



Jim Wells MLA
12 Bridge Street
Kilkeel
Co Down
BT34 4AD

By post and email: jim.wells@mla.niassembly.gov.uk

30 June 2017

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 enclose a copy of the RHI Inquiry's Terms of Reference for your information.

You will no doubt be aware from media reports that the RHI Inquiry is conducting its investigations into the matters set out in its Terms of Reference. The Inquiry is continuing with the process of gathering all of the relevant documentation from relevant departments, organisations and individuals. In addition, the Inquiry has also now begun the process of requiring individuals who have been, or who may have been, involved in the range of matters which come within the Inquiry's Terms of Reference to provide written evidence to the Inquiry Panel.

From information received by the Inquiry, it appears that you may have had some involvement with the Non Domestic Renewable Heat Incentive Scheme in Northern Ireland ('the Scheme') or matters falling within the Inquiry's terms of reference.

In keeping with the approach we are taking with others, the RHI Inquiry is now issuing to you a Statutory Notice (known as a 'Section 21 Notice') pursuant to its powers to compel the provision of evidence in the form of a written statement in relation to the matters falling within its Terms of Reference.

The Section 21 Notice enclosed with this letter requires 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. This should allay any concerns you might otherwise have had in relation to confidentiality or data protection.

The aim of the enclosed Notice is to require you to provide all relevant evidence you have within your knowledge, information or belief which is pertinent to the Inquiry's Terms of Reference. The Schedule to the enclosed Section 21 Notice provides further detail as to the matters which should be covered in the written evidence which is required from you. In the event that there is a category of information in respect of which you have no evidence which you can provide, please state this in your response. Where you can provide evidence, the more comprehensive your statement is, the less likely it is that the Inquiry will have to revert to you at a later stage for clarification, although in many cases this is likely to be necessary to some degree.

Receipt of this correspondence and its enclosures places you under a duty of confidentiality to the RHI Inquiry in respect of them. You may share the correspondence and the enclosed Notice with your legal representative(s), but neither you nor they may show, communicate the contents of, or provide this correspondence or the Notice 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. In addition, a similar restriction is contained in

Restriction Order No 2 of 2017 made by the Inquiry Chairman and available on the RHI Inquiry website.

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.

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, appearing to read 'Patrick Butler', written in a cursive style.

Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE

[No 333 of 2017]

General involvement with the RHI Scheme

1. Explain in detail (identifying any relevant documents) any direct or indirect involvement you had in the RHI Scheme or any aspect of it prior to its suspension in February 2016, including, in particular:
 - a. any interactions or communications with constituents or members of the public;
 - b. any interactions or communications with Scheme applicants, or potential applicants, or companies or organisations in the renewable heating or biomass industries or supply chains; and
 - c. any interactions or communications with civil servants, Ministers, special advisers, other MLAs or politicians, or public bodies (including in particular, but not limited to, DETI, DFP and/or Ofgem);regarding, relating to or touching upon the RHI Scheme.
2. Without prejudice to the generality of paragraph 1 above, please provide full details of:
 - i. any communications with, or instances of lobbying or encouragement of, any of the above classes of person in relation to the terms of the RHI Scheme and/or the introduction, non-introduction, variation, or delay of the introduction of cost controls into the Scheme (including, but not limited to, the amendment of tariffs, tiering, degression and Scheme suspension or closure);
 - ii. any communications between you and any of the above classes of person in which you sought and/or were provided with information

concerning the likelihood of costs controls being introduced in the RHI Scheme and/or the nature, extent, and effective date of such controls (providing in respect of each such communication the name of the relevant civil servant, politician, special adviser, etc., the date of each communication, the mode of each communication, the place at which each communication occurred, if applicable, and the authorisation [if any] you and, if known, the other person had to engage in such communications);

iii. any other instances of information passing between you and any of the above classes of person regarding, or of relevance to, the RHI Scheme.

3. Please identify any risks, flaws, problems, anomalies, loopholes, or other issues regarding the Scheme which came to your attention, setting out details of when this occurred, how it occurred, by whom any relevant communication was made, and how you dealt with such knowledge and/or communications (including, in particular, the steps [if any] taken by you to alert other persons or bodies such as the Department for Enterprise, Trade and Investment ['DETI'] and/or Ofgem to the said risks, flaws, problems, anomalies, loopholes, or other issues with the Scheme).
4. Please identify any instances of whistle-blowing to you in relation to the Scheme, or any disclosures made to you raising concerns about the Scheme, setting out details of when such communications occurred, by whom each such communication was made, and how you dealt with each such communication.
5. Specify whether you promoted the Scheme and/or encouraged any third party to seek accreditation under the Scheme, assisted any third party in so doing, or provided any third party with information to the end that they might apply, or consider applying, for accreditation under the Scheme. In respect of any such instance, please provide full details including (but not limited to) the third party concerned and the date of any steps taken by you in that regard.

