

To: Teri Clifton[teri.clifton@ofgem.gov.uk]
Cc: McCutcheon, Joanne[Joanne.McCutcheon@detini.gov.uk]
From: Hutchinson, Peter
Sent: 2013-11-01T11:08:43Z
Importance: Normal
Subject: RE: RHI and Carbon Trust interest free loan
Received: 2013-11-01T11:08:49Z

Teri,

Yes, we got the figures ok and were able to feed them into our financial returns and profiling in time.

Spoke to our Director yesterday and have some queries on how the figures have been calculated but will probably respond formally early next week – as you say we can discuss further on Wednesday.

Thanks,
Peter

From: Teri Clifton [mailto:teri.clifton@ofgem.gov.uk]
Sent: 01 November 2013 09:48
To: Hutchinson, Peter
Subject: RE: RHI and Carbon Trust interest free loan

Thanks Peter.

Just wanted to check you got the figures ok in the end?

I spoke to finance about the invoice situation that Joanne was asking about and they've come back to me and said once we have confirmation of your agreement to the approach we can then send out an invoice. This is also something worth talking through on Wednesday.

Regards
Teri

From: Hutchinson, Peter [mailto:Peter.Hutchinson@detini.gov.uk]
Sent: 01 November 2013 09:41
To: Edmund Ward
Cc: Teri Clifton; McCutcheon, Joanne
Subject: RE: RHI and Carbon Trust interest free loan

Edmund,

This sounds like a sensible approach – we can discuss on Monday at 1.30pm and we can outline the advice we have received from our Departmental Solicitors and discuss our preferred route forward. If needed, you could then revert to your lawyers with a view to an agreement / solution being in place on Wednesday.

Thanks
Peter

From: Edmund Ward [mailto:Edmund.Ward@ofgem.gov.uk]
Sent: 31 October 2013 18:34
To: Hutchinson, Peter
Cc: Teri Clifton; McCutcheon, Joanne
Subject: RE: RHI and Carbon Trust interest free loan

Peter,

Thanks for the update on your progress on this. We'd be happy to discuss via teleconference, perhaps on Monday afternoon?

Teri and I have now had flights booked for Wednesday; we can review at the end of a teleconference on Monday if it still makes sense to come over. I can imagine that we may need to discuss on Monday, potentially have further internal review/legal interactions and then reconvene on Wednesday to agree a position/actions/next steps.

As per your earlier timing suggestions, would 1:30pm on Monday work for a teleconference? If so, I can provide login details.

Kind regards,
Edmund

From: Hutchinson, Peter [mailto:Peter.Hutchinson@detini.gov.uk]
Sent: 31 October 2013 16:46
To: Hutchinson, Peter; Edmund Ward
Cc: Teri Clifton; McCutcheon, Joanne
Subject: RE: RHI and Carbon Trust interest free loan

Edmund,

I have spoke to Pat Millen and he has given me an overview and analysis of the advice he has received from your lawyer's. I have discussed the potential options with Pat and our Director of Energy, Fiona Hepper, and think we might be able to move forward with one of the options.

Given the increased local interest in the event and the need for a resolution, Fiona has asked that we consider having a teleconference earlier in the week rather than waiting until Wednesday to meet in person. If this was an option at all we could have the telecon on Monday afternoon or anytime on Tuesday? If you aren't available or already booked flights we could proceed with Wednesday but have preliminary discussions beforehand?

Let me know what suits and whether a telecon earlier in the week would be preferable?

Thanks,
Peter

From: Hutchinson, Peter
Sent: 31 October 2013 12:34
To: 'Edmund Ward'
Cc: Teri Clifton; McCutcheon, Joanne
Subject: RE: RHI and Carbon Trust interest free loan

Edmund,
 11am on Wednesday would be fine with us, let me know when confirmed.

Happy for you to pass my contact details on to Connel (or anyone else you happen to speak with who wants to speak with DETI also), I spoke to someone else from Alternative Heat yesterday. Think we are using similar lines in terms of "the issue is under review and we are working with Ofgem to understand the issue and consider how to go forward" etc.

