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From: Edmund Ward
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Framework for Improving NIRHI Governance and Control.docx

Hi Stuart,

Further to our discussion on Tuesday, and having subsequently reviewed the Hansard from the PAC session on 9th November, I wanted to make one urgent request for confirmation, and to provide some further updates and requests for clarification.

A: Administration under existing Arrangements:

Summary of our discussion on Tuesday 15th November:

- I made reference in our discussion to Andrew McCormick's comments at the PAC of 9th November, and questioned whether on that basis we should be acting any differently in respect of our current administration.
- You confirmed that your expectation is that we continue to process cases (applications and compliance cases) in line with our current approach, also confirming that this should be evidence based.
- I noted that our administration would continue to be evidence based, but to be clear that I understood this to mean that we would continue to progress cases while being mindful of the findings from the PwC work, and that we would continue to engage with the Department in light of those findings and on particular cases as appropriate.

Follow-up further to our discussion:

- The Hansard transcript of the PAC session on 9th November has subsequently been issued, and I'm particularly mindful of the following extracts (page 25):

Dr McCormick:

"We do have a concern about Ofgem enforcing the regulations. Part of what we are doing now, and part of the discussions with the lawyers, is to see what is the right thing to do now: what is fair, what is appropriate and what is proper management of public money here. Now that we know, we can see the thing in such a different way. ...
 "A key difference now is that, because this is much more out in the open, and because we are devoting resource and attention from the Department to it, we do not want Ofgem to sign off and resolve cases on a business-as-usual basis. Business as usual is over in that sense. Part of the discussion that I had with Chris Poulton directly on that point is that we now have to engage in assessing the issues and making sure that the assessment of the cases that PwC has drawn to its attention and any conclusions reached are informed by discussion with us. In turn, our view of it will be informed by discussion with our lawyers."

Confirmation requested from DfE:

- Having considered the above, can you confirm if the Department is in agreement that, until we may agree otherwise (for example via updated Arrangements or governance):
 - (a) Ofgem should continue to process applications to the scheme (to reach approval or rejection decisions) where we are satisfied that this is in line with the regulations, in line with our existing procedures; and
 - (b) Ofgem should continue to deploy audits where appropriate, in order to act on the basis of referrals, to establish eligibility (e.g. pre-accreditation audits), or to address particular cases where there may be grounds to investigate alleged non-compliance.

I'd be grateful if you could confirm this approach on behalf of the Department, such that we can continue to progress administration of the scheme without the possibility of confusion or misunderstanding between Ofgem and DfE.

Please could you confirm by 10:00 on Monday that we should continue to proceed with administration of the NI RHI in line with the regulations, Administrative Arrangements and in line with our existing procedures?

B: Ofgem audits to be conducted during November/December 2016:

- To support our ongoing compliance investigations, and mindful of applications currently under review and yet to be approved or rejected, I'd currently expect to be in a position to instruct on a further c. 5-15 compliance audits to be deployed over the next month or so.
- To be clear, that would still be within our funded audit volume for 2016/17 (57 audits, with 26 completed to date). However, I note that depending on how we engage further on audit strategies (by Ofgem and/or the Department) over the remainder of 2016/17, any future commitments might mean that the cost of these audits would impact on the overall funding requirement for audits for this financial year.
- I'd be grateful if you could confirm if you are happy for us to proceed and what, if anything, you would need in addition, in order for us to progress with those audits.

C: DfE response to PAC:

- We provided information on Wednesday to support DfE's response to the NI PAC requests, and Teri has responded on Lucy's follow-up.
- I hope this means you now have what you need, but do let us know if there's any more you need on this.

D: MOU and governance:

- I have confirmed that due to the nature of the MoU between BEIS and Ofgem, which applies more widely to our administration of a number of schemes, it would not be appropriate to share this with the Department in full.
- However, I will endeavour to summarise the themes and relevant aspects of an MOU as might pertain to our administration of the NI RHI, in order to support your consideration of governance arrangements between DfE and Ofgem.
- I can confirm that we can also now revert with our initial comments on your draft framework document – see attached.
- As agreed, we can then discuss your progress on the framework, and agree next steps, at our meeting on Wednesday 23rd November.

E: Minutes of meeting of 3rd November 2016 at DfE offices

- Thanks for your email of 8th November summarising key Action Points from our meeting on 3rd November.
- As discussed on Tuesday, on (2) you are expecting to progress with case studies – but I confirmed that we will be happy to provide further information relating to particular applications or cases as requested.
- Can you confirm when we can expect any further minutes to be circulated?

I've set out the above points for clarity, but as always I'm also happy to discuss on approach, or to follow up with others as required on any of the points above. In order to facilitate ongoing administration, and to make arrangements with regards audits, it would be useful to receive an overall response by COP on Tuesday 22nd, but as set out above I am keen that we are aligned on item A as a matter of priority.

