

Mr Stuart Cook

Personal information redacted by the RHI Inquiry



20 February 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 refer to your statement in response to the section 21 Notice (No.478 of 2017).

The Section 21 Notice enclosed with this letter requires you to provide further 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 need for a further statement from you arises out of the Inquiry's ongoing review of documentary evidence disclosed to it and the oral evidence being given at the public hearings.

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 may be 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.

It is vital that the witness statement you provide to the Inquiry is your own evidence, absent the influence of others; that it is comprehensive; and that it fully explains your involvement in the matters about which you have been asked.

I appreciate that you may require or desire access to some documentation in order to assist you in preparing your statement. In particular, you may wish to see documentation to which you previously had access but now no longer have access in your current post. If that applies in your case, I understand that Ofgem will assist you, at least in the first instance. You should contact Mark Mills, Principal Legal Advisor at Ofgem. He is contactable at Mark.Mills@ofgem.gov.uk. I have informed Mark Mills that you may be making contact with him to arrange access to documentation, or for general assistance and support; but there is, of course, no obligation upon you to do so. If you encounter any difficulties, of whatever kind, you should not hesitate to get in touch with me.

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 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



Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE

[No 11 of 2018]

1. In May-June 2012, Marcus Porter raised concerns with Keith Avis about the risks inherent in DETI proceeding with a scheme which did not include the amendments suggested by Ofgem or the interim cost controls which were due to be introduced by DECC to the GBRHI Scheme in July 2012. In addition, he also raised the question of whether Ofgem should defer its administration of the scheme until these issues had been addressed. In this respect, please find attached some relevant documentation extracted from the Inquiry's evidence bundles [OFG-164912-914]. As to this:
 - a. Were you aware of Mr Porter's concerns in this regard? If so, when did you become aware? Please provide supporting documentation. If you were not aware of these concerns, can you explain why not?
 - b. What action, if any, did you take in relation to the concerns raised by Mr Porter?
 - c. Were GEMA informed at any stage of Mr Porter's concerns? If so, how and when was GEMA informed? If GEMA was not informed, can you explain why not?
 - d. How did GEMA respond to Mr Porter's concerns?
 - e. If a decision was taken that Ofgem should administer the NI RHI Scheme notwithstanding Mr Porter's concerns, what assessment was made of the risks to Ofgem/GEMA in so doing?
 - f. Were these risks recorded on a risk register? Was any action taken to mitigate the risks Mr Porter raised? If so, please provide details.
2. In an email you sent to Matthew Harnack, Bob Hull and others in October

2012, you asked for “a list of high profile things than could go wrong – e.g. problems we are sitting on – by COP Thursday. Rather than sharing these by email, can you leave them on my desk (in an envelope, if you would prefer)” [OFG 07017-07018]. As to this:

- a. What material did you receive from your colleagues in response to this request? Who did you receive material from? Please provide supporting documentation.
- b. How many of the responses related to NIRHI or GBRHI?
- c. What prompted “Project Woodwork”? Was this a regular exercise or a one-off? Was there any problem or issue in particular that you were expecting to find?
- d. What actions did you take as result of the response to Project Woodwork?
- e. Were you made aware of the issues raised by Keith Avis in relation to NIRHI?
- f. If not, why not?
- g. If so, what action was taken on foot of the issues raised by Keith Avis?

NORTHERN IRELAND RENEWABLE HEAT INCENTIVE: BRIEFING**Headline Messages**

- DETI confirmed in May that they wished to enter into an agreement with Ofgem to administer the Northern Ireland RHI scheme.
- We are awaiting sight of the draft regulations that will underpin the scheme (which will be reviewed against the original feasibility study) before agreeing the scope and cost of the 4 month development phase. [To note: DETI confirmed on 12 June that the regulations should be sent to Ofgem by cop 13 June] as yet not seen
- The development phase will include the drafting and joint approval with the Northern Ireland Authority for Utility Regulation (NIAUR) of an Agency Services Agreement for the operational phase of the scheme, which will mitigate any risks that could impact on Ofgem. That will be the intention, including litigation costs in the even of a JR. The agreement will be pursuant to s.114 of the Energy Act 2011. There is a precedent in the form of the NIRO agreement made under a similar provision in the Energy Act 2004 which could be used as a starting point but it seems that NIAUR are not willing for DETI to have sight of that document! It will therefore presumably be a case of replicating such of its provisions as are relevant. It seems DETI will meet the costs of preparing the agreement.