6. Identify any instances, to your knowledge or belief, of lobbying or encouragement of Ministers, special advisers, civil servants or other relevant persons in relation to the terms of the Scheme and/or the introduction, non-introduction, variation or delay of the introduction of cost controls into the Scheme (including, but not limited to, the amendment of tariffs, tiering, degression and Scheme suspension or closure) at any stage but, in particular, at the creation of the Scheme and in the period from mid-2015 to early 2016.
7. Please specify when you first became aware that there may have been an incentive in some cases to produce heat merely to make profit from the Scheme; how you became so aware, and the actions (if any) you took in respect of such knowledge (such as, for example, communicating with DETI, DFP or Ofgem, or with persons in the renewable energy sector, or others).
8. Specify whether, to your knowledge, you have any connection to a person or body receiving payment under the Scheme or benefiting commercially from the Scheme in some other way (for instance, by supplying equipment, plant, fuel or other goods or services used by Scheme claimants). In this request, a 'connection' includes (but is not limited to) circumstances where the Scheme claimant or beneficiary is a relative, friend, close acquaintance, business associate or (in the case of politicians or special advisers) donor or supporter (either to or of you or your political party).

Specific instances of involvement

9. From information received by the RHI Inquiry it appears that you received an email from Harry Baxter on 5 August 2014 (a copy of which is enclosed for your assistance), which highlighted a number of concerns he had with the Scheme. As to that, please address the following matters:
 - a. Your connection to Harry Baxter;
 - b. How did Harry Baxter have your personal email address?
 - c. Had you any previous dealings or discussions with Harry Baxter in relation to the RHI Scheme?

- d. In this email Harry Baxter outlined a number of concerns with the Scheme, stating that, “at the minute the legislation disadvantages us”; highlighting that, “those who have held back have benefitted significantly”; and that certain applicants have “played the system”. Please address the following:
- i. Were you aware of these concerns?
 - ii. What did you think Harry Baxter meant by these concerns?
 - iii. Did you follow this up with Harry Baxter or any other relevant party to understand whether there was any legitimacy to these concerns? If so, please provide full details;
 - iv. Was this email from Harry Baxter the first you had heard of any concerns raised with the tariff level of the Scheme?
 - v. What else, if anything, did you do with the information contained in the email from Harry Baxter? In particular, did you pass this information on to anyone else? If so, please provide full details.
10. It also appears to the RHI Inquiry that you received an email from Harry Baxter on 4 September 2014 (a copy of which is enclosed for your assistance), which raised an allegation of ‘gaming’ of the RHI Scheme by applicants. As to that, please address the following matters:
- a. Were you aware of these concerns?
 - b. What did you think Harry Baxter meant by these concerns?
 - c. Did you follow this up with Harry Baxter or any other relevant party to understand whether there was any legitimacy to these concerns? If so, please provide full details;
 - d. Was this email from Harry Baxter the first you had heard of any ‘gaming’ concerns raised in relation to the RHI Scheme? If not, please provide full details;
 - e. What else, if anything, did you do with the information contained in the email from Harry Baxter? In particular, did you pass this information on to anyone else?

11. It further appears to the Inquiry from information received by it that, on 10 February 2016, you, together with a number of your colleagues, were sent a private Facebook message by Harry Baxter (a copy of which is enclosed for your assistance), which discussed the closure of the RHI Scheme. As to that, please address the following matters:
- a. Did you read the message?
 - b. What actions, if any, did you carry out in relation to the RHI Scheme on foot of having read the message?
 - c. In particular, did you speak to or contact Jonathan Bell or his special adviser, as requested by Harry Baxter, to discuss the delaying of closure of the Scheme? If so, please provide details of any relevant communications.
12. Also contained within the previously outlined Facebook message, Harry Baxter claims to have lobbied you to have the tariff band extended in November to include his organisation's installation. To that end, please address the following:
- a. Is this claim correct?
 - b. Please outline all dealings and discussions you had with Harry Baxter in relation to this matter;
 - c. Please outline all dealings and discussions you had with Paul Frew MLA in relation to this matter;
 - d. Did you contact any relevant party with a view to making representations to keep the original version of the RHI Scheme open for longer at any stage or to delay or soften the introduction of costs controls? If so, please provide full details of this contact, to include the date, means and content of all such communications.
 - e. Did you contact any other relevant party for a similar or related purpose at any time?
 - f. If you have disclosed any relevant communications, discussions or representations in response to the above, please specify on whose behalf you were acting in respect of each.

