

To: Matthew Harnack[Matthew.Harnack@ofgem.gov.uk]
Cc: Mary Smith[Mary.Smith@ofgem.gov.uk]
From: Keith Avis
Sent: 2012-11-15T13:08:36Z
Importance: Normal
Subject: NIRHI: Admin Agreement
Received: 2012-11-15T13:08:37Z
RE: Audit

Matthew cc: Mary

Following our meeting yesterday I had a discussion with Joanne at DETI to pick up on the Admin Arrangement points. Below in yellow highlight (added to your points in red) is a synopsis of the discussion on the two key points and one additional point on ops costs for this year. Underneath this in blue is my suggested response to DETI – So in responding to DETI I will only be using the text in blue which I will add to DETI's original email. The wording as it stands reflects Mary's comments. Before I go back to DETI I would be grateful for any comments that you wish to make. I hope that you are happy for me to clear this with you, I am aware that we are engaging on a number of levels with DETI and I wanted to make sure that our message remains consistent.

DETI have also sent me a further email on audit – if you need to see this, you will find the email attached, along with my proposed draft reply, which very much remains consistent with the message in Bob's draft covering letter.

Of course, I will pick up on any comments you wish to make before responding to DETI.

I met with Fiona yesterday to look at the revised letter, Admin Agreement and Scoping document. I think we are nearly there – just a few points.

Firstly, we urgently need clarification on who is considered to own the data/documentation provided by the installer. Matthew was to come back to us on this point once he had sought the legal opinion. We believe this is an important issue which impacts on the Admin Agreement in a number of places. This will take several weeks to work through with lawyers and then to discuss with DETI. Is it really needed for the purpose of getting the agreement in place? I think we can agree all outstanding issues without having to bottom this out and I'd recommend we do this so that it doesn't impact on our operation of the scheme. In addition, we have the following

questions/suggestions: I discussed this with Joanne and suggested a resolution that would be a statement in the participants application form that Ofgem may share any data on installations with DETI, which would ensure that they had access to what they need. Her response was that this still did not resolve the question of who owns the data. I pushed back along the lines of so long as they had the information did it matter. Joanne thought that it did because if there was a request from a third party for information we would have no right to send it if it turned out that DETI was legally the owner. I flagged para 8.3 of the Admin Arrangements that says we will notify DETI should we share info to a third party but DETI are still stuck on this point. The driver behind this is the question of the relationship between them and us. They remain of the view that we are carrying out the administration of the scheme on their behalf and as such they own the data. It seems that their Legal Counsel is questioning this point and DETI are waiting for a view from them. I asked how long this could take as we need to move to sign off the agreement quickly. Joanne wasn't sure but is going to find out and also speak to Fiona on our statement in the application suggestion. I do think that Fiona and Matthew will need to discuss to find a resolution to this point. There is a real danger that if the respective legal parties get involved this could run for weeks and could end up in a position where we incur significant cost and agree to disagree. So from a practical perspective it would be beneficial to both parties to find some middle ground for agreement quickly.

In our discussion I put forward a suggestion that we add a statement in the participants application form that Ofgem may share any data on installations with DETI, thus giving you access to all information provided by the installer. I note your point that you still wished for a definitive view on who owns the data, as this links into who is responsible for supplying data to a third party. It is the case that ultimate clarity on this point would take some time to work through with lawyers which would in turn hold up the signing of the Admin Arrangements. I appreciate that you are going to speak to Fiona following our conversation, but as a next step would it be helpful if she spoke to Matthew to see if there was a way to secure a way forward in the arrangements on this point? As I say, to reiterate the point in our proposed covering letter, we will provide you with all information that you need, as long as it does not pose any legal issues or places undue resource demands on us.

Letter

Para 3 – 'additional costs which we may need to agree with you' – we would prefer this read 'additional costs which we would agree with you in advance'

The wording we used was on the basis that some costs may be small and it would be inefficient if we went through the approval process with you in every instance. Having said that, we are prepared to change the wording as you suggest if this would help.

Para 4 - you say the KPI's are 'internal performance measures' just wondering how are they internal if they are published on the web? We should clarify that by 'internal' we mean that ultimately they are measures that we have decided are appropriate for the scheme. We do report externally on these so we should reword this to avoid confusion.

