



Martin Crouch
Deputy Director
OFGEM
9 Millbank
London
SW1P 3GE

2 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.

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. 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.

Please do not hesitate to contact me to discuss any matter arising.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Patrick Butler', written in a cursive style.

Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE**[No 479 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, 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.

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

RHI REF: Notice 479 of 2017

DATE: 18 October 2017

Witness Statement of: Martin Richard Crouch

I, Martin Richard Crouch, will say as follows:

(Paragraph numbers below refer to the Schedule of the Section 21 notice.)

Background

1. I have worked at Ofgem since January 2003. Prior to this, I worked in the European offices of American Electric Power, and prior to that as an economic consultant at National Economic Research Associates (NERA). In total, my professional experience in the energy sector extends over 24 years. I have a BSc in Economics from the University of Warwick and a MSc in Economics from Birkbeck College, University of London.
2. I have had seven roles during my time at Ofgem. From January 2003 - Dec 2007, I was Director of Electricity Distribution. From Jan 2008 – August 2009, I was Director, European Strategy and Environment. From Sept 2009 – July 2012, I was Partner, European Strategy. In July 2012, I moved to the E-Serve division as Director, Offshore and then from 1 February 2013 to February 2014, I was Acting Deputy Managing Director, E-Serve. This was the only role in which I had responsibility for or direct involvement with the NI RHI scheme. From February 2014 to December 2015, I was Senior Partner, Electricity Transmission and from January 2016 to date, I have been Senior Partner, Improving Regulation. I have never held the title “Deputy Director” to which the Section 21 notice was addressed.
3. In respect of my involvement with the NI RHI scheme, while I was Acting Deputy Managing Director, E-Serve, I reported to Robert Hull. Shortly after starting in this role, I took on oversight of all the renewable and energy efficiency schemes operated by E-Serve, including the GB Non-domestic RHI and the NI RHI scheme. From this point, Matthew Harnack, who was responsible for both the GB and NI RHI schemes (as well as other responsibilities), reported to me. In the summer of 2013, we reorganised the management of the schemes so that the non-domestic RHI schemes would have a single senior civil servant (SCS) overseeing the schemes full-time. Clive Sparrow took this role on an interim basis from August 2013, alongside other responsibilities, reporting to me in terms of scheme management (but not line management terms). In January 2014, I passed my responsibilities for most of the E-Serve schemes, including the non-domestic RHI schemes, to Chris Poulton, who joined Ofgem at that point, and Gareth John took over from Clive Sparrow as the SCS directly responsible for the non-domestic RHI scheme. Subsequent to that period, I have been a

member of Ofgem's Senior Leadership Team, which involves collective responsibility for leadership of Ofgem as a whole.

Involvement with the Northern Ireland RHI Scheme

4. As noted above, the period for which I had oversight responsibility for the NI RHI scheme was from in or around February 2013 until December 2013. This was after the scheme had gone live (including the associated IT system which went live at the end of January 2013, following a period of manual operation). By December 2013, there were 60 participants approved on the scheme and approximately £140k had been paid out – it was still at a relatively early stage of operation.
5.
 - a. There was not a fixed proportion or percentage of my role devoted to the NI RHI scheme. To give an indication, in the revised structure we implemented in the summer of 2013, I had five teams reporting to me, of which the combined GB and NI non-domestic RHI team was one. I also had corporate responsibilities including a European role that took up to 30% of my time. I would therefore say that about 15% of my time was devoted to the combined non-domestic RHI schemes and of that, the GB scheme took the great majority. As described above, my role was not to be the person responsible for running each scheme, but to support and oversee that person and to ensure good governance, collaboration across schemes and assist the E-Serve Managing Director with the overall leadership of E-Serve during 2013.
 - b. I undertook my oversight responsibilities on the NI RHI scheme through: regular discussions with the responsible SCS who reported to me, ad hoc discussions with their teams and chairing the internal RHI implementation board. I ensured appropriate reporting to the E-Serve Programmes Committee, which was the main supervisory committee for E-Serve, and to the E-Serve Management Committee (the E-Serve executive board).
 - c. I consider that I was adequately experienced and resourced for my role.
6. During the period February to December 2013, to the best of my recollection, there were not major issues with the NI RHI scheme. The two minor issues that arose were as follows. I recall that Matthew Harnack briefed me on discussions with DETI about funding for Ofgem's costs, partly as a result of volumes being less than expected initially. Towards the end of the period, there were issues with the GB scheme regarding duplication of funding with grants, and a similar issue arose with Carbon Trust funding for a project in NI which gave rise to state aid considerations.
7. I became aware of the discussions with DETI on funding in the spring of 2013; and of issues around grant funding in the summer or autumn of 2013.
8. I did not encounter particular difficulties within Ofgem in respect of the NI RHI scheme. Colleagues in Ofgem were keen that the NI scheme remained as close as possible in terms of rules and procedures to the GB scheme, to avoid additional costs and complexities in operation. I did feel that given the growing scale and complexity of the RHI schemes, and the change in Bob Hull's role following Stuart Cook's departure (which inevitably implied he would have less time to focus on RHI matters), the RHI schemes (and other schemes) required more SCS time than implied in the structure I inherited. I therefore proposed the

changes described above to appoint a dedicated SCS lead responsible for the GB and NI non-domestic schemes. This was readily agreed within Ofgem.

