

RHI Inquiry

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Peter Larmour
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By Email & Post: peter.larmour@investni.com

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 statement and documents 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, Gillian Shaw of Invest NI (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 206 of 2018]

The oral evidence of Jim Clarke of Invest NI

1. On 20 September 2018 Jim Clarke of Invest NI provided oral evidence to the Inquiry. During his evidence session he was asked, *inter alia*, about various technical consultancy reports provided to Invest NI including a number of such reports provided by Alastair Nicol of Element Consultants and Action Renewables, which said reports identified a number of issues, trends and flaws in, or relating to, the RHI Scheme. Mr Clarke stated, in terms, that he had understood these aspects of the said reports and that he had raised them with you (see, in this regard, his oral evidence at **TRA-13420 to 13422**, **TRA-13426 to 13429**, and **TRA-13431 to 13433** in particular). However, in your witness statement (at **WIT-307545 and onto 307546**) you have stated that “at no stage was I aware of any issues relating to the RHI Scheme which were flagged in Technical Consultant’s Reports which would have required discussion with my Line Manager”. In the circumstances, please now address the following issues:
 - a. Clarify whether you agree or disagree with each part of Mr Clarke’s evidence in respect of his interactions with you concerning issues, trends and flaws in, or relating to, the RHI Scheme, which were being identified in technical consultants’ reports;
 - b. In the event that you agree (either entirely or in part) with Mr Clarke’s evidence in this regard, please explain and/or clarify:
 - i. How your witness statement came to include the statement quoted above and whether, in the circumstances, you continue to stand over that aspect of your witness statement;
 - ii. The actions (if any) that you took as a result of Mr Clarke’s relevant interactions with you or, if you took no action, the reasons 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, 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 206 of 2018****DATE: 16th November 2018**

Witness Statement of: Peter Larmour

I, Peter Larmour, will say as follows: -

The oral evidence of Jim Clarke of Invest NI

1. On 20 September 2018 Jim Clarke of Invest NI provided oral evidence to the Inquiry. During his evidence session he was asked, *inter alia*, about various technical consultancy reports provided to Invest NI including a number of such reports provided by Alastair Nicol of Element Consultants and Action Renewables, which said reports identified a number of issues, trends and flaws in, or relating to, the RHI Scheme. Mr Clarke stated, in terms, that he had understood these aspects of the said reports and that he had raised them with you (see, in this regard, his oral evidence at **TRA-13420 to 13422**, **TRA-13426 to 13429**, and **TRA-13431 to 13433** in particular). However, in your witness statement (at **WIT-307545 and onto 307546**) you have stated that “at no stage was I aware of any issues relating to the RHI Scheme which were flagged in Technical Consultant’s Reports which would have required discussion with my Line Manager”. In the circumstances, please now address the following issues:
 - a. Clarify whether you agree or disagree with each part of Mr Clarke’s evidence in respect of his interactions with you concerning issues, trends and flaws in, or relating to, the RHI Scheme, which were being identified in technical consultants’ reports;



On reading the transcript of Jim Clarke's evidence, it is not clear what time period is being referred to and Jim did not identify any specific occasions upon which he discussed issues, trends and flaws in, or relating to, the RHI Scheme, which were being identified in technical consultants' reports.

At paragraph 7.4.5, page WIT-307543, of my witness statement of 3 July 2018, I accepted that although I had no recollection of it, Jim Clarke mentioned that he was going to contact the DETI RHI team for clarification of rumoured changes to scheme. To clarify, in accepting Jim's recollection (which is aided by the subsequent email chain OPB-00011 – OPB-00012 into which I was ultimately copied) I do not believe that the Scheme, and any issues or complications with it, were raised with me by Jim prior to this point.

The reference that I was made "aware" by Jim Clarke and others in the team is unclear as it does not specify exactly what I was deemed to be aware of and when. I can only assume this relates to Jim Clarke's general understanding that informal/casual conversations and anecdotes discussed in the team were being picked up by me.

However to give some context to my awareness at different times whilst I do not recall specific instances /occasions in which issues relating to RHI were discussed, I accept that up until July 2015 there was some general conversation in the open plan office around the poor quality of some of the draft reports. Whilst these issues would typically be dealt with by the Programme Manager I would on occasion have advised on how such issues were to be addressed with the technical consultant by the relevant technical advisor. The issues discussed with me were not concerning issues, trends and flaws in or relating to the RHI Scheme, but were in respect of the professionalism and quality of the draft reports generally. The draft reports explored a number of different technology solutions across energy, water and waste schemes. To give some context, whilst the office is open plan, this is a large area with over 50 staff. Unless directly involved in a discussion staff are otherwise engaged in other business activities, emails, telephone calls, document reviews, site visits etc. As I was not a technical member of staff I tended not to engage in discussions that were technical in nature, unless called upon, as above, to advise on operational aspects.

