



Peter Hutchinson
C/o Mary O'Neill LL.B.
Departmental Solicitor's Office
2nd Floor, Centre House
79 Chichester Street
BELFAST
BT1 4JE

By email to: Mary.O'Neill@finance-ni.gov.uk

9 November 2018

Dear Sir,

Re: The Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme
Provision of a Section 21 Notice requiring the provision of evidence in the form of a written statement

I am writing to you in my capacity as Solicitor to the Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme (known as 'the RHI Inquiry') which has been set up under the Inquiries Act 2005 ('the Act').

I know that you are familiar with the work of the Inquiry and its Terms of Reference from your previous engagement with it and the Inquiry remains grateful for the witness statements, documents, and oral evidence you have already provided.

As you may be aware, the Inquiry continues to seek some further written evidence from witnesses and participants, particularly where issues have arisen in evidence recently provided in respect of which it is necessary, or appropriate, to provide an

opportunity for further response. The Inquiry Chairman also retains the right to require witnesses to attend to provide (further) oral evidence, and consideration will be given to whether that is necessary in light of additional written evidence which is received.

In the circumstances, please find enclosed with this letter a further Section 21 Notice requiring you to provide evidence to the RHI Inquiry Panel in the form of a further written statement addressing the matters identified in the Schedule to the Section 21 Notice.

Where you have been asked about a matter which has been addressed to some degree in your previous written evidence and you are clear that there is no further evidence which you can provide, please simply say so.

In the interests of fairness, you are also encouraged to provide, through the further written statement now being requested of you, any additional information that you can which is relevant to the Inquiry's investigation of the matters falling within its Terms of Reference in relation to any of its phases, in light of any additional matters which have emerged during the course of the Inquiry's evidence-gathering processes.

As the text of the Section 21 Notice explains, you are required by law to comply with it.

As before, it is vital that the further witness statement you provide to the Inquiry is your own evidence, absent the influence of others; that it is comprehensive; and that it fully explains your involvement in the matters about which you have been asked.

In the event that you require or desire access to some documentation, not already in your possession, in order to assist you in preparing your statement, please revert to me.

The questions in the attached notice refer to various documents. For the most part, these documents have already been provided to you or your solicitor. Where they

have not, a copy of the relevant document is enclosed with the Notice.

I also remind you, as before, of the restriction orders made by the Chairman of the RHI Inquiry, which affect how you may deal with this correspondence and its enclosures (which are also provided to you under a duty of confidentiality to the RHI Inquiry). You may, of course, share the correspondence and the enclosed Notice and documents with your legal representative(s), under the same conditions as I set out in my previous correspondence.

Given the tight time-frame within which the RHI Inquiry must operate, the Chairman of the Inquiry would be grateful if you would comply with the requirements of the Section 21 Notice as soon as possible and, in any event, by the date set out for compliance in the Notice itself.

A copy of this correspondence has also been provided to your legal representative, Mary O'Neill of the Departmental Solicitor's Office (by email only).

Finally, I would be grateful if you could acknowledge receipt of this correspondence and the enclosed notice by email to Patrick.Butler@rhiinquiry.org.

Please do not hesitate to contact me to discuss any matter arising.

Yours faithfully



Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE**[No 209 of 2018]***The oral evidence of Alastair Nicol on 20 September 2018*

1. On 20 September 2018 Alastair Nicol provided oral evidence to the Inquiry (see **TRA-13281 to 13384**). During his evidence session he was asked, *inter alia*, about various technical consultancy reports provided to Invest NI, which said reports identified a number of issues, trends, and flaws in, or relating to, the RHI Scheme. Mr Nicol suggested, in terms, that, as well as communicating with DETI about the multiple boiler issue (a point canvassed with you in question 4 of Section 21 Notice no. 133 of 2018 at **WIT-9311 to 9313**), he may at the same time have raised other issues, trends or flaws of which he was aware such as, for example, the lack of tiered tariffs in the RHI Scheme and the resulting perverse incentive to generate unnecessary heat (see, in particular, in this regard the following parts of his transcript: **TRA-13328, 13329, 13372, 13373, and 13374**). In the circumstances, please now address the following issues:
 - a. Clarify whether you recall having any conversation with Mr Nicol about these other issues; and,
 - b. If you do recall having such a conversation with him, please provide full details of same including details of any steps you took following that conversation (such as, for example, raising Mr Nicol's issues with Ofgem) or, if you took no steps, an explanation for this.

