



Myles McKeown
Head of Compliance and Enquiries
The Charity Commission for Northern Ireland
257 Lough Road
Lurgan
Craigavon
BT66 6NQ

By post and email: myles.mckeown@charitycommssionni.org.uk

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

You will no doubt 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 has also now begun 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 this context, it would be of assistance to the Inquiry to have a statement on behalf of the Charity Commission for Northern Ireland ('the Commission') setting out its involvement with Action Renewables Limited (company no. NI047950) and/or Action Renewables Energy Trading Limited (company no. NI603031), insofar as the same was in any way connected to, or of relevance to the Inquiry's work in respect of, the Non Domestic Renewable Heat Incentive Scheme in Northern Ireland ('the RHI Scheme').

In keeping with the approach we are taking with others, 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 Notice is provided to you because, as Head of Compliance and Enquiries in the Commission, you are considered to be the appropriate person to receive it. The Inquiry may also seek evidence from other servants or agents (or former servants or agents) of the Commission, if considered appropriate.

For the avoidance of doubt, the statement which is required of you by virtue of the enclosed Notice is a statement setting out the involvement of Commission with the companies mentioned above, rather than your own personal involvement (though no doubt any personal involvement you have had will inform the content of the statement). The Inquiry understands that you will have access to all of the relevant information in order to provide the witness statement required. Should you consider that not to be the case, please advise the Inquiry of that as soon as possible.

Please bear in mind that, although the RHI Inquiry now has a good working knowledge of the RHI Scheme, the witness statement required by the enclosed Notice is likely (in common with others) to be published by the RHI Inquiry in due

course. It should therefore ideally be written in a way which is as accessible as possible in terms of public understanding.

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 is 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.

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) and any relevant servants or agents of the Commission 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.

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 320 of 2017]

1. Clarify whether either of the following is a charity registered as such in Northern Ireland and, if it is, specify its date of registration:
 - a. Action Renewables Limited (company no. NI047950);
 - b. Action Renewables Energy Trading Limited (company no. NI603031).

2. Clarify whether the Charity Commission for Northern Ireland ('the Commission') has, either in the context of the charity registration process or otherwise, carried out any investigation, inquiry, probe, document request, records search, or other similar compliance, regulatory, scrutiny, or audit exercise in respect of the companies listed at paragraph 1 of this Schedule, their servants and agents, and, if the Commission has done so, set out in respect of each such exercise the following particulars:
 - a. the dates between which same was undertaken;
 - b. the reason(s) why the said exercise was undertaken;
 - c. its connection (if any) to the commercial activities undertaken by or on behalf of either company, its servants or agents, associated, either directly or indirectly, with the RHI Scheme;
 - d. the outcome of same (including details of whether the outcome took the form of a decision reached by the Commission or an accommodation or agreement reached between either company and the Commission);
 - e. the name(s) of the person(s) in the Commission were involved in the said exercise.

3. Identify any instances of which the Commission is aware where either company, its servants or agents:
 - a. breached relevant standards or acted in a way incompatible with their duties; or
 - b. acted in circumstances relating to or touching upon the RHI 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.

4. Identify, in the context of its work (if any) in respect of the companies listed at paragraph 1, and their respective servants and agents, any instances of which the Commission is aware of whistle-blowing in relation to the RHI Scheme, or disclosures made in the public interest raising concerns about the Scheme, setting out details of when this occurred, to whom and by whom any relevant disclosure was made, and how any relevant person or body dealt with it.
5. Provide any further evidence within your knowledge or belief that 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 320 of 2017

DATE: 31 July 2017

**Witness Statement of: Myles McKeown, Head of Compliance & Enquiries
Charity Commission for Northern Ireland**

I, Myles McKeown, will say as follows: -

1.
 - a. Action Renewables Limited (company no. NI047950) was registered with the Commission as a charity on 18 June 2015.
 - b. Action Renewables Energy Trading Limited (company no NI603031) is not registered as a charity with the Commission.

