

To: McCutcheon, Joanne[Joanne.McCutcheon@detini.gov.uk]
Cc: Teri Clifton[teri.clifton@ofgem.gov.uk]; Hutchinson, Peter[Peter.Hutchinson@detini.gov.uk]
From: Edmund Ward
Sent: 2013-11-25T18:03:14Z
Importance: Normal
Subject: RE: URGENT Carbon Trust and RHI in Northern Ireland
Received: 2013-11-25T18:03:15Z

Thanks Joanne
Tuesday at noon is looking hopeful, I'll confirm shortly...
Edmund

From: McCutcheon, Joanne [mailto:Joanne.McCutcheon@detini.gov.uk]

Sent: 25 November 2013 14:39

To: Edmund Ward

Cc: Teri Clifton; Hutchinson, Peter

Subject: RE: URGENT Carbon Trust and RHI in Northern Ireland

Anytime between 10.30 and 2 tomorrow would suit – not sure about Weds yet – Stephen is waiting for word about another meeting he has to attend.

Joanne

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

Sent: 25 November 2013 14:24

To: McCutcheon, Joanne

Cc: Teri Clifton; Hutchinson, Peter

Subject: RE: URGENT Carbon Trust and RHI in Northern Ireland

Joanne,

Thanks, that seems a good plan. I'll seek availability at this end – for Tuesday & Wednesday; are there times that would suit you and Stephen Moore? I can then set up a teleconference number and send out an invite.

Kind regards,

Edmund

From: McCutcheon, Joanne [mailto:Joanne.McCutcheon@detini.gov.uk]

Sent: 25 November 2013 14:17

To: Edmund Ward

Cc: Teri Clifton; Hutchinson, Peter

Subject: RE: URGENT Carbon Trust and RHI in Northern Ireland

Edmund

Way forward might be a conference call with Ofgem (you and legal), DETI and Stephen Moore?

Joanne

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

Sent: 22 November 2013 19:06

To: McCutcheon, Joanne; Hutchinson, Peter

Cc: Teri Clifton

Subject: RE: URGENT Carbon Trust and RHI in Northern Ireland

Joanne, Peter

Further to our discussion yesterday Joanne, I have engaged with our lawyers to explore the mechanism by which we could ensure compliance with state aid provisions in practice.

Having shown Stephen Moore's state aid analysis to our lawyers here, they are keen to explore with him and DETI lawyers whether any additional constraints are applied by the Community Guidelines on state aid for environmental protection (EP), under which state aid approval for the RHI Non-Domestic scheme was given.

Their current reading of the cumulation provisions of those guidelines suggests that we can only "cumulate" aid approved under the EP Guidelines with *de minimis* aid if the total of both remains within the thresholds set in the Guidelines. In other words, if the aid ceiling for the EP Guidelines is less than the *de minimis* threshold, we would be constrained by the former.

They are very keen to engage both with your state aid expert and DETI lawyers to discuss this further as a matter of urgency, so that we can agree a mutually acceptable solution that does not create longer-term precedent problems in applying the rules to Carbon Trust loans. I appreciate that this may require a further briefing to your Departmental Solicitor. Do you think this is something it would be possible to take forward? It seems this may be central to determining if we can achieve the narrower reading approach with regard to Carbon Trust loans.

Many thanks for your continued engagement on this.

Kind regards,

Received from OFGEM on 11.05.2017
Annotated by RHI Inquiry

Edmund
Edmund Ward
Senior Technical Manager, RHI
New Scheme Development
9 Millbank
London
SW1P 3GE
Tel: 0207 901 7168
www.ofgem.gov.uk

From: McCutcheon, Joanne [<mailto:Joanne.McCutcheon@detini.gov.uk>]

Sent: 20 November 2013 13:59

To: Edmund Ward; Teri Clifton

Cc: Hutchinson, Peter

Subject: RE: URGENT Carbon Trust and RHI in Northern Ireland

Edmund
Any update on RHI issue ? Also any word from lawyers on website statement – it will be two weeks tomorrow since we sent it. Or a change control and supporting info to cover your proposal on the finances? Thanks.
Regards
Joanne

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

Sent: 11 November 2013 13:16

To: Hutchinson, Peter; McCutcheon, Joanne

Cc: Teri Clifton

Subject: FW: URGENT Carbon Trust and RHI in Northern Ireland

Joanne, Peter,
I hope you are well; it was good to meet you last week. Thanks also for the tip on lunch venue.
Please see below advice from the Carbon Trust lawyers on the status of Carbon Trust. I've shared with our lawyers, and will provide a further update on that tomorrow. I hope to be able to respond on the website statement by the end of the day – apologies for the delay in this.
Kind regards,
Edmund