Generally

2. Finally, please provide any additional evidence which you consider to be relevant to the Inquiry's Terms of Reference, or of which you consider it should be aware, having regard to (a) any additional information and documentation which is now available to you, (b) your knowledge of the evidence of other parties in the Inquiry proceedings (in particular, evidence given since you provided your most recent witness statement to the Inquiry on 30 August 2018),

and/or (c) any further developments or communications you have had with others.

NOTE:

It is important for the efficiency of the RHI Inquiry that the issues identified above are addressed as fully as possible and by reference, where available, to the dates and locations of specific incidents to which reference is made. The statement should be broken down into paragraphs, which should be numbered sequentially from '1' to the end. The use of appropriate section headings or sub-headings is also encouraged. A template witness statement is provided with this Notice for your assistance and should be used as the format for your response.

INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME**RHI REF: Notice 209 of 2018****DATE: 20 November 2018**

Witness Statement of: Peter Hutchinson

I, Peter Hutchinson, will say as follows: -

The oral evidence of Alastair Nicol on 20 September 2018

1. **On 20 September 2018 Alastair Nicol provided oral evidence to the Inquiry (see TRA-13281 to 13384). During his evidence session he was asked, *inter alia*, about various technical consultancy reports provided to Invest NI, which said reports identified a number of issues, trends, and flaws in, or relating to, the RHI Scheme. Mr Nicol suggested, in terms, that, as well as communicating with DETI about the multiple boiler issue (a point canvassed with you in question 4 of Section 21 Notice no. 133 of 2018 at WIT-9311 to 9313), he may at the same time have raised other issues, trends or flaws of which he was aware such as, for example, the lack of tiered tariffs in the RHI Scheme and the resulting perverse incentive to generate unnecessary heat (see, in particular, in this regard the following parts of his transcript: TRA-13328, 13329, 13372, 13373, and 13374). In the circumstances, please now address the following issues:**
 - a. **Clarify whether you recall having any conversation with Mr Nicol about these other issues; and,**
- 1.1 I refer back to previous statements on the matter – in that I have no recollection of speaking with Mr Nicol and therefore cannot advise on what issues he may or may not have raised or how he may have described them.



- 1.2 It would be my expectation that if Mr Nicol had raised a number of different matters in any level of detail then I would recall.
- 1.3 I note from the evidence session that Mr Nicol appears to have raised a number of different issues with Ofgem (Dr Edmund Ward). I note from Dr Ward's evidence that he did not raise these matters further with anyone in DETI at any time.
- 1.4 Mr Nicol may have also raised similar issues with Invest NI – I do not recall Invest NI ever raising the matter with me or any of my colleagues.
- b. If you do recall having such a conversation with him, please provide full details of same including details of any steps you took following that conversation (such as, for example, raising Mr Nicol's issues with Ofgem) or, if you took no steps, an explanation for this.**
- 1.5 The answer above refers, I do not recall any such conversation.
- 1.6 My general approach when discussing issues with stakeholders which either related to the administration or performance of the Scheme would have been to discuss with my line manager and / or raise with Ofgem colleagues for clarification.
- 1.7 As I do not recall any such conversation I cannot advise on any remedial action.

**Generally**

2. **Finally, please provide any additional evidence which you consider to be relevant to the Inquiry's Terms of Reference, or of which you consider it should be aware, having regard to (a) any additional information and documentation which is now available to you, (b) your knowledge of the evidence of other parties in the Inquiry proceedings (in particular, evidence given since you provided your most recent witness statement to the Inquiry on 30 August 2018), and/or (c) any further developments or communications you have had with others.**

2.1 I am aware that in Mr Wightman's most recent statement (WIT-17778 – 17836) he makes various statements about mine, and other members of "Team 1", work activities, with particular references to 2013 and 2014. These can be found at paragraphs 44-48 and 54-55 and relate primarily to the contents of the handover document, the meeting with Ms O'Hagan (October 2013) and the monitoring of the Scheme.

2.2 Whilst I do not wish to enter into a debate with Mr Wightman on these issues, given they have already been scrutinised by the Inquiry during written and oral evidence, I feel that some factual points are required.

Handover document

2.3 The handover document was intended to be helpful for new staff entering a complex role. It was not a complete list of every action that I was carrying out but instead was drafted to provide a work plan for a number of months whilst the new staff read into their roles and became more familiar with the policy area and the Scheme.

2.4 It was also drafted with a knowledge that both myself and Ms McCutcheon had offered to return to the Branch to meet with new staff as required and provide fuller briefing.