- g. Did you discuss the extending of the original version of the RHI Scheme with any other relevant person to the Scheme?

Means of communication in relation to the RHI Scheme

13. Identify all email addresses used by you (or used by others on your behalf) to send or receive communications in relation to any matter relating to, or touching upon, the RHI Scheme.
14. Identify all telephone numbers used by you (or used by others on your behalf) to send or receive text communications in relation to any matter relating to, or touching upon, the RHI Scheme.
15. Identify all social media accounts or platforms (if any) used by you to send or receive communications in relation to any matter relating to, or touching upon, the RHI Scheme.
16. Specify whether you are aware of any communications relevant to the RHI Inquiry - such as emails or text messages - that may have been deleted or otherwise rendered potentially unavailable or irretrievable.
17. If you are aware of any communications relevant to the RHI Inquiry, such as emails or text messages, that may have been deleted or otherwise rendered potentially unavailable or irretrievable, then please provide full details of any such communications.
18. Excluding Departments of Government (both at Westminster and devolved), civil servants employed within those Departments (although not including Special Advisers), GEMA/Ofgem and consultancy firms engaged by Departments of Government, please identify any individual or organisation that you consider may have, or may once have had, documentation or information relevant to the matters being investigated by the RHI Inquiry. In respect of any such individual or organisation please set out the basis for your belief.

General

19. Considering the RHI Inquiry's Terms of Reference, please identify any representations made to you about the RHI Scheme (which you regard as significant and about which you consider the RHI Inquiry should be aware), whether those representations were made by colleagues, or otherwise. In respect of any such representations please indicate when they occurred, where they occurred, who was involved, and what was said or communicated to you.
20. Considering the RHI Inquiry's Terms of Reference, please identify any conversations or discussions you had about the RHI Scheme (which you regard as significant and about which you consider the RHI Inquiry should be aware), whether those conversations or discussions involved colleagues, or otherwise. In respect of any such conversations or discussions please indicate when they occurred, where they occurred, who was involved, and what was said to you.
21. Provide any further evidence within your knowledge or belief which is relevant to the matters which the RHI Inquiry is investigating as set out in the RHI Inquiry's Terms of Reference.

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.

Mr Patrick Butler
Renewable Heating Incentive Inquiry
Waterfront Plaza
8 Laganbank Road
Belfast
BT1 3LY

12 Bridge Street
Kilkeel
BT34 3AD

3rd August 2017

Dear Mr Butler,

I refer to your letter dated 30th June 2017 regarding the Renewable Heating Incentive Inquiry.

As you are aware I have already given your office a folder of documents regarding my involvement with the RHI Scheme. In addition to this you asked a series of detailed questions which I will attempt to answer as fully as I can.

At the outset I want to make it clear that the events in question span a period of over three years and it is not possible to recall everything accurately after such a long time. My involvement in the RHI Scheme was peripheral and mainly involved dealing with a small number of constituency cases. At the time these appeared to be routine complaints which were dealt with in the normal way.

When these cases arose neither I nor any of my staff could have predicted just how controversial the RHI Scheme would become from autumn 2016 onwards. Obviously had we known this we would have dealt with the issue very differently and kept much more detailed records.

Harry Baxter.

1. I have known Harry Baxter for 19 years. I first met him when he was the Manager of the Bank of Ireland in Kilkeel and I kept in contact when he moved to their Portadown branch. He is also well known in the Ulster Scots movement in South Down and a member of a band. In these roles I met Harry and his family on many occasions and would regard him as a friend.

2. Harry moved from the Bank of Ireland to take on his new role as Chief Executive of Centre Ministries which owns and manages Castlewellan Castle as a conference centre. This facility brings over 100 groups to South Down for Christian residential events and conferences.

3. My brother in law is employed by Scripture Union in Northern Ireland and in this capacity he brings groups to Castlewellan Castle and is often asked to speak at events and conferences at that venue. Both he and his wife regularly stay in the Castle and they are also friendly with Harry. In addition to dealing directly with Harry I regularly received updates about events in the Castlewellan Castle from my son in law. During

these conversations it emerged that the heating system in the Castle was antiquated and Harry was investigating ways of radically improving it.

