



Michelle Murdoch
NI RHI Policy Development Manager
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 stylized flourish at the end.

Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE**[No 488 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.

Renewable Heat Incentive Inquiry**RHI REF: Notice 488 of 2017****DATE: 18/10/2017****Witness statement of Michelle Murdoch.****I, Michelle Murdoch, will say as follows: -*****Background***

1. I have been working for Ofgem since June 2012. Previous to Ofgem I completed an MSC in Environmental Forensics at Strathclyde University. My career before this date was in telesales with Yell Ltd.
2. My roles in Ofgem:
 - a. NIRHI Policy Development Manager, July 2012 – November 2012. Main tasks:
 - i. Lead on policy development issues flowing from delivery work streams, co-ordinating views from key participants across Ofgem.
 - ii. Worked on developing operation processes and manuals
 - iii. Developed and updated existing communications and guidance
 - iv. Developed training material and rolled out training for the operational staff
 - b. NIRHI Operations Manager, November 2012 – May 2013. Main tasks:
 - i. Responsible for the administration of the Northern Ireland Renewable Heat Incentive including the achievement of key performance indicators
 - ii. Updating, maintaining and developing business procedures to ensure robust and efficient processes
 - iii. Line management, recruitment, training and developing of staff
 - iv. Reporting to senior management periodically and on an ad hoc basis
 - c. EU Wholesale Policy Manager within Energy Systems Division, May 2013 – Oct 2017. Main tasks (no relevance to NIRHI):
 - i. Contribute to the development of European rules relating to cross border infrastructure
 - ii. Contribute to the development of European regulator's position on issues associated with European energy policy
 - iii. Research and draft policy documentation
 - iv. Build and manage stakeholder relationships to support effective policy development and delivery both at British and European levels
 - v. Represent Ofgem at various European fora
3. My manager as policy development manager was Keith Avis. I did not manage anyone in this role. My manager when I was working as NIRHI operations Manager was Gregor Stenhouse. I oversaw the NIRHI accreditations (there were only a handful by the time I left this role) for the two colleagues who were assigned to work on them alongside their GB RHI application work: Chi Ganzallo and Berta Paniagua. I also line managed Lewis Martin, Atika Campbell, Christopher Howarth, James MacLeod and Robert Martin, however did not oversee their work on the GB RHI (in various roles).

Involvement with Northern Ireland RHI Scheme

4. I was involved with NIRHI between July 2012 and May 2013. During this time I produced NIRHI policy guidance documents by amending GB policy guidance documents. I also

produced NIRHI operational processes by amending GB RHI operational processes and then oversaw the process as the first few applications were accredited.

5.
 - a. As the NIRHI Policy Development Manager, my role was 100% devoted to the NIRHI scheme. As NIRHI Operations Manager, roughly 50% of my role was devoted to NIRHI, the rest being used to support colleagues in GB RHI. This was because operations were at such an early stage that I had extra resource.
 - b. As Development Manager I utilised the NIRHI regulation and the existing GB RHI guidance manuals to develop and publish the NIRHI guidance documents for potential applicants. On a day to day basis I sat at my desk and worked independently. I liaised with legal and my GB policy colleagues (mostly Keith Avis and Paul Heigl) over the phone since I was based in Glasgow and they were based in London.
As Operational Manager, I liaised with IT to develop the systems to allow NIRHI accreditation alongside GB RHI accreditations. I oversaw two colleagues who worked on both RHI and NIRHI accreditations (it was a slow start – there were only a handful of NIRHI accreditations by the time I moved on) and dealt with issues that were identified in the NIRHI accreditation process.
 - c. I believe I was always supported by my immediate line management in respect of my roles and responsibilities in relation to the NIRHI scheme.
6. While working on the policy guidance, it was sometimes difficult to pin down where DETI's responsibilities ended and Ofgem's responsibilities started. To the best of my recollection, this was around the administration of the scheme.
7. This became apparent when I was working on the NIRHI policy guidance. I had a teleconference call with Keith Avis and Paul Heigl where we discussed outstanding issues with the NIRHI policy guidance and I brought this up then. I cannot remember any further detail.
8. I cannot remember any difficulties I encountered during operations. I left the role very early on after operations went live.
9. I cannot remember any difficulties I had with regards to my DETI colleagues (Joanne McCutcheon and Peter Hutchinson). I do remember hearing that there were some difficulties in getting signing off around the administrative relationship between Ofgem and DETI at senior levels and that this caused some frustration in the relationship, however I wasn't personally involved and cannot remember any further detail.

Involvement with Great Britain RHI Scheme

10.
 - a. I was also involved in supporting the GB RHI scheme during my time as NRHI operations manager.
 - b. I provided support to the GB RHI operation managers by creating some of the regular reports and helping with recruitment of RHI accreditors.
 - c. I was involved with both schemes:
 - i. I wasn't aware of any lessons to be learned for the NI RHI Scheme from the GB RHI scheme. Policy wise I used the GB RHI scheme guidance documents as a template with which to produce the NI versions. Operationally, the NI accreditation process shadowed the GB process and was amended only where the two schemes diverged.
 - ii. There were some differences in the NI RHI Regulation vs the GB Regulation due to historical legislative differences between GB and NI (e.g. NI has no legal equivalent to Schedule 1, Part L of the Buildings Regulations 2010 which is referred to in the GB

RHI legislation). However, these differences did not impact adversely upon the NI RHI Scheme as I understand them.

Promotion of the NI RHI Scheme

11. I presented the NIRHI application guidance manuals and answered questions at a two day workshop in Northern Ireland for stakeholders (I cannot remember the specific dates but it would have been sometime between September and November 2012). My line manager Keith Avis also attended for one of these days. DETI representatives were also present. This was the only promotion I was involved with for the scheme. Apart from this one event, I did not encourage or assist any third party to seek accreditation or provide any third party with information knowing that they might apply or consider applying.

Lobbying and pressure

12. I am not aware of any instances 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, variation or delay of the introduction of cost controls into the scheme at any stage. I would also draw your attention to the fact that I was no longer working on the RHI in the period from mid-2015 to early 2016.
13. I cannot identify any instances, to my knowledge or belief, where influence or pressure was exerted on me in relation to any aspect of the NI RHI Scheme.
14. I cannot identify any instances, to my knowledge or belief, where influence or pressure was exerted on someone else in relation to any aspect of the NI RHI Scheme.

Standards of conduct and conflict of interest

15. I am not aware of any instances, to my knowledge or belief, where a Minister, Special Adviser, Civil Servant or any other person involved in the NI RHI Scheme (including myself) breached relevant standards or acted in circumstances where they had a real or perceived conflict of interest.
16. To my knowledge, I have no connection to any persons or body receiving payment under the NI RHI Scheme. I am not benefiting commercially in any way from the Scheme.

Whistle-blowing and raising of concerns

17. I am not aware of any whistle-blowing in relation to the Scheme or disclosures raising concerns about the Scheme.
18. Not applicable.
19. I was not aware that subsidies payable under the NI RHI scheme exceeded the cost of biomass fuel used to produce heat until the story broke in the national media.

General

20. I cannot identify any representations made to me about the RHI Scheme which I regard as significant and about which I consider the RHI inquiry should be aware.
21. I cannot identify any conversations or discussions I have had about the RHI scheme which I regard as significant to this inquiry.
22. To my knowledge, I have no further evidence which is relevant to the matters which the RHI Inquiry is investigating as set out in the RHI Inquiry's Terms of Reference.

Statement of Truth

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

Signed:

A handwritten signature in blue ink, appearing to be 'M. Murdoch', written over a faint circular stamp.

Dated: 18/10/2017