2. In respect of the company listed at 1(a), the Commission received a concern from a member of the Northern Ireland Assembly on 23 January 2017 which we investigated further.

On registration of the charity, documents were requested and scrutinised in compliance with the Commission's registration process. In addition a Section 96 (of the Charities Act (Northern Ireland) 2008) application was submitted by the charity to the Commission however the answers throughout the rest of this statement pertain solely to the concern received by the Commission in January 2017. If further information is required regarding the registration of the charity or the Section 96 application then I will be content to provide same.
 - a. The dates of our inquiries were 25 January 2017 through to 24 March 2017 however our correspondence continued with the concerned party through to 30 June 2017.

Statement of Truth

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

Signed: Myles McKeown

Dated: 31 July 2017

- b. The reason our enquiries commenced was as a result of a concern received from a member of the Northern Ireland Assembly – the same action would have been taken should the concern have been received from a member of the public.
- c. The Commission's enquiries concerned only the operation of the charity however we were aware of the public confidence issue which was related to Mr Doran's role in Renewable Heat Association Northern Ireland – a role which he later stood down from.
- d. The Commission was satisfied with the information received from our enquiries. We concluded that while there was an issue of public confidence to be addressed, the charity had made lawful decision within the remit of its governing document and that there was no regulatory concern for the Commission to pursue (in the absence of evidence of mismanagement or misconduct). While our concern is closed, we have made a note of the issues within this case and will monitor any further issues linked to the charity.
- e. The Commission Enquiry Team was involved in the exercise which included, Neil Henry, James Walsh and Paul O'Hagan. The Enquiry Team reports to myself (Myles McKeown).

3.

- a. and b.

As stated at 2 (d) above, the Commission was satisfied with the information received following our enquiries and we concluded that while there was an issue of public confidence the charity's decisions were lawful within the remit of its governing document. The issue of Mr Doran's role in the Renewable Heat Association Northern Ireland was resolved (as he resigned on 24 March 2017) and was not taken further.