Key Points:

- In January GEMA agreed to Ofgem administering the Northern Ireland RHI, subject to appropriate funding and resolution of remaining uncertainties.
- DETI formally wrote to Bob Hull on 4 May to confirm that they wished to enter into an agreement with Ofgem for the administration of the NI Renewable heat Incentive Scheme. A short response from Bob Hull confirmed that we need to agree funding and the specific terms of the agreement to enable us to proceed.

- DETI have confirmed that they wish to mirror the detail of the GB RHI scheme. They are unlikely to lay the Statutory Instrument before the Assembly summer recess, which will mean that the legislation is unlikely to come into force until end of September/October at the earliest. I have advised firmly that it makes little sense for DETI simply to replicate DECC's existing Regs, given that then GB Regs are due to be amended three times by next July and, in particular, that the amendments will incorporate some, and perhaps many, to rectify perceived deficiencies in the current Regs. The risks associated with so doing are clear. DETI have the opportunity to benefit from DECC's forthcoming improvements and they should avail themselves of it. Moreover it makes little logistical sense to make Regs now then amend them twice in quick succession. It is not as if DETI have not been advised of the need for amendments. They were informed of this last Autumn and were sent a detailed table of the likely amendments prepared by Fave. If DETI will not agree to await DECC's amendments it strikes me that it may be advisable for the Authority to seek to defer the point at which the arrangements for us to administer take effect until the amendments have been made to the NI scheme too, though we could perhaps still help out with the drafting exercise in the meantime
- DETI are still working on finalising the regulations that underpin the scheme. Ofgem have made clear that we will need to review the regulations against the detail of the feasibility study before agreeing the scope, timeline and costs for the development phase of the scheme. Feasibility study was quite lengthy I believe. If they agree to take on board DECC's amendments there may be implications for the feasibility study.
- The development phase will last approximately 4 months – we have flagged to DETI that this may take a few weeks longer than anticipated to accommodate staffing issues around the Olympics. I have advised that this is very difficult to predict, depending on what they want to do. If they insist on simply replicating the existing Regs then obviously it will take less time.

Background:

In September 2011 the Northern Ireland Department for Enterprise, Trade and Investment (DETI) asked Ofgem to undertake a feasibility study into Ofgem administering the £25m NI RHI scheme alongside the £860m Ofgem-administered GB scheme which went live in November 2011.

This £87k feasibility study (funded by DETI) was finalised on 16 December 2011 and made clear that if DETI wish Ofgem to proceed to the next phase, detailed funding provisions, terms, and project scope will need to be agreed between the two parties.

The feasibility study emphasised that considerable synergies could be exploited between the development and administration of the GB RHI and the NI RHI. By re-using the existing structure established for GB RHI, DETI can make a cost saving of nearly 90% against the cost of developing a bespoke system.

The Authority provided approval for E-Serve to carry out the development and administration of the NI RHI scheme on behalf of DETI in January 2012. This was subject to the confirmation of final policy decisions and agreeing the proposed funding and an appropriate service agreement for operating the scheme with the Northern Ireland Authority for Utility Regulation (NIAUR) that mitigates risk to GEMA.

To take forward the process highlighted in the Feasibility Study we need DETI to confirm policy and provide the significantly finalised draft legal instruments before any development can commence.

Ofgem and NIAUR need to agree a suitable Agency Service Agreement for the operation (not development) of the scheme, which helps to mitigate the risks we have identified. This agreement will need to ensure that Ofgem can draw down adequate funds from DETI to cover all tariff payments on time.

A key difference between the GB RHI and NI RHI schemes is that under the GB RHI scheme regulations the Authority is named as the scheme administrator. Under the proposed NI RHI regulations, NI AUR will be named as the scheme administrator. However, there are provisions in the Energy Act 2011 that allow NIAUR to enter into arrangements with Ofgem to carry out administrative functions on behalf of NIAUR. This is similar to how Ofgem and NIAUR administer the Northern Ireland Renewables Obligation (NIRO).

Deleted: The

Initially the risk of legal challenge was identified as a potential downside risk to the Authority if the administration of the scheme was carried out by Ofgem. However DETI have confirmed that they expect to carry all legal risk of challenge. We will need confirmation as to the scope of this. In the meantime I have pointed out that this doesn't get us entirely off the hook since not all JR remedies are monetary and there is reputational risk to consider also.

