



Chris Poulton
OFGEM
10 South Colonnade
Canary Wharf
London
E14 4PU

By post and email to: chris.poulton@ofgem.gov.uk

21 December 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 know that you are by now very familiar with the work of the Inquiry and its Terms of Reference from your previous engagement with it; and the Inquiry remains grateful for the evidence you have already provided.

However, as you may be aware, the Inquiry continues to seek some further written evidence from witnesses and participants where it is necessary to do so. The Inquiry Chairman also retains the right to require witnesses to attend to provide further oral evidence, and consideration will be given to whether that is necessary in light of additional written evidence which is received.

In the circumstances, 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 further 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.

The questions in the attached notice refer to various documents. The Inquiry is grateful that Ofgem undertook to provide those documents to you for your consideration in advance of receiving this Notice.

I also remind you, as before, of the restriction orders made by the Chairman of the RHI Inquiry, which affect how you may deal with this correspondence and its enclosures (which are also provided to you under a duty of confidentiality to the RHI Inquiry). You may, of course, share the correspondence and the enclosed Notice and documents with your legal representative(s), under the same conditions as I set out in my previous 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, slightly slanted style.

Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE
[No 247 of 2018]

You are referred to the following documentation:

- Mr Fyfe's Inquiry witness statement at **WIT-99001 to WIT-99019**;
- A copy extract from an email Mr Fyfe says he sent to PCAW on the 3 February 2017 at **IND-80033**;
- Material relating to Mr Fyfe provided to the Inquiry by Ofgem:
 - o An extract from a record of a meeting on the 1 February 2017 at **OFG-270112/3** (irrelevant parts redacted); and
 - o An extract from a letter of the 1 February 2017 at **OFG-270114** (irrelevant parts redacted);
- A copy email Mr Fyfe sent to Sinn Féin on the 20 January 2017 (**POL-10095 to POL-10103**); and
- Media material relevant to Mr Fyfe and Ofgem at **INQ-125501 to INQ-125523**.

Edward's Fyfe's statement to the Inquiry of the 31 August 2017

1. On **WIT-99010** at sections 5 and 6, Edward Fyfe makes reference to the deletion or alteration of records and files on the internal Sharepoint system. As to this:
 - a. Were you aware of a "war room"? If so, please explain what you knew about it.

- b. Were you aware, at any time during your employment with Ofgem, of documents or files being deleted or altered, or anything that could be so construed, or misconstrued, whether by Edward Fyfe or others?
 - c. Please explain the connection, if any, of the above matters to the Northern Ireland Non Domestic RHI Scheme.
2. In his statement Edward Fyfe, in summary, appears to allege that Ofgem was mismanaging the administration of schemes, including the Northern Ireland Non Domestic RHI Scheme, and was then not being transparent about that mismanagement, but instead covering it up. Are you aware of anything that could be so construed, or misconstrued, whether by Edward Fyfe or others, that may amount to or resemble the issues he has raised? If so, please provide full details.
3. Please set out anything else you wish to say in response to the witness statement provided to the Inquiry by Edward Fyfe.

Extract from what is said to be an email from Mr Fyfe to PCAW of 3 February 2017

4. Mr Fyfe states that he said to PCAW on 3 February 2017 (**IND-80033**) that you were involved in *“wiping clean and sanitising information ahead of the meeting on NI on 24/02/2017”* and that it was *“just crazy to watch documents disappear. Staff are being told not to speak to auditors, and there is a significant cover-up of what has happened”*. As to this:
 - a. What was the *“meeting on NI on 24/02/2017”* and what was your role in it?
 - b. What do you say to the allegation that you were involved in *“wiping clean and sanitising information ahead of the meeting on NI on 24/02/2017”* (the Inquiry takes this to be a reference to information held by Ofgem)?

