



RENEWABLE HEAT
INCENTIVE INQUIRY

RHI Inquiry

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BELFAST BT1 3LY

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E: general@rhiinquiry.org

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Catriona Gibson
Managing Partner
Arthur Cox Solicitors
Victoria House
Gloucester Street
BELFAST
BT1 4LS

By post and email Personal information redacted by the RHI Inquiry

13 September 2017

Dear Madam

Re: The Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme
Provision of a Section 21 Notice requiring the provision of 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').

A copy of the RHI Inquiry's Terms of Reference is available on the Inquiry's website, at www.rhiinquiry.org. I know that you will be familiar with the work of the RHI Inquiry from my previous correspondence with you in relation to the provision of documentation to the Inquiry.

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 also now in the process of requiring individuals 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.

The Inquiry is aware that your firm was involved in the process of drafting the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012. In this context, it would be of assistance to the Inquiry to have a statement from you setting out your firm's involvement with the Non Domestic Renewable Heat Incentive Scheme in Northern Ireland ('the Scheme') or other matters within the Inquiry's field of enquiry.

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. As you are also aware, the Department for the Economy (formerly the Department for Enterprise, Trade and Investment) has waived privilege in relation to work carried out, or advice given to it, in relation to the RHI Scheme.

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 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.

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 available on the Inquiry's website. This restriction order prohibits you from publishing any documentation received from the RHI Inquiry (save that you may show it to your legal representative) unless you first obtain the consent in writing of the Inquiry Chairman.

In addition to the three restriction orders made by the Chairman of the RHI Inquiry (which you will find published on the Inquiry website) receipt of this correspondence and its enclosures also places you under a duty of confidentiality to the RHI Inquiry in respect of them. You may share the correspondence and the enclosed Notice and documents with your legal representative(s), but neither you nor they may show, communicate the contents of, nor provide this correspondence or the Notice or documents to any other person or organisation without the express permission of the RHI Inquiry. Any breach of this duty of confidentiality is actionable at the suit of the Inquiry Chairman.

You will also find attached to the Section 21 Notice a Guidance Note explaining the nature of a Section 21 Notice and the procedures that the RHI Inquiry has adopted in relation to such a notice. In particular, you are asked to provide your evidence in the form of the template witness statement which is also enclosed with this correspondence.

Given the tight time-frame within which the RHI Inquiry must operate, the Chairman of the Inquiry would be grateful if you would comply with the requirements of the Section 21 Notice as soon as possible and, in any event, by the date set out for compliance in the Notice itself.

Finally, I would be grateful if you could acknowledge receipt of this correspondence and the enclosed notice by email to Patrick.Butler@rhiinquiry.org.

Please do not hesitate to contact me to discuss any matter arising.

Yours faithfully



Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE**[No 466 of 2017]**

1. Summarise how Arthur Cox came to be providing assistance to the Department of Enterprise, Trade and Investment (DETI) in relation to the drafting of the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012. In the course of your response, please address the following matters:
 - a. Whether Arthur Cox tendered for this work; and
 - b. How it was selected to provide the assistance which it did.
2. Without prejudice to the generality of paragraph 1 above, specify whether Arthur Cox held itself out as having any particular expertise or experience relevant to the work required on behalf of DETI and/or in relation to energy policy or legislation generally.
3. Summarise the work undertaken by Arthur Cox for DETI in relation to the Non Domestic Renewable Heat Incentive Scheme in Northern Ireland ('the RHI Scheme').
4. Without prejudice to the generality of paragraph 3 above, set out Arthur Cox's understanding of what was required of it in respect of each of the five work requests provided to it by DETI (and provided by you to the Inquiry in response to Chairman's Notice No 159 of 2017).
5. State whether DETI instructed Arthur Cox to carry out any further work in relation to the RHI Scheme which was not included in the five work requests, or whether Arthur Cox did carry out any such further work, and, if so, describe what that work was.
6. Explain, to your knowledge:

- a. Why DETI sought external, independent legal advice in relation the drafting of the 2012 Regulations, rather than using in-house legal staff or other government lawyers (such as the Departmental Solicitor's Office or the Office of Legislative Counsel); and
 - b. What work was carried out in relation to the drafting of the 2012 Regulations by the Departmental Solicitor's Office (DSO) and the difference in role or nature, if any, between the work carried out by the DSO and by Arthur Cox.
7. State whether Arthur Cox considered it any part of its professional role, in providing assistance to DETI, to give advice as to (a) the policy of the draft Regulations; and (b) potential deficiencies in the Scheme definitions (such as definitions lacking clarity, loopholes or definitions which could be exploited in order to abuse the Scheme).
8. Set out what steps were taken in order to ensure that the 2012 Regulations, as drafted, ensured that claims made under the Scheme were consistent with the purpose of the Scheme.
9. Describe any interactions or communications between Arthur Cox and DETI in relation to the RHI Scheme which were, or are, of particular significance in the view of Arthur Cox.
10. Specify whether Arthur Cox considered that it was provided with sufficient time by DETI to carry out the work required in the various work requests issued to it. If not, please give reasons for your response.
11. In respect of work which was undertaken in relation to work request 5, clarify whether (a) there was ever a final report provided to DETI or whether (b) the "*preliminary draft report*" sent to DETI on 28 March 2013 was the last version of that report provided to DETI. If the latter, please provide reasons for this.

12. Provide any further evidence or information within your knowledge or belief that is relevant to the matters which the RHI Inquiry is investigating as set out in the RHI Inquiry's Terms of Reference or of which you consider the RHI 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.

