



RENEWABLE HEAT  
INCENTIVE INQUIRY

**WIT-163001**

**RHI Inquiry**

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Mark Mullan

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BELFAST

BT11 9BW

By email to: [markmullan](mailto:markmullan@rhiinquiry.org)

Personal information redacted by the RHI Inquiry

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 enclose a copy of the RHI Inquiry's Terms of Reference for your information.

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 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.

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, please revert to me.

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.

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

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 of the name.

**Patrick Butler**

Solicitor to the RHI Inquiry

02890408928

**SCHEDULE****[No 213 of 2018]**

*The Deputy First Minister's awareness, in January and/or February 2016, of a letter alleging abuse of the RHI Scheme*

1. An undated letter, provided to First Minister Foster by a constituent of hers during January 2016, in which allegations were made about abuse of the RHI Scheme can be found at **TEO-16**. Mrs Foster addressed the issue of this letter during her oral evidence to the Inquiry on 25 September 2018 at **TRA-13668 to 13675** where she stated, in terms, that she believed Deputy First Minister McGuinness was made aware of the letter (see, for example, **TRA-13674** in this regard). Sir Malcolm McKibbin was asked about Mr McGuinness' awareness of this letter during his oral evidence on 26 October (at **TRA-16756 to 16758**) and he stated, in terms, that although he did not have it with him during an oral briefing with the Deputy First Minister on 28 January 2016, his office forwarded the letter, and a related memo from Sir Malcolm to Andrew McCormick, (which, together, can be found at **TEO-14 to 16**) by email to Mr McGuinness' private secretary and to you by email very shortly after the said briefing (see **TEO-17** in this regard). In the circumstances, please clarify the following issues:
  - a. Clarify whether you were present at a briefing between Sir Malcolm McKibbin and Deputy First Minister McGuinness regarding the RHI Scheme on 28 January 2016 and, if you were present, address the following issues:
    - i. Specify the other persons whom you recall were also present;
    - ii. Confirm whether Sir Malcolm mentioned the letter alleging Scheme abuse and, if he did so, set out in detail your recollection of this aspect of the briefing including what each of Sir Malcolm and the Deputy First Minister said about the issue and whether

any indication was given that the letter would be forwarded to the Deputy First Minister and/or his office and/or his advisers;

- iii. Confirm whether you have any, or are aware of the existence of any, notes of the said briefing and, if you have such notes or are aware of such notes, please provide full details of same;
- b. Clarify whether you received and/or were made aware of the email (TEO-17) and attachments (TEO-14 to 16) after they were sent, including details of when you received and/or were made aware of them;
  - c. Clarify whether you brought the said email and/or attachments to the attention of and/or discussed them with the Deputy First Minister and:
    - i. if you *did* do so, please provide full details of this, including what the Deputy First Minister said and whether you have, or are aware of, any notes of this; *or*
    - ii. if you *did not* do so, please explain this;
  - d. Confirm whether you agree or disagree with Mrs Foster's evidence that the Deputy First Minister was aware of the letter alleging abuse by late January 2016 (setting out the reasons why you agree or disagree with her);
  - e. Without prejudice to the foregoing, clarify when (if at all) the Deputy First Minister was first aware of each of (i) the existence of the letter at TEO-16 and (ii) the contents of that letter (including details of how he became so aware and the precise basis for your knowledge of this);
  - f. Provide any further evidence you believe may be relevant to this issue.

**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 213 of 2018

DATE:

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**Witness Statement of: Mark Mullan**

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I, \_\_\_\_\_, will say as follows: -

*The Deputy First Minister's awareness, in January and/or February 2016, of a letter alleging abuse of the RHI Scheme*

