



Seamus Hughes
C/O Caroline Martin
Departmental Solicitor's Office
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By email: Caroline.Martin@finance-ni.gov.uk

24 July 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 you will already be familiar with the work of the Inquiry and its Terms of Reference from my previous correspondence with you.

The Inquiry is grateful for the evidence you have already provided to it.

There are a number of further matters that the Inquiry would like you to address by way of further witness statement.

Therefore, 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 written statement addressing the matters identified in the Schedule to the Section 21 Notice.

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

It is vital that the 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.

I appreciate that you may require or desire access to some documentation in order to assist you in preparing your statement. In particular, you may wish to see documentation to which you previously had access but now no longer have access in your current post. If that applies in your case, I understand that the Department for the Economy (DfE) is making arrangements to permit such access, at least in the first instance. You should contact Terence Coyne at DfE, who is the Department's RHI Task Force Information Manager, to organise this. He is contactable at Terence.Coyne@economy-ni.gov.uk. I have informed Mr Coyne that you may be making contact with him to arrange access to documentation; but there is, of course, no obligation upon you to do so.

I also refer you to Restriction Order No 2 made by the Chairman of the RHI Inquiry on 22 June 2017, a copy of which is enclosed for your convenience. This restriction order prohibits you from publishing any documentation received from the RHI Inquiry (save that you may show it to your legal representative) unless you first obtain the consent in writing of the Inquiry Chairman.

In addition to the restriction orders made by the Chairman of the RHI Inquiry (which you will find published on the Inquiry website) receipt of this correspondence and its enclosures also places you under a duty of confidentiality to the RHI Inquiry in respect of them. You may share the correspondence and the enclosed Notice and documents with your legal representative(s), but neither you nor they may show, communicate the contents of, nor provide this correspondence or the Notice or documents to any other person or organisation without the express permission of the RHI Inquiry. Any breach of this duty of confidentiality is actionable at the suit of the Inquiry Chairman.

You will also find attached to the Section 21 Notice a Guidance Note explaining the nature of a Section 21 Notice and the procedures that the RHI Inquiry has adopted in relation to such a notice. In particular, you are asked to provide your evidence in the form of the template witness statement which is also enclosed with this 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.

I should also indicate that just because the Inquiry has asked you to provide a witness statement it does not follow that the Inquiry will also ask you to attend to give further oral evidence. Should the Inquiry wish to hear further from you it will be in touch.

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

A handwritten signature in black ink that reads "Patrick Butler". The signature is written in a cursive style with a long horizontal stroke at the end.

Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE**[No 144 of 2018]***1 June 2015 meeting with Solmatix at McCauley Engineering*

It appears to the Inquiry, from information received by it, that, on 1 June 2015, you and Dan Sinton made a site visit, with Frank McCullough and Richard Bell from Solmatix, to McCauley Engineering (see your diary entry at IND-04464, and paragraph 30 of your witness statement at WIT-14033).

It further appears to the Inquiry that the following relevant matters had occurred by 1 June 2015, namely:

- By 15 May 2015 a decision had been reached to introduce tiering to the NI Non Domestic RHI Scheme from 1 April 2016, along with set tariff reductions (see version 23 of the then wider draft policy document on Phase 2 Non Domestic proposals at DFE-117110 and DFE-117124 (with the metadata at DFE-424046)). This was confirmed in an updated cost control policy template sent to Ofgem by you on 22 May 2015 (see DFE-119483 to DFE-119485), although the covering email from you contained the suggestion of bringing the introduction of tiering forward to October 2015.
- On 20 May 2015 (see DFE-27173) Bernie Brankin of DETI Finance Division requested Stuart Wightman to stop entering into commitments on the NI Non Domestic RHI Scheme.
- On 23 May 2015 (see OFG-61743 and OFG-61744) Stuart Wightman, when making a request for Ofgem to queue applications (a request which was later withdrawn on 27 May 2015), informed Ofgem that the RHI budget was overspent.
- On 28 May 2015, at the DETI Energy Division Heads of Branch meeting (DFE-410290 and DFE-410291), it was being said by Stuart Wightman that tiering would be introduced in October 2015 as part of Phase 2 of RHI.

- On 29 May 2015 you saved to TRIM (see the TRIM metadata at DFE-424232 to DFE-424241, at DFE-424235) the first draft of a much narrower policy document (only dealing with CHP and cost control) (see DFE-119629 to DFE-119633) which recorded tiering as to be introduced on an as yet unspecified date in October 2015, along with the then plan to have staggered specific reductions in the medium biomass tariff in April 2017 and April 2018.
- Also on 29 May 2015 you saved to TRIM (see the TRIM metadata at DFE-424438 to DFE-424442) a draft submission (which it appears was ultimately never sent) explaining the proposals contained in the then narrower draft policy document. The second version of the draft submission (DFE-119509 to DFE-119512), also of 29 May 2015, recorded similar information in its draft paragraph 9, and, in its draft paragraph 13, indicated an aim to have the changes in place from "*late October 2015*".

1. As to the above:

- a. Please confirm that you did attend the meeting with Solmatix and McCauley Engineering on 1 June 2015.
- b. What would you have known of the above matters as you went to the meeting?
- c. Did you travel to the meeting together with Dan Sinton?
- d. Of what instructions or guidance (if any) were you aware as to what (of the then current position in respect of the NI Non Domestic RHI Scheme) could be communicated to third parties outside of the Department?
- e. What discussions did you have, or are you aware of Dan Sinton having, with the representatives from Solmatix about the position over the NI Non Domestic RHI Scheme and the anticipated forthcoming changes?
- f. Have you any reason to believe that, during the meeting on 1 June 2015, the representatives of Solmatix would not have been told:

- i. About the NI Non Domestic RHI Scheme budget problem;
- ii. About the potential tariff reductions in the biomass tariff; and/or
- iii. About the potential introduction of tiering to the biomass tariff from in and about October 2015.

