



RENEWABLE HEAT
INCENTIVE INQUIRY

WIT-19888

RHI Inquiry

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Susan Logan
Department for Infrastructure
Vehicle Policy Branch
Room G18
Clarence Court
10-18 Adelaide Street
Belfast
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By email: susan.logan@infrastructure-ni.gov.uk

14 September 2017

Dear Madam

Re: The Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme
Provision of a Section 21 Notice requiring the provision of further 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 witness statement you provided to it dated 3 August 2017. That statement has been considered by the Inquiry and there are a number of further matters the Inquiry wishes to ask you about arising out of it or arising out of other information considered by the Inquiry.

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 further 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.

As before, 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 continue to 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 three 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.

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 471 of 2017]**

In paragraph 5 of your statement of 3 August 2017 ('your first statement') you describe, amongst other things, that part of your work involved liaising with Arthur Cox Solicitors in relation to the drafting of the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 ('the 2012 Regulations'). Arising out of that, please address the following issues:

1. Describe whether you were responsible for composing emails to Arthur Cox or whether you simply transmitted emails composed by others (such as Peter Hutchinson, Fiona Hepper and/or Joanne McCutcheon).
2. In an email from you to Alan Bissett of Arthur Cox dated 18 May 2012 (a copy of which is provided herewith for your convenience, bearing Inquiry reference DFE-17514 to DFE-17515) you provided draft wording for (then) regulation 52 of the draft 2012 Regulations relating to publication obligations. As to that:
 - a. Specify who drafted this email.
 - b. Specify who drafted the wording for the draft regulation which was included in the email.
 - c. Set out, to your knowledge, the reasoning behind the wording used in this draft regulation and the changes from the reporting and publication requirements in the earlier draft of the 2012 Regulations (based upon the equivalent GB Regulations).
3. You also recalled the email referred to above and re-issued it several minutes later (see the emails also provided herewith, being Inquiry reference DFE-17518 to DFE-17520). Please explain the reasoning behind the recall and re-issue of this email. Without prejudice to the generality of the foregoing, was this simply to insert the word 'RESTRICTED' in the subject heading; and, if so,

please explain why this was important.

4. On 8 August 2012 you sent a further email to Arthur Cox (bearing Inquiry reference DFE-18954 to DFE-18955). As to that email:
 - a. Again, please set out who drafted this email.
 - b. Explain, in particular, if it is within your knowledge, why the comments were made which were made in relation to Footnote L.
 - c. Identify how and from whom DETI knew that woodchip or biomass drying could often not be undertaken in an enclosed building.
 - d. Explain why DETI was eager to ensure that this type of activity was supported under the Scheme.

5. In a number of emails in September 2012 you informed Arthur Cox that DETI was being "*pressed*" to move forward with, or to finalise, the draft 2012 Regulations (see, for instance, your email of 10 September 2012 at DFE-19299; and your email of 12 September 2012 at DFE-19648). As to these:
 - a. Again, please set out who drafted these emails and who was responsible for conveying the message that DETI was being pressed to finalise the Regulations.
 - b. Explain, to your knowledge, who was pressing for the Regulations to be finalised.
 - c. Without prejudice to the above, specify whether it was the Minister who was pressing for the Regulations to be finalised.
 - d. Explain, to your knowledge, what the urgency was about.

6. Alan Bissett of Arthur Cox sent you an email on 11 September 2012 (at Inquiry reference DFE-19544) asking, *inter alia*, whether the Department intended that

all of the amendments made to the Great Britain RHI Scheme by the Renewable Heat Incentive Scheme (Amendment) Regulations 2012 were intended by DETI to be included in the draft 2012 Regulations in Northern Ireland. As to that:

- a. Was that query ever answered directly on email or in writing?
 - b. Was that query addressed at the meeting between Arthur Cox solicitors and DETI personnel which was held on 18 September 2012?
 - c. Are you aware of whether the email of 11 September 2012 from Arthur Cox was saved on TRIM? If so, please provide a reference. If not, please explain why not.
7. It appears from information received by the Inquiry that there was a meeting between Arthur Cox and DETI personnel on 18 September 2012. As to that:
- a. Did you attend this meeting?
 - b. If not, do you know who did attend the meeting?
 - c. Are you aware of any minutes or notes of the meeting?