Statement of Truth

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

Signed: _____

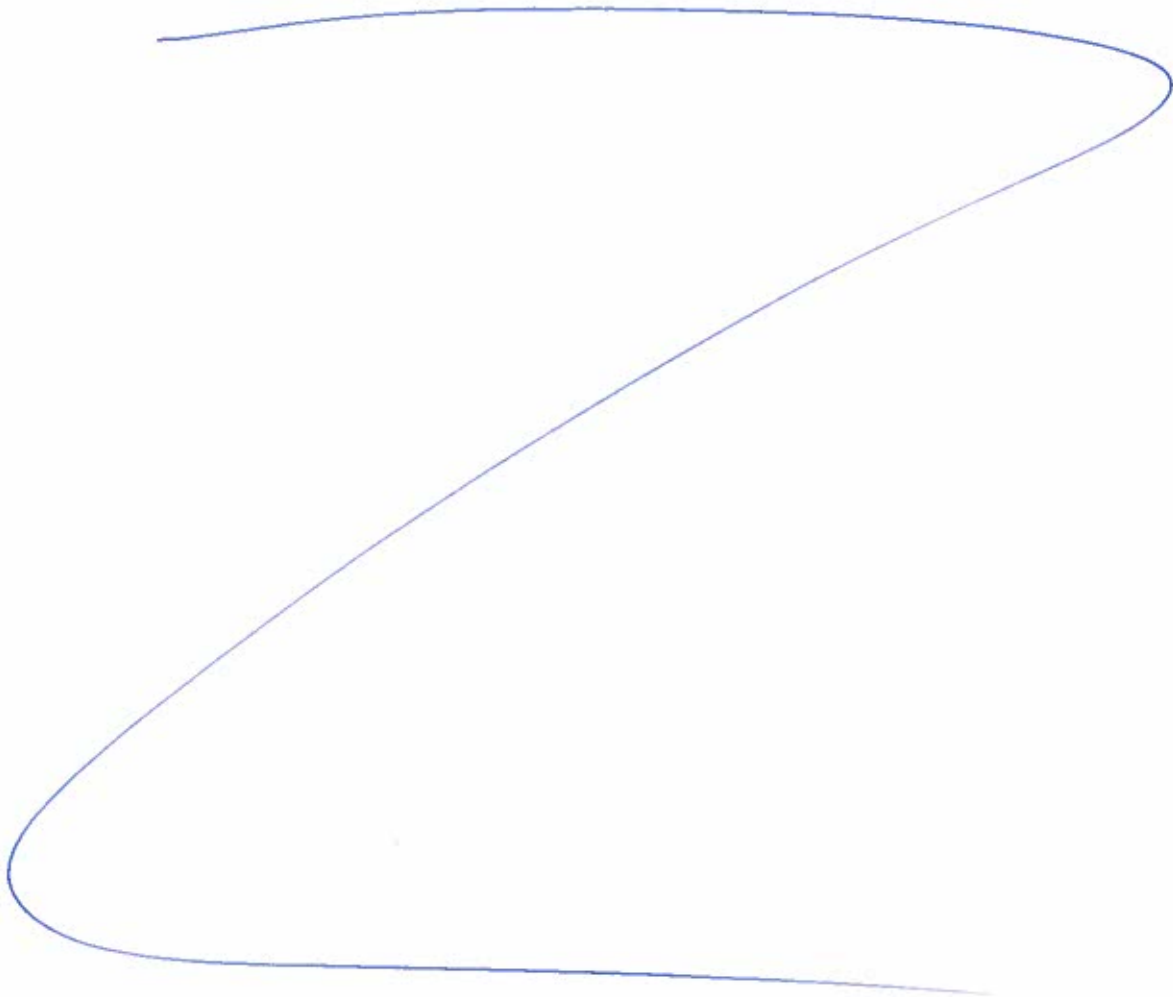
Myles McKeown

Dated: _____

31 July 2017.

4. The Commission is not aware of any whistle-blowing in relation to the RHI Scheme however we did receive a concern from a member of the Northern Ireland Assembly. A copy of the concern received and our correspondence with the concerned party is attached.

5. The Commission received a Freedom of Information request regarding the charity, a copy of our response to the request is attached.



Statement of Truth

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

Signed: Myles McKeown

Dated: 31 July 2017.

McKeown, Myles

From: Wilson, Neil
Sent: 09 January 2017 10:26
To: Personal information redacted by the RHI Inquiry
Cc: Walsh, James
Subject: Personal information redacted by the RHI Inquiry

Dear Personal information redacted by the RHI Inquiry

My colleague James Walsh has passed your email in order that we can respond to the questions posed in your email.

The Commission is the regulator of charities in Northern Ireland and its objectives, functions and duties can be found in sections 7-10 of the Charities Act (Northern Ireland) 2008.

The Commission has a statutory obligation to issue guidance as to the operation of the public benefit requirement (section 4 of the Charities Act (Northern Ireland) 2008).

The Commission statutory guidance on public benefit requirement can be found [here](#).

A charity trustees must have regard to the public benefit requirement when exercising any powers or duties to which the Commission's guidance is relevant (section 4(6) Charities Act (Northern Ireland) 2008).

In relation to your specific questions we reply as follows:

1. *Could I ask the Charity Commission and the DfE to confirm if charitable organisations, e.g. churches, community groups, housing associations and / or their subsidiary profit making companies could have applied for the HRI grant without first breaching their public benefit obligations?*

Any institution whether charitable or otherwise, provided they satisfied the criteria of the RHI scheme, could have applied for the RHI grant. The public benefit requirement applies to charities only and does not to non-charitable trading subsidiary. A charity would not be seen as contravening the public benefit requirement so long as its charity trustees lawfully exercised its powers when applying for the RHI grant.

