

To: Edmund Ward[Edmund.Ward@ofgem.gov.uk]
Cc: Chris Poulton[Chris.Poulton@ofgem.gov.uk]; James Robinson[James.Robinson@ofgem.gov.uk]; Michael Knight[Michael.Knight@ofgem.gov.uk]; Alison Hardie[Alison.Hardie@ofgem.gov.uk]; Jane Pierce[Jane.Pierce@ofgem.gov.uk]; Teri Clifton[teri.clifton@ofgem.gov.uk]
From: Gareth John
Sent: 2016-10-15T16:52:47Z
Importance: Normal
Subject: Re: Urgent: S Brimstone's RHI appl no redacted investigation [OFFICIAL Internal Only]
Received: 2016-10-15T16:52:49Z

Edmund

Let's discuss on Monday , but I tend to agree we need to be comfortable with our own preparations and that's planned into ally for tues/wed with follow up fri/mon in London . Perhaps a teleconference as you suggest on Thursday to run through their view on questions would be helpful - but we need to be careful with the dialogue here - we are our own witnesses as it where.

The point about agreed interpretation of eligibility is an interesting one - we have one and that hasn't changed. As witnesses the reflection on NAI0 report and PWC report and evidence we provide should not deviate from our approach , guidance and consistent interpretation validated against what the regs allow.

Thanks
Gareth

Gareth John
Gareth.John@ofgem.gov.uk

On 15 Oct 2016, at 00:27, Edmund Ward <Edmund.Ward@ofgem.gov.uk> wrote:

Hi All

To note from below:

- (i) Stuart is seeking Andrew's availability for a discussion with Chris on Monday – I'll update on Monday morning.
- (ii) They've confirmed processing outstanding applications remains in line with BAU – requesting 'sufficient' evidence particularly over drying applications which is part of our current process in any event (and as additional controls Teri/I are sole Delegated Authorities for outstanding NI applications and are sensitive to PwC findings and ongoing discussions
- (iii) There's another invite for a mock session with DfE – although our preference may well be to have a short teleconference to discuss general approach with DfE, and then meet with them the day before the session

Edmund

From: Wightman, Stuart [<mailto:Stuart.Wightman@economy-ni.gov.uk>]
Sent: 14 October 2016 18:17
To: Edmund Ward
Cc: Jane Pierce; Teri Clifton; Hughes, Seamus; Marten, Lucy; Willis, Adele; McCann, Brendan
Subject: Re: Urgent: S Brimstone's RHI appl no redacted investigation [OFFICIAL]

[Thanks Edmund

An early discussion would be helpful. I'm keen to ensure we have an agreed interpretation on eligibility going into the PAC and for the handling of all the PWC cases and future cases.

In terms of your outstanding applications (200 no), I can confirm it should be business as usual in terms of processing. However, given the PWC findings we should ensure we receive sufficient evidence over eligibility before accreditation particularly for any 'drying' applications.

I think it would be useful for Andrew and Chris to speak on Monday at some stage. I'll check Andrew's availability and let you know first thing on Mon.

As things stand, Ofgem are still to attend the PAC on the 26th. Would you be interested in coming over next Thu or Fri to have a mock session. These are a very useful way of preparing for the real thing.

I'll speak to you on Mon.

Have a good weekend.

Stuart

Sent from my BlackBerry 10 smartphone.

From: Edmund Ward
Sent: Friday, 14 October 2016 17:20
To: Wightman, Stuart
Cc: Jane Pierce; Teri Clifton; Hughes, Seamus; Marten, Lucy; Willis, Adele
Subject: RE: Urgent: Brimstone's RHI appl no redac investigation [OFFICIAL]

Stuart

Thanks for your email; I've responded to the points in turn as follows:

(i)

A letter with allegations of potential abuse was received in May 2016 by letter – we will share a copy by GSI on Monday for your reference. I note that this was not a complaint from a current or prospective applicant or participant.

(ii)

This case did not fall into our view of any of the categories identified in the Arrangements that you have referenced. That said, we have already proposed amendments to those arrangements and are happy to engage on what cases the Department would like to be advised of going forward.

