

**To:** Gareth John[Gareth.John@ofgem.gov.uk]  
**From:** Teri Clifton  
**Sent:** 2016-10-14T12:48:53Z  
**Importance:** Normal  
**Subject:** FW: Urgent: [Personal information redacted by the RHI Inquiry] investigation [OFFICIAL Internal Only]  
**Received:** 2016-10-14T12:48:54Z

**From:** Wightman, Stuart [mailto:Stuart.Wightman@economy-ni.gov.uk]

**Sent:** 14 October 2016 13:45

**To:** Wightman, Stuart; Edmund Ward

**Cc:** Jane Pierce; Teri Clifton; Hughes, Seamus; Marten, Lucy; Willis, Adele

**Subject:** RE: Urgent [Personal information redacted by the RHI Inquiry] investigation [OFFICIAL ]

Good afternoon Edmund,

As we discussed earlier in the week, we need to be clear of all the facts before formally responding to NIAO on this case. Can I therefore please ask you to confirm:

(i) when (June?) and how (telephone call / letter / Etc) the initial complaint was received by Ofgem in relation to recipient

[Personal information redacted by the RHI Inquiry] ?

(ii) why the Department was not advised of the allegations given that paragraph 3.2 b) of our Administrative Agreement states that Ofgem will: *b) inform DfE of any complaint, request for a formal review, dispute, proposed court proceedings or actual court proceedings that is received by GEMA in connection with the carrying out by it of the Conferred Functions or the Ancillary Activities?*

(iii) If Ofgem has evidence that show the meter readings as being out of proportion to the very limited eligible use the participant concedes? Our legal advice is that the participant is not entitled to RHI payments outside the periods during which there is no non-domestic use (i.e. the periods during which there is only a domestic use). Our advice is based on:

1. There is no de minimis requirements in the scheme, in other words the fact that a business may be seasonal and only operate for a particular period of the year would not necessarily exclude it from the scheme.
2. Notwithstanding 1 above, because a business is eligible for a particular period does not mean that during times outside this period the installation can be used to service a domestic dwelling (ineligible purpose).
3. Para 6.20 of the RHI Guidance seems to confirm this, it says: *An installation can be eligible for the NIRHI if it supplies heat to one or more ineligible purposes in addition to at least one eligible purpose. However, meter readings and heat output data submitted to Ofgem for NIRHI payment purposes must not include any heat that has been used for ineligible purposes.*

Our legal advice on Point (iii) above may also be relevant to other scheme participants and the Category 2.3 & 4 cases flagged through the PWC work.

Happy to discuss.

Thanks

**Stuart Wightman**

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Received from OFGEM on 22-05-2017  
 Annotated by RHI Inquiry

**From:** Wightman, Stuart