2. *If the RHI scheme is flawed, it is flawed because it is seen as an unfair drain to the taxpaying [sic] public, surely this is a valid reason to remove charitable organisations for being recipients of the grant; to consider the legality of any such applications made and to consider the charitable designation of any such organisation who applied for the RHI grant?*

Section 16 (5) of the Charities Act (NI) 2008 sets out the circumstances when the Commission shall remove an institution from the 'register of charities'. Availing of a legitimate government grant is not a reason set out in the Charities Act (NI) 2008 to remove a institution from the register of charities.

We reiterate that administration of any government scheme is a matter primarily for that relevant department and the Charity Commission is prohibited by law from administering charities.

Furthermore, we advise that the Commission has no remit over trading subsidiaries which are not established as charities.

Kind regards,

Neil Wilson
Communications Officer

Charity Commission for Northern Ireland
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The Charity
Commission
for Northern Ireland

The Commission has published a never-seen-before snapshot of Northern Ireland's charity sector to mark three years of charity registration. You can read it on our [website](#).

This email is from the Charity Commission for Northern Ireland. It contains information which is confidential and which may be privileged or subject to public disclosure under the Freedom of Information Act 2000. Any views or opinions presented are solely those of the author and do not necessarily reflect the views of the Charity Commission for Northern Ireland. It is for the exclusive use of the intended recipient.

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Northern Ireland
Assembly

Frances McCandless
Chief Executive
The Charity Commission for Northern Ireland
257 Lough Road
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Craigavon
BT66 6NQ

23rd January 2017

Dear Frances,

Following our conversation, I am writing to you today in my capacity as an MLA. Following an article in the Irish News on Saturday 21st January 2017, I am writing to submit a concern about the charity, Action Renewables Ltd.

In the Irish News article (enclosed), journalist Gareth McKeown quoted Action Renewables Director, Michael Doran, in relation to Action Renewables' knowledge of the flaws in the Renewable Heat Incentive Scheme.

The Irish News reported asking Mr Doran why no one in Action Renewables Ltd. relayed concerns about the operation of the scheme to the government. Mr McKeown in his article quoted Mr Doran as saying it would have been "ethically improper".

I am requesting that Charity Commission investigate the assertions put forward in the article by Mr Doran.

Could the Charity Commission answer whether it was accurate that reporting known flaws in the scheme to the government would have been "ethically improper"? As a charity, with a processing cost of approximately £220,000 for the Renewable Heat Incentive Scheme applications, which the processed, whether there was a duty of care to the general public to highlight flaws, as it was a publicly funded scheme? Furthermore, can the Charity Commission advise whether all the Trustees of Action Renewables Ltd. were made aware of these flaws and the decision that it was "ethically improper" to inform the government and/or their clients.

In the information relating to Action Renewables Ltd. registering as a charity, the public benefit in advancing the promotion of renewable energy was stated as the "purpose [should] not result in any harm or private benefit."

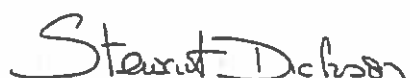
8 West Street, Carrickfergus, County Antrim, Northern Ireland, BT38 7AR
T: 028 9335 0286 E: stewart.dickson@mla.niassembly.gov.uk
www.stewartdicksonmla.com

If there was a contribution to the scale of the Renewable Heat Incentive Scheme crisis from Action Renewables Ltd., then could there be potential issues relating to public confidence in this charity and its registration as a charity in Northern Ireland?

I have attached a copy of the article in the Irish News on 21st January.

I eagerly await your response.

Yours sincerely,



Stewart Dickson MLA

Mr Stewart Dickson MLA
Alliance Party
8 West Street
Carrickfergus
County Antrim
BT38 7AR

Date: 6 April 2017

Ref: ENQ/17/585

Dear Mr Dickson

Re: Action Renewables Ltd

Thank you for your letter of 23 January 2017 which was received by the Commission on 25 January 2017 in respect of the governance of the registered charity Action Renewables Limited (NIC100806).

In examining concerns about charities, our principal considerations are whether decisions have been properly made, within the law and in accordance with its governing document.

Following assessment by the Enquiries Team, which included meeting with charity trustees and obtaining documents and information from the charity, we have concluded that the charity has acted within the law, met its charitable objectives and acted in accordance with its governing document in respect of the issues raised.