- 2.5 The list of immediate actions is not prioritised, nor is it sequential – I do not believe I ever presented the list as such. The list is not numbered, rather it is bulleted.
- 2.6 I believed the list of actions to be a realistic work plan for the summer months and I am aware that Ms McCay made significant progress on a number of actions prior to Mr Wightman joining the team.
- 2.7 The handover document highlighted the email from Ms O’Hagan (and provided the TRM reference) which I felt needed to be considered and highlighted the conversation with Dr Ward (and provided his contact details). The handover document does not get into overly technical detail, which I potentially felt would be inappropriate for new staff, but it does highlight this issue of demand factors. It explains, in simple terms, that “*payments made to installations are higher than would have been expected*”..... “*many installations have had a higher demand (time of operation) than had been assumed in the tariff calculations*” and “*tariffs can become over-generous.*”
- 2.8 It is incorrect to say the issue was not escalated. The issue was included in the Head of Branch update meeting I attended in May 2018, explained as “potential need for review of tariffs (particularly for biomass less than 99kW) given advice from Ofgem re use of these systems. A system of tiered tariffs might be appropriate.” The purpose of the Heads of Branch meeting under Mr Mills was to identify this as an issue for immediate attention in the next few weeks. I am aware that this update remained the same for a number of weeks within the Head of Branch document before being removed.

Meeting with Ms O’Hagan

- 2.9 As stated during my evidence and in my witness statements, my recollection of the meeting with Ms O’Hagan is that it covered a range of issues across energy efficiency, renewable heat and her company / product. She raised some issues around installers discouraging energy efficiency and potential scenarios involving energy wastage. She was asked for further information and evidence

of these issues and I followed up the meeting with an email asking for her input into the open consultation.

- 2.10 Mr Wightman appears to place a significant level of importance on this meeting and suggests actions that should have been taken – this is difficult to accept given the fact he was not present to hear what information was provided or how it was provided and given the fact that little action seems to be have taken on Ms O’Hagan’s emails in 2014 and 2015 which provided a greater level of detail.
- 2.11 The request for further information and the immediate email to Ms O’Hagan seeking input to the consultation (and the provision of contact points) was seen as appropriate action by those who attended the meeting and heard the information presented first-hand.

Monitoring of the Scheme

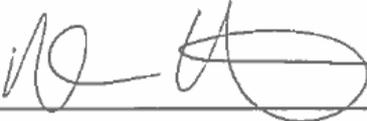
- 2.12 In my statements and evidence sessions I explained how I attempted to proactively monitor the Scheme, identify trends and forecast future uptake and spend. I would contrast this with Mr Wightman’s own words at paras 50-52 of his latest statement where it appears that he made little or no effort to monitor uptake, identify trends and forecast future uptake and spend on the Scheme for which he was responsible.
- 2.13 In my handover document, I provided TRIM links for the weekly reports from Ofgem, my spreadsheet analysis on uptake (which I assumed, wrongly, would be maintained) and the contact points in Ofgem for monthly reports.
- 2.14 In my written and oral evidence I have sought to explain the trends I saw and how I interpreted them. I have also explained (in my third written statement) how a higher load factor was used for forecast future spend. This was based on figures I was seeing during monitoring – at this stage no conclusions on Scheme performance were drawn due to limited uptake and a level of faith in the CEPA analysis and calculations.

- 2.15 Mr Wightman suggests that I should have been taken firmer action in 2013 and 2014 and escalating issues apparent in the available data – this point is based in hindsight from someone not working in the environment or monitoring the data at the time.
- 2.16 It is true that through looking at the data and developing some systems to track against GB I noticed some trends – however my analysis of uptake in 2012, 2013 and early 2014 was based on limited numbers of applications – therefore, I believe that clear conclusions on load factors, technology size / type, payment level etc. could not be drawn. Indeed, the Ofgem NI RHI Summary of November 2013 stated that:
- “As the scheme is fairly new, the number of applications received to date doesn’t form a strong basis for detailed and accurate conclusions for the scheme’s future.”*
- 2.17 It was not until later in 2014 that I felt confident to draw clearer conclusions on issues such as load factor and payments, as detailed in the handover document. This was supported, primarily, by the conversation with Dr Ward and also the email from Ms O’Hagan – both detailed in the handover document. Even at that point I felt that there needed to be a level of review before policy decisions taken – hence the recommended action.



Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed: 

Dated: 20 November 2018