2. What other evidence can you provide to assist the Inquiry with establishing the earliest occasion(s) when information about changes to the NI Non Domestic RHI Scheme (such as the above matters) were communicated outside the Department?

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 144 of 2018

DATE: 16 August 2018

Witness Statement of: Seamus Hughes

I, Seamus Hughes, will say as follows: -

1 June 2015 meeting with Solmatix at McCauley Engineering

It appears to the Inquiry, from information received by it, that, on 1 June 2015, you and Dan Sinton made a site visit, with Frank McCullough and Richard Bell from Solmatix, to McCauley Engineering (see your diary entry at IND-04464, and paragraph 30 of your witness statement at WIT-14033).

It further appears to the Inquiry that the following relevant matters had occurred by 1 June 2015, namely:

- By 15 May 2015 a decision had been reached to introduce tiering to the NI Non Domestic RHI Scheme from 1 April 2016, along with set tariff reductions (see version 23 of the then wider draft policy document on Phase 2 Non Domestic proposals at DFE-117110 and DFE-117124 (with the metadata at DFE-424046)). This was confirmed in an updated cost control policy template sent to Ofgem by you on 22 May 2015 (see DFE-119483 to DFE-119485), although the covering email from you contained the suggestion of bringing the introduction of tiering forward to October 2015.
- On 20 May 2015 (see DFE-27173) Bernie Brankin of DETI Finance Division requested Stuart Wightman to stop entering into commitments on the NI Non Domestic RHI Scheme.
- On 23 May 2015 (see OFG-61743 and OFG-61744) Stuart Wightman, when making a request for Ofgem to queue applications (a request which was later



withdrawn on 27 May 2015), informed Ofgem that the RHI budget was overspent.

- On 28 May 2015, at the DETI Energy Division Heads of Branch meeting (DFE-410290 and DFE-410291), it was being said by Stuart Wightman that tiering would be introduced in October 2015 as part of Phase 2 of RHI.
- On 29 May 2015 you saved to TRIM (see the TRIM metadata at DFE-424232 to DFE-424241, at DFE-424235) the first draft of a much narrower policy document (only dealing with CHP and cost control) (see DFE-119629 to DFE-119633) which recorded tiering as to be introduced on an as yet unspecified date in October 2015, along with the then plan to have staggered specific reductions in the medium biomass tariff in April 2017 and April 2018.
- Also on 29 May 2015 you saved to TRIM (see the TRIM metadata at DFE-424438 to DFE-424442) a draft submission (which it appears was ultimately never sent) explaining the proposals contained in the then narrower draft policy document. The second version of the draft submission (DFE-119509 to DFE-119512), also of 29 May 2015, recorded similar information in its draft paragraph 9, and, in its draft paragraph 13, indicated an aim to have the changes in place from "*late October 2015*".

1. As to the above:

- a. I confirm that I did attend the site visit with Solmatix at the McAuley Engineering premises, Ballymoney on 1 June 2015.
- b. I would certainly have been aware of the matters listed above at the time as I was dealing with some of these in the course of my day to day work.
- c. As I recall, the arrangements on the day were that Dan and I travelled separately to the Solmatix premises at Crumlin and then we both travelled to McAuley Engineering in Ballymoney with Mr Bell in his car. If memory serves me right Mr McCullough travelled separately to Ballymoney in his



own car. Following the factory visit we returned to the Solmatix premises with Mr Bell and Dan and I then travelled our separate ways home, Tandragee and Newtownards respectively.

- d. I did not have any instructions nor was I aware of any guidance concerning what could be communicated to third parties outside the Department about the then current position in respect of the NI Non Domestic RHI Scheme.
- e. There was no discussion that I recall, (this was an informal event over three years ago), with the Solmatix representatives about the position of the NI Non Domestic RHI Scheme and the anticipated forthcoming changes. As referenced in paragraph 30 of my previous witness statement **WIT-14033** the purpose of the engagement with Solmatix was to facilitate a visit to McAuley Engineering in Ballymoney to view a commercial renewable heating system in operation. This was the sole purpose and it was a factory site visit, not a sit down meeting with any kind of formal agenda. At the factory we were given an overview of the heating system by Solmatix, (Mr McCullough), followed by a tour of the factory by Mr McAuley.
- f. Have you any reason to believe that, during the meeting on 1 June 2015, the representatives of Solmatix would not have been told:
 - i. *(About the NI Non Domestic RHI Scheme budget problem)* As indicated in para e above there was no discussion that I recall about the NI Non Domestic RHI Scheme position or the anticipated changes so Solmatix representatives would not have been made aware of the budget problem, potential for tariff reductions, and/or the potential for tiering of the biomass tariff from in and about October 2015. I would emphasise again that this was a factory visit to view a commercial heating installation and that was the sole purpose of the visit and there was no wider discussion.
 - ii. *(About the potential tariff reductions in the biomass tariff)* As for (i) above.



iii. *(About the potential introduction of tiering to the biomass tariff from in or about October 2015) As for (i) above*

2. I do not have any other evidence to assist the Inquiry with establishing the earliest occasion(s) when information about changes to the NI Non Domestic RHI Scheme, (such as the above matters), was communicated outside the Department.

Statement of Truth

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

Signed: 

Dated: ____ 16 August 2018 _____