



RENEWABLE HEAT
INCENTIVE INQUIRY

WIT-42201

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By post and email to: joanne.mcburney@finance-ni.gov.uk

4 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').

I enclose herewith a copy of the RHI Inquiry's Terms of Reference. You will no doubt be aware that the RHI Inquiry is currently conducting its investigations into the matters set out in its Terms of Reference. These investigations include gathering in of all of the relevant documentation from relevant departments, organisations and individuals as well as 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.

In keeping with the approach we are taking with other individuals, the RHI Inquiry is

Chairman: Rt Hon Sir Patrick Coghlin | Secretary: Andrew Browne | Solicitor: Patrick Butler

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 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.

As you may be aware, the Inquiry has already required the provision of a statement setting out the respective corporate positions of both the Department for the Economy and the Department of Finance in relation to the RHI Scheme. However, the Inquiry Panel is also interested in the roles played by individual civil servants who were involved with the Scheme. Moreover, the Inquiry Panel recognise that individual officials may have a different perspective from, or may even disagree with certain aspects of, the position adopted by their Department (or former Department). The statement which is required from you pursuant to the enclosed Notice is your opportunity to explain what you did in relation to the RHI Scheme and why you did it; and also to make the Inquiry aware of any concerns you may have about the actions

or omissions of others.

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 the Department of Finance (DoF) is making arrangements to permit such access, at least in the first instance. You should contact Emer Morelli, Head of Supply, to organise this. She is contactable at Emer.Morelli@finance-ni.gov.uk. I have informed Ms Morelli that you may be making contact with her to arrange access to documentation; but there is, of course, no obligation upon you to do so.

Receipt of this correspondence and its enclosures places you under a duty of confidentiality to the RHI Inquiry in respect of them. You may share the correspondence and the enclosed Notice with your legal representative(s), but neither you nor they may show, communicate the contents of, or provide this correspondence or the Notice 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. In addition, a similar restriction is contained in Restriction Order No 2 of 2017 made by the Inquiry Chairman and available on the RHI Inquiry website.

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 note that you have already received two Section 21 Notices from the Inquiry:

one seeking details in respect of phones, email accounts, and other modes of communication used by you, and another seeking the production of any potentially relevant documents in your custody or control. I also note that you replied to both notices some time ago. Nonetheless I would be grateful if, in light of the various detailed issues raised in the Schedule to this Notice (No. 421 of 2017) and the consideration you give to those issues when preparing your statement, you would revisit the question of potentially relevant documents in your custody or control so as to ensure that you have provided all of same to the Inquiry.

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, appearing to read 'Patrick Butler', with a stylized flourish at the end.

Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE**[No 421 of 2017]***Background*

1. Summarise your occupational history, qualifications, and experience.
2. Summarise your role(s) within the Department of Finance (previously the Department of Finance and Personnel) ('the Department' / 'your Department') including (a) the dates between which you held each role and what each role entailed, as well as (b) details of how each role related, if at all, to the Non Domestic Renewable Heat Incentive (RHI) Scheme in Northern Ireland ('the RHI Scheme').
3. Explain, insofar as is relevant to any involvement you had with the RHI Scheme, to whom you were accountable and/or reported in the Department and who, if anyone, was accountable, and/or reported, to you.

The RHI Scheme – Involvement with the Scheme or with Officials in respect of it

4. Set out in detail the involvement that you had in, or relating to or touching upon, the RHI Scheme and, in particular, the following issues:
 - a. The creation of the Scheme;
 - b. The funding of the Scheme;
 - c. The administration/operation of the Scheme;
 - d. Any problems or difficulties (such as, for example, actual or projected overspend) which emerged in respect of the Scheme (including, but not limited to, the causing or permitting, identification, consideration [whether by the Public Accounts Committee or otherwise] and/or remediation of any such problems);

e. The amendment, suspension or closure of the Scheme;

in each instance providing:

