanation or discussion.

We also questioned if Dr McCormick would take them seriously as they were helpful to the political party of which we were members but unhelpful to his colleagues and the civil servants who were still advising us on energy matters.

Such was the lack of trust in almost all directions at that time, I, and to some extent Simon, struggled to feel satisfied that Dr McCormick did not already know such briefing of industry on tariff changes was taking place in 2015. Therefore, I wasn't convinced that these emails would be treated in the way they deserved to be.

- vi. What considerations did you take into account in deciding whether or not to do so *anonymously* (including details of the reasons why the emails were ultimately sent to him on an anonymous basis);

Alongside the Minister, I considered the protection of the source. If we handed them over directly, Dr McCormick was going to ask about their origin. A clear commitment had been given by me to Andrew Crawford that the original source would not be disclosed.

- vii. Set out any steps you took to ensure that Dr McCormick received the emails;

They were posted to Dr McCormick and the Chairman of the Economy Committee Conor Murphy.



- viii. In sending the emails anonymously to Dr McCormick, what regard did you have to the Civil Service Code of Ethics or any other Code, protocol or contractual obligation placed upon you by virtue of your temporary employment as a civil servant;

I was acting to ensure the investigations had the relevant material whilst at the same time honouring a commitment to protect the origin of the emails.

My primary focus was getting the information to the relevant people as opposed to the channel used to communicate it.

My instinct was to hand them directly to Dr McCormick. It is a matter of regret that I did not.

- ix. Clarify whether you believe you had any actual or potential conflict of interest between your allegiance to the DUP and your obligations as a temporary civil servant when considering what to do with the emails (please include your reason(s) for holding such a belief);

These were industry-to-industry emails. The data was not owned by the Department. My duty as a temporary civil servant was to get the information to the relevant investigations within the system. This obligation was fulfilled.

- x. Clarify whether you believe you placed the interests of the DUP, or any individual or group of individuals (whether within the DUP or otherwise), ahead of the interests of the NI Civil Service or the public interest when considering what to do with the emails (please include your reason(s) for holding such a belief);

These were industry-to-industry emails. The data was not owned by the Department. My duty as a temporary civil servant was to get the information to the relevant investigations within the system. This obligation was fulfilled.



c. If, as has also been stated, you sent the emails to members of the media, please address the following issues:

- i. Provide details of all discussions you had, prior to sending the emails to the media, regarding their possible disclosure to the media, including when and with whom such discussions took place;

As above at b. iv

- ii. Prior to sending the emails to the media, did any person direct or advise you, or make a request of you, that the emails should be disclosed to the media and, if so, from whom (and for what purpose) did such direction, advice or request come;

As above at b. iv

- iii. What considerations did you take into account when deciding whether to disclose the emails to the media;

The first step was to ensure the four pages of industry-to-industry emails were received by the Department. This was confirmed by the Permanent Secretary on 5 January 2017.

The emails were almost forgotten about. Our focus was on progressing cost controls, however, as the narrative gathered pace in the public domain that information about the 2015 tariff changes had been given to industry from political sources, it was felt that this alternative narrative needed to be shared.

I wasn't entirely comfortable with sharing the information. Richard Bullick and I had initially planned to meet Sam McBride and brief him face-to-face but this wasn't possible due to diaries.



I chose two outlets that I knew would test material before simply publishing it. To that end, the four pages were printed and posted separately to the BBC's Head of News Kathleen Carragher and the News Letter's Sam McBride.

- iv. Without prejudice to the foregoing request, please set out in full the regard, if any, that you had for the following issues when deciding to disclose, and when disclosing, the emails to members of the media:
 - a. the welfare of the civil servants named in the emails;
 - b. NICS information security;
 - c. the Data Protection Act 1998;
 - d. the Civil Service Code of Ethics or any other Code, protocol or contractual obligation placed upon you by virtue of your temporary employment as a civil servant;
 - e. anonymising personal data within the emails;

Neither of these documents were owned by the Department. Whilst I wasn't entirely comfortable sharing the documents with the media, I was satisfied that both journalists would act in the public interest, test it, and give anyone impacted an opportunity to reply.

- v. To which precise members of the media did you send the emails, when and how did you send them, and for what reasons did you select those specific persons;

As per above at c. iii.