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 471 of 2017

DATE: 22 September 2017

Witness Statement of: Susan Logan

I, Susan Logan, will say as follows: -

In paragraph 5 of your statement of 3 August 2017 ('your first statement') you describe, amongst other things, that part of your work involved liaising with Arthur Cox Solicitors in relation to the drafting of the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012 ('the 2012 Regulations'). Arising out of that, please address the following issues:

1. All emails which I composed to Arthur Cox were on instruction from Joanne McCutcheon or Peter Hutchinson who were my line management chain for Renewable Heat issues. As I mentioned in my first statement, I was a shared staff resource between the Renewable Electricity Branch and the Renewable Heat Branch so all instructions relating to my work came from the line management chains in both these branches. I was not involved in any policy development or any policy decision making hence any email correspondence I prepared was based upon instruction by the Renewable Heat line management chain. These emails were checked, amended, if necessary, and verified by the Renewable Heat line management chain before they were allowed to be issued. This was to ensure that any policy decisions relayed to me by the Renewable Heat line management chain were accurately reflected in the email correspondence.



2.

- a. I drafted the email (Inquiry reference DFE-17514 to DFE-17515) dated 18 May 2012 to Arthur Cox on instruction from the Renewable Heat line management chain. An email from Nicola Wheeler to Peter Hutchinson (Inquiry reference DSO-01054 to DSO-01057) on 17 May 2012 helped to form some of the content of this email correspondence.
- b. The wording for the draft regulation included in the email was provided to me by the Renewable Heat line management chain. I am unable to specify who drafted the wording but only that it was given to me by the Renewable Heat line management chain to include in this email correspondence.
- c. To the best of my knowledge, the changes from the reporting and publication requirements in the earlier draft of the 2012 Regulations (based upon the equivalent GB Regulations) were based on the legal advice provided by Nicola Wheeler to Peter Hutchinson (Inquiry reference DSO-01054 to DSO-01057) on 17 May 2012 where Nicola advises *"Regulations 53 and 54 for the most part should be removed and you should instead have reporting provisions along those lines in the agreement between yourselves and GEMA. I say for the most part because DETI may wish to consider retaining something in the legislation along the lines of paragraph (6) of Regulation 53 whereby DETI has the power and the duty to publish the information outlined on it's own website. That is a policy matter for DETI to decide"*.

I am unable to comment on the reasoning behind the wording used in the draft regulation as I had no involvement in drafting it.

3. The email (Inquiry reference DFE-17518 to DFE-17520) was recalled and re-issued to include the attachment entitled "Draft RHI Regulations – 18 May.DOC" which was not included in the original email. The re-issued email was essentially to include the restricted attachment. The word 'RESTRICTED'



was inserted in the subject heading to make it clearer to Arthur Cox that the attached document was restricted as had already been explained in the body of the email. The re-issued email with the attachment included can be found at TRIM reference DT1/12/0060744.

4.

- a. I drafted the email dated 8 August 2012 to Arthur Cox (Inquiry reference DFE-18954 to DFE-18955) on instruction from the Renewable Heat line management chain.
- b. I drafted the email on instruction from the Renewable Heat line management chain and they relayed the comments to me that were made in relation to Footnote L.

Subsequent evidence found on TRIM on 19 September 2017

I arranged access to look through the TRIM containers I worked on during my time in DETI (from 9 May 2011 until 23 November 2012) by going to DfE offices in Netherleigh on 19 September 2017. During this visit to DfE offices, I found an email chain from Peter Hutchinson to me (TRIM ref: DT1/12/0094426) dated 8 August 2012. This email confirms that Peter Hutchinson provided me with the comments for Footnote L and that I replicated those comments in the email to Arthur Cox (Inquiry reference DFE-18954 to DFE-18955).

- c. I was not involved in any policy development or any policy decision making therefore I am unable to identify how and from whom DETI knew that woodchip or biomass drying could often not be undertaken in an enclosed building. Please see also response under "Subsequent evidence found on TRIM on 19 September 2017" paragraph to 4(b) above.
- d. I was not involved in any policy development or any policy decision making therefore I am unable to explain why DETI was eager to ensure



that this type of activity was supported under the Scheme. Please see also response under "Subsequent evidence found on TRIM on 19 September 2017" paragraph to 4(b) above.

5.