- c. During your employment with Ofgem have you ever been involved in, or aware of, any activity which could be construed, or misconstrued, whether by Edward Fyfe or otherwise, as activity that may, or could, amount to “wiping clean” or “sanitising” information within Ofgem?
- d. What do you say about the allegation that Ofgem staff were “being told not to speak to auditors”?
- e. At any time during your employment with Ofgem did you tell anyone, were you told by anyone, or were you aware of others telling anyone, not to speak to auditors? If the answer is ‘yes’, then please provide a full explanation of the facts and circumstances.
- f. Are you aware, at any time during your employment with Ofgem, of any member of Ofgem staff saying anything that could be construed, or misconstrued, whether by Edward Fyfe or others, as encouraging staff not to speak to, or otherwise fully co-operate with, auditors? If the answer is ‘yes’, then please provide a full explanation of the facts and circumstances.
- g. What do you say about the allegation that there was a “significant cover-up of what has happened” (which the Inquiry takes to be a reference to what happened during Ofgem’s administration of the Northern Ireland Non Domestic RHI Scheme)?
- h. At any time during your employment with Ofgem were you involved in, or aware of, anything that could be construed, or misconstrued, as a “cover-up”? If the answer is ‘yes’, then please provide a full explanation of the facts and circumstances.

Generally

- 5. Please set out any other information of which you consider the Inquiry should be aware.

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 247 of 2018****DATE: 08/02/2019**

Witness Statement of: CHRISTOPHER POULTON

I, Christopher Poulton, will say as follows: -

1. I make this statement in response to the Inquiry's Notice number 247 of 2018. I have previously given statements to the Inquiry and given oral evidence. My first statement (dated 28 March 2018, see WIT-282531 onwards) provides details of my role at Ofgem. Since I gave that statement I have left Ofgem and returned to work in the private sector. Accordingly, and while I have been supported by Ofgem in the preparation of this statement, I no longer have ready access to all materials to which I would have had in the past.
2. Before turning to address the specific questions asked of me by the Inquiry I consider it may assist if I were to make some preliminary observations.
3. As Managing Director of the E-Serve Division it was open to any member of staff to approach me, although formally there were a number of layers of management between Mr Fyfe, as a relatively junior member of staff, and me. Against this background, as I explain in more detail below, I had very limited direct contact with Mr Fyfe during my role at Ofgem. My main involvement with Mr Fyfe related to various HR and welfare issues arising in the course of his employment. I have provided some explanation of these matters in my statement below because I believe it is relevant to do so in order to address the matters put to me by the Inquiry and to assist it with its investigations. I anticipate that some of these are likely to be considered as sensitive by Mr Fyfe but understand that it will be for the Inquiry to determine which of this material to place into the public domain.
4. I would also make an observation about the material presented to me in the bundle of documents provided alongside my notice. During the Inquiry's opening submissions, it was stated that the Inquiry would seek substantiation of these claims from Mr Fyfe (TRA- 00192 (lines 17-25) and TRA-00193 (lines 1-8)). In the materials provided to me by the Inquiry, there is no substantive or corroborative evidence to support the allegations made by Mr Fyfe, many of which are made in non-specific terms. I can only presume from the fact it has not been put to me that no such material is available to the Inquiry (or at least there is no such material relevant to me). I note that Mr Fyfe has not attended the Inquiry in person to give oral evidence or to be tested on it in the way that I was.
5. Further, given the vague manner in which Mr Fyfe makes his allegations (for example on many occasions being unclear as to whether he is referring to the GB Domestic Scheme or another scheme such as the NI RHI Scheme), it is very difficult for me to respond fully. I have nonetheless tried my best to respond to what I understand to be the key points in order to assist the Inquiry.

6. Finally, I note that some of the allegations made against me are very serious: those that relate to the improper destruction of documents. I appreciate the Inquiry giving me the opportunity to put across my account of these matters, subject to the limitations I identify above. I can categorically state at the outset that I have never been involved in such behaviour. This is a serious allegation, the making of which alone has the potential to damage my professional reputation if it were to come into the public domain. As I explain further below, I respectfully ask that the Inquiry take steps to mitigate the potential impact of this on me. I ask that the Inquiry do this in the interests of fairness.
7. I now address the Inquiry's questions in turn.