Deleted:

The Feasibility Study set a development budget at £386,000, with appropriate contingency (ie an additional £386,000) to cover costs arising from uncertainty around final scheme policy and the extent of IT and legal work that may be required. The forecast costs of Ofgem administering the NI RHI scheme will be between £740,000 and £900,000 over the first 4 years of the scheme. This represents between 3-3.6% of the scheme's £25 million funding envelope over the first 4 years. Assuming that DETI's regulations will mirror the GB RHI we are confident that these costs will be adequate to deliver the scheme, although we reserve our position until we have had sight of the draft final regulations.

OFG_00001551-0001

OFG-07017

To: Matthew Harnack[Matthew.Harnack@ofgem.gov.uk]
Cc: Mary Smith[Mary.Smith@ofgem.gov.uk]
From: Keith Avis
Sent: 2012-10-04T15:18:42Z
Importance: Normal
Subject: RE: ACT URGENT - Project Woodwork - gentle reminder
Received: 2012-10-04T15:18:43Z

Matthew cc: Mary

Please find below some thoughts on NIRHI

Keith

NIRHI

Issue:

NSD team had scoped out and drafted the Feasibility Study that covered the development and operation of the Northern Ireland Renewable Heat Incentive Scheme (NIRHI). As the intention was for the NI scheme to closely mirror the GB RHI scheme, the costs and volumes in the Feasibility Study were based on our early knowledge of the GB operation. The Feasibility Study was approved on this basis. The Department of Enterprise Trade and Investment (DETI) did not give us the go-ahead to administer the scheme until 5 months after the Feasibility Study was presented to them. During this time it became apparent that GB RHI volumes were significantly lower than originally projected in the Feasibility Study, resulting in the NI scheme moving from a 3-11% uptake rate against the of the GB scheme. The time taken to deal with GB accreditations had also increased substantially from those that were the basis for Feasibility Study. The result was that Ofgem's costs had increased substantially from drafting the Feasibility Study to being asked develop and operate the scheme 5 months later.

Actions:

We have worked hard to keep 2012/13 costs as low as possible, while not compromising Ofgem's delivery position. In particular we have revised our 2012/13 cost forecast to take account of the part (rather than full) year operations, as well as taking into account our experience on the GB scheme with administration processing time. As a result we have been able to revise down the base operating costs by almost £15,000, although this is offset by a need to increase operating costs due to the impacts of operating without IT until January. The net effect is a small increase of £4,340 to the 2012/13 operating costs. We have also reduced costs by combine risk assessments with the GB scheme and IT have move down from a 100% to a 33% contingency compared to what we currently understand is required.

The outyear costs (post 2012/13) remain well above the Feasibility Study projections, using 11% of GBRHI Corporate Plan figures as the basis for our figures. To reduce costs we can look to reduce accreditation checks, operational services and suggest outsourcing as options for DETI to consider, but costs will remain well above those contained in the Feasibility Study.

Lessons learned:

As in this case, Feasibility Studies need to be scoped and presented, based on the best available information at the time. From what we now know, we may want to build more scenario planning into the Feasibility Study, based on a number of possible circumstances, and make it a requirement that customers must have the contingency in place before approaching us to administer the scheme.

From: Matthew Harnack
Sent: 03 October 2012 18:18
To: NSD Senior Management Group
Subject: FW: ACT URGENT - Project Woodwork - gentle reminder
Importance: High

All,

See below for action. **Can you please forward these to me by 5pm tomorrow** and I will pool them all together for Bob and Stuart.

To put some context to it, when Stuart discussed it at MC yesterday, he was talking about decisions we have made which may now look to be at risk of coming back to haunt us. Could be a decision to accredit or reject certain applications which were contentious or precedent setting (they want to be aware if there is another Infinis), could also be an aggrieved person or organisation. Or could be a decision which now looks a bit weak in light of changing supporting evidence. At a stretch could even be a large gap in legislation which could lead to gaming, fraud, perverse outcomes etc that may cause us reputational damage.

For what it's worth, I think the RHI biomethane consultation might fall into this category, as might a couple of complainants under the RHI, as might the small amount we've paid out under the RHI compared to the large amount spent so far, as might the NIRHI operating costs.

Can you please write up short descriptions of what the issue is and what we had done about it originally, as well as whether we are considering anything more to be done about it now.

