

To: Robert Hull[Robert.Hull@ofgem.gov.uk]
Cc: Elizabeth Hillman[Elizabeth.Hillman@ofgem.gov.uk]
From: Ruth Lancaster
Sent: 2011-10-28T09:15:47Z
Importance: Normal
Subject: Fw: Corporate Plan
Received: 2011-10-28T09:15:48Z

Bob

Liz has asked me to provide some further comment in relation to our figures for the New Schemes work. Attached below is my original e-mail to Peter, but the main points are as follows:

(A) RHI

As you will be aware the figures I provided to Peter included a small uplift to the baseline figures for matters not currently included in the Baseline Document for the operational period. The uplift was an interim measure only to flag the potential need for additional resource requirements for the next phase. I had intended to produce a detailed estimate setting out our assumptions as to scope to develop a more accurate estimate. However, I understand from Liz that the suggestion of any uplift to the baseline figures was rejected at the recent corporate planning meeting so before we devote resources to producing a detailed estimate we need to understand if there is any scope for these items to be included. Since my e-mail to Peter I had begun work on this and to give you an idea of the extent of the issues not included previously I have set out below a list of what we consider are areas likely to require legal input during the operational period.

The only work for the operational period covered in the baseline document is (i) rectification Regulations and (ii) Procurement (PSP and contact centre).

We have not been provided with a detailed work plan for the operational phase so these are assumptions based on experience gained from the implementation phase.

Additional Items for the Operational Period (WIP)

1. provide legal support to a substantial number of applicant enquiries;
2. review of the Operational Business Plan and operational procedures;
3. legal support to develop revised Ofgem policy and guidance;
4. review of operational documents such as:
 - a. IT use cases/ text;
 - b. IT system user terms and conditions;
 - c. declarations;
 - d. letters/ emails;
5. review of less formal communications with consumers;
6. maintaining a watching brief on DECC's emerging high level policy and Ofgem's policy input;
7. legal review of DECC's final policy statement/consultation;
8. review of revised Audit strategy;
9. review of revised Fraud Prevention strategy;
10. consideration of infringements by participants: including breaches of ongoing obligations. Note also that follow-up on fraudulent behaviour has not been included in the budget to date;
11. support in relation to application of sanctions;
12. support in relation to formal and statutory reviews;
13. review/ procurement of ID verification and bank account validation provider.

There may be other areas we haven't yet considered.

B) NI RHI

I am aware of the suggestion that as the value of the scheme is estimated to be approximately 3% of the value of GB scheme, the costs for the NI scheme should be 3% of the costs of the GB scheme. This is unlikely to be the case. For example, the NI scheme is not identical to the GB scheme and there has been no detailed analysis of the impact of these variations to date. Also we don't yet know how protracted the

discussions/explanations/negotiations with DETI will be. Furthermore a detailed analysis of the issues likely to arise from proposals to amalgamate NI and GB systems and processes has not been carried out yet.

Again I haven't been provided with a detailed scope of work for the project so the figures given to Peter are little more than a "guesstimate". I have kept them down in view of the pressure to do so, but as I don't envisage the legal input being substantially less than it was on the GB scheme once the detailed scope becomes available we will need to curtail the parameters of the legal support that can be provided to match whatever budget has been set aside for this.

(C) ECO

Again in the absence of a scope of work the figures provided are guesswork. As with the schemes above, when the scope is known available legal support may be determined by the budget made available rather than the actual requirement for legal input (i.e. if the budget provides for less legal support than is actually required) because of the way in which legal costs are charged back.

Not having been at the meeting I'm not sure if I've addressed all of the points raised so please let me know if you need anything further from me.

Ruth

From: Ruth Lancaster
To: Peter Rice
Cc: Elizabeth Hillman
Sent: Wed Oct 19 20:19:03 2011
Subject: FW: Corporate Plan

Peter

Set out below is my first stab at the Corporate Planning figures for my areas. (Note: these are for external Legal only and do not include internal Legal FTE figures). I have discussed these with Liz and there are some issues (flagged below) that she is going to raise with you in connection with some of these areas.

NEW SCHEMES

RHI

Consultancy figures proposed -

11/12	12/13	13/14	14/15	15/16	16/17
102,000	285,000	160,000	150,000	100,000 (new)	100,000 (new)

The original estimate of legal costs was developed on the basis set out in my e-mail to Matthew of 26 May 2011. This estimate was reduced to the figures shown in the Baseline Document dated 3 June 2011 on the understanding that we would be required to support only 3 of the 12 areas identified in my e-mail of 26 May. In our view this estimate in the Baseline Document was unrealistically low and indeed the support required has not been limited to the three areas identified. We remain within budget for the current financial year only because (a) we are only part way through this financial year and (b) certain anticipated pieces of work have slipped in the timetable and have not (yet) materialised. This work will still need to be carried out at some point, only the timing of it has changed. In addition to date we have only used Counsel to advise on matters on an ad hoc basis. However, we are in the process of appointing external law firm support at the moment, so there is likely to be a step up in external spend before the end of December 2011.