Edward's Fyfe's statement to the Inquiry of the 31 August 2017

1. On WIT-99010 at sections 5 and 6, Edward Fyfe makes reference to the deletion or alteration of records and files on the internal Sharepoint system. As to this:
 - a. Were you aware of a "war room"? If so, please explain what you knew about it.
8. Yes, I was aware of a room that was sometimes referred to as "war room". Generally, in project management, a war room is a common term used to describe a project room.¹
9. There were a number of workstreams ongoing in the area of RHI around the end of 2016 and beginning of 2017. The Inquiry had started, we had considerations from PAC, internal and external assurance reports that had been completed which required further actions, and we were working with the DETI team on the new audit regime and regulations. A project room was set up. This is not uncommon for any temporary project or where confidentiality might be required like this and I have set these up before. The room had posters on the wall saying "RHI project room" (or similar).
10. The same room had been used as a project room for the implementation of the Domestic RHI in GB. It allowed the RHI team to have meetings and conference calls on the numerous workstreams without having to book regular meeting rooms (which historically have been difficult to come by at short notice within Ofgem). When the Inquiry started to request documentation it was used for legal staff to search databases and send documents to the Inquiry
- b. Were you aware, at any time during your employment with Ofgem, of documents or files being deleted or altered, or anything that could be so construed, or misconstrued, whether by Edward Fyfe or others?

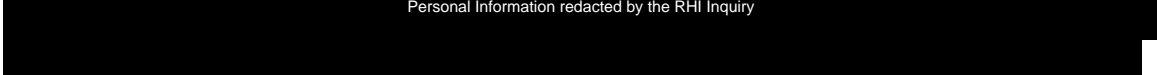
¹ <https://project-management-knowledge.com/definitions/w/war-room/>

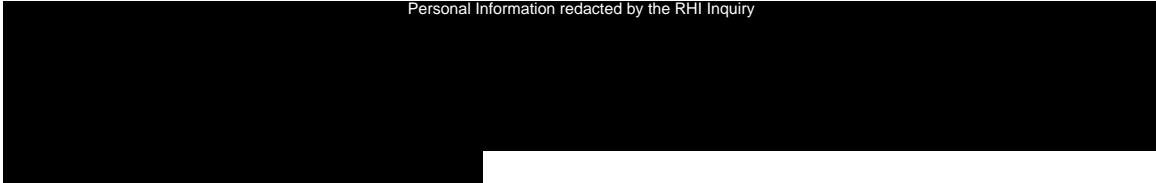
11. Mr Fyfe has made a specific allegation about the wiping clean and sanitising information and he is at some point “watching documents disappear”. I can categorically confirm that I have never been involved in improper conduct of this type; this allegation appears to be malicious and without evidence.
12. Further, I have not witnessed files being deleted or altered in a manner which suggests that Ofgem staff were intentionally and improperly hiding or destroying relevant information nor have I ever been made aware of conduct like this during my time managing E-Serve.
 - c. Please explain the connection, if any, of the above matters to the Northern Ireland Non Domestic RHI Scheme.
13. I'm not aware of any connection as I have no knowledge of any such action taking place as I have explained above.
2. In his statement Edward Fyfe, in summary, appears to allege that Ofgem was mismanaging the administration of schemes, including the Northern Ireland Non Domestic RHI Scheme, and was then not being transparent about that mismanagement, but instead covering it up. Are you aware of anything that could be so construed, or misconstrued, whether by Edward Fyfe or others, that may amount to or resemble the issues he has raised? If so, please provide full details.
14. Mr Fyfe's allegations seem to span a number of schemes and issues which he raises. I have tried to address in turn below.
15. On the subject of third party finance his summary of the situation is incorrect. Before turning to that however it is important to note that, to the best of my knowledge, this is an arrangement which was utilised in the Domestic Scheme. That is to say the GB Domestic Scheme. As the Inquiry will be aware, administration of the NI Domestic Scheme is not undertaken by Ofgem. I am not generally aware of this model having been used in the NI Non-Domestic RHI Scheme. Given this, the response below may be of limited relevance to the Inquiry's work but I provide some brief observations below.
16. We had applications from a third party finance company. It's a model which has worked on prior schemes such as the Feed in Tariff. It was a model that DECC/BEIS were keen to implement in the future. Applications were received and held whilst a legal evaluation was carried out as to whether the model proposed met the legislation as was in place for that time. Senior discussions were held with legal colleagues, directors at DECC/BEIS and directors of the organisations themselves. Mr Fyfe was not involved in any of these many discussions to my knowledge, and his observations are incorrect. There were consumer