Thanks,

Matthew

Matthew Harnack
 Associate Director, Commercial
 New Scheme Development

Received from Ofgem on 03/10/2012 17:05:20
 Annotated by RHI Inquiry

OFG_00001551-0002

9 Millbank
London
SW1P 3GE
Tel: 020 7901 7218
www.ofgem.gov.uk

OFG-07018

From: Stuart Cook
Sent: 03 October 2012 17:13
To: Andrew Amato; Collette Dennis; Milton James; Charles Hargreaves; Elizabeth Hillman; Martin Crouch; Matthew Hamack; Min Zhu; Robert Hull; Stephen Beel
Subject: ACT URGENT - Project Woodwork - gentle reminder

As I mentioned in MC yesterday, Bob and I will need a list of high profile things that could go wrong – eg problems we are sitting on – by COP on Thursday. Rather than sharing these by email, can you leave them on my desk (in an envelope, if you would prefer).

Thanks

Stuart Cook
Managing Director
E-Serve
9 Millbank
London
SW1P 3GE
Tel: 020 7901 7009
www.ofgem.gov.uk

Received from OFGEM on 11 05 2017
Annotated by RHI Inquiry

Issued by RHI Inquiry on 20/02/18
Annoataed by RHI Inquiry



INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 11 of 2018

DATE: 16 March 2018

Witness Statement of: Stuart Cook

I, Stuart Cook, will say as follows: -

1. I make this statement in response to the Inquiry's section 21 notice number 11 of 2018 dated 20 February 2018 (the **Notice**).
2. I have no specific recollection of the events to which the Inquiry refers in its Notice. My response to the questions in and issues raised by the Inquiry's Notice are based on my recent review of the limited set of documents provided to me by Ofgem and the Inquiry. To the extent that further documents are brought to my attention I would need to consider my explanations below further.
3. Before reading my responses below I invite the Inquiry to read my previous statement dated 22 October 2017 (see WIT101611 onwards). For convenience, I repeat elements of my responses to questions 2 to 5 below which explain my role at Ofgem.
4. In September 2011, I became Managing Director, Ofgem E-Serve ("E-Serve"). I held this post until 14 February 2013, when I went on a period of "gardening leave". As Managing Director (MD), Ofgem E-Serve I led the division responsible for administering a number of government schemes. In this capacity, my responsibilities included: managing the relationship and communications with the Department of Energy and Climate Change (DECC); E-Serve strategy; and Management initiatives which spanned E-Serve, including a performance improvement initiatives.
5. During 2012, Ofgem E-Serve established the arrangements to support the administration of the NI RHI Scheme and commenced operation of the NI RHI Scheme, in line with the policy developed by the Department of Enterprise, Trade and Investment (DETI). To the best of my knowledge and from what I recall, work on developing arrangements to administer the NI RHI Scheme began in May 2012. To the best of my knowledge and from what I recall, the NI RHI Scheme went live in November 2012. The Scheme was live for 3.5 months before I went on "gardening leave".
6. During my time as MD E-Serve, E-Serve was organised as two divisions. One division was responsible for schemes which were well-established, having been developed in the past. The other division (Commercial) was responsible for developing new schemes, such as the NI RHI and the GB RHI, and for administering new schemes in the early periods of their operation. I had day-to-day responsibility for the former division. As Managing Director Commercial, Robert (Bob) Hull had day-to-day responsibility for the latter division. The other individuals



in the E-Serve management team who were involved with the NI RHI Scheme were Elizabeth Hillman and Matthew Harnack.

7. My involvement in the Scheme was limited to 2012 and to the strategic decision for E-Serve to take on the Scheme, the funding arrangements to cover E-Serve's work in the Scheme, and the assignment of responsibility to develop and operate the Scheme to Bob Hull. I had no direct role or sign-off responsibilities in relation to the creation, operation or administration of the Scheme. I estimate that I devoted less than 1% of my time to work on the Scheme.