Kind regards

Edmund

Dr Edmund Ward

Head of Technical and Compliance, RHI

Ofgem E-Serve

Personal information redacted
by the RHI Inquiry

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Framework for Improved NI RHI Governance and Control

1. Review of Scheme Guidelines and Legislation

- Scope current scheme guidelines and legislation to identify areas where policy intent / interpretation might be clarified or strengthened through amendments.
- Secure legal advice from Departmental Solicitor's Office (DSO) on how best the Department and Ofgem can apply these revisions to existing RHI recipients.
- Amend the scheme guidelines and legislation as required following the results from the consultation.
- Work closely with DSO to reduce impact of legal challenge.

Ofgem's initial comment: *As we discussed in our meeting in Belfast on the 3rd November, we are happy to feed into this process and understand that the Department are drafting a series of policy options papers.*

DfE have responsibility for both the regs and the guidance (under the Arrangements, reg 51 is a retained function by DfE – this is the duty to publish guidance to participants and prospective participants in connection with the administration of the scheme).

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2. Audit and Enforcement Strategy

- Develop an enhanced audit and enforcement strategy to monitor and ensure scheme compliance and minimise the risk of fraud.
- Review cases (cat 2, 3 & 4) referred from the independent (PWC) review and suspend payments until eligibility can be demonstrated by the scheme participant or revoke accreditation(s) and recover payments if ineligibility is proven.

- Explore legal position to take forward action above and prepare for legal action to be taken against the Department.
- Strengthen current verification procedures so that, in cases where eligibility is questioned, the applicant must demonstrate eligibility via photos, fuel records, additional inspections (at their cost) etc.
- Put in place more rigorous approach to audit, inspection and enforcement including:
 - updating site inspection specification to include increased focus on unacceptable behaviours identified through the independent review (inefficiency, wastage, ineligible heat use, etc).
 - Putting in place an increased site inspection programme (up to 100%) proportionate the risks of non-compliance / fraud;
 - securing robust assurances around eligibility for all cases referred for further investigation (onus should be placed on scheme recipient to provide necessary evidence); and

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- carrying out appropriate enforcement action where such assurances are not provided including revocation and payment recovery.

Ofgem's initial comment: *As we discussed on 3rd November, Ofgem has the power to suspend in order to investigate under reg 43 where we have "reasonable grounds to suspect" a past or ongoing failure to comply with an ongoing obligation (as set out in the regulations). Any such suspicion can only last a maximum of 6 months.*

As part of using this power, we have to specify the respect in which we suspect failure to comply and the next steps in the investigation.

Ofgem has the power to revoke, the power to recover payments is retained by DfE - reg 47(1)(a) - (the requirement to repay PSP as a civil debt – is listed as a retained function in the Arrangements.

Does the reference to verification procedures relate to outstanding applications?

We are very happy to continue to discuss this area with the Department, including resource requirements. Our audit approach (and enforcement powers) is designed around identifying/acting upon non-compliance with the regulations.

3. Implement effective governance and oversight arrangements

- Formalise the working relationship between Ofgem and the Department through the existing Administrative Agreement and a new Memorandum of Understanding (MOU).
- The MOU will set out reporting requirements and include NI specific KPIs on Ofgem's performance around site audits, investigation, payments and accruals, rate of return, comparability, communications, etc.

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- Develop formalised reporting structures and mechanisms including:
 - setting up a new DfE RHI Performance Review Board, (to which both Energy Renewables Division and Ofgem report) which will review performance against the KPIs on a quarterly basis.
 - reviewing key project management controls (including risk register, issues log, decisions log and project plan) to take account of Internal Audit, NI Audit Office and PWC reports and new governance arrangements.
 - DfE continuing to receive weekly updates on installations from Ofgem and both parties continuing to hold monthly teleconferences on operational issues;
 - DfE dialling into Ofgem's internal monthly NIRHI Board meetings.
- Agree a joint DfE/Ofgem Action Plan for the recommendations arising from the Internal Audit report, the NIAO report, the PAC and the PWC investigation and report progress as required.

Ofgem's initial comment: *We are happy to discuss this further. If there is an MOU in addition to the Administrative Arrangements, we will need clarity of the status and contents of each.*

We are happy to report on progress against the KPIs at DfE's new Board. (Although we note that we are required to administer the scheme in line with the Arrangements and Regulations.)

Ofgem will continue to hold its internal governance Board, to which DfE are welcome to continue to dial in as observers.

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4. Budget Management and Forecasting

- Implement a new DfE budget management system for the RHI focussed on:
 - Providing more robust / accurate forecasts on future RHI payments;
 - Minimising the level of monthly accruals associated with outstanding payments; and
 - Ensuring the Department's database aligns with Ofgem's systems to minimise manual data entry.
- Review process for forecasting monthly cash requirements for RHI payments.
- Review future NI Administration Costs to take account of scheme closure and NI specific costs associated with additional controls and governance.

Ofgem's initial comment: *We are happy to discuss this further.*