Thanks,
 Peter

From: Edmund Ward [<mailto:Edmund.Ward@ofgem.gov.uk>]
Sent: 31 October 2013 11:38
To: Edmund Ward; Hutchinson, Peter
Cc: Teri Clifton; McCutcheon, Joanne
Subject: RE: RHI and Carbon Trust interest free loan

Peter,
 Teri and I are just looking to confirm flights, but could we provisionally say 11am on Wednesday and I'll confirm later on today.

Just to update you that I've just spoken to the Managing Director of Alternative Heat, Connel McMullan (Personal information redacted by the RHI Inquiry) (ConnelMcMullan@alternativeheat.co.uk). He was keen to speak also to someone at DETI to provide some context for the impact this issue will have on their business – they have a number of projects in the pipeline, and several undergoing works on site this week. I've already emphasised that this is an area under active and urgent review, that we are liaising closely, and have added him to our list of interested stakeholders so that he will receive an update as soon as we have one; however, would you be happy for me to pass him your contact details, or are there other details we could pass out for DETI in similar escalated situations?

Kind regards,
 Edmund

From: Edmund Ward
Sent: 30 October 2013 19:10
To: 'Hutchinson, Peter'
Cc: Teri Clifton; McCutcheon, Joanne
Subject: RE: RHI and Carbon Trust interest free loan

Peter, thanks, and apologies for the delay, I've only just got to this. I'll get back to you tomorrow on the meeting time.

Thanks also for the update; as you predict, we are indeed starting to get more calls on this.

I spoke to Janine Cobain at Carbon Trust yesterday, who confirmed that CT are advising potentially affected parties to contact us for confirmation before proceeding.

Kind regards
 Edmund

From: Hutchinson, Peter [<mailto:Peter.Hutchinson@detini.gov.uk>]
Sent: 30 October 2013 10:20
To: Edmund Ward
Cc: Teri Clifton; McCutcheon, Joanne
Subject: RE: RHI and Carbon Trust interest free loan

Edmund,
 Thanks for this – I will speak to Pat and get his perspective on the current situation.

In terms of meeting, I think Wednesday morning would suit best, we are free all day between 9am-3pm. On Monday the only option is between 1pm-3pm. Let me know what suits.

Just for information, the issue with the CT loan is now widely in the public domain in Northern Ireland, spoken to 3 people this morning about it and spoke to Geoff Smyth (Carbon Trust) on Monday. The issues this morning have included one customer who was supposed to sign off on a 200k CT loan but is now delaying and a second (installer) who has built a 50k bespoke biomass boiler system (for a hotel on an island) and was supposed to ship and install the product today but has had the order delayed because of the issue. Both potential

applicants had previously received advice from Ofgem that CT loan and NIRHI were compatible and know of other installations that have been accredited despite receiving the CT loan. It is likely that the Ofgem RHI team will be receiving similar calls / queries no doubt.

Let me know what suits re meeting.

Thanks,

Peter

From: Edmund Ward [<mailto:Edmund.Ward@ofgem.gov.uk>]

Sent: 30 October 2013 09:29

To: Hutchinson, Peter

Cc: Teri Clifton; McCutcheon, Joanne

Subject: RE: RHI and Carbon Trust interest free loan

Peter,

I understand there have now been further discussions between our respective legal teams. I have had an initial debrief from our legal team, and they suggested that it might be prudent for you to do the same, at which point we may be well placed to discuss the policy and administrative options to progress this matter.

To make the urgent progress desired by all parties on this issue, it's been discussed here that I would meet with you in Belfast; could I propose Monday (4th) or Wednesday (6th) of next week as possible dates?

Kind regards,

Edmund

From: Edmund Ward

Sent: 29 October 2013 10:46

To: 'Hutchinson, Peter'

Cc: Teri Clifton; 'McCutcheon, Joanne'

Subject: RE: RHI and Carbon Trust interest free loan

Peter,

Just to note that I understand a telephone meeting between our respective legal teams did not proceed yesterday, but I believe there is ongoing dialogue to establish a suitable time for this to occur – possibly tomorrow (Wednesday).