Without substantive information to the contrary, there is no further action for the Commission to take in respect of this matter.

For your information and comfort, Action Renewables Ltd is now a registered charity and will be required to submit its annual accounts and reports which will be available for scrutiny by the Commission and shall be subject to our monitoring programme.

We are grateful that you brought this concern to our attention and we offer our sincere thanks for your contribution in maintaining public trust and confidence in the good work of charities.

If you have any further questions in relation to this issue, I am happy to discuss.

Yours sincerely



Myles McKeown
Head of Compliance and Enquiries
e-mail: myles.mckeown@charitycommissionni.org.uk



Northern Ireland
Assembly

Mr Myles McKeown
Head of Compliance and Enquiries
257 Lough Road
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Your ref: ENQ/17/585

5th May 2017

Dear Mr McKeown,

Thank you for your later dated 6th April 2017.

I am writing regarding the Charity Commission's decision on Action Renewables Ltd. I would appreciate if you could detail the reasoning behind the Commission's decision to take no further action.

In your letter it was stated that the Charity Commission were satisfied that decisions taken by Action Renewables had been a) properly made, b) made within the law, and c) made in accordance with its governing document. Would you outline how the concerns I raised were satisfied within these decisions?

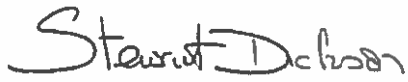
My concerns were that Action Renewables claimed it was ethically improper to report concerns to the Department of Enterprise, Trade and Investment (now the Department of Economy). How was this decision made with accordance of Action Renewables governing document?

Another concern was that there was a duty of care to the public to highlight the flaws. How did this decision satisfy decisions being properly made and with accordance to Action Renewables governing document?

I would also be grateful if you could answer two further questions. Firstly, how the Charity Commission assessed that there had been no public confidence issue and secondly, whether Action Renewables Ltd had been a registered charity earlier if it would have had an impact on the Commission holding them to account on their actions regarding the RHI scheme.

Thank you for all your help to date.

Kind regards,



Stewart Dickson MLA

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Mr Stewart Dickson MLA
Alliance Party
8 West Street
Carrickfergus
County Antrim
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30 June 2017

Ref: ENQ/17/585

Dear Mr Dickson

Re: Action Renewables Ltd

Thank you for your letter of 5 May 2017 in respect of the governance of the registered charity Action Renewables Limited (NIC100806) and apologies for the delay in responding.

We will set out below responses to the questions raised.

Query

My concerns were that Action Renewables claimed it was ethically improper to report concerns to the Department of Enterprise, Trade and Investment (now the Department of Economy). How was this decision made with accordance of Action Renewables governing document?

Response

The quote attributed to Mr Michael Doran (Managing Director of Action Renewables Ltd) in the article seen by the Commission states *"if you're employed on behalf of a client to make an application it would then be ethically improper to then undermine that application by trying to have it withdrawn."*

In relation to the associated question *"How was this decision made with accordance of Action Renewables governing document?"*, the latter was a verbal statement made by the Managing Director in response to a question following the Assembly's suspension of the scheme. The Commission holds no information that suggests that the charity made a decision NOT to report any concerns to the Department of Enterprise, Trade and Investment (now the Department for the Economy) and therefore we are content that, while the statement and its use in media was inappropriate, the charity did not breach its governing document.

The Commission did raise the issue regarding the comments made by Mr Doran and reminded the charity how these comments could damage the reputation of the charity. However, while the comments made and their use in the media are a public confidence issue, as the charity did not take a decision that supported those comments, and confirmed to the Commission that it considered them inappropriate in the context, there is no further action for the Commission to take in terms of compliance with charity law.

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At a meeting with the Commission, the charity trustees stated that they were not aware of anything being wrong with the scheme when it was in operation. There is nothing in the news article or documents seen by the Commission which contradicts this position.