Q1. In May-June 2012, Marcus Porter raised concerns with Keith Avis about the risks inherent in DETI proceeding with a scheme which did not include the amendments suggested by Ofgem or the interim cost controls which were due to be introduced by DECC to the GBRHI Scheme in July 2012. In addition, he also raised the question of whether Ofgem should defer its administration of the scheme until these issues had been addressed. In this respect, please find attached some relevant documentation extracted from the Inquiry's evidence bundles [OFG-164912-914]. As to this:

8. Before turning to the specific questions posed by the Notice, it may assist the Inquiry if I were to provide some context.
9. The document (OFG-164912-914) to which I have been referred is a briefing document on the NI RHI. As I explained above, given the passage of time I have no specific recollection of receiving such a document. I have nonetheless endeavoured to understand and explain, based on the documents provided to me, what I believe is likely to have occurred in relation to relevant matters such as any observations I made to the GEMA board and the process of my briefing, by my team, to do so.
10. It was common practice for me to provide an oral update on the work of the E-Serve division at each GEMA meeting; my other executive colleagues would do the same in respect of the areas for which they were responsible. This would be in addition to any papers submitted by the relevant area. The purpose of the oral update was to highlight any issues that I judged GEMA might need to be aware of, but which were either not material enough to justify a substantive Board paper or had arisen recently and needed urgent consideration by GEMA.
11. It appears (see OFG-78291) that early in the morning on 12 June 2012 I emailed my senior team of Directors and Associate Directors within OFGEM E-Serve, including Matthew Harnack, who was responsible for the work on the NI RHI Scheme and Elizabeth Hillman, who was responsible for E-Serve's legal function. I requested that they email me by the end of that day with any points they would like me to raise at the GEMA Board meeting on 14 June 2012. My intention would have been to elicit any items that I might refer to in my oral update across a range of OFGEM E-Serve responsibilities. I note that the email was not directed towards any scheme specifically or NI RHI in particular.
12. I met individually with my direct reports on a frequent and often weekly basis. As a



team, my direct reports met with me at Management Committee once a week. I would have expected my reports to raise any material issues associated with any scheme through these individual one-to-one meetings, or through Management Committee. And I encouraged the team to approach me at any time to discuss concerns. I would not have expected the team to highlight material and new issues solely in their response to my request for items to be included in my oral update.

13. It seems from the email exchanges that I received a number of submissions from my team in response to the request I explained above at paragraph [10]. Among those, it appears from the documents disclosed to me, there were two submissions to me in relation to NI RHI. I address each in turn below.
14. The first version was provided by Keith Avis, who sent this to Collette Dennis on the afternoon of 12 June (see OFG-142826). Collette was my PA. Collette would have used her judgement about the best way to draw my attention to this material. I have no specific recollection of whether or how she drew my attention to the document sent by Keith Avis. .
15. Bob then provided comments to me in the evening of the 12 June (see OFG-78291), commenting on a number of areas of E-Serve's work. In relation to the NI RHI Scheme it appears that Bob referred me back to the briefing note produced by Keith Avis: "*RHINI progress as set out by Keith*". The same email chain includes an email from me in which I made the following comments:

Bob,
Thanks for this. Very helpful, as always.
In terms of NI RHI, having read the note, I wasn't sure that much has changed since my last GEMA update. In my last update I noted DETI's intention, the need to agree legal risk mitigation, the need to re-do elements of the feasibility study, and the need to extend implementation because of the Olympics. Have I missed any new developments?
16. I have no further recollection of this email exchange beyond what is set out in it. I consider it is likely that my reference to "my last GEMA update" would have referred to my last update to GEMA on NI RHI. I do not recall when that update would have been provided.
17. I only recall one legal issue that was discussed with me and with GEMA. This was the risk that the Authority my face a legal challenge for a decision taken in relation to the NI RHI and that the costs of this legal challenge might not be covered by DETI. Although I have no specific recollection, I consider that the reference in this email to the need to agree legal risk mitigation is likely to have referred to mitigating the costs of a legal challenge. This risk was subsequently addressed - DETI agreed to bear the costs of any NI RHI Judicial Review.
18. The second version is the briefing note referred to in the Notice (OFG-164912-914). This was provided to me on the afternoon of 13 June (i.e. the day after the deadline I had set for submission of points to be raised) [under cover of an email from Ruth Lancaster (OFG-142826). Ruth Lancaster was a senior lawyer within the E-Serve legal function whom I understand to have been responsible for overseeing and supervising Mr Porter at the relevant time.
19. It is important to emphasise that I have no specific recollection of whether I actually reviewed this version of the document at the time. I do, however, have the following observations to make about based on my reading of it now. As administrator of the



NI RHI, I would not have expected OFGEM E-Serve to have a role in developing or drafting the legislation that gave effect to the NI RHI scheme and it would have been unusual for OFGEM E-Serve to be involved in discussions on policy matters. On occasions when OFGEM E-Serve escalated policy concerns to Government departments, these were typically about the way that a policy decision might impact on OFGEM E-Serve's administration of a scheme and costs. For example, a change in legislation to align the NI RHI scheme to GB legislation might impose systems or process costs which were not provided for in the budget agreed with DETI. Such concerns reflect the fact that GEMA normally has no choice about whether to administer schemes. The question of whether to give OFGEM the relevant powers and duties under a Scheme are entirely a question for government. This means GEMA normally has to consider how the new powers and duties will affect GEMA's operations and costs rather than deciding whether or not to take on the functions].