I'll keep you informed of any developments.

Kind regards,

Edmund

From: Edmund Ward

Sent: 28 October 2013 08:26

To: 'Hutchinson, Peter'

Cc: Teri Clifton

Subject: RE: RHI and Carbon Trust interest free loan

Peter,

That's certainly how our legal team are proceeding at this end – i.e. I will not attend. I've arranged a briefing from my legal advisors following the proposed call - on Tuesday - and will contact you after that to give a progress update from my perspective.

Kind regards,

Edmund

From: Hutchinson, Peter [<mailto:Peter.Hutchinson@detini.gov.uk>]

Sent: 28 October 2013 08:22

To: Edmund Ward

Subject: Re: RHI and Carbon Trust interest free loan

Edmund,

Just to check, does the teleconference just require DETI legal contacts? Joanne is on leave and I'm not sure if I'll be free this afternoon.

No doubt Pat will keep us informed of developments as required.

Many thanks

Peter

This was sent from my Blackberry Device.

From: Edmund Ward [<mailto:Edmund.Ward@ofgem.gov.uk>]

Sent: Friday, October 25, 2013 04:50 PM

To: Edmund Ward <Edmund.Ward@ofgem.gov.uk>; Hutchinson, Peter; McCutcheon, Joanne

Edmund Ward - DEEMOND1W03003
Annotated by RHI Inquiry

Cc: Teri Clifton <teri.clifton@ofgem.gov.uk>
Subject: RE: RHI and Carbon Trust interest free loan

Peter, Joanne,

Further to my previous, I now understand that a legal option paper has been shared with Patrick Millen by email, and that a joint DETI/Ofgem telephone conference has been proposed by Ofgem for Monday afternoon 2.15-3.15.

My legal colleagues are aware of some of the operational considerations associated with these options, and we will be happy to discuss those with you further.

Kind regards,
Edmund

From: Edmund Ward
Sent: 25 October 2013 13:57
To: 'Hutchinson, Peter'; McCutcheon, Joanne
Cc: Teri Clifton
Subject: RE: RHI and Carbon Trust interest free loan

Peter,
Many thanks, I've passed on both the phone number and the request for this to be shared as soon as possible – I can assure you we are working to progress this as swiftly as we can.
Kind regards,
Edmund

From: Hutchinson, Peter [<mailto:Peter.Hutchinson@detini.gov.uk>]
Sent: 25 October 2013 12:31
To: Edmund Ward; McCutcheon, Joanne
Cc: Teri Clifton
Subject: RE: RHI and Carbon Trust interest free loan

Edmund,
Just to make sure you have it - here is Pat's number 028 9025 1210.
Would appreciate the legal advice to be shared as soon as possible as we are receiving calls on a daily basis regarding the issue.
Thanks,
Peter

From: Edmund Ward [<mailto:Edmund.Ward@ofgem.gov.uk>]
Sent: 25 October 2013 12:29
To: Hutchinson, Peter; McCutcheon, Joanne
Cc: Teri Clifton
Subject: RE: RHI and Carbon Trust interest free loan

Peter,
Thanks for your email, and update.
I understand a colleague from our legal team has attempted to reach Pat by phone and has left a voicemail, but has not made contact. I understand our lawyers will continue to attempt to reach Pat, in order to agree the best way to progress discussions.
If I have further update on the status of this, I will of course let you know.
Kind regards,
Edmund

From: Hutchinson, Peter [<mailto:Peter.Hutchinson@detini.gov.uk>]
Sent: 25 October 2013 12:05
To: Edmund Ward; McCutcheon, Joanne
Cc: Teri Clifton
Subject: RE: RHI and Carbon Trust interest free loan

Edmund,
Can I ask whether the legal advice has been sent through to Pat Millen yet or, if not, when it might be passed through to him?
We have provided briefing for our Minister this morning on the issue but have advised her that fuller briefing will be able once our Departmental Solicitor's have been able to consider and advise on the legal advice and some potential policy options have been considered.
Thanks,
Peter

From: Edmund Ward [<mailto:Edmund.Ward@ofgem.gov.uk>]
Sent: 24 October 2013 16:12
To: Hutchinson, Peter; McCutcheon, Joanne
Annotated by RHI Inquiry

Cc: Teri Clifton

Subject: RE: RHI and Carbon Trust interest free loan

Peter,

Apologies for the delay in replying, I have already passed on the contact details to our legal team.