1. An undated letter, provided to First Minister Foster by a constituent of hers during January 2016, in which allegations were made about abuse of the RHI Scheme can be found at **TEO-16**. Mrs Foster addressed the issue of this letter during her oral evidence to the Inquiry on 25 September 2018 at **TRA-13668 to 13675** where she stated, in terms, that she believed Deputy First Minister McGuinness was made aware of the letter (see, for example, **TRA-13674** in this regard). Sir Malcolm McKibbin was asked about Mr McGuinness' awareness of this letter during his oral evidence on 26 October (at **TRA-16756 to 16758**) and he stated, in terms, that although he did not have it with him during an oral briefing with the Deputy First Minister on 28 January 2016, his office forwarded the letter, and a related memo from Sir Malcolm to Andrew McCormick, (which, together, can be found at **TEO-14 to 16**) by email to Mr Guinness' private secretary and to you by email very shortly after the said briefing (see **TEO-17** in this regard). In the circumstances, please clarify the following issues:
  - a. Clarify whether you were present at a briefing between Sir Malcolm McKibbin and Deputy First Minister McGuinness regarding the RHI Scheme on 28 January 2016 and, if you were present, address the following issues:



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- i. Specify the other persons whom you recall were also present;

**I was present along with Deputy First Minister Martin McGuinness, HOCS Malcolm McKibben and DFM Private Secretary Gail McKibbin**

- ii. Confirm whether Sir Malcolm mentioned the letter alleging Scheme abuse and, if he did so, set out in detail your recollection of this aspect of the briefing including what each of Sir Malcolm and the Deputy First Minister said about the issue and whether any indication was given that the letter would be forwarded to the Deputy First Minister and/or his office and/or his advisers;

**I have no recollection of Malcolm McKibben mentioning the letter. He may have done so but his clear focus was on the budget implications resulting from the Autumn 2015 spike in applications.**

- iii. Confirm whether you have any, or are aware of the existence of any, notes of the said briefing and, if you have such notes or are aware of such notes, please provide full details of same;

**I have no notes of the meeting and have no knowledge of the existence of any.**

- b. Clarify whether you received and/or were made aware of the email (TEO-17) and attachments (TEO-14 to 16) after they were sent, including details of when you received and/or were made aware of them;

**I have no record of having received it to** Personal information redacted by the RHI Inquiry  
**which is the one I routinely use. Without access to the departmental account, I cannot check if it was sent there.**

- c. Clarify whether you brought the said email and/or attachments to the attention of and/or discussed them with the Deputy First Minister and:



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- i. if you *did* do so, please provide full details of this, including what the Deputy First Minister said and whether you have, or aware of, any notes of this; *or*
- ii. if you *did not* do so, please explain this;

**I was not dealing with the issue. By that stage I was aware that Aidan McAteer had been instructed by the Deputy First Minister to work with the First Minister side to close the scheme down as quickly as possible.**

- d. Confirm whether you agree or disagree with Mrs Foster's evidence that the Deputy First Minister was aware of the letter alleging abuse by late January 2016 (setting out the reasons why you agree or disagree with her);

**I do not agree. If the First Minister had wished to raise it with him, she had ample opportunity to do so. They were in regular contact. Their private offices were in the same building. They routinely attended events and meetings together and obviously had each other's phone numbers. I am clear that the Deputy First Minister's first knowledge of the problems associated with the RHI scheme was when we arrived in Stormont Castle on January 28, 2016 and Aidan McAteer informed him that HOCS wanted to brief him on serious budgetary issues relating to DETI. I am also aware from the Inquiry that there were a number of other whistle-blower contacts to the First Minister, including one relating to her own Special Adviser Stephen Brimstone. To my knowledge, none of these were shared with the Deputy First Minister either.**

- e. Without prejudice to the foregoing, clarify when (if at all) the Deputy First Minister was first aware of each of (i) the existence of the letter at **TEO-16** and (ii) the contents of that letter (including details of how he became so aware and the precise basis for your knowledge of this);

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To my knowledge, the Deputy First Minister was not made aware of it.

- f. Provide any further evidence you believe may be relevant to this issue.

**After the HOCS briefing, the Deputy First Minister was clear that the scheme needed to be closed in order to protect the public purse and directed Aidan McAteer to immediately meet with FM advisors towards that end.**

**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.

Statement of Truth

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

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

21/11/18