- i. Details of any relevant interactions with Civil Servants (whether in your own Department, DETI, DECC, HM Treasury, or elsewhere), Committees (such as the Public Accounts Committee), Ministers, Special Advisers, MLAs, politicians, political parties and other potentially relevant persons (e.g. consultants, the renewable heating industry, actual or potential applicants for accreditation under the Scheme, journalists, etc.);
 - ii. Where you made any decision, or gave any advice, in respect of any of the matters set out at paragraphs a. to c. above, the reasons for that decision or that advice (as the case may be); and
 - iii. Details of any documents which are of significance or particular relevance (which should be annexed to the witness statement if you have access to the documentation which permits you to do so; or, otherwise, which are identified in clear terms).
5. If different from your answer to the previous question, set out in detail the involvement that you now consider you *ought properly to have had*, in, or relating to, the RHI Scheme and the issues mentioned in the previous question as well as the reasons why you did not, in fact, have such involvement.
6. Clarify whether, at any time, you became aware of actual or potential problems, anomalies, loopholes, risks, flaws, misunderstandings, or other issues in respect of the RHI Scheme, its administration, operation and/or funding, and, if you did, please provide the following details:
- a. The precise problems etc. of which you became aware;

- b. The date on / by which you first became aware of each one;
 - c. The means by which you became so aware;
 - d. The action (if any) actually taken by you in respect of each such problem etc. (e.g. raising the issue with DETI, etc.) including details of the date(s) of any step(s) taken by you and the name(s) and role(s) of any other person(s) with whom you engaged;
 - e. (If different from your answer to the previous question) the action that you now consider you ought properly to have taken, as well as the reasons why you did not, in fact, take such action at the relevant time.
7. Identify, in respect of the role(s) you performed relevant to the RHI Scheme, any documents which you consider to be of significance or particular relevance (same should be annexed to your witness statement, if you have access to them, or else identified in terms that include details of the person or body whom you believe holds the said documents).

The RHI Scheme – Issues in respect of the Funding for the Scheme

8. On 9 November 2016 at 09:30 you sent an email to Jeff McGuinness which is served herewith under Inquiry reference DOF-41476 to 41477 (your email is at the foot of page DOF-41477). In relation to the contents of that email please address the following matters:
- a. Your role at that time and, in particular, your role in respect of the RHI Scheme;
 - b. The role of Jeff McGuinness at that time;
 - c. The full name of each of the persons identified as “Pamela”, “Alison”, and “David” in the email;

- d. Your understanding of the point then being made by “DfE”, including details of the “point in time” when DfE received the additional AME budget which it is suggested DfE thought would continue;
- e. Your knowledge or understanding of the funding position in respect of the RHI Scheme, in particular for the financial year 2015-2016, at the time when you sent the said email;
- f. Any change in your knowledge or understanding of the funding position in respect of the RHI Scheme, in particular for the financial year 2015-2016, including details of when, and for what reasons, your knowledge or understanding changed;
- g. Your knowledge of when, and in what terms, details of the funding position in respect of the RHI Scheme for the financial year 2015-2016 were communicated to DfE, whether before, during, or after the said financial year.

Promotion of the RHI Scheme

- 9. Specify whether you promoted the RHI Scheme and/or encouraged any third party to seek accreditation under the Scheme, assisted any third party in so doing, or provided any third party with information knowing that they might apply, or consider applying, or that they might advise, encourage, assist, or cause other persons to apply, or consider applying, for accreditation under the Scheme. In respect of any such instance, please provide full details including (but not limited to) the third party concerned and the date of any steps taken by you in that regard.

Lobbying and pressure

- 10. Identify any instances, to your knowledge or belief, of lobbying or encouragement of Ministers, Special Advisers, Civil Servants or other relevant persons in relation to the terms of the Scheme and/or the introduction, non-introduction, variation or delay of the introduction of cost controls into the RHI

Scheme (including, but not limited to, the amendment of tariffs, tiering, degression and Scheme suspension or closure) at any stage.

11. Identify any instances, to your knowledge or belief, where influence or pressure was exerted on you in relation to any aspect of the RHI Scheme (including details of the person exerting the influence or pressure, the approximate date of same).
12. Identify any instances, to your knowledge or belief, where influence or pressure was exerted upon someone else in relation to the RHI Scheme (including details of the person exerting the influence or pressure, the person upon whom same was exerted, the approximate date of same, and how you came to be aware of it).

Standards of conduct and conflict of interest

13. Identify any instances, to your knowledge or belief, where a Minister, Special Adviser, Civil Servant or any other person involved