



RENEWABLE HEAT  
INCENTIVE INQUIRY

**WIT-100701**

RHI Inquiry  
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Kevin Hughes  
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RHI  
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10 October 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 know that you will be familiar, from my previous correspondence, with the RHI Inquiry's Terms of Reference, which remain available on the Inquiry's website. You will also be aware that the RHI Inquiry is conducting its investigations into the matters set out in its Terms of Reference. The Inquiry is continuing with the process of gathering all of the relevant documentation from relevant departments, organisations and individuals.

In addition, the Inquiry is also engaged in 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.

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Chairman: Rt Hon Sir Patrick Coghlin | Secretary: Andrew Browne | Solicitor: Patrick Butler

In keeping with the approach we are taking with other individuals, 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.

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 may be 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.

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.

As you may be aware, the Inquiry has already required the provision of a statement setting out the corporate position of Ofgem in relation to the Northern Ireland RHI Scheme. However, the Inquiry Panel is also interested in the roles played by individual officials from Ofgem who were involved with the Scheme. Moreover, the Inquiry Panel recognise that individual officials may have a different perspective from, or may even disagree with certain aspects of, the position adopted by the organisation they work for. The statement, which is required from you pursuant to

the enclosed Notice, is your opportunity to explain what you did in relation to the Northern Ireland RHI Scheme and why you did it; and also to make the Inquiry aware of any concerns you may have about the actions of others.

I appreciate that you may require or desire access to some documentation in order to assist you in preparing your statement. In particular, you may wish to see documentation to which you previously had access but now no longer have access in your current post. If that applies in your case, I understand that Ofgem will assist you, at least in the first instance. You should contact Mark Mills, Principal Legal Advisor at Ofgem. He is contactable at [Mark.Mills@ofgem.gov.uk](mailto:Mark.Mills@ofgem.gov.uk). I have informed Mark Mills that you may be making contact with him to arrange access to documentation, or for general assistance and support; but there is, of course, no obligation upon you to do so. If you encounter any difficulties, of whatever kind, you should not hesitate to get in touch with me.

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 four 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.

Finally, I would be grateful if you could acknowledge receipt of this correspondence and the enclosed notice by email to [Patrick.Butler@rhiinquiry.org](mailto: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 507 of 2017]**

*Background*

1. Set out a description of your occupational history, qualifications and experience.
2. Set out a summary of your role or roles within Ofgem. Please provide details of dates between which you held the role/s, and what the role/s entailed. In each instance, describe how this role related, if at all, to the Non Domestic Renewable Heat Incentive (RHI) Scheme in Northern Ireland ('the NI RHI Scheme').
3. Explain, insofar as is relevant to any involvement you had with the RHI Scheme, to whom you were accountable and/or reported in Ofgem and who, if anyone, was accountable and/or reported to you.

*Involvement with Northern Ireland RHI Scheme*

4. Please summarise any involvement you had with the NI RHI Scheme, whether in respect of its creation, operation, administration, or otherwise, and during what period you were so involved.
5. In respect of your particular role or position:
  - a. Explain what proportion or percentage of your role was devoted to work on the NI RHI Scheme (giving details, if applicable, of how this altered over time or at different periods);
  - b. Explain how you carried out your roles or responsibilities in relation to the NI RHI Scheme on a day-to-day basis; and

- c. Specify whether you consider you were adequately trained and/or resourced in respect of your roles or responsibilities in relation to the NI RHI Scheme. (If not, please specify clearly in what respects you contend this was not so and, if applicable, what steps you took in relation to this).
6. Identify, in your view, any actual or potential problems, flaws, anomalies, or difficulties with the NI RHI Scheme and/or its operation or administration, explaining in each instance, so far as you can, how those problems, flaws, anomalies, or difficulties manifested themselves, how they came about, and with whom (if anyone) responsibility or accountability for them lay.
7. Please identify when, and how, you first became aware of each of the aforementioned problems, flaws, etc..
8. Please identify and explain any difficulties you encountered within Ofgem in respect of the operation of the administration of the RHI Scheme.
9. Please identify and explain any difficulties you encountered in the relationship between Ofgem and the Department of Enterprise, Trade and Investment (DETI) (later, the Department for the Economy) in Northern Ireland in respect of the operation of the administration of the NI RHI Scheme.

