

Máirtín Ó Muilleoir MLA
Sinn Féin
Connolly House
147 Andersonstown Road
Belfast
BT11 9BW

By post and email: mairtin@newbelfast.com

31 May 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 also be aware that the RHI Inquiry is conducting its investigations into the matters set out in its Terms of Reference.

From documentation received by the Inquiry it would appear that you received information relevant to the matters the Inquiry is investigating from an individual raising concerns about Ofgem. A copy of the relevant communication is attached for your convenience.

In keeping with the approach we are taking with other individuals, 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 information you received.

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.

If it would assist you, I am happy to meet with you (or, if you have one, your legal representative) to discuss the requirements of the Section 21 Notice and what evidence you may be able to provide which is within the scope of the Section 21 Notice.

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.

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.

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 251 of 2017]

1. On 20 January 2017 you received an email forwarding you information from a Mr Edd Fyfe (a copy of which is enclosed with this Notice for convenience). As to that, please explain:
 - a. What you did with the information contained within that email;
 - b. In what way, if at all, the information was used;
 - c. Whether you provided the information to the Comptroller and Auditor General (or any other relevant authority);
 - d. If you did so, when you did so;
 - e. If you did not do so, why you did not do so;
 - f. Whether you provided the information to anyone else;
 - g. If you did so, who else you provided it to and when; and
 - h. If you did not do so, why you did not do so.

2. Given the Terms of Reference of the RHI Inquiry, please set out any further relevant information that you have, or that you are aware of;

GUIDANCE NOTES FOR THE SECTION 21 NOTICE

1. The Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme ('the RHI Inquiry') was set up under the Inquiries Act 2005 ('the Act').
2. These Guidance Notes are not part of the Chairman's Notice served under Section 21 of the Act, but are designed to assist those who receive such a Notice.
3. It is very important that a Notice served under Section 21 of the Act is complied with in full. Failure to comply has potentially very serious consequences. Failure to comply may result in you being prosecuted and convicted of a criminal offence that may result in you being fined and/or imprisoned; or being certified to the High Court where you may face contempt of court proceedings.
4. You should consult your solicitor, or your organisation's legal advisor, about the Notice as soon as possible. They will be able to assist you as to how to deal with it.
5. If you feel the content of the Notice is somehow unclear, and you wish something to be clarified, you may contact Patrick Butler, Solicitor to the RHI Inquiry, by email at Patrick.Butler@rhiinquiry.org, who will endeavour to assist with your query and will discuss it with the Chairman of the RHI Inquiry, as necessary.
6. Compliance with the Notice requires you, in the case of producing documents, to have the documents with the RHI Inquiry by the date and time set out in the Notice. Where the Notice requires you to produce a witness statement, the statement should be produced to the RHI Inquiry by the date and time set out in the Notice.
7. "Document" is defined in section 43 of the Act as information recorded in any form.

8. There is no restriction in the Act on the number of times a Section 21 Notice may be served upon a person or organisation. The RHI Inquiry reserves the right to issue further such notices in future to any recipient, as appropriate in the judgment of the Chairman.
9. The RHI Inquiry prefers that documents, including statements, are received by it in electronic form – preferably as a PDF document – and would be grateful if you could furnish, wherever possible, the documents required of you in that form. The documents should be sent to Patrick.Butler@rhiinquiry.org.
10. Where it is not possible for you to send documents in electronic form you should engage with the Solicitor to the RHI Inquiry to find a suitable solution for provision of the documents to the RHI Inquiry. The RHI Inquiry is keen to ensure that documents are received by it in a manner which is as conducive as possible to the effective and efficient conduct of the RHI Inquiry's work. Where documents can be provided in chronological order, this is particularly helpful.
11. Where it is necessary to send hard copy documents, these should be sent to the RHI Inquiry by post or courier to **RHI Inquiry, 1st Floor, Waterfront Plaza, 8 Laganbank Road, Belfast, BT1 3LR**. If there is a need to hand deliver the documents then contact should be made with the Solicitor to the RHI Inquiry to make suitable arrangements.
12. It may be that you consider that some of the documents you are providing to the RHI Inquiry should be redacted in some way for some reason, bearing mind that the RHI Inquiry may decide to publish the documents in due course. If you do feel documents you are providing should be redacted in some way, then you should provide the documents to the RHI Inquiry in provisionally redacted form (using a grey redaction if possible) so that the proposed redacted material can be read by the Inquiry team. You should also set out in writing the reasons why you consider the redactions should be made by the Inquiry. The RHI Inquiry will then deal with the material in accordance with its Procedural Protocol.
13. If, for some reason, you wish to make a claim to the Chairman of the RHI Inquiry, under Section 21(4) of the Act, to the effect that you are unable to

comply with the requirements of the Notice, or that it is not reasonable to require you to comply with the Notice, then that claim should be made in writing and addressed to the **Chairman of the RHI Inquiry, RHI Inquiry, 1st Floor, Waterfront Plaza, 8 Laganbank Road, Belfast, BT1 3LR.**