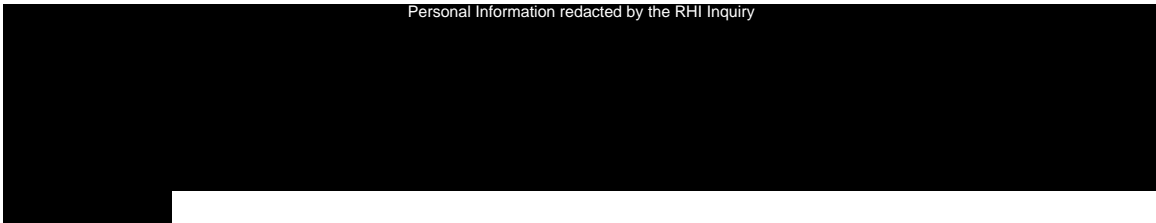
protection issues and a member of staff within the scheme fed in the risks. It was a difficult decision, but one taken with care and the legal connotations in mind. Ofgem is in no position to give “special privileges” to any organisation applying for the scheme.

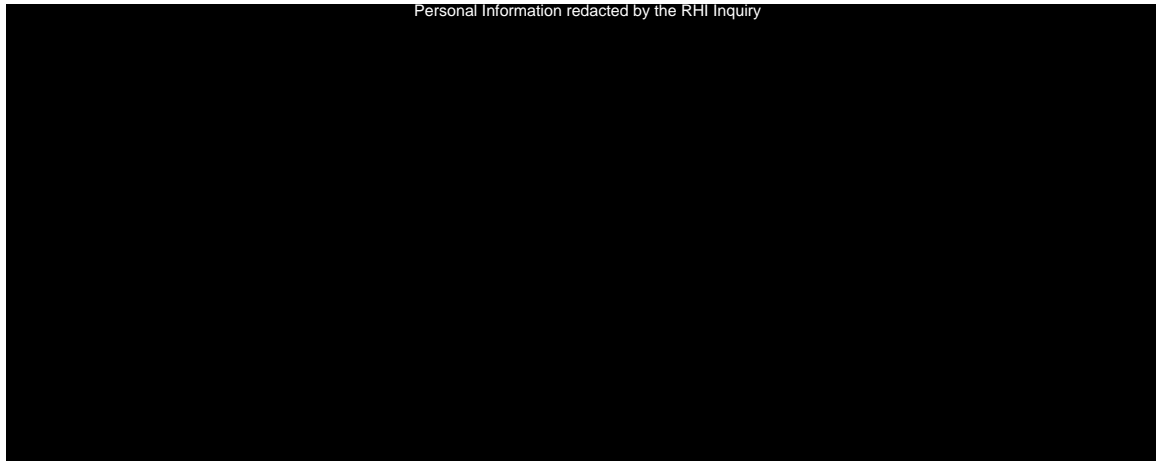
17. Mr Fyfe links this decision with state aid. I am not a state aid expert, however, my understanding is that state aid rules would apply to the value of the subsidy on offer and not who applied for it.
 18. Mr Fyfe also includes market share issues. As a demand led scheme Ofgem does not have a role in determining the fair percentage of market share for organisations that can apply. And indeed competition and innovative models (even if that does increase the burden of administration and make it more cumbersome) can improve access to the schemes for others by lowering prices. I do not understand how Ofgem allowed one company to dominate biomass.
 19. Mr Fyfe refers to the amount of audits and a failure rate of 50% on Domestic RHI Audits on the GB scheme. He fails entirely to note that this was a widely known figure, and the team calculate other figures around the materiality of failures. A simple example is failure to keep fuel records which does not affect eligibility of a system but is a breach of the rules.
 20. In his interview Mr Fyfe states that there was a concern that if non compliance was reported this could result in the contracting out of the scheme to a private company, and that senior management was concerned by this. As one of Ofgem’s senior management team, I cannot ever recall ever having any conversation with my leadership team that even closely resembles his unsubstantiated observation. What he feels has no basis in fact. I have also never pressured any member of the senior management team or anyone else in relation to figures they were producing to amend them in any way.
 21. Mr Fyfe refers to people pushing through applications “because of the pressure to sign people up”. Ofgem is under no pressure to sign people up. Ofgem has no targets in relation to the success or otherwise of the scheme in relation to its number of applicants. Ofgem also publishes openly data on its queues so people can understand the time it may take to process their application. As stated before, the schemes are complex, and novel in many ways, so it is not uncommon for more information to be required for an application and there to be an iterative element to an approval, and this rightly takes time.
 22. In relation to “cash for ash” enterprises that Mr Fyfe raises in relation to 3rd party models, it is worth noting that, as these were on the GB Domestic RHI scheme, the heat is in fact deemed. So there is no incentive to burn more fuel to earn higher subsidy as the subsidy level is known and capped, and the fuel cost remains as a cost
 23. Mr Fyfe raises that some of the companies involved in the scheme were there “purely for profit”. Ofgem had no role in determining the price that organisations paid for wholesale boilers in the market, or a role in monitoring how the prices of boilers changed in relation to demand. As stated earlier, this type of activity could create a benefit of a more competitive price for other users.
3. Please set out anything else you wish to say in response to the witness statement provided to the Inquiry by Edward Fyfe.