RHI/128/2017

ARTHUR COX

BELFAST · DUBLIN · LONDON · NEW YORK · SILICON VALLEY

RHI Inquiry
29 SEP 2017

OUR REFERENCE
CG/MM/R001950001

YOUR REFERENCE

28 September 2017

PRIVATE AND CONFIDENTIAL
TO BE OPENED BY ADDRESSEE ONLY

Patrick Butler, Solicitor to RHI Inquiry

1st Floor
Waterfront Plaza
8 Laganbank Road
Belfast
BT1 3LY

BY POST AND EMAIL: Patrick.Butler@rhiinquiry.org

Dear Mr Butler

Re: The Independent Public Inquiry into the Non-Domestic Renewable Heat Incentive (RHI) Scheme ("the RHI Scheme")

Provision of a Section 21 Notice No 466 of 2017 to Arthur Cox ("the Notice") regarding the provision of evidence in the form of a written statement

I refer to your letter dated 13 September 2017 enclosing the Notice, which requires the provision of evidence from me in the form of a written statement.

Please find enclosed my witness statement dated 28 September 2017. I confirm that this is being sent to you both electronically and in hard copy.

Should you have any queries whatsoever, please do not hesitate to contact me, Catriona Gibson, on catriona.gibson@arthurcox.com or 028 90 230007.

Yours sincerely,



Catriona Gibson
Managing Partner
ARTHUR COX

Enc



INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 466 of 2017

DATE: 28 September 2017

Witness Statement of: Catriona Ann Gibson

I, Catriona Ann Gibson, Partner in Arthur Cox Solicitors of Victoria House, 15-17 Gloucester Street, Belfast, BT1 4LS, will say as follows: -

Preliminary remarks/context

1. I am Managing Partner of Arthur Cox Solicitors, Northern Ireland ("Arthur Cox") and have held this position since February 2016. On 13 September 2017, I received a notice (number 466 of 2017) pursuant to Section 21 of the Inquiries Act 2005 from Mr Patrick Butler ("Mr Butler"), solicitor to the Independent Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme ("the Notice") ("the Inquiry") ("the Scheme"). The Notice requires me to provide evidence in the form of a witness statement in response to the Notice.
2. Accordingly I make this, my first witness statement in this matter, in response to the Notice.
3. Before addressing the numbered points set out in the Notice, I set out some initial remarks, in order to assist the Inquiry.
4. On 15 May 2017 I received notice numbered 159 of 2017 from Mr Butler ("the First Notice"). The First Notice required the provision of documentation from the files of Arthur Cox in relation to work undertaken by Arthur Cox on behalf of the Department for the Economy (formerly the Department for Enterprise, Trade and Investment) ("the Department") in relation to the Scheme.
5. On receipt of the First Notice, I arranged for the undertaking of a comprehensive search of documentation (within the custody or control of Arthur Cox) relevant to the Scheme, and supervised the detailed review of that documentation. This review culminated in provision of documentation to the Inquiry under cover of a letter dated 26 May 2017.



6. Following the sending of the letter dated 26 May 2017, I received a letter dated 2 June 2017 from Mr Butler, querying the extent of some of the redactions made to the documentation supplied on foot of the First Notice. I responded to that letter by a letter dated 19 June 2017.
7. For clarity, save that I was aware that Arthur Cox was appointed as an Energy Legal Adviser firm to the Department for Enterprise, Trade and Investment ('DETI') in 2011 (and I had no role in the tender that led to that appointment or any work that was done as a result of the appointment) I confirm that I have no direct personal knowledge of the matters set out in the Notice, other than what is readily apparent to anyone reviewing the documentation recalled and considered on foot of the First Notice.
8. The responses that I provide below are therefore naturally limited in nature and are provided to the best of my knowledge, information and belief. I stress that no discourtesy is meant to the Inquiry, but I cannot speak to matters that are outside my direct personal knowledge, information and belief.
9. I turn now to the numbered points set out in the Notice.

Response to numbered points set out in the Notice

1. I refer to paragraph 7 above. I have no direct personal knowledge as to how Arthur Cox came to be providing assistance to DETI in relation to the drafting of the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012:
 - a) I do not know if this was as a result of the tender that led to the appointment of Arthur Cox as an Energy Legal Adviser to DETI.
 - b) I do not know how Arthur Cox was selected to provide the assistance which it did.
2. I have no direct personal knowledge of the matters set out in this request; as such I am unable to speak to it.
3. I have no direct personal knowledge of the matters set out in this request; as such I am unable to speak to it.



4. I have no direct personal knowledge of the matters set out in this request; as such I am unable to speak to it.
5. I have no direct personal knowledge of the matters set out in this request; as such I am unable to speak to it.
6. Explain, to your knowledge:
 - a. I have no direct knowledge of the matters set out in this request; as such I am unable to speak to it.
 - b. Ditto 6(a) above.
7. I have no direct personal knowledge of the matters set out in this request; as such I am unable to speak to it.
8. I have no direct personal knowledge of the matters set out in this request; as such I am unable to speak to it.
9. I have no direct personal knowledge of the matters set out in this request; as such I am unable to speak to it.
10. I have no direct personal knowledge of the matters set out in this request; as such I am unable to speak to it.
11. I have no direct personal knowledge of the matters set out in this request; as such I am unable to speak to it.
12. I have no such further evidence or information within my knowledge or belief.

Statement of Truth

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

Signed: Adrian O'Shea

Dated: 28/9/17