9. I was not directly involved in the relationship with DETI.

Involvement with the Great Britain RHI Scheme

10. a. and b. As explained above, I had oversight of the GB non-domestic RHI scheme in the same way and the same period as for the NI RHI Scheme.

c. In 2013, both the GB and NI RHI schemes were in relatively early stages of operation. It was evident from the GB scheme in particular that it had a relatively complicated application procedure, and it became evident during 2013 that we were experiencing relatively low take-up of, and high rates of technical non-compliance with, the GB scheme but that these non-compliances had little impact on the financial entitlements. We learnt lessons from this in the design of the GB domestic RHI scheme, which took a more user-centric and agile approach to design of both policy and processes, and took a phased approach to initial applications. We also began discussions with DECC (as was) about streamlining the non-domestic GB scheme.

As the NI RHI scheme had already been launched, it was not possible to take on board these lessons in its initial design. Due to the relatively low number of projects that had been accepted onto the NI scheme at that time (only 1 project in NI was accredited by the end of the 2012/13 financial year), there had not been the experience of audits to know whether the non-compliances we were finding in the GB scheme also arose in NI. I do not know what was done subsequently on considering implications of these issues for the NI scheme.

During 2013, we also began to analyse the value for money achieved in the environmental schemes generally, for example in comparing renewable electricity and renewable heat schemes. This would have focussed on GB due to data availability at the time (the NI RHI scheme, for example, having only just started). This analysis was not complete by the time I moved role.

Promotion of the NI RHI Scheme

11. As far as I recall, I did not promote the NI RHI scheme in any way or contact third parties about the scheme.

Lobbying and pressure

12. I was not involved with any lobbying of Ministers, Special Advisers, Civil Servants or other relevant persons. I was not involved with the Scheme at the time of its creation or in 2015 or 2016.
13. I was not, to my knowledge, subject to any influence or pressure in relation to the NI RHI scheme. I do not recall discussing the NI RHI scheme with anyone outside of Ofgem E-Serve.
14. I have no direct knowledge of any influencing or pressure on someone else in relation to the NI RHI scheme.

Standards of conduct and conflict of interest

15. I am not aware of any breaches of standards of conduct or actions subject to a conflict of interest.

16. To my knowledge, I do not have any connection (as described in the Section 21 Notice) to a person or body receiving a payment under the NI RHI Scheme.

Whistle-blowing and raising of concerns

17. I have no direct knowledge (ie other than what I read in newspapers or have heard reported to GEMA or to the Ofgem senior leadership team in 2017) of any whistle-blowing or public interest disclosures in relation to the NI RHI scheme.

18. Not applicable.

19. I believe that I was aware that the NI RHI scheme (as the GB scheme) was intended to provide a subsidy for capital costs based on a payment for heat produced, and that this could give rise to particular incentives on operators such as to maximise heat produced. I understood that the complicated processes in the scheme were, in part, intended to respond to and address these issues. I do not recall exactly when or how I became aware of this, but, as far as I recall, the previous two sentences describe my understanding as of 2013. I do not recall seeing a detailed comparison of subsidy payments with fuel costs or operating costs more generally. As noted above, by the time I became involved in the scheme, all the initial design elements had long been settled (and the scheme had been operational for a few months in NI and over a year in GB) and the volume of applications was at that stage below expectations.

General

20. I do not recall any representations made to me on the NI RHI scheme that appear to me to be central to the Inquiry's Terms of Reference. As I have noted, the main issues raised with me during 2013 were: the relatively low initial take-up, the consequential considerations about the cost of administering the scheme and discussions with DETI on funding Ofgem's costs, potential read-across from the GB scheme and one issue in NI in relation to grant funding, issues about the RHI schemes generally in terms of complexity of and time to process applications, the rate of technical non-compliance in GB and consideration of value for money in terms of cost per ton of carbon saved.

21. I do not consider any conversations that I recall to be significant to the Inquiry.

22. I have no further evidence that I consider relevant to the RHI Inquiry.

Statement of Truth

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

Signed: 

Dated: 18 October 2017