As you surmise, our view is that the next step on the policy options or solutions to the current situation should be addressed via lawyer-to-lawyer communication in the first instance. Once that legal background has been set out, we would of course be very happy to engage with you directly on the implications of how we would administer under particular policy options/scenarios.

Kind regards,

Edmund

From: Hutchinson, Peter [<mailto:Peter.Hutchinson@detini.gov.uk>]

Sent: 24 October 2013 12:19

To: Edmund Ward; McCutcheon, Joanne

Cc: Teri Clifton

Subject: RE: RHI and Carbon Trust interest free loan

Edmund,

The legal advice should be sent to Patrick.Millen@dfpni.gov.uk as a matter of urgency – when sending please mark in the cover email that the issue relates to the NI RHI.

Are you able to provide any further advice on the policy options or solutions to the current situation or is this contained in the legal advice?

I'll be in touch again regarding a meeting.

Peter

From: Edmund Ward [<mailto:Edmund.Ward@ofgem.gov.uk>]

Sent: 24 October 2013 10:32

To: Hutchinson, Peter; McCutcheon, Joanne

Cc: Teri Clifton

Subject: RHI and Carbon Trust interest free loan

Dear Joanne, Peter

Thank you for your emails and recent discussions, regarding the compatibility of Carbon Trust interest free Loans with Non-Domestic RHI eligibility in Northern Ireland. I understand that this is an issue of concern to DETI, and can assure you that we are keen to work with you to address this so far as we can as a matter of urgency.

I would also like to preface this response by offering to arrange a further opportunity to discuss the joint DETI/Ofgem way forward on this. To address the possible options from a policy and implementation perspective, we would be happy to meet with you at your offices if that would be convenient. Further to my discussion with Peter on Tuesday 22nd October, it would be helpful if you would provide the contact details for the relevant Departmental Solicitor at DETI so that our lawyers can engage with you on this. Perhaps the Departmental Solicitor who advised on the regulations last year, particularly on the Technical Standard Directives provisions.

The remainder of this email covers:

1. Background
2. Responses to your specific queries
3. Proposed next steps for your consideration

1. Background

An applicant was refused accreditation for the RHI scheme by Ofgem on the basis that he had a Carbon Trust Interest free Loan towards the cost of the installation which was subject of the application. The reason for the rejection was because a view was taken that the Carbon Trust Interest free loan constituted public support under Regulation 23 which excludes accreditation under the Northern Ireland Regulations.

The two elements to be considered are, therefore: (i) whether the Loan conveys a financial advantage to the applicant and (ii) whether it was provided by a public authority.

In relation to (i) we were of the view that it is likely the Loan would be considered to give a financial advantage to the applicant as it is interest free with a 36 month repayment period.

In relation to (ii) the source of the interest free loan was Invest Northern Ireland which is a fund provided by Northern Ireland government and that therefore the person providing the public support in this instance was a public authority.

2. Responses to your specific queries

On your specific queries, including those raised in emails from Peter Hutchinson and Joanne McCutcheon on 8th October and 9th October 2013 to Edmund Ward and Teri Clifton, we suggest that your Departmental Solicitors discuss these with our lawyers.

3. Proposed next steps for your consideration

Regarding publication on Ofgem's website, we would like to reach a conclusion with you on this issue before any public statement is published.

As mentioned above, we would be happy to arrange a meeting to discuss next steps, either in advance of, or subsequent to, any position being made public.

Kind regards

Received from OFGEM on 05.09.2017

Annotated by RHI Inquiry

Edmund
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