From: Janine Cobain [<mailto:Janine.Cobain@CarbonTrust.com>]

Sent: 11 November 2013 09:31

To: Edmund Ward

Subject: FW: URGENT Carbon Trust and RHI in Northern Ireland

Good Morning Edmund,
Please find below response from our legal team, If you require any further details please do not hesitate to contact me
Regards

Janine Cobain
Loans Manager
Carbon Trust Loan Scheme
Tel : 028 9073 4398
The Carbon Trust - Making Business Sense of Climate Change

From: Claire Williams

Sent: 09 November 2013 16:04

To: Janine Cobain

Subject: RE: URGENT Carbon Trust and RHI in Northern Ireland

Janine
As discussed, the following may be helpful to you :-
The Carbon Trust is a private company limited by guarantee. It is a not for dividend company with an independent board of directors drawn wholly from the private sector.
It may also be useful to note that the Carbon Trust:

- does not have any government directors or other government representatives sitting on its board or involved in its

management. It has decision making autonomy and is not controlled by government.

- does not exercise functions of a governmental or public nature;
- was not created by statute and has no statutory powers or regulatory functions and does not exercise any such powers or functions;
- is not accountable to the public for its activities;
- is not subject to judicial review;
- designs and owns its programmes of activity and the intellectual property that it generates, with the result that its activities could not be transferred to another organisation without its consent; and
- is not subject to the Freedom of Information Act.

As the Carbon Trust receives public funding to support various of its low carbon or renewable energy programmes, its status has been considered over the years at various times. On each occasion, all bodies have accepted that it is not a public body.

Regards

Claire

Claire Williams

Head of Legal & Company Secretary

The Carbon Trust – Making Business Sense of Climate Change

4th Floor, Dorset House

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Tel: +44 (0) 20 7832 4844

Fax: +44 (0) 20 7170 7020

www.carbontrust.co.uk

Help cut carbon...Don't print this email unless you really need to

From: Janine Cobain

Sent: 05 November 2013 10:42

To: Claire Williams; Stephanie Hanson

Cc: Geoff Smyth; Abigail Hermon

Subject: URGENT Carbon Trust and RHI in Northern Ireland

Good Morning Claire, Steph

With reference to the email below, could you please provide clarification for Edmund Ward from Ofgem (email address below) on the points listed below as requested and also provide a copy of Section 2, State Aid Declaration from the Interest Free Loan Scheme agreements.

This matter is causing concern for a number of our clients within Northern Ireland and I would be grateful if we could facilitate a speedy response to the specified timescale.

If you have any queries please do not hesitate to contact me

Regards

Janine Cobain

Loans Manager

Carbon Trust Loan Scheme

Tel : 028 9073 4398

The Carbon Trust - Making Business Sense of Climate Change

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

Sent: 04 November 2013 18:13

To: Janine Cobain

Subject: Carbon Trust and RHI in Northern Ireland

Hi Janine

Thanks for your time on the phone, and for your email. I'm glad we managed to make contact.

I've been discussing with DETI our approach to Carbon Trust loans and RHI eligibility in NI, and one aspect that may affect our decisions on this matter going forward relates to whether the Carbon Trust would be regarded as a 'public authority'.

I would appreciate any help or context you could give to enable us to reach a view on this.

Our lawyers have suggested I might seek clarification on the following aspects in particular:

- (a) The nature of the function of the Carbon Trust;
- (b) The degree of state or government control (including commenting on membership and decision making process);
- (c) The degree of government funding.

We also briefly discussed the declaration regarding State Aid funding and de minimis limits that Carbon Trust loan recipients must complete, and you mentioned you might be able to send a copy of that (which I believe may be Section 2 of the loan agreement form).

Annotated by RHI Inquiry

I appreciate that it may take some time to provide a response. However, I do note that I'll be meeting with D. Tragan on Wednesday and any information you were able to provide by then, even if only an initial response, would be very useful.

Kind regards

Edmund

Edmund Ward

Senior Technical Manager, RHI

New Scheme Development

9 Millbank

London

SW1P 3GE

Tel: 0207 901 7168

www.ofgem.gov.uk

ofgem e-serve

From: Janine Cobain [<mailto:Janine.Cobain@CarbonTrust.com>]

Sent: 04 November 2013 15:02

To: Edmund Ward

Subject: missed call

Hi Edmund

Just seen I've missed a call from you – I'm in a meeting and should be free in an hour or so, I will call you back then unless I can help over email?

Regards

Janine Cobain

Loans Manager

Carbon Trust Loan Scheme

Tel : 028 9073 4398

The Carbon Trust - Making Business Sense of Climate Change

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