In line with our standard procedures, this matter was referred to relevant teams for investigation, including our audit & compliance and counter fraud teams. We investigated this promptly, including via commissioning a site audit which was conducted on 30 June 2016. Following the result of that site audit, we concluded a further investigation and ultimately took a decision not to take any further action on the basis of the information that was received. We have already shared the audit report with you, and are happy to provide any further information as required for you to consider this case further.

(iii)

We'd be happy to discuss this further. However, as initial points for consideration:

- Regulation 15 of the NI RHI Regulations defines as an excluded plant a plant 'generating heat solely for the use of one domestic premises' and not, paraphrasing your position, a plant generating heat that is solely used by a single domestic premises
- In line with point 1 of your advice, our approach to regulation 15 is based on considering the nature of the heating system which the plant forms part of, and on the operation of the plant over a period of time, rather than on its operation at any given point in time. In considering this, we note that the approach to a number of areas of administration of the scheme, such as metering, is based on data only being available on a quarterly basis. It is also relevant that seasonal, alternating or transient uses of heat generated by a plant as between the different parts of a heating system and the premises that they may provide heat to are normal in many of the applications to which installations are providing heat – for example, district heating systems serving more than one domestic premises.

That said, we will consider this further and would be keen to discuss your opinion in this regard, alongside any other areas of interpretation. We'd be happy to propose a meeting to discuss this over the course of the next week, if that would be of interest.

We'd also be happy to share on request our view of the breakdown of meter readings and payments over the periods to date.

Kind regards

Edmund

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: [Redacted] 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 [Redacted]
- (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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Please consider the environment - do you really need to print this e-mail?

From: Wightman, Stuart
Sent: 11 October 2016 14:37
To: Edmund Ward
Cc: Jane Pierce; Teri Clifton; Hughes, Seamus; Marten, Lucy; Willis, Adele
Subject: RE: Urgent: [Redacted] investigation [OFFICIAL]

Sorry Edmund

Further to Lucy's email below. Our Permanent Secretary (Andrew) is meeting the DfE Minister shortly and is planning to provide a letter confirming this case is currently under investigation. Looking at the Site Report alone, it is very difficult to justify that there is an eligible heat use. This looks very like the Cat 4 installations that PWC identified.

We therefore need assurances that Ofgem's decision not to proceed with further enforcement action has been based on robust evidence. Otherwise, we'll have to initiate another investigation given the allegations were only received yesterday

and the site visit was in June.

Can you please come back to me as soon as you can? Andrew is meeting with the Minister within the next hour.

Thanks, Stuart

Stuart Wightman

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From: Marten, Lucy

Sent: 11 October 2016 14:14

To: Edmund Ward; Willis, Adele

Cc: Jane Pierce; Teri Clifton; Wightman, Stuart; Hughes, Seamus

Subject: RE: Urgent: Brimstone's RHI appl no redac investigation [OFFICIAL]

Thanks Edmund

Grateful if you could provide the findings from the investigation which led you to be satisfied that the recipient's heat use was eligible for payments under the non-domestic RHI scheme.

Thanks

Lucy

Lucy Marten

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Please consider the environment - do you really need to print this e-mail?

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

Sent: 11 October 2016 14:10

To: Willis, Adele

Cc: Jane Pierce; Teri Clifton; Wightman, Stuart; Marten, Lucy; Hughes, Seamus

Subject: RE: Urgent: Brimstone's RHI appl no redac investigation [OFFICIAL]

Hi Adele,

Yes, I can confirm that we did conduct an investigation on the basis of the report referenced below. Following that investigation, and in line with our standard procedures, we reached a position of being satisfied of ongoing eligibility, and released a hold on payments.

Happy to provide further information as required. In the interim, I'll arrange for a copy of relevant information to be forwarded (to Seamus via GSI as per our usual approach).

If you have any further information that would be relevant to this case, we would of course expect to look at that and act appropriately.

Kind regards,

Edmund