*Involvement with Great Britain RHI Scheme*

10. If you had any involvement in the Northern Ireland RHI Scheme (as addressed above), please also address the following issues:
  - a. State whether you were also involved in the analogous RHI Scheme which operated in Great Britain ('the GB RHI Scheme');
  - b. If you were involved in the GB RHI Scheme, summarise briefly the extent and nature of your involvement in it;
  - c. If you were involved in both RHI Schemes:

- i. state whether, based upon your experience of each, there were lessons to be learned for the NI RHI Scheme from the GB RHI Scheme and, if there were, clarify what those lessons were, whether they were learned, and, if they were not learned, what you understand to be the reasons for this;
- ii. state whether, based upon your experiences of each, there were differences in how Ofgem dealt with each Scheme and if there were such differences, clarify whether any of them impacted adversely upon the NI RHI Scheme (in particular, concerning the proper administration of that Scheme), clarify what those particular differences were, and set out the reasons for those differences as you understand them.

#### *Promotion of the NI RHI Scheme*

11. Specify whether you promoted the NI RHI 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 knowing that they might apply, or consider applying, or that they might advise, encourage, assist, or cause other persons to 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.

#### *Lobbying and pressure*

12. 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 NI 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,

depression 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.

13. Identify any instances, to your knowledge or belief, where influence or pressure was exerted on you in relation to any aspect of the NI RHI Scheme. In respect of any such instance specify:
  - a. who provided that influence or pressure;
  - b. when it occurred;
  - c. what it consisted of and how it was conveyed;
  - d. what you believed the motivation to have been (and what you now believe the motivation to have been, if different), and why you believe that; and
  - e. how you dealt with it.
  
14. Identify any instances, to your knowledge or belief, where influence or pressure was exerted on someone else in relation to the NI RHI Scheme. In respect of any such instance identify:
  - a. who provided that influence or pressure;
  - b. who it was exerted on;
  - c. when it occurred;
  - d. what it consisted of and how it was conveyed;
  - e. what you believe the motivation to have been, and why you believe that;
  - f. how it was dealt with; and
  - g. how and when you came to be aware of the influence or pressure.

*Standards of conduct and conflict of interest*

15. Identify any instances, to your knowledge or belief, where a Minister, Special Adviser, Civil Servant or any other person involved in the NI RHI Scheme (including, if applicable, yourself):



- a. breached relevant standards (including, but not limited to, the Nolan Principles, the Ministerial Code of Conduct, the Civil Service Code of Conduct, the Code of Conduct for Special Advisers and/or terms or conditions of employment or service) or acted in a way incompatible with their duties (including, but not limited to, by means of making premature or unauthorised disclosures);
- b. acted in circumstances relating to or touching upon the Scheme in any way where they had a real or perceived conflict of interest;

in respect of any such instances, providing details and specifying the basis for any belief that there has been a breach of a relevant standard or duty or that a conflict of interest arose.

16. Specify whether, to your knowledge, you have any connection to a person or body receiving payment under the NI RHI 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).

*Whistle-blowing and raising of concerns*

17. Identify any instances of which you are aware of whistle-blowing in relation to the Scheme, or disclosures made in the public interest raising concerns about the NI RHI Scheme, setting out details of when this occurred, to whom and by whom any relevant disclosure was made and how it was dealt with.
18. In particular, provide an account of how you dealt with any disclosures raising concerns about the NI RHI Scheme made or communicated to you at any time. In relation to each such instance, identify precisely how the concerns were communicated to you.

19. Specify when you first became aware that subsidies payable under the NI RHI Scheme exceeded the cost of biomass fuel used to produce heat (so that there was an incentive in some cases to produce heat merely to make profit from the Scheme) and how you so became aware.

*General*

20. Considering the RHI Inquiry's Terms of Reference, please identify any 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.
21. Considering the RHI Inquiry's Terms of Reference, please identify any 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.
22. 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.

**INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME****RHI REF: Notice 507 of 2017****DATE: 18/10/2017**

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**Witness Statement of: Kevin Hughes**

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I, Kevin Hughes, will say as follows: -

*1. Background*

- Process & Controls Manager (ND RHI), Ofgem January 2015 – Present
- Assistant Manager (ND RHI), Ofgem January 2014 - December 2014
- Graduate Intern, Foreign and Commonwealth Office November 2012 – October 2013
- English Language Assistant, British Council August 2011 – July 2012
- Graduated from University in 2011

*2. Process & Controls Manager (ND RHI), Ofgem January 2015 – Present*

I manage members of the Accreditations Team within the Non Domestic Renewable Heat Incentive (ND RHI). Within that team I manage one member of staff who has reviewed applications submitted to the Renewable Heat Incentive Scheme in Northern Ireland ('the NI RHI Scheme'). Additionally, that same member of staff also completed quality control (QC) reviews of applications submitted to the NI RHI Scheme. In these instances she would assess the reviews completed by colleagues. Since taking on line management responsibilities in 2016, I have only ever managed one member of staff who reviews applications submitted to the NI RHI Scheme.

I have completed QC assessments on applications submitted to the NI RHI Scheme. This involved recommending cases for approval and rejection. I have also sent correspondence such as dormancy emails to applicants to the NI RHI Scheme. This



involved emailing applicants who had yet to provide us with information requested. I would forward the information request on the applications to the applicant and include text that the case may be rejected if the information is not provided to Ofgem by the deadline specified on the email. I completed this exercise in August as Ofgem looked to resolve the remaining cases with the Accreditation Team.

I have also completed QC reviews on GB applications submitted to the ND RHI. I am also a Delegated Authority for the GB scheme, meaning I have the authority to accredited and reject applications to that scheme. I am not, nor have I ever had, Delegated Authority for the NI RHI Scheme.

### 3. Assistant Manager (ND RHI), Ofgem January 2014 - December 2014

I was responsible for completing reviews of applications submitted to the GB ND RHI Scheme. I had no involvement with the NI RHI Scheme whilst in this role.

#### *Involvement with Northern Ireland RHI Scheme*

### 4. I line managed one member of staff who reviewed and completed QC reviews on applications submitted to the NI RHI.

For a period, I assigned NI RHI applications to QC reviewers to assess. Later, I would also complete QC reviews on NI RHI applications. As part of this task, I would recommend applications for accreditation and rejection.

I have also completed the administrative task of sending out dormancy emails.

### 5.

- a. For a period of 13 months between January 2015 and February 2016, my involvement in relation to the NI RHI Scheme was confined to assigning applications submitted to the NI RHI Scheme to QC reviewers for assessment. During this period I estimate that, on average, less than 5% of my working day was apportioned to work related to the NI RHI Scheme.



When completing QC reviews on NI cases I would spend around 15% of my day on work related to the NI RHI Scheme. This includes time assigning cases and reviewing cases.

When completing the dormancy exercise described earlier, I would spend 50% of my days on NI cases for a period of 2 working days, to send the initial emails. I was then involved on an ad hoc basis to send further emails/discuss certain cases with applicants when required. This did not take a great deal of my time as my involvement was not daily. When it did occur, it took approximately 10% of my day over the course of around six weeks.

- b. When assigning out applications, I would use the Customer Relations Manager software (CRM) to identify cases at the QC stage of the accreditations review process. I would export this list to Excel. From there I would filter for NI applications and divide the case evenly between QC reviewers qualified to review NI applications. I also used a log to track cases assigned to QC reviewers. This was in place to ensure applications could be reassigned to the same QC reviewer, should they be returned to QC for any reason.

When completing a QC review myself I would use a checklist to complete the checks and record the quality on the QC logs.

When completing dormancy checks, I was given a list of applications which were to receive the text. I worked my way through this list, sent standardised text and edited the deadline date in line with the appropriate deadline which at the time was seven calendar days from the date the email was sent.

- c. I believe I was adequately trained and resourced to carry out my responsibilities. I was trained by an experienced NI QC reviewer who



also acted as my buddy. I had access to a checklist and training slides which I used when completing my tasks.

With regard to assigning cases, this was a fairly straightforward process which I learned from a member of staff, who worked on GB and NI cases, as I transferred in to my new role in 2015.

In regards to the dormancy process, I was given a list of cases to work through and a log to complete when responses were sent. This also includes a section in which case notes could be added.