However, in respect of the charity's governing documents, the charity's objects stipulate:

"The Charity's objects ("Objects") are to:

(1) Advance to the benefit of the public the protection and improvement of the environment through the promotion of energy efficiency and renewable energy by:

- (i) promoting good environmental practice;*
- (ii) providing information and advice;*
- (iii) providing consultancy services to communities;*
- (iv) conducting research relating to the utilisation of energy conservation practices and renewable energy technologies and to use the research for the public benefit.*

(2) Advance the education of the public in energy efficiency and renewable energy by increasing awareness of the benefits of reducing carbon emissions and of promoting effective ways to make such reductions.

(3) Improve the quality and standards of renewable energy provision by promoting quality assurance schemes and delivering quality assurance services."

The Commission confirms that no information has been provided or discovered to suggest that the charity made any decisions which are outwith their governing document and objectives. The objects quoted above are in line with the charity's efforts to assist their clients to apply for available government support to utilise renewable energy.

Query

Another concern was that there was a duty of care to the public to highlight the flaws. How did this decision satisfy decisions being properly made and with accordance to Action Renewables governing document?

The referenced article quotes the Managing Director as stating *"the fact that the government created the scheme that some people now think is over incentivised is not our responsibility."*

The Commission has seen no evidence in the remainder of the article or charity documents and records which indicate that the charity was aware of any flaws in the scheme.

Furthermore, in the aforementioned meeting with Commission staff, charity trustees explained that the board first became aware of the issues relating to the scheme in December 2016. In the absence of the charity trustees being aware of any issues with the scheme, no decision could be taken in relation to this.

Query

Firstly, how the Charity Commission assessed that there had been no public confidence issue?

The Commission would accept that the issue of public confidence is a factor in the assessment of risk in a case such as this and with regard to charity regulation more generally.

The Commission as charity regulator has confirmed publicly that it had a concern open regarding the charity and that the matter has since been closed following investigation. Such steps are taken to promote public confidence in the charity sector and its regulation.

As detailed earlier in this letter, the promotion by the charity of renewable energies and the provision of assistance to the charity's clients to make associated applications to benefit from government schemes are considered by the Commission to be in line with the charity's objectives and accordingly to the public benefit.

The administration of the renewable energy scheme itself is not the responsibility of the charity and no evidence has been identified to support any inappropriate practices, mismanagement or misconduct by any representative of the charity to date.

As highlighted above, we did discuss the issue of public confidence with charity trustees and are satisfied with the charity's response.

Query

Whether Action Renewables Ltd had been a registered charity earlier if it would have had an impact on the Commission holding them to account on their actions regarding the RHI scheme.

As Action Renewables Ltd was a "deemed" charity, their registration date made no difference in our investigation.

In order to work with, and regulate, charities in Northern Ireland, the Commission must first be able to categorise which organisations are charities. Prior to registration beginning in December 2013, the law in Northern Ireland deemed organisations recognised as eligible for charitable tax exemptions through Her Majesty's Revenue and Customs (HMRC) as charities.

The Commission's powers extend to the following organisations:

- Under the Charities Act (Northern Ireland) 2008: organisations that have registered with the Commission as charities.
- Under transitional orders: organisations which had been recognised as eligible for charitable tax status by Her Majesty's Revenue & Customs (HMRC) as at 18 August 2013. These organisations number over 7,000 and are listed on what is called the "deemed list".

Conclusion

Where a charity has made lawful decisions within the remit of its governing document, which fulfils its purposes and provides a service to its beneficiaries, then there is no regulatory concern for the Commission to pursue (in the absence of evidence of mismanagement or misconduct).

While our concern is closed, we have made a note of the issues within this case and will monitor any further issues linked to the charity.

We are grateful that you brought this concern to our attention and we offer our sincere thanks for your contribution in maintaining public trust and confidence in the good work of charities.

I hope this has answered your queries but should you require any further information please feel free to contact me.

Yours sincerely



Myles McKeown
Head of Compliance and Enquiries
e-mail: myles.mckeown@charitycommissionni.org.uk