14. Any such claim should be made as soon as possible after receiving the Notice, and no later than the deadline for making a claim set out in the Notice.
15. The claim should set out the grounds on which it is made, and the reasons why it is said that you cannot, or it is not reasonable for you to, comply. The claim should be as comprehensive and detailed as possible.
16. If you are making a claim for a variation of the Notice in order to give you further time to comply, then you should set out why you need more time and indicate a date by which you say you will be able to comply, and why you say that date will be sufficient. If you can provide some of the information required within time but contend that you cannot provide all of the required information in time, this should be clearly stated and, again, detailed reasons for your contention should be put forward.
17. The Chairman will determine whether to revoke or vary any Notice. In considering your claim he will take into account, amongst other things, the public interest in the information in question being obtained by the RHI Inquiry, having regard to the likely importance of the information. His decision will be communicated to the person making the claim as soon as is reasonably practicable.
18. A Section 21 Notice, by reason of the matters set out in section 22 of the Act, cannot require you to give, produce, or provide any evidence or document to the RHI Inquiry if you could not be required to provide them in civil proceedings in Northern Ireland, or the requirement is incompatible with an EU obligation, or the documents are covered by public interest immunity. If you are withholding evidence or documents from the RHI Inquiry for one of these reasons then you should notify the Solicitor to the RHI Inquiry in writing, immediately the decision

to withhold is taken, of what the material is that you are withholding and why you are claiming that that material is not required to be provided by the Section 21 Notice.

19. Section 40 of the Act provides the Chairman with power to make awards for expenses, including for legal representation, incurred in complying with requirements imposed by the RHI Inquiry. In determining whether an award should be made, the Chairman will have regard to the financial resources of the applicant and whether making any award is in the public interest. The Chairman does not expect to receive requests for funding from Northern Ireland Government Departments or other public bodies. If you are affected by the issue you can discuss it with the Solicitor to the RHI Inquiry.

INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 251 of 2017

Date: 19 June 2017

Witness statement of Máirtín Ó Muilleoir.

In relation to the following questions asked in Notice 251 of 2017 I, Máirtín Ó Muilleoir, will say as follows:-

1

a. What you did with the information contained within that email.

I discussed the information contained within the e-mail with my advisor Eoin Rooney.

b. In what way, if at all, the information was used.

On the basis of the information I decided that the Public Inquiry's Terms of Reference should specifically cover OFGEM's role in the RHI scheme. Section 1d requires the Inquiry to "Examine the work on the RHI scheme by ... the Office for Gas and Electricity Markets ... with a view to determining what if anything went wrong". In relation to the allegation in the email that "Ofgem allowed one company to dominate the biomass installations (ECO Green Capital Ltd)" section 1i requires the Public Inquiry to "Examine any real or perceived conflicts of interest, including whether any individual ... acted in a way incompatible with their duties ... and/or intentionally or dishonestly sought gain from the RHI scheme or the supply chain (including the installation of boilers) for themselves or others".

The information also led me to emphasise the importance of Ofgem's role in my statement to the Assembly on the RHI Inquiry (24th January). I stated "I hope that the inquiry – Ofgem is mentioned by name in terms of reference – will not miss and hit the wall when it comes to looking at Ofgem's role in the entire matter".¹

c. Whether you provided the information to the Comptroller and Auditor General (or any other relevant authority).

No.

¹ <https://www.rhiinquiry.org/sites/rhiinquiry.org/files/media-files/24-01-17-ministerial-statement-in-ni-assembly.pdf>

d. If you did so, when you did so.

Not applicable.

e. If you did not do so, why you did not do so.

I did not provide the information to the Comptroller and Auditor General (or any other relevant authority) for two reasons, First, the sender was explicit that he did not want the information to be passed on to anyone, stating in the Subject box "Please keep private" and reiterating in the text of the e-mail to "please respect my privacy". Secondly, because I was satisfied that the Public Inquiry's Terms of Reference ensured that the role of OFGEM would be fully examined.

f. Whether you provided the information to anyone else.

No.

g. If you did so, who else you provided it to and when.

Not applicable.

h. If you did not do so, why you did not do so.

As per my answer at e. I did not provide the information to anyone else because the sender had asked for his privacy to be protected and because I was satisfied OFGEM's role would be fully examined as part of the Public Inquiry.

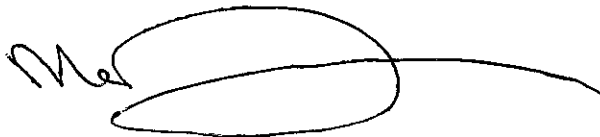
2. Given the Terms of Reference of the RHI Inquiry, please set out any further relevant information that you have, or that you are aware of.

I have no, and am not aware of, any further relevant information.

Statement of Truth

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

Signed:

A handwritten signature in black ink, consisting of a stylized 'M' followed by a large, sweeping loop that extends to the right and then curves back down.

Dated: