



Viscount Brookeborough
Colebrooke Park
Brookeborough
Co Fermanagh
BT94 4DW

By e-mail and post: ahb

Personal information redacted by the RHI Inquiry

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

You may well be aware from media reports, and from your previous engagement with the Inquiry, that the RHI Inquiry is conducting its investigations into the matters set out in its Terms of Reference. As well as having conducted a number of its oral hearings, the Inquiry is continuing with the process of gathering all of the relevant documentation from relevant departments, organisations and individuals. In addition, the Inquiry is

still in the process of requiring persons 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.

In this context, it would be of assistance to the Inquiry to have a statement from you setting out your involvement in the Non Domestic Renewable Heat Incentive Scheme in Northern Ireland ('the Scheme'). I appreciate that you have already provided an email response to the RHI Inquiry on 16 May 2017, in response to my email of 12 May 2017, for which the Inquiry is grateful. However, some further queries arise from your email and other information which has been received by the Inquiry. In providing a formal statement to the Inquiry, it would be helpful if you would set out information some of which may encompass details that you have already supplied to us in your previous correspondence.

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.

The aim of the enclosed Notice is to require you to provide all relevant evidence within your knowledge 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, please state this in your response. Where you can provide evidence, then 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.

If it would assist you, I am happy to meet with you (or your legal representative) to discuss what evidence you may be able to provide and whether it is covered by the Inquiry's request.

I wish to make you aware of the terms of Restriction Order No 2 made by the Chairman of the RHI Inquiry on 22 June 2017. 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 four 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

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 140 of 2018]**

1. Please provide details of your occupation(s) and/or employment during the period November 2012 to the date of answering this Notice.
2. Explain why you first became interested in the Non Domestic Renewable Heat Incentive Scheme in Northern Ireland ('the RHI Scheme') (both attached for ease of reference).
3. Please explain the direct or indirect involvement that you had with, or in relation to, the RHI Scheme or any aspect of it prior to its suspension in February 2016. In particular, please provide full details of:
 - a. why you decided to apply to the Scheme;
 - b. the date that each of your biomass boilers was installed;
 - c. the date that you made each application to the Scheme;
 - d. the date each of your biomass installations was accredited;
 - e. the installed capacity (in kW) and efficiency of each of your biomass boilers;
 - f. the date upon which you received your first RHI payment;
 - g. the person or company you employed to provide and install each of your biomass boilers; and
 - h. the person or company, if any, you engaged to assist with each of your applications to the Scheme.
4. It appears to the RHI Inquiry from information provided to it that you applied for accreditation of an installation or installations under the RHI Scheme in November 2015 when there was a marked 'spike' in the number of such applications generally. As to that please address the following matters:
 - a. Why did you make an application to the Scheme at that time?
 - b. Did anyone encourage you to make an application to the Scheme at or

around that particular time? If so, please identify who did so, when, and what reason was given for the encouragement.

- c. Were you warned in any respect about the possible introduction of cost controls, tiered or amended tariffs, or an annual eligible heat cap into the Scheme? If so, in respect of each such warning, beginning with the earliest, please identify who provided this warning, when they did so, how it was communicated and (insofar as you can) in what terms.
 - d. Without prejudice to the generality of sub-paragraph c. above, were you in contact with any Minister, Special Adviser ('SpAd') or Civil Servant in respect of proposed changes to the Scheme? If so, please provide full details including, in respect of each such contact, who it was with, when it occurred, how it occurred and (insofar as you can) the substance of what was said, discussed or communicated.
 - e. Please explain, in respect of your installation(s) for which application for accreditation to the Scheme was made within the above period, how long it took from ordering the relevant plant to it being installed and commissioned.
 - f. Please explain any steps taken by you to expedite your application to the Scheme, including steps taken in order to ensure that your application was submitted in advance of the 18 November 2015 deadlines.
 - g. Please explain, given that you had already made a previous successful application to the RHI Scheme in 2013, the reasons (e.g. a further heat requirement) for your applications in respect of an additional biomass boiler during the aforementioned 2015 'spike'.
5. Please advise whether you have any connection with the Ulster Farmer's Union ('UFU') (such as, for example, being a member of it) and, if you do have such a connection, please provide full details of same.

6. Specify whether you were encouraged by any other party to seek accreditation under the RHI Scheme, were assisted in doing so, or were provided with information which encouraged you to apply or to consider applying or which influenced the timing of such application. Please provide full details, including the identity of the person or persons concerned, the relevant dates and any and all documentation relating to this.
7. Specify whether you used any information which had been shared with you to advise, encourage, assist, or cause other persons to apply, or consider applying, for accreditation under the RHI Scheme. In respect of any such instance, please provide full details, including (but not limited to) the information you shared, the third party concerned and the date of any steps taken by you in that regard.
8. Specify whether you are aware of the UFU, Action Renewables, or any other body sharing information in relation to the RHI Scheme (in particular, but not limited to, information about the amendment of the Scheme or the introduction of costs controls into the Scheme) with any other persons, giving details of the identity of such other persons and what information was shared in relation to the RHI Scheme, as far as you can.
9. Please provide details of each and every communication, either direct or indirect, between you and any other person in relation to the RHI Scheme (providing the nature, date, and place of each communication as well as details of the persons between whom each such communication occurred).
10. Specify any email addresses used by you and any telephone numbers used by you in relation to any communication about the RHI Scheme.
11. Specify when you first became aware that tariffs payable under the RHI Scheme exceeded the cost of biomass fuel used to produce heat and/or the cost of producing a unit of heat (so that there was an incentive in some cases to produce heat merely to make profit from the Scheme) and how you became

so aware. Without prejudice to the foregoing, please also provide details of the following:

- a. the type of biomass fuel burned by you / your business' biomass boilers (for example, wood pellets or wood chips) and, in the case of wood chip (if applicable), the moisture content of same;
 - b. whether you / your business were able to obtain a discount on fuel prices by, for example, bulk buying, group buying, and/or entering into a long-term supply contract and, if you were so able, please provide details of this;
 - c. the prices paid by you / your business for each fuel type (in £/tonne and/or p/kWh) including details of how these prices changed over time (if applicable);
 - d. any other operating costs you / your business incurred (e.g. electricity) when producing heat with biomass fuel; and
 - e. the steps (if any) taken by you to alert other persons (including, for example, DETI, Ofgem officials, or the UFU) to the fact that the relevant RHI tariff exceeded the cost of biomass fuel and/or the cost of producing a unit of heat with biomass fuel.
12. The Enhanced Capital Allowances Scheme (ECA) was available for certain renewable energy technologies, including some of those falling within the RHI Scheme. This enabled businesses to claim 100% tax relief on the purchase of eligible equipment in the year of purchase. In relation to this, please explain:
- a. whether you availed of such relief in respect of any of your biomass installations;
 - b. if so, please explain:

- i. at what stage you became aware of the ECA scheme and how you became so aware;
 - ii. whether you were encouraged to avail of the said tax relief, providing all relevant details of who encouraged you, and when and how they did so;
 - iii. whether the prospect of benefitting from this tax relief enhanced your interest in the RHI Scheme;
 - iv. whether you were aware at any time of any changes that occurred in respect of the ECA system (such as, for example, the removal of any renewable heat technology from the list of technologies eligible for 100% write-off in a single year), including, in particular, how you became so aware;
 - v. the date(s) on which you purchased your biomass boiler(s);
 - vi. the date(s) on which you registered with the ECA scheme; and
 - vii. the amount of tax relief you benefitted from for each biomass installation under the ECA scheme, providing all documentation in relation to this;
 - c. whether you applied for, received or in any way benefitted from any further form of financial assistance in order to purchase and/or install any biomass boiler(s) and related heating systems which are accredited under the RHI Scheme, (including but not limited to, grant aid, interest-free loan, tax relief or any other form of financial incentive).
13. You provided the RHI Inquiry with an email dated 16 May 2017 in response to the RHI Inquiry's letter of 12 May 2017 seeking information about the RHI Scheme. The following questions arise from your email:

- a. With regard to the commissioning of a second boiler in 2015, you stated: *"We are renovating and developing our old stable yards and wanted to heat the gym firstly and to extend later to other buildings"*. Please confirm the stage to which these works have progressed and the use to which any heat generated by the second boiler is now used.
- b. You stated in relation to 2015: *"I was aware that if we did not move soon, the scheme might terminate and my suppliers were well aware as well"*. Please indicate how and/or from whom you were aware that the scheme might terminate soon.
- c. You stated that: *"We had no specific contact with politicians..."*. As to this:
 - i. Please set out the nature of any relationship you have with Arlene Foster and the nature of any contact you have, or have had, with her.
 - ii. Please advise whether you had any contact with Arlene Foster between the beginning of July 2015 and the end of February 2016. If you did, please indicate whether RHI was discussed during any such communications and, if it was, please provide details of any such discussions.
- d. You stated that *"there is nothing new about Govt Depts encouraging applications for any schemes ... before the closing dates and many people need reminding and encouragement. In my view there is nothing remotely incorrect about that, and that is the reason for having local representative offices around the country"*. Please clarify whether, to your knowledge, your local representative and/or your local representative office (or anyone associated with that representative or office) encouraged applications for RHI before the closing dates or at

any other time.

14. From information available to the Inquiry, it appears that a 'biomass workshop' was held at Colebrooke Estate in late 2013 in conjunction with CAFRE and/or Original Heating, at which you were present and to which you contributed. As to this:
 - a. Please provide further detail about the event and your role in relation to it and, insofar as you can, the persons or organisations in attendance.
 - b. Please indicate what financial benefits of the Scheme were highlighted by you (or others making presentations) in relation to the RHI Scheme.
 - c. Without prejudice to the generality of the previous request, please state whether it was indicated during the event that it was possible to achieve an income from the RHI Scheme which exceeded the cost of fuel necessary to produce heat in the relevant boiler.

15. Except to the extent that it has already been comprehensively addressed in your answers to the foregoing questions, please provide details of your past and current connections (if any) with the following, insofar as they are of potential relevance to the RHI Scheme and the Inquiry's Terms of Reference:
 - a. The Democratic Unionist Party ('DUP');
 - b. Action Renewables; and
 - c. The Renewable Heat Association of Northern Ireland ('RHANI').

16. Except to the extent that it has already been comprehensively addressed in your answers to the foregoing questions, please set out any potential risks, flaws, problems, anomalies, loopholes, or other issues regarding the RHI Scheme which came to your attention, setting out details of when you first became aware of each such issue and the actions (if any) taken by you as a result.

17. Except to the extent that it has already been comprehensively addressed in your answers to the foregoing questions, please provide any further evidence within your knowledge or belief which is relevant to the matters that 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.



- f. 28th June 2013
 - g. original heating
 - h. original heating
4. It appears to the RHI Inquiry from information provided to it that you applied for accreditation of an installation or installations under the RHI Scheme in November 2015 when there was a marked 'spike' in the number of such applications generally. As to that please address the following matters:
- a. We had always hoped that we might apply to extend our first scheme to cover a new gym enterprise in the yard. However we realised, after about 2 yrs of use, that it did not have the capacity and when we talked to our providers, we decided to put in a second boiler.
We had just renovated the lower yard and needed to heat the new gym. The timing was lead by this development.
 - b. No, it was driven by our circumstances alone and when we looked at it we were made aware that the scheme might be closing soon, by Original Heating. We knew that we had to make a decision or miss the opportunity
 - c. I did not receive any warnings. I had no idea about any possible change in the regulations until I read it in the press. As far as I was aware I had a secure contract with the Govt and it would be honoured.
 - d. I never had any contact with any Govt Minister, Special Advisor or Official ref the RHI scheme at any time.
 - e. 8 weeks
 - f. I did nothing except make several calls to my supplier to check that things were moving on. It did take a while and I remember being told that they were very busy but I accepted reassurance that it would be sorted in time - I trusted them so I was relatively happy and ultimately it was accredited
 - g. See 4a above



We had always hoped that we might apply to extend our first scheme and produce sufficient capacity to cover a new gym enterprise in the yard. However we realised, after about 2 yrs of use, that it would not have the capacity and when we talked to our providers, we decided to put in a second boiler.

5. I am a non-active member of the Ulster Farmers Union, as was my father and my grandfather who was probably a founding member, although I could not swear to that.

6. No one persuaded me to apply. Since we did the report in the House of Lords EU Committee I had always been interested in becoming a bit 'greener' and hopefully saving some money. I was provided with statistics by Original Heating and I probably googled for more information. I was happy that it would not be a bad route to go down if I could afford the capital cost. It was entirely our decision.

7.
 - a. We hosted an event for CAFRE and Original Heating to demonstrate the newly installed biomass system in late 2013. I agreed to show people round it and explain how it worked from a layman's users perspective. I think that Balcas may have had a rep there but I do not remember who else attended. I think that no more than a dozen interested parties were there and as far as I remember I did not actually know any of them. The 2013 event was the only event I participated in.

8. I have no idea if the UFU had or shared any information on RHI. I never thought of approaching them on this as I did not consider that they would be the experts in practice.

9. I had no communication with anyone else except Original Heating which I did on a frequent basis and continue to do so for operational reasons...problems, servicing etc

10. My telephone number is Personal information redacted by the RHI Inquiry and my email address is ahb@... Personal information redacted by the RHI Inquiry

11. I do not know the date that I first heard of this and read it in the press. I was always sceptical about any potential profit perhaps for the following reasons.
 - * My boiler is 80 mtrs from the meter in the house and I lose approx 13% of generated heat during the winter and approx 20% in the summer.(the less you run it the more you lose – in summer! There is an optimum usage..) We can only use it for a proportion of



the time. At any time of the year, or we would damage the structure of the house with too much heat.

* Ours is a complicated system and the cost of running about a dozen pumps is quite high

- a. Pellets
- b. We get a discount of about 5% as we buy in 18 ton loads, and Balcas have purchased our forestry production since well before my time, probably more than 50 yrs!
- c. They started first price £160.00 a tonne, they're lowest price was £145.00 a tonne, highest price was £175.00 a tonne and currently £170.00 a tonne.
- d. I have never put a meter on my system but we are thinking of doing so - I believe that the electricity costs could be as high as £3-4000 a year. Totally unsubstantiated but we suspect this. Also the servicing is around £1200 a year, twice a year plus parts
- c. We have had no excess of income over cost of pellets, therefore I had nothing to communicate on this matter

12. The Enhanced Capital Allowances Scheme (ECA) was available for certain renewable energy technologies, including some of those falling within the RHI Scheme. This enabled businesses to claim 100% tax relief on the purchase of eligible equipment in the year of purchase. In relation to this, please explain:

a. We did not use this scheme

b. if so, please explain:

i. N/A

ii. N/A

iii. N/A

iv. N/A

v. N/A

vi. N/A

vii. N/A



- c. I did not apply for any form of financial assistance nor did I receive any such assistance, tax relief or incentive.

13. You provided the RHI Inquiry with an email dated 16 May 2017 in response to the RHI Inquiry's letter of 12 May 2017 seeking information about the RHI Scheme. The following questions arise from your email:

a.

We have renovated the yard and developed the gym but did nothing to extend it to other buildings at present. The second boilers heats this but is very much under used and is not cost effective.

b. As far as I aware it was common knowledge that the scheme would close at some stage. I think that the date I was aware of was early Nov 2015 and I asked Original Heating when we decided to develop the gym and needed additional heating. The exact date was of no interest to me as Original Heating assured me that we had applied in time

c. You stated that: "*We had no specific contact with politicians...*". As to this:

- i. I know Arlene Foster is our closest neighbour, a member of our church and I have known her mother in law all my life until she died a few years ago
- ii. I have frequent contact with her, but I never discuss politics with her - As Her Majesties Lord Lieutenant for Co Fermanagh I cannot be involved, neither would I lobby, or discuss with her, over any policy. There were simply NO conversations about RHI, either before or after it became an issue.

b. . I have no knowledge of any action by any government agency offices at all in this case. My remark was made as from experience with other Depts such as Historic Buildings, Tourist Board, Dept of Agriculture. They always tell you when the applications for a scheme will close and particularly if they shut it early because of too large a take up, or if they extend it because of the lack of take up. This would seem to be well managed administration, not a devious way of 'insider dealing' for want of a better phrase.

14. From information available to the Inquiry, it appears that a 'biomass workshop' was held at Colebrooke Estate in late 2013 in conjunction with CAFRE and/or Original Heating, at which you were present and to which you contributed. As to this:
- a. I have already referred to this at question 7. This was an event held by Original Heating in conjunction with CAFRE. I think, but I am not absolutely sure, that BALCAS may have attended. The other attendees were potential customers of Original Heating and CAFRE may have had a few guests. I do remember that I knew very few if any of the guests personally. We showed the guests round our installation and explained how it worked and linked into our heating system.
 - b. My system had only been operating since Feb and I would have said that it might be saving me money but would have to wait till after one year's operation to estimate the value of the saving. Original Heating and CAFRE may have given these guests figures but at that stage I was not really interested in the detail as I was way past that stage with an operating system. I knew that it was saving me money but how much was still a question mark.
 - c. Not as far as I was aware. I do not think that, (at that time (2013)), I had heard anyone say that you could achieve an income over and above the cost of operation. I was aware that you should be able to save more money using chip but that was never an option for me at Colebrooke so I never went into those figures.
15. Except to the extent that it has already been comprehensively addressed in your answers to the foregoing questions, please provide details of your past and current connections (if any) with the following, insofar as they are of potential relevance to the RHI Scheme and the Inquiry's Terms of Reference:
- a. I am not a member of any political Party and in the House of Lords I sit as a Cross Bench Peer. I see DUP and UUP Peers regularly in Westminster. The RHI issue has come up in several debates in which I have not taken part.
 - b. I think that I may have been invited to an Action Renewables event in Portadown some years ago, or somewhere else, which was promoting renewables, among them biomass and photovoltaics. I cannot remember the



date but it was early on. I think that there were over 50 people there and it was interesting as I had also considered solar panels and a turbine, both of which were problematical with DofE Historic Buildings Branch. I have never had any other connection to Action Renewables.

- c. I am a member of RHANI

16.

General

May I say that I accept the issue of the lack of controls and that some may have apparently taken unlawful advantage of this.

With ref to my para 13b i would add this;

When the Govt brings out a policy/scheme that requires the public to invest in it, there is often a grant mechanism in order to attract applications, eg. Tourism - creating beds in hotels and guest houses – or agriculture – improving farm performance.

Logically, grants/incentives are only deployed when, without them, there would be no investment by the private sector. These have to be 'marketed' to the public with timescale and other information.

It appears to me to be not only logical, but essential, for govt to keep in touch with potential investors and encourage them to take part, otherwise it will simply not happen. Meetings are held around the country and if a person shows an interest, the Dept keeps in touch. This liaison also includes opening, and closing dates and any variation of these dates – sometimes with dates for a second tranche.

This apparently was the issue for the Govt in reaching the EU targets for the take up of renewable energy schemes. Therefore the Govt had to 'market' them to the public.

I see nothing wrong with energising and reminding potential investors throughout the running of a scheme – in fact it would be negligent to fail to do so.

This, I may say so, is entirely separate from any fraudulent, or 'insider' dealings that may have taken place which is a different matter.

Except to the extent that it has already been comprehensively addressed in your answers to the foregoing questions, please provide any further evidence within your knowledge or belief which is relevant to the matters that the RHI Inquiry is investigating as set out in the RHI Inquiry's Terms of Reference.

I have no further evidence within my knowledge or belief.



Statement of Truth

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

Signed: Viscount Brookeborough

Dated: 11 Aug 18