20. From my reading of the email, it is unclear whether Ruth Lancaster was referring to the risk that OFGEM E-Serve would incur extra costs to systems and process changes that were the consequence of amendments in the legislation, or highlighting more fundamental concerns about the legislation. But, in my view, Ruth Lancaster was a very capable lawyer who would not have hesitated to approach me had she had any serious concerns with any scheme. Had this been the case, I would have expected her to raise the issue directly with me, rather than through comments and annotations to a document. I have no recollection of her drawing my attention to detailed concerns in the proposed NI RHI legislation and I note that the document and the amendments made to it do not detail areas of the legislation which were considered to be a problematic.
21. E-Serve provided a paper on a quarterly basis to GEMA setting out its work. It appears that an E-Serve quarterly update paper was to be presented to the July GEMA meeting (see OFG-51602 onwards for the final version of the paper and OFG-53675 onwards for the minutes of the GEMA meeting).
22. I have no specific recollection of seeing any drafts or different versions of this document although it is likely to have gone through a number of iterations and been commented by a number of my members of my senior staff before the draft was finalised. From my review of documents that have been made available to me by OFGEM, I note that earlier drafts of this document, which I do not appear to have received copies of at the time, include a slightly more extensive description of the progress towards developing the NI RHI legislation.]
23. With the passage of time, I have no specific recollection of this final version of the document either but comment on it based on my recent review of documents provided by Ofgem. As I observed above, on occasions when OFGEM E-Serve escalated policy concerns to other Government departments, these were typically about the way that policy decision might impact on OFGEM E-Serve's administration of a scheme and costs.
24. In this context I note that OFG-164912 refers to "perceived deficiencies in the current Regs". The fact that these deficiencies were only judged to be "perceived", suggests to me that they were not sufficiently material to have been escalated to me or to GEMA in their own right. I consider that any concerns about the legislation being developed to support the NI RHI scheme were most likely to have been referring to the risk that OFGEM E-Serve would incur extra costs to systems and



process changes that were the consequence of amendments in the legislation.

25. Also in this context, I note there are no mention of NI RHI issues in the EPC minutes from July 2012 (see OFG-51626) or in the July 2012 GEMA minutes (OFG- 53675).

(a) Were you aware of Mr Porter's concerns in this regard? If so, when did you become aware? Please provide supporting documentation. If you were not aware of these concerns, can you explain why not?

26. With the passage of time, I have no specific recollection of being made aware of any of the specific comments made by Mr Porter. Indeed, I have no recollection of ever having met or spoken with Mr Porter in any context. As I understand it, Mr Porter would have reported through to Ruth Lancaster. It would have been unusual for me to have met members of Ruth's team. If Mr Porter's comment were judged important by Ruth Lancaster, I would have expected her to have raised them directly with me. I do not recall her doing so.

27. A general level, I was aware that legislation underpinning the GB RHI scheme had gone through a series of improvements, and I was also aware of the possibility that the NI RHI scheme was not aligned to the latest GB thinking, but I was not made aware of any details of the legislative changes that my team considered should have been implemented in NI.

(b) What action, if any, did you take in relation to the concerns raised by Mr Porter?

28. I have no recollection of being made aware of any of the specific comments made by Mr Porter. Indeed, I have no recollection of ever having met or spoken with Mr Porter in any context.

(c) Were GEMA informed at any stage of Mr Porter's concerns? If so, how and when was GEMA informed? If GEMA was not informed, can you explain why not?

29. I have no recollection of being made aware of any of the specific comments made by Mr Porter. Indeed, I have no recollection of ever having met or spoken with Mr Porter in any context. I do not consider it likely that GEMA would have been made aware of Mr Porter's concerns. Unless the matter was urgent, GEMA would only have been made aware of any serious concerns with the NI RHI through a document which set out these concerns in detail and that was tabled either at an EPC or GEMA meeting. I note that no such paper was tabled at EPC or GEMA.