- vi. Clarify your and/or Minister Hamilton's objective in disclosing the emails to the media (and/or the objective of any person who directed, advised or requested that you disclose the emails, if known) and state whether, in your opinion, disclosure achieved that objective (including the reasons for your opinion);

As per above at c. iii.



- vii. Clarify whether you believe that, by disclosing the emails to the media, you breached any the NI Civil Service Code of Ethics or any other Code, protocol or contractual obligation placed upon you as a temporary civil servant (include the reason(s) for your belief);

No. As per c. iv.

- viii. To whom other than Minister Hamilton (if anyone) did you disclose that you had sent the emails to the media, and when and for what purpose did you make such disclosure (**NOTE: you are not obliged to reveal any privileged disclosures to your lawyers in answer to this question**);

As outlined in previous answers.

- d. To whom, other than those people captured by the foregoing requests, did you send or disclose the emails, or otherwise make aware of the contents of the emails (please include details of when and for what purpose(s) you did so);

The two emails were initially sent to Dr McCormick and the Economy Committee Chairman Conor Murphy on 23 December 2016 and in mid January 2017 to Sam McBride and Kathleen Carragher.

- e. Explain in detail whether you believe you had a conflict of interest, either actual or potential, between your allegiance to the DUP and the obligations you were under as a temporary civil servant when considering what to do with the emails (please include your reason(s) for holding such a belief);

The information was received as a result of my political role but I understood my duty to ensure the relevant investigations received it. I accept there was a struggle but whilst the means would be different with hindsight, ultimately the



end result would not be materially different. With hindsight I would hand the document's directly to Dr McCormick.

- f. Explain in detail whether you believe you placed the interests of the DUP, or any individual or group of individuals whether within the DUP or otherwise, ahead of the interests of the NI Civil Service or the public interest when considering what to do with the emails (please include the reason(s) for your belief);

I tried my best to balance all those interests.

- g. If you did disclose the emails to either Dr McCormick or members of the media:
- i. explain why you failed to disclose that information to the Inquiry in your written or oral evidence to date;
 - ii. clarify whether you believe your written and oral evidence to the Inquiry was, given the aforementioned failure, full, frank and candid (please include the reason(s) for your belief);
 - iii. identify for, and provide to, the Inquiry all documentation within your custody or control relating to any matter touching upon the issue of disclosure of the emails to Dr McCormick and the media and, if applicable, explain why you have not previously given such documentation to the Inquiry.

The documents at WIT-10601 to WIT-10604 were disclosed in my initial trawl of documents supplied to the Inquiry in folder 6. By supplying the Inquiry with the related documents, there was no effort on my part to withhold any material or information. If I had been asked about those documents, I would have given a full and candid reply as I have done in this written response.

The Renewable Heat Incentive Scheme (Amendment) Regulations (Northern Ireland) 2017



2. Clarify (a) whether it was your belief in early 2017 and (b) whether it remains your belief now that the measures introduced by the 2017 Regulations represented the best way to mitigate the expense of the RHI scheme (providing, in each case, the reasons for your belief that they were or were not the best approach).

I always believed two actions were needed in tandem: a thorough investigation into allegations of fraud to root it out; and a new tariff system which was fair to the Scheme recipients who entered in good faith. The amendment introduced in January 2017 was critical to bringing the Scheme under control but it was to be a temporary measure until a better tariff system could be designed. As a temporary measure, it should be replaced with a long-term tariff system which can give users certainty.

General

3. To the extent that you consider the evidence of any other witness or participant contradicts your evidence on a significant issue, or is materially incomplete in respect of any significant issue, you should take this opportunity to address those issues by way of further written evidence, but only to the extent (a) that the said issues have not already been addressed in your existing oral and written evidence and (b) that the further material you wish to provide constitutes evidence of fact as opposed to mere commentary on the evidence of another witness or participant which would be more appropriate for submissions.

Not applicable at the moment.

4. Please set out any further significant evidence you have or of which you are aware, having regard to the Inquiry's Terms of Reference, which has not been addressed either adequately or at all in your previous written or oral evidence.

I am not aware of anything which has not been drawn to the Inquiry's attention



but if anything arises I will certainly pass it to the Inquiry.

Statement of Truth

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

Signed:

Dated: 20 November 2018