6. The only difficulty I experienced was the backlog of cases which occurred as result of increased volume of cases submitted in November 2015. We had an influx of applications submitted due to the introduction of tier tariffs and an annual cap. This created a backlog of cases meaning delays in the processing of them. I am unsure with whom the responsibility for this lay.
7. The problem was easy to identify from my perspective as the number of submissions increased substantially in November 2015.
8. The backlog of cases described above was the only issue I encountered within Ofgem of the operation of the administration of the RHI Scheme. The influx of cases meant that in some instances GB cases were reassigned from reviewers trained on both GB and NI reviews in order for them to focus solely on NI reviews. At this period there was a substantial backlog of cases and our Key Performance Indicator (KPI) in relation to the progress of cases across both the GB and NI schemes was lower than targeted.
9. I was not formally made aware of any difficulties between Ofgem and DETI/DfE but was informed that there were issues around the financing versus the proportion of resource DETI/DfE expected Ofgem to allocate to the NI RHI Scheme. I was not given any further details other than this 'headline'.

### *Involvement with Great Britain RHI Scheme*

- 10.
- a. I am also involved in the GB RHI Scheme.
  - b. In my first role, I reviewed applications submitted to the GB RHI scheme. I would then recommend them for approval or rejection. In my second role, I completed QC reviews and coordinated QC resource. I later became a Delegated Authority for the GB RHI Scheme and have since accredited and rejected applications. I also line manage members of the Accreditations Team.
  - c.
    - i. In terms of the operational environment in which I worked, I do not believe there were any lessons to be learned for the NI RHI Scheme from the GB Scheme. Both were Schemes executed in a similar operational manner.
    - ii. There were no administrative differences other than resource. In my time at Ofgem, there have been a smaller number of NI reviewers than GB reviewers at each stage of the review (Accreditation Reviewers, QC, and Delegated Authority Reviewers). I was informed in 2016, by Senior Management that this was due to the level of finance provided to Ofgem by the Government Departments.

*Promotion of the NI RHI Scheme*

11. I did not promote the NI RHI Scheme to any third party at any time.

*Lobbying and pressure*

12. I have not nor have I ever had knowledge or belief of lobby or encouragement from any one of any position in relation to the terms of the NI RHI Scheme.





13. To my knowledge and belief, I have never been influenced or pressured in relation to any aspect of the NI RHI Scheme.

- a. N/A
- b. N/A
- c. N/A
- d. N/A
- e. N/A

14. To my knowledge and belief, I am unaware of any instances where influence or pressure has been exerted on someone else in relation to the NI RHI Scheme.

- a. N/A
- b. N/A
- c. N/A
- d. N/A
- e. N/A
- f. N/A
- g. N/A

*Standards of conduct and conflict of interest*

15. To my knowledge and belief, I am unaware of any instances where a Minister, Special Adviser, Civil Servant or any other person involved in the NI RHI Scheme, including myself, breached any relevant standards, acted in a way incompatible to their duties, or acted circumstances relating to the Scheme in any way where they had a real or perceived conflict of interest.

- a. N/A
- b. N/A



16. To the best of my knowledge, I do not have connection to a person or body receiving payment under the NI RHI Scheme or benefitting commercially from the Scheme in some other way.

*Whistle-blowing and raising of concerns*

17. I was not made aware of any instances of whistle blowing in relation to the Scheme or disclosures made in the public interest raising concerns about the NI RHI Scheme.
18. Not applicable.
19. When I started my QC training in February 2016 on NI applications, I asked whether there were any cost controls in place, similar to the GB RHI Scheme, and was informed that there was no tier tariff structure in place nor any other financial cap. It was at this time when I became aware that there was a possible incentive in some cases to produce heat merely to make profit from the Scheme. However, I was not aware of the cost of biomass fuel used to produce heat.

*General*

20. With consideration of the RHI Inquiry's Terms or Reference, there were no representations made to me about the RHI Scheme which I regard as significant and which the RHI Inquiry should be made aware of.
21. With consideration of the RHI Inquiry's Terms or Reference, there are no conversations which I regard as significant and which the RHI Inquiry should be made aware of.
22. To the best of my knowledge and belief, I have no further evidence which is relevant to the matters which the RHI Inquiry is investigating.

Statement of Truth



**RENEWABLE HEAT  
INCENTIVE INQUIRY**

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

Signed: 

Dated: 18 - 10 - 2017