- a. I drafted the emails dated 10 September 2012 (Inquiry reference DFE-19299) and 12 September (Inquiry reference DFE-19648) to Arthur Cox on instruction from the Renewable Heat line management chain. I was instructed by the Renewable Heat line management chain to ask Arthur Cox to progress and finalise these Regulations and to convey the message that DETI was being pressed to finalise the Regulations.
- b. To the best of my knowledge, I was instructed by the Renewable Heat line management chain to contact Arthur Cox to finalise these Regulations. I understand this instruction to be coming from senior management.
- c. I do not know whether the Minister was pressing for the Regulations to be finalised. As I stated in 5(b) above, I was instructed by the Renewable Heat line management chain to contact Arthur Cox to finalise these Regulations.
- d. To the best of my knowledge, Her Majesty's Treasury (HMT) made £25million of funding available to the RHI scheme in Northern Ireland to be distributed over the period between 2011 to 2015. The funding was being provided in stages over the four year period. As far as I can remember, the Renewable Heat line management team had secured a portion of funding for the 2012/13 financial year and if that portion of funding was not used by a certain date then it would be lost. To the best of my knowledge and memory, the urgency was to have the RHI Scheme up and running in order to utilise the portion of HMT funding for that financial year.



6.

- a. I do not remember if the query raised by Alan Bissett of Arthur Cox in his email (Inquiry reference DFE-19544) dated 11 September 2012 was answered directly on email or in writing. During my visit to DfE offices in Netherleigh on 19 September 2017 to look through the TRIM records on this issue, I could not find any records of this query being answered in writing or by email.
- b. I do not remember if the query raised by Alan Bissett of Arthur Cox was addressed at the meeting between Arthur Cox solicitors and DETI personnel which was held on 18 September 2012.
- c. The email (Inquiry reference DFE-19544) dated 11 September 2012 from Alan Bissett of Arthur Cox was saved in TRIM. The TRIM reference number is DT1/12/0114067 and it is entitled "*Draft Regulations – 11 Sept 2012*".

7.

- a. I do not remember whether I attended the meeting on 18 September 2012 between Arthur Cox solicitors and DETI personnel. However, it appears from TRIM records (TRIM reference DT1/12/0114078 and TRIM reference DT1/12/0117472), that I may have attended this meeting. There is further information on these TRIM records provided in 7(c) below.
- b. I do not remember who attended the meeting on 18 September 2012 between Arthur Cox solicitors and DETI personnel. However, it appears from TRIM records (TRIM reference DT1/12/0114078 and TRIM reference DT1/12/0117472) that DETI personnel who attended this meeting may have been Joanne McCutcheon, Peter Hutchinson and myself. It appears from the same TRIM records that Alan Bissett



and David Trethowan may have represented Arthur Cox solicitors at the same meeting. I have provided further information on these TRIM records in 7(c) below.

- c. The only records that I am aware of are two email chains which refer to the meeting held on the 18 September 2012 which I found on TRIM during my visit to DfE offices in Netherleigh on 19 September 2017 (first noted in 4(b) above).

Email chain dated from 12 to 21 September 2012

The TRIM reference number is for this email chain is DT1/12/0114078. Within it, there is an email from Alan Bissett of Arthur Cox to me dated 19 September 2012 and copies in David Trethowan, Joanne McCutcheon and Peter Hutchinson. This email states "*As requested at our meeting yesterday morning, ...*". This email also notes the changes made to the draft 2012 Regulations as a result of that meeting.

Second email chain dated from 12 to 25 September 2012

The TRIM reference number is for this email chain is DT1/12/0117472. This email includes an attachment of the revised draft 2012 Regulations which were changed as a result of the meeting held on 18 September 2012 and which were sent with the email of 19 September 2012 from Alan Bissett of Arthur Cox to me, referred to in the paragraph above.

Statement of Truth

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

Signed: S. Logan

Dated: 22/09/2017

Subject: FW: Handwritten Notes from 9 March 2012 Casework Committee meeting on RHI

From: Logan, Susan

Sent: 13 December 2017 14:29

To: Coyne, Terence <Terence.Coyne@economy-ni.gov.uk>

Cc: Linton, Rachel <Rachel.Linton@economy-ni.gov.uk>

Subject: RE: Handwritten Notes from 9 March 2012 Casework Committee meeting on RHI

Hi Terry

Further to our telephone conversation, I am confirming that I would have destroyed my handwritten notes (either by shredding them or putting them in the confidential waste) from the 9 March 2012 Casework Committee when I left the Department in November 2012.

Regards

Susan

Susan Logan
Vehicle Standards
Vehicle Policy Branch
Ext. 41126