The only pieces of work for Legal in the Operational Period identified at the time of the Baseline Document were (i) supporting the rectification Regulations and (ii) procurement (PSP, contact centre and audit investigations). We have very briefly reviewed likely additional areas of work requiring Legal support during the operational period and believe there are a significant number of areas not covered in the original scope. We have included a very slight uplift in the figures above in respect of this work. However, **we do not believe this uplift is sufficient and will need to review in detail the additional work anticipated and provide you with some revised figures next week.**

In addition the impact of the competing needs of the Operational and Development teams within the GB RHI scheme and also the competing demands of the GB and NI RHI teams will have to be accommodated as all these workstreams will be running in parallel. We will be addressing the GB/NI timetable clashes over the next couple of weeks by means of some further additional support from external Counsel. Once we have secured external law firm support a more cost efficient solution may be a secondment arrangement with the firm(s) appointed.

NI RHI

11/12	12/13	13/14	14/15	15/16	16/17
75,000	200,000	150,000	100,000	50,000	50,000

We have no detailed specification on which to base this estimate and have not yet had time to consider the proposed differences between the NI and GB schemes. These figures are therefore a complete guess. However, we note there is quite a lengthy list of proposed departures from the GB scheme and on this basis we don't think that the suggested figure of 3% of the GB scheme estimated costs is likely to be a realistic figure for the NI scheme. We will need to revisit these figures as soon as any kind of scoping document is available and the extent of the differences from the GB scheme become apparent.

ECO (Just in case)

11/12	12/13	13/14	14/15	15/16	16/17
0 (We understand no appointment will be made until June 2012)	200,000	150,000	100,000	50,000	50,000

Again we have no detailed specification on which to base this estimate so these figures are another guess. Our view when the Proposals document was produced was that the figures estimated were unrealistically low, which means we only have budget to support a limited scope of work, which (as we have discussed before) is counterintuitive to the role of an in house Legal function. We will need to revisit these figures as soon as any kind of scoping document is available.

OFFSHORE

Following on from the comments and e-mails earlier about the under spend against current budgets I do not agree that this is an issue. In most cases the underspend is largely due to timetable slippage (e.g. Enduring). As with RHI all of the work anticipated by the earlier estimates still needs to be done it is only the timing if it that has changed. Care should also be taken not to make the erroneous assumption that there is not much work involved in these Projects. Taking Enduring as an example: there has been significant timetable slippage, we are also now proposing to condense 2 sets of Regs into one and to bring forward the date of the Regs (not achievable in my view bearing in mind the complexities yet to be considered). For example, we have yet to consider how to make the revised Regulations work for all 4 ongoing regimes (i.e. transitional, generator build, early OFTO build and late OFTO build). In addition issues such as how we distinguish enduring generator build from transitional etc have yet to be considered. On top of that there is likely to be substantial work in relation to the underlying codes required. Following our discussion and your later e-mail we have also looked back at the work/costs involved on earlier rounds and believe that the figures estimated for the development phase of Enduring are currently too low and have revised them upwards. However, we have also revised the estimates for the Enduring tender stages downwards. We will be happy to discuss the reasoning behind this with you.

Finally we are currently in the process of appointing external law firm support for the Offshore development work so as with RHI there is likely to be a step up in legal spend on Offshore before the end of this calendar year

Enduring (Development)

11/12	12/13	13/14	14/15	15/16	16/17
250,000	500k-600k	0	0	0	0

Enduring (Tender Stages)

11/12	12/13	13/14	14/15	15/16	16/17
0	0	500,000	500,000	500,000	500,000

Certification

11/12	12/13	13/14	14/15	15/16	16/17

130,000	70,000	0	0	0	
---------	--------	---	---	---	--

NB. Certification costs from 13/14 onwards are included in the relevant tender stage budgets.

Coordination

11/12	12/13	13/14	14/15	15/16	16/17
100,000	150,000	0	0	0	0

Energy Bill (Offshore)

11/12	12/13	13/14	14/15	15/16	16/17
50,000	50,000	0	0	0	0

Interface Issues (currently "P&I")

11/12	12/13	13/14	14/15	15/16	16/17
50,000	50,000	0	0	0	0

AND FINALLY.....

I have listed some areas below that are not currently included in the corporate planning figures for Legal. I have flagged them here for information, but Liz has said she will take these forward with you.

DELIVERY REVIEW

MOU/SLA/Change mech - there is a potential need to test some of his work (for example the finely balanced issues around the SLA) with Counsel. One (of several) issues we have here is that there doesn't appear to be any budget provision for any work that falls within the current financial year.

Energy Bill (Powers to Bid) – there is a potential need for law firm and/or Counsel's support on this issue. Again there is a question of how this is to be funded to the extent that support is required in the current financial year.

SPECULATIVE WORK

e.g. EMR, Green Deal

We understand there has been some discussion about separate budgets being set up to cover speculative work. We would like to understand, if this is the case, whether Legal will have access to those budgets or, if not, how our input will be funded.

JR Potential

Clarification as to how JRs are to be funded is required.

Ruth Lancaster

Principal Legal Adviser
 Legal Services: Commercial
 9 Millbank
 London
 SW1P 3GE
 Tel: 0207 901 1853
www.ofgem.gov.uk