



Mary Smith
Head of Development
New Schemes (RO, FITs & NI RHI)
OFGEM
9 Millbank
London
SW1P 3GE

3 October 2017

Dear Madam,

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', with a long horizontal flourish extending to the right.

Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE**[No 489 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 SCHEME****RHI REF: Notice 489 of 2017****DATE: 20 October, 2017****Witness Statement of:**Mary Smith

I, Mary Smith, will say as follows: -

Background

1. A brief description of my occupational history, qualifications and experience is as follows. I started my career at the Legal Services Commission in 2000, working as a Policy Assistant and then Policy Officer investigating and then assessing pilot methods for the delivery of legal aided civil legal advice. In 2004-5, I then took on managing the tender, set up and ongoing contract management of services to develop public information leaflets around civil legal areas and the printing and distributing of these leaflets and marketing materials to promote Community Legal Service Direct (a free, publicly available legal advice service). In 2005-2007, I worked as a Development Manager at the Legal Services Commission, managing the tender process and overseeing the contract management of suppliers providing civil legal advice over the telephone. In 2007-2009, I was promoted to a Senior Project Manager at the Legal Services Commission, managing the tender process and overseeing the set up and ongoing contract management of suppliers delivering legal advice at the police station by telephone. In June 2009, I then moved to the UK Borders' Agency and worked as a Project Manager on an IT enabled business change programme, with specific responsibility for managing the development and roll out of a cross agency database search tool.

In addition to my degree (2.1 in History and Russian), I am a registered Prince 2 and Agile Project Management practitioner:

2. A Summary of my roles within Ofgem is set out below:

I started at Ofgem in February 2011. Between February 2011 and September 2012, I worked as Senior Manager in the Tenders and Transactions team, Offshore Transmission. This role was not related to the NI RHI scheme. I project managed tender rounds for offshore transmission assets, involving developing the tender documentation and evaluation approach, managing the evaluation process and making recommendations for contract awards. I was also responsible for the tender governance and management of project controls.



From September 2012 – March 2013, I was Head of Development for the Feed in Tariff (FITs), Renewables Obligation (RO) and the Northern Ireland Renewable Heat Incentive (NI RHI) schemes, in New Schemes Development. In relation to the NI RHI scheme, I oversaw the development of operational processes, external scheme guidance, training of the operational team and the finalising of the scheme administrative arrangements for sign off by Ofgem and DETI. My non NI RHI scheme responsibilities also included leading delivery of changes required to the FITs and RO schemes (other Government environmental schemes which Ofgem administers) resulting from legislative amendments. This involved overseeing the updating of operational processes, external guidance and IT system amendments.

From March 2013-April 2014, I was on maternity leave. I then returned to my current role, Head of Delivery, Energy Efficiency and Social Programmes, E-Serve. This role is not related to the NI RHI Scheme. My responsibilities include leading the operational team in our administration of the Energy Company Obligation, ensuring effective programme controls, planning and resource management is in place across the team and managing internal and external stakeholders connected with my role

3. In my involvement with the NI RHI Scheme, I was ultimately accountable to the Gas and Electricity Markets Authority (GEMA). I reported to Matthew Harnack (Head of New Schemes Development) and Keith Avis (Senior Manager, New Schemes Development) reported to me. The following also supported work on NI RHI Scheme development at points during the 6 months and reported to both myself and Keith Avis: Paul Heigl, Rita Chohan and Mavreen Ananura.

Involvement with Northern Ireland RHI Scheme

4. From September 2012-March 2013, I was responsible for developing the operational arrangements for administering the scheme when it went live. This involved overseeing development of the operational processes, training materials and scheme guidance. I was also involved in the latter stages of agreeing the arrangements by which Ofgem would administer the scheme and securing sign off from both DETI and the Managing Director of E-Serve.
5. In respect of my particular position:
 - a. approximately 30% of my role was devoted to work on the NI RHI Scheme throughout the period I worked on the scheme.
 - b. On a day-to-day basis, I provided leadership to those working on the scheme, oversaw delivery of agreed work in line with the project plan, acted as an escalation point for resolving issues (arising out of the day-to-day development of operational arrangements for the scheme), reviewed materials and passed these for final sign off to the Head of New Schemes Development.



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- c. I had sufficient resources for the delivery of the work in relation to the NI RHI Scheme. As my role involved developing and implementing a plan for the set up and delivery of a service, I felt adequately trained/ experienced in this.
6. During my limited time in working on the NI RHI Scheme, I did not identify any actual or potential problems, flaws, anomalies or difficulties with the NI RHI Scheme and/ or its operation or administration.
7. Not applicable.
8. I was involved in the development of arrangements for operating the Scheme once it went live. I was therefore not involved in the actual operation of the administration of the scheme and did not encounter any difficulties within Ofgem in respect of this.
9. I was not involved in the operation of the administration of the NI RHI Scheme and did not encounter any difficulties. Prior to the Scheme starting, the only difficulties I encountered in the relationship between Ofgem and DETI were during the finalising and signing of the administrative arrangements by which Ofgem would administer the scheme. These took several months to develop and ultimately sign, partly due to different opinions around certain details of the service Ofgem would provide. My team and I had many conversations with DETI to clarify the role Ofgem would provide and to negotiate and agree appropriate wording for the arrangements which were agreeable to both parties.

Involvement with Great Britain RHI Scheme

- 10.
- a. I was not involved in the analogous RHI Scheme which operated in Great Britain.
 - b. Not applicable.
 - c. Not applicable.

Promotion of the NI RHI Scheme

11. I did not promote the NI RHI Scheme and/ or encourage or assist any third party in seeking accreditation or applying.

Lobbying and pressure

12. To my knowledge or belief, I know of no instances of any 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 at any stage.
13. To my knowledge or belief, I know of no instances where any influence or pressure was exerted on me in relation to any aspect of the NI RHI Scheme.



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- a. Not applicable.
- b. Not applicable.
- c. Not applicable.
- d. Not applicable.
- e. Not applicable.

14. To my knowledge or belief, there were no instances where influence or pressure was exerted on someone else in relation to the NI RHI Scheme.

- a. Not applicable.
- b. Not applicable.
- c. Not applicable.
- d. Not applicable.
- e. Not applicable.
- f. Not applicable.
- g. Not applicable.

Standards of conduct and conflict of interest

15. To my knowledge or belief, there were no instances where a Minister, Special Adviser, Civil Servant or any other person involved in the NI RHI Scheme (including myself)

- a. breached relevant standards or acted in a way incompatible with their duties.
- b. acted in circumstances relating to or touching upon the Scheme in any way where they had a real or perceived conflict of interest.

16. To my knowledge, I have no connection to any 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 know of no instances of whistle-blowing in relation to the Scheme or of any disclosures made in the public interest raising concerns about the NI RHI Scheme.

18. Not applicable.

19. I first became aware when this was covered in the Press, I do not recall the exact time.

General

20. No representations have been made to me about the RHI Scheme.



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21. I had no conversations or discussions about the RHI Scheme, which I regard as significant or which I consider the RHI Inquiry should be aware.

22. I have no further evidence which, within my knowledge or belief, is relevant to the matters which the RHI Inquiry is investigating.

Statement of Truth

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

Signed: Mary Smith

Dated: 20/10/17