4. I have already forwarded to you my correspondence with Mr Baxter but I thought that it would be useful to provide the context in which I dealt with the Castlewellan Castle case. I will now deal with each of each of the questions you asked in Schedule 333 of 2017.

5. You asked me to outline any direct or indirect interactions or communications with constituents or members of the public. I trust that the material I have already given your staff and the contents of this e mail will deal with the above question. I also hope this material deals with question 1b and question 1c.

6. You asked for information on lobbying regarding the RHI Scheme. I did not lobby as such but I did write and e mail the Department of Enterprise, Trade and Investment on behalf of constituents who had concerns about the scheme. This should all be covered by the material I have already given to you and this letter. I trust that this will also cover all of the rest of question 2.

7. I had no contact whatsoever with Ofgem at any time over the last three years. All of my correspondence was with the Department of Enterprise, Trade and Investment and subsequently the Department of the Economy. I have no objections to the Department making all of this material available to the Inquiry. I trust that this will deal with all of question 3.

8. As far as I can recall none of the contacts I had with constituents could be regarded as whistle blowing. I did however receive a messagek from a TUV supporter who alleged that a brother of John Robinson was benefiting from RHI payments through his heating business.

9. I asked my agent to check this allegation but his research concluded that while Mr Robinson's brother did have a heating business in Omagh, there was no evidence that he was directly involved in the installation of heating appliances that used wood pellets. I believe that I passed the allegation on to the First Minister's office.

10. I can be very clear about question 5. My involvement in the RHI Scheme was entirely reactive. Whilst I dealt with a small number of queries from constituents I never promoted the Scheme or encouraged anyone to take an interest in or join it.

11. I believe that I have dealt with question 6. All of my dealings with the RHI are covered by the material I have supplied to you. The queries from my constituents were in relation to the proposed closure of the Scheme and the impact of the amended tariffs.

12. Question 7 is more difficult to answer. I was aware that the Northern Ireland Audit Office had initiated an inquiry into the RHI Scheme and as evidence emerged I read press coverage of their investigations and the work of the Public Accounts Committee. In November 2106 I attended a hearing of the PAC at Stormont and at that point it became clear that the Scheme had become very controversial. The Spotlight documentary was broadcast in early December 2016 and like many others I realized that this was an issue which would generate a great deal of public interest.

13. Regarding question 8, I can be very specific about my connections to those in receipt of RHI payments. My brother (Geoffrey Wells), and my cousins (Robin Wells, Ronnie Wells, and Marion McKinstry) all produce chickens for Moy Park Ltd based in Dungannon. They have installed wood pellet burners to heat and dry their rearing units and they all receive RHI payments. I have never benefited personally from these payments. I have already sent you copies of the press coverage of a statement I issued regarding my relatives and their involvement in the RHI Scheme.

Specific instances of involvement.

14. I have already dealt with my connections with Harry Baxter, his family and Castlewellan Castle. I should add that I have the highest regard for Harry and I have found him to be totally honest and reliable in all of my dealings with him over the last 19 years. I am convinced that he contacted me in order to improve the heating for the users of Castlewellan Castle. He did not stand to benefit personally from RHI payments.

15. You have made it very clear that I am not permitted to contact Mr Baxter or any other witness to the Inquiry so I cannot speak to him to clarify my recollections of what happened several years ago. I therefore have to rely on the documents I have located and my memory of the various steps I took.

16. I do not have a personal e mail address. All of my e mail addresses are available to the public and are regularly given to constituents who contact myself or my offices at Kilkeel or Stormont. My staff are encouraged to provide full details of all my contact details. I am also contactable by Facebook and Twitter. There is therefore nothing unusual about the fact that Mr Baxter contacted me on my gmail e mail address.

17. As I outlined earlier in this letter my son in law (Mark Hawthorne) had made me aware that there were problems with the heating at Castlewellan Castle and that Harry Baxter was trying to change the oil fired system. I was therefore not surprised when he sent me an e mail on 5th August 2014 but this was my first direct contact with him about this matter.

18. In relation to question 9, I was not aware of the concerns that Mr Baxter had about the Scheme until I received his e mail. I have to be honest and say that I did not really understand these concerns but I knew that the Minister would be fully aware of these problems and could answer his questions. The query was passed on to the Department.