These are 'internal performance measures' in as much that they are measures that we have decided are appropriate for the scheme. We can reword the text to make sure that this is clear. Would you be content if we were to do this?

As regards the KPI – how regularly will you provide management us with info on these indicators? – don't need this in the letter just for info. I think we can provide this monthly. We produce a monthly report on the scheme as is, though it doesn't yet contain all of this.

We can provide you with monthly reports on the scheme. Michelle Murdoch, who has moved over to be the Operations Manager for the scheme will contact you to discuss the detail of the reports that we can provide.

Admin Agreement

4.2 h still causes us some concern. Just not sure how this is going to work going forward. We may not even be aware of what regulations you use never mind any changes to them. Is there some way you can provide us with a list of regulations that you use and highlight when GB changes take place – in much the same way as Marcus did on the gas safety issue? Think we need to discuss this further.

We can always commission NI specific legal advice using some of the contingency that we have not yet called on. DETI seemed OK with this when I spoke to them last time, but they also said that they would probably be happy with the text that I inserted, so I thought that would be better to avoid lengthy delays due to legal advice. I'd suggest we need to ask DETI for some money to get NI legal advice and also that we flag that this will delay the agreement by several weeks (which might impact on operations, though unlikely). I'd also suggest we mention this to Bob as he won't be happy if this is delayed any longer.

I explained to Joanne that this is primarily about any local (NI) Regs that will impact on the NIRHI regs. She asked for a list from us of the type of regs (eg gas safety) that would impact on the NIRHI regs. I basically pushed back and said (very tactfully) that we are talking about local NI regs here and as they had drafted and own the NIRHI regs I was imagining that they had considered the impact of other local regs in the drafting so we are asking that they continue to keep these issues in mind and link into their broader legislative programme for NI. Joanne took on board where I was coming from and is going to speak to Fiona on this point

We discussed this issue in some detail and you are going to pick up on this further with Fiona. To confirm our position is that we need to be aware of any new local (NI) legislation or changes to existing local legislation that will impact on our ability to carry out our duties. In drafting the NI Regulations we recognise that you will have considered how this dovetails into other areas of the NI legislative portfolio, so it would be any changes/additions to this that impact on NIRHI that we should be made aware of. I await the result of your conversation with Fiona, but following that discussion and on the basis of the added clarity here could you come back to me to confirm that you are content (or otherwise) with the wording as it stands.

5.2 Can you just clarify what the last sentence means – created doubt rather than avoided

In short if either party are aware of anything that would require a change to the regulations or guidance as they currently stand we should let each other know. Grateful if you could confirm that this provides the clarity that you need and, if so, that you are happy with the wording.

7.1 What do you mean by assets – presumably ip rights database etc but not data, paperwork, documentation etc?

Yes these are assets that are owned by Ofgem, so computer systems, databases, reports, internal process delivery supporting documents etc. As mentioned earlier we will provide you with regular information on the operation of the scheme. Does this provide you with sufficient clarity on this point?

Baseline Scope

Exec Summary para4 – doesn't make sense – you have used £5k of contingency

I presume this is talking about the extra £5k of legal spend. Best to reply to DETI that we have not asked for contingency funds for this, but instead we have reallocated £5k from another line item. Up to you whether you think the wording in the baseline scope needs changing.

There is a £5k cost increase on the original legal forecast, but we have reallocated this from another line item rather than use contingency funding. Grateful if you could let me know whether this is sufficient clarity for your purposes, if necessary we can re-visit the wording of the baseline scope to ensure that this is clear.

1.2 – 7th bullet – can you clarify what this means – as it reads it would appear that if you get any other work our costs could change?

This means that we will not be operating outside of the boundaries of the baseline scope or the arrangements. Should an instance occur we will approach you to discuss the implications of any cross Government and/or scheme requirement and enact the change request process as agreed between us. Are you content that this clarifies the position for you?

5.17(a) the 'Accounting Officer' is a specific role within the NICS. Can we change this to read 'first be discussed by the Project Managers? Branch Head? Or something else? Yes we can insert some wording that sets out attempts to resolve issues before they go to the accounting officer. I would suggest at para 5.17 we say "The dispute will first be discussed by key Ofgem New Schemes Development and DETI working level contacts (to be agreed separately)" Is this acceptable to you?

