

**To:** Hepper, Fiona[Fiona.Hepper@detini.gov.uk]  
**Cc:** McCutcheon, Joanne[Joanne.McCutcheon@detini.gov.uk]; Hutchinson, Peter[Peter.Hutchinson@detini.gov.uk]; Teri Clifton[teri.clifton@ofgem.gov.uk]; Jacqueline Balian[Jacqueline.Balian@ofgem.gov.uk]  
**Importance:** Normal  
**Subject:** RE: Admin Arrangements  
**Received:** 2013-07-03T16:48:01Z

Fiona,

Thanks for coming back to me on this. I agree that it's best to park the legal question for now and only return to it if and when the need arises.

I'll ask Teri Clifton to see if we're able to provide you with the additional information that you request, as part of the regular reports that you are sent. I would hope this is possible. I'll also see if she can answer your questions about registration with the Information Commissioners Office and two data controllers.

Regards,  
 Matthew

**Matthew Harnack**  
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**From:** Hepper, Fiona [mailto:Fiona.Hepper@detini.gov.uk]

**Sent:** 03 July 2013 09:00

**To:** Matthew Harnack

**Cc:** McCutcheon, Joanne; Hutchinson, Peter

**Subject:** FW: Admin Arrangements

Matthew

We discussed this matter when we met on 29 May and I indicated that we would get back to you once we had further input from our Solicitors. I have now received their response and they have reiterated their point - that the provisions of the primary legislation expressly use language indicating that GEMA acts *on behalf of* DETI i.e GEMA has not replaced or extinguished DETI's overall responsibility and interest in the scheme. I think this issue could go backwards and forwards between our legal teams indefinitely - perhaps we should park it at present and return to it if and when the need arises.

As regards the sharing of data, the Solicitors have asked whether GEMA is registered with the Information Commissioner's Office for the purposes of the NI RHI scheme - perhaps you could clarify this for us? They also raise the possibility of two data controllers - any views? In any case, it is their view that even were GEMA the sole data controller there is no impediment within the Data Protection Act 1998 which would prevent you sharing applicants details with DETI.

With regard to the assessment of fairness they refer to

- (a) para 1.24 of the Guidance which clearly envisages GEMA sharing personal data with DETI for the purposes of monitoring - applicants could not be said to possess any expectation that their details were not liable (at some stage) to be disclosed to DETI.
- (b) The fact that no one has been misled or deceived as to DETI's involvement with the scheme when the information was collected
- (c) Their inability to identify any conceivable harm to the interests of the applicant - perhaps GEMA could identify the adverse consequences/harm they envisage?

With regard to Schedule 2 they make the point that applicants have applied voluntarily, are aware from the outset that the scheme is a DETI scheme and that it is difficult to envisage what possible 'prejudice' would be caused to them by having their details disclosed to DETI. Finally, as regards Article 8 ECHR the Solicitors cannot see how disclosure would bring any risk of contravening this article.

In summary, even if we cannot achieve agreement over the 'ownership' of the data, it is the view of our Solicitors that DETI, as the specific public authority with statutory responsibility for the scheme, has a legitimate interest in the scheme and as such there should be no difficulty in disclosing the data to us for a 'legitimate purpose'.

At present we are receiving some details of applicants. The additional details that we would like access to are - name of applicant, postcode of applicant and the Standard Industrial Classification (SIC code) of business if held. The purposes for which we require the information are (i) to enable us to coordinate the RHI with other NI Department's funding initiatives to ensure there is no double funding (ii) monitoring take up in relation to our other projects e.g. gas extension and (iii) for the briefing of our Minister - Northern Ireland is a small place and our Minister regularly asks about individual companies.

I would be very grateful if this information could be added to our regular reports. If this is possible then I would be content to park the wider issue for now.

Regards

Fiona  
 Received from OFGEM on 22.05.2017

Annotated by RHI Inquiry

**Fiona Hepper**

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**From:** Matthew Harnack [<mailto:Matthew.Harnack@ofgem.gov.uk>]

**Sent:** 19 April 2013 17:00

**To:** Hepper, Fiona

**Cc:** McCutcheon, Joanne; Hutchinson, Peter

**Subject:** RE: Admin Arrangements

Fiona,

Thank you for sharing your legal advice on 12 February, and my apologies for such a slow reply. Irrelevant information redacted by the RHI Inquiry unfortunately disrupted getting this advice to you, as has Easter and the annual leave I took last week and on Monday.

Our views on this advice are marked up in red below. I'd be grateful if you could consider these points and feed back DETI's views. I agree that it's important to try and reach a common view on this issue.

Regards

Matthew

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**From:** Hepper, Fiona [<mailto:Fiona.Hepper@detini.gov.uk>]

**Sent:** 12 February 2013 16:29

**To:** Matthew Harnack

**Cc:** Mary Smith; McCutcheon, Joanne; Hutchinson, Peter

**Subject:** Admin Arrangements

**Importance:** High

Dear Matthew

Further to our recent tele-conference, and with regard to Keith's e-mail, I provide below the advice of our Departmental Solicitor. The main points made by our Solicitor are as follows:-

**Relationship between DETI and GEMA**

Received from OFGEM on 22.05.2017

Annotated by RHI Inquiry