(d) How did GEMA respond to Mr Porter's concerns?

30. I do not consider it likely that GEMA would have been made aware of Mr Porter's concerns. Unless urgent, GEMA would only have been made aware of any serious concerns with the NI RHI through a document which set out these concerns in detail and that was tabled either at an EPC or GEMA meeting. I note that no such paper was tabled at EPC or GEMA.

(e) If a decision was taken that Ofgem should administer the NI RHI Scheme notwithstanding Mr Porter's concerns, what assessment was made of the risks to Ofgem / GEMA in doing so?

31. I do not consider it likely that GEMA would have been made aware of Mr Porter's concerns. Unless urgent, GEMA would only have been made aware of any serious



concerns with the NI RHI through a document which set out these concerns in detail and that was tabled either at an EPC or GEMA meeting. I note that no such paper was tabled at EPC or GEMA.

(f) Were these risks records on a risk register? Was any action taken to mitigate the risks Mr Porter raised? If so please provide details.

32. I have no specific recollection of being made aware of any of the specific comments made by Mr Porter. Indeed, I have no recollection of ever having met or spoken with Mr Porter in any context. In light of this I would not expect Mr Porter's concerns to have been recorded in the OFGEM E-Serve risk register.

Q2. In an email you sent to Matthew Harnack, Bob Hull and others in October 2012, you asked for "a list of high profile things than could go wrong – e.g. problems we are sitting on – by COP Thursday. Rather than sharing these by email, can you leave them on my desk (in an envelope, if you would prefer)" [OFG 07017-07018]. As to this:

33. I note at the outset that, with the exception of my initial email to my senior team on 3 October 2012, I am not a recipient to the documents (OFG-07017-07018) to which I have been referred. As with my response to question 1 above, the passage of time means that I have very limited recollection of the relevant events. My observations below are therefore based on my recent review and understanding of the various documents provided to me now.

34. Given the passage of time, I do not recall the detail of Project Woodwork. From what I do remember, Project Woodwork was a one-off exercise initiated by Alistair Buchanan, OFGEM's CEO. It was a request for all of OFGEM's Executive team members to identify any high profile issues that might go wrong. It was not directed specifically at OFGEM E-Serve activities or the NI RHI. It did not form part of OFGEM's or OFGEM E-Serve's ongoing management, audit or risk management activity.

(a) What material did you receive from your colleagues in response to this request? Who did you receive material from? Please provide supporting documentation.

35. I do not recall receiving any material in response to this request.

(b) How many of the responses related to NIRHI or GBRHI?

36. I do not recall receiving any responses that related to the RHI or the GB RHI.

(c) What prompted "Project Woodwork"? Was this a regular exercise or a one-off? Was there any problem or issue in particular that you were expecting to find?

37. Given the passage of time, I do not recall the detail of Project Woodwork. As I explain above, from what I do remember, Project Woodwork was a one-off exercise initiated by Alistair Buchanan, OFGEM's CEO. It was a request for all of OFGEM's Executive team members to identify any high profile issues that might go wrong. It was not directed specifically at OFGEM E-Serve activities or the NI RHI.

(d) What actions did you take as a result of the response to Project Woodwork?

38. I do not recall receiving any material in response to Project Woodwork and do not



recall any actions taken as a result of Project Woodwork.

(e) Were you made aware of the issues raised by Keith Avis in relation to NIRHI?

39. I have no specific recollection of having been made aware of the issue raised by Keith Avis in relation to NI RHI.

(f) If not, why not?

40. I refer to my general statements above, 7. My involvement in the NI RHI Scheme was limited the strategic decision for E-Serve to take on the Scheme, the funding arrangements to cover E-Serve's work in the Scheme, and the assignment of responsibility to develop and operate the Scheme to Bob Hull. I had no direct role or sign-off responsibilities in relation to the creation, operation or administration of the Scheme. Keith Avis did not report directly to me and I would therefore have relied on my direct reports to highlight to me any concerns that Keith Avis would have made. I have no recollection of being briefed on the detail of Keith Avis' concerns.

(g) If so, what action was taken on foot of the issues raised by Keith Avis?

41. I have no recollection of having been made aware of the specific issues raised by Keith Avis or of any actions taken in connection with these issues.

Statement of Truth

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

Signed: _____

Dated: _____