24. In response to the witness statement from Mr Fyfe, I would like it noted that my personal interactions with Mr Fyfe were very limited. I cannot specifically recall many, if any, meetings I had where there was a contribution from Mr Fyfe on any of the points he raises.
25. I held weekly sessions where anyone could book time with me to raise concerns or discuss issues. Mr Fyfe has never raised any of these issues with me to my knowledge or recollection.

26.  Personal Information redacted by the RHI Inquiry

27.  Personal Information redacted by the RHI Inquiry

28.  Personal Information redacted by the RHI Inquiry

29.  Personal Information redacted by the RHI Inquiry

Extract from what is said to be an email from Mr Fyfe to PCAW of 3 February 2017

4. Mr Fyfe states that he said to PCAW on 3 February 2017 (IND-80033) that you were involved in “wiping clean and sanitising information ahead of the meeting on NI on 24/02/2017” and that it was “just crazy to watch documents disappear. Staff are being told not to speak to auditors, and there is a significant cover-up of what has happened”. As to this:



- a. What was the “meeting on NI on 24/02/2017” and what was your role in it?
30. I do not have any recollection, notes or access to information that can guide me as to that meeting. I do not recall whether such a meeting was held on that day, or if I was at that meeting on 24 February 2017. There were however a number of meetings on NI RHI issues around this time, given the establishment of the Inquiry among other things.
- b. What do you say to the allegation that you were involved in “wiping clean and sanitising information ahead of the meeting on NI on 24/02/2017” (the Inquiry takes this to be a reference to information held by Ofgem)?
31. I strongly deny My Fyfe’s allegation against me. I have never made any attempt to improperly hide, amend, delete, or destroy any information in relation to Ofgem’s administration of the RHI scheme or any other Scheme. I consider Mr Fyfe’s allegations to be malicious and untrue.
- c. During your employment with Ofgem have you ever been involved in, or aware of, any activity which could be construed, or misconstrued, whether by Edward Fyfe or otherwise, as activity that may, or could, amount to “wiping clean” or “sanitising” information within Ofgem?
32. No, as I say above I have never been involved in the improper destruction or deletion of documents, nor anything that I could consider could be reasonably construed as that. In the circumstances, it is difficult for me to comment on whether and how Mr Fyfe might have misconstrued anything.
- d. What do you say about the allegation that Ofgem staff were “being told not to speak to auditors”?
33. This is not true, as shown in Edmund Ward’s email [POL-10100] asking staff to be helpful to those who were in the office carrying out assurance reviews and interviews. The only concern was regarding data protection.
34. A specific example was that in one piece of assurance work, a download of the database was required to allow analysis to be done. I believe the decision was taken that the analysis should be done on site so it wasn’t taken out of the building, to minimise risks of data breaches.
35. There was a lot of assurance work going on around this time, with different people, and also a lot of work being done with team at DFE. It did create resource concerns about how we could handle all this work, which included giving time to auditors, but no instruction was ever given not to interact with them by me or, to the best of my knowledge, anyone else. The nature of the audit process is that the auditors are free to speak with anyone who they consider relevant; if staff were actively refusing to speak with auditors which prevented them from doing their work then that would have been a matter of some concern to the auditors and I would have expected them to raise it with me and other senior management figures.