I cannot recall any instances of discussions in respect of any issues in relation to the RHI prior to July 2015. My work was focused on the delivery of Invest NI's programmes and my knowledge of RHI would have been limited to an awareness of the scheme's existence. I would have assumed that the approval process for a DETI programme would have included an appropriate independent assessment, detailed financial analysis and scrutiny/approvals at the appropriate levels.

Again, I do not believe that any issues, trends or flaws were specifically brought to my attention in respect of the RHI Scheme which were being identified in technical consultants' reports. I refer to Jim Clarke's statement of

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18th June 2018 response paragraph 12 (c) in which he confirms he did not take any action until July 2015.

I did not take any action in 2014 regarding what I perceived to be flaws in the RHI Scheme, as I assumed those features were an acceptable part of the scheme as structured and approved by DETI, on the basis that they were designed to meet the objective of increasing the proportion of heat generated from renewable sources from 1% to 12% of total heat generated by 2020. In mid-2015 I became aware of RHI schemes in England and Germany that were structured such that the produced annual amount of heat liable for subsidy was capped, and that once the capital cost of the boiler was paid by the RHI subsidy, and the heat cap exceeded, the subsidy was reduced to cover any cost differential between oil and biomass wooden pellet or chip. At that stage it occurred to me (for the first time) that DETI may not have adequately modelled the scheme using a pre-existing benchmark such as the English or German RHI schemes.

In June 2015, I became aware of rumours that the existing tariff for 20 – 99kW boilers was to be changed in October/November 2015. A sharp increase in applications to DETI occurred during the summer of 2015 to get the maximum RHI tariff. On 31 July 2015 I emailed Seamus Hughes in DETI (see below) expressing my concerns regarding the rush to get RHI accreditation regardless of technical merit and suggested ways in which technically optimum biomass boiler solutions could be installed. Following an invitation by myself, Seamus Hughes had a meeting with the Energy and Resource Efficiency Team in Invest NI on 10 September 2015 in order to clarify DETI's position in respect of the RHI scheme.

I also refer to my previous witness statement dated 3rd July 2018:

I understand that in a team meeting in the summer of 2015 Jim Clarke mentioned that he was going to contact the DETI RHI team for



clarification about rumoured changes to the RHI scheme. I have no recollection of this but accept Jim's recollection.

Jim emailed the Department on 29th July 2015 I have located this email record (Record 4). I was copied into an email from Jim Clarke to the wider team on 29th July 2015. This email was a forward of an email sent by Jim Clarke to Seamus Hughes in DETI which requested a meeting to discuss a number of matters including CHP, proposed changes to ROC's and also sought clarity on potential changes to RHI Scheme.

- b. In the event that you agree (either entirely or in part) with Mr Clarke's evidence in this regard, please explain and/or clarify:
 - i. How your witness statement came to include the statement quoted above and whether, in the circumstances, you continue to stand over that aspect of your witness statement;

Whilst I have now read the transcript of Jim Clarke's oral evidence, it remains my genuine belief as set out in my Witness Statement that no one (including Technical Advisors) raised any concerns from the Technical Reports to me directly either formally or informally prior to July 2015 (other than the operational issues referred to above).

Whilst Jim Clarke and the other Technical Advisors could have discussed issues identified in technical reports in relation to RHI these were not brought to me until July 2015. I do not recall any conversations prior to this date in which potential issues, trends or flaws in respect of RHI were raised with me.

I was copied into the correspondence from Jim Clarke and John Batch to DETI in summer/autumn 2015 around what I understood to be seeking clarifications on rumours around the changes to RHI and therefore would have been assured that the issues had been dealt with directly by Jim Clarke and John Batch by raising them directly with DETI as was appropriate for them to do so.

- ii. The actions (if any) that you took as a result of Mr Clarke's relevant interactions with you or, if you took no action, the reasons for this.

I refer to my response above at 1 (a) and my original witness statement at paragraph 7.4.5 I did not take any action for the following reason:



"I agreed actions as a way forward with technical advisors as part of dealing with general issues as detailed in 7.3 and 7.4 above. I took no action when the specific issue was raised by Jim Clarke as whilst I do not recall the discussion I believe I would not have taken any action as I would have understood that Jim Clarke was taking this query forward directly with the Department."

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

At TRA-13432 (14-17) Jim Clarke is unable to recall who my Line Manager was. I can confirm that as per my original witness statement in question 3 Olive Hill was my Line Manager from my taking up the role as Team Manager in January 2014 to April 2015 and that Vicky Kell was my Line Manager from May 2015 to Dec 2016. Please note that the table in my original witness statement in question 3 contains one small error and should read that Olive Hill commenced being my Line Manager from Jan 2014 not April 2014.

Other than the information above I have no additional information or documentation to bring to the attention of the RHI Inquiry, no knowledge of the evidence of other parties in the Inquiry proceedings nor any further developments or communications with others.

Statement of Truth

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

Signed: Peter Larmour

Dated: 16/11/18