19. I did not understand exactly what Mr Baxter meant by the phrase 'gaming' of the RHI scheme but again I knew that DETI would have an answer to the point he was alluding to. Apart from discussing the e mail briefly with my agent, the matter was dealt with as a routine constituency case which was passed to the Department. I am more than happy for all of my correspondence on this or any other RHI issue to be made available to your Inquiry by the Department.

20. Question 11 poses significant problems for me as my recollection of the events of 10th February 2016 not at all clear. Sensitive personal information redacted by the RHI Inquiry

[REDACTED] and I had resigned as Health Minister in very controversial circumstances. Sensitive personal information redacted by the RHI Inquiry and I have little memory of the events of early 2016. I request that all of the above paragraph is redacted should you decide to publish my submission as I believe that its contents would represent a breach of [REDACTED] right to privacy.

21. I accept that Harry Baxter did lobby me to have the tariff band extended to November to include his organisation's installation. As far as I can recall I had at least one telephone conversation with him about his concerns and an exchange of e mails. I am certain that I spoke to Minister Bell as outlined below as a direct response to Harry's contact with me.

22. I have no recollection at all of having any contact with Paul Frew about the RHI though I am sure it was discussed at various DUP Group meetings we both attended.

23. As far as I can recall the only representations I made regarding the RHI Scheme were to DETI and Minister Bell. I am certain that these included a request that the scheme be extended to permit Castlewellan Castle to install its new wood pellet heating scheme.

24. I am certain that I did read the private Facebook message. I didn't speak to Andrew Crawford but I do recall having a brief discussion with Jonathan Bell in the lobby at Stormont. During this he told me that he had to take action as the Scheme was over budget and cost controls had to be introduced.

Means of communication in relation to RHI.

All of my e mail addresses area as follows-

[Jimwells](#) Personal information redacted by the RHI Inquiry

[Jimwells](#) Personal information redacted by the RHI Inquiry

Jim.wells@mla.niassembly.gov.uk

[jimwellsDUP](#) Personal information redacted by the RHI Inquiry

Personal information redacted by the RHI Inquiry

All of my telephone numbers are as follows-

Personal information redacted by the RHI Inquiry

(Personal mobile)

028 417 69900

(Kilkeel office)

028 90 521110

(Stormont office)

Personal information redacted by the RHI Inquiry

(Agents's mobile number)

Personal information redacted by the RHI Inquiry

(Previous home number)

25. I have no objections to the RHI Inquiry accessing any or all of my e mail accounts and viewing all of my itemised telephone bills for the entire period under investigation.

I have two social media accounts on Facebook and Twitter.

Jim Wells (Facebook)

Jim_Wells_MLA (Twitter)

26. As above, I have no problems with the Inquiry having full access to every message on both social media sites. I was briefly a member of LinkedIn but not during the period covered by the investigation. My account with LinkedIn is dormant.

27. I have asked my staff to try and locate every text message and e mail which refer in any way to the RHI issue and some of these messages have already been sent to you. I use a Nokia 6310i mobile phone which can make and receive texts but these have to be deleted on a regular basis as it has a limited memory. I understand that there is software available which can detect deleted text messages but I am not sure if this will work on my rather old mobile phone.

28. My agent (Austin Orr) has access to all of my e mails and post. He may have a small number of text messages relating to RHI. As far as I am aware nobody else holds such information.

General

29. Until late 2016 my understanding of and involvement in the RHI was restricted to dealing with constituency cases and reading media coverage about it.

30. This all changed after the Spotlight programme on BBC in December 2016 and all of the subsequent media coverage which occurred. There were numerous discussions within the DUP about the programme, the Stephen Nolan interview with former Minister Bell, and the numerous requests for interviews about the issue.

31. At a very early stage the Party took a decision that all media inquiries about RHI would be immediately referred to the DUP Press Office who would make the decision on whether or not we would put forward a spokesman. I did not do any interviews about RHI apart from those associated with my press release revealing that my brother and three cousins were in receipt of RHI payments. This press release was issued directly by me and not through the Press Office.

32. The discussions which occurred after the Spotlight programme concentrated on dealing with media contacts, the line to take during Stormont debates, the preparation of answers to give constituents who had contacted MLAs about RHI, the amendments to the RHI regulations and the setting up of the Inquiry.

33. Whilst I witnessed these discussions my understanding of the situation was limited and I was not directly involved in much of what happened between December 2016 and the present date.

I trust that you find this information useful to your Inquiry and please do not hesitate to contact me if I can be of any further assistance.

Yours sincerely,

Jim Wells MLA