36. In respect of Mr Fyfe's allegations, I am also not aware of any collusion or cover-up as between Ofgem and the auditors about the nature of their conclusions. This is a serious allegation and I confirm that I have never been involved in any such matters.
37. Finally, I have always welcomed independent assurance on our schemes. The Audit and Risk committee has a work plan approved by the (GEMA) Board to provide independent assurance. In addition to that required by the Board, I have regularly commissioned additional work from Deloitte and others to look at project assurance, areas of concern where a deep dive is of benefit and anywhere else where we feel scrutiny of experts would improve our work.
- e. At any time during your employment with Ofgem did you tell anyone, were you told by anyone, or were you aware of others telling anyone, not to speak to auditors? If the answer is 'yes', then please provide a full explanation of the facts and circumstances.
38. No, I did not advise anyone to do this, and to my recollection I was not informed by anyone that such a thing was happening. To my recollection, Mr Fyfe never raised this with me. I do not consider Mr Ward's email to be evidence of this as I have explained above.
- f. Are you aware, at any time during your employment with Ofgem, of any member of Ofgem staff saying anything that could be construed, or misconstrued, whether by Edward Fyfe or others, as encouraging staff not to speak to, or otherwise fully co-operate with, auditors? If the answer is 'yes', then please provide a full explanation of the facts and circumstances.
39. Please see my responses above.
- g. What do you say about the allegation that there was a "significant cover-up of what has happened" (which the Inquiry takes to be a reference to what happened during Ofgem's administration of the Northern Ireland Non Domestic RHI Scheme)?
40. I strongly refute and reject this allegation. I have engaged openly and transparently with the Inquiry. Unlike Mr Fyfe, I have attended the Inquiry to give evidence, and also attended the PAC. I've been wholly honest and transparent. I have played no role in any alleged cover up.
- h. At any time during your employment with Ofgem were you involved in, or aware of, anything that could be construed, or misconstrued, as a "cover-up"? If the answer is 'yes', then please provide a full explanation of the facts and circumstances.



41. No.

5. Please set out any other information of which you consider the Inquiry should be aware


42. At this point in time there is no further information in relation to the allegations made by Mr Fyfe.

43. As I explained above, if the Inquiry is to consider it necessary to publish Mr Fyfe's statement alongside its final report or otherwise I believe it is important for it to take action to mitigate the potential harm which may be caused to me. This arises to the serious but baseless allegations he makes against me relating to destruction of documents. These have the real potential to damage my public reputation which would be wholly unjustified. I would ask the Inquiry, in the interests of fairness to me, to reach a clear and unambiguous finding in relation to these matters: to conclude that there is no evidence that they occurred.

44. I would be happy to assist the Inquiry in relation to any other matters.

Statement of Truth

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

Signed:  _____

Dated: 08/02/2019