Somewhere in this document we need clarity on the £47K contingency. We understand that you need assurance that this is available to you. However, from discussions with Matthew and Paul I have been given to understand that as things stand at the moment this £47K would be available to cover the costs if we need to go it alone come Jan/Feb i.e 30-35K although this might change as the project moves forward.

To be clear – we need the full £47k to be available to us up front for the purposes of spending on the main IT build costs. This is because there is a chance we will need it, and we can't afford to stop work for several weeks to seek this funding should we need it, as that would mean that we would spend even more (because of idle IT developers who can't be redeployed that quickly) and also it would mean that the end of January go-live date would well and truly be missed (hence resulting in more operating costs too). At this stage it appears that we won't need to use it, so it could instead be used to cover the IT release costs should that be needed, but as said that could change as the project progresses so there is no guarantee there would be sufficient budget left to cover the IT release costs once we get to the end of January.

We do need the full £47k to be available to us up front for the purposes of spending on the main IT build costs. As you are aware, the intention was that we would link in with the GB RHI IT release to reduce costs. However, a risk of delay in delivering the GB RHI release in January remains. As a result, given the tightness of timing, we cannot afford to stop work for several weeks to seek this funding should we need it, as that would mean that we would spend even more and also it would mean that the end of January go-live date would well and truly be missed, resulting in more operating costs too. Therefore, moving forward, I would be grateful if you could confirm that this

£47k is now available to us. Once I have your confirmation I will update the wording of the baseline scope to reflect this.

Matthew, you did also mention looking at the scope to make clear the ops costs for this year. We have given the baseline scope, concluding that total operating costs for 2012/13 are now forecast at £140k, which DETI seem to be broadly content with. In invoicing them each month we will be able to clarify staffing costs and the like. There is a danger that if accreditations are low they may question staffing levels, but unless DETI are pushing for a formula I think we should monitor this internally for the remainder of the year. Of course, if you feel differently I will look at this further.

Think these are the main points – hopefully we can get this signed off soon

Regards

Joanne

Joanne McCutcheon

Renewable Heat

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From: Matthew Harnack
Sent: 13 November 2012 18:31
To: Keith Avis; Mary Smith
Subject: RE: NIRHI: Admin Agreement

Hi both,

I've had a chat to Bob about both points that have potential to drag on and he has suggested ways forward on both. Can we chat about it in the morning please?

From: Matthew Harnack
Sent: 13 November 2012 15:26
To: Keith Avis; Mary Smith
Subject: RE: NIRHI: Admin Agreement

Thanks Keith.

I have a few comments in red below. Can you please take account of these in any response that either of you make on this.

From: Keith Avis
Sent: 13 November 2012 11:41
To: Mary Smith; Matthew Harnack
Subject: NIRHI: Admin Agreement

Mary, Matthew

Attached is the response from DETI on the Admin Arrangements, baseline scope and letter. Joanne also gave me a call to talk these through. In short, most of this is a matter of clarification, which is good news. It seems to be the only stumbling block now is who owns the data. DETI are pushing for a definitive answer on this. As I understand it, underlying this is the broader question of the relationship between DETI and Ofgem (e.g. customer/supplier as DETI would wish to have it). More generally, I explained to Joanne that the question of data ownership is not as straightforward as it would seem as a good deal depends on the source of the data and how the contents are covered (e.g. contract law, IP law, data protection etc.). Joanne is going to discuss this further with Fiona. From our perspective we will need to explore this further with Marcus I think.

As regards next steps, Joanne agreed with my proposal that the best way forward was for me to pull together Ofgem comments on the points below. It may be necessary to have a further exchange with DETI, but hopefully we are moving ever closer to a position where we can sign everything off.

Mary – I assume that you will wish to make broad reference to this as part of the update to the RHI Implementation Board shortly.

Rgds

Keith

From: McCutcheon, Joanne [<mailto:Joanne.McCutcheon@detini.gov.uk>]
Sent: 13 November 2012 10:56
To: Keith Avis
Cc: Hutchinson, Peter; Hepper, Fiona
Subject: Admin Agreement

Keith

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Received from OFGEM on 11.05.2017

Annotated by RHI Inquiry

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Joanne McCutcheon

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The new website for the European Sustainable Competitiveness Programme for NI is now available - visit www.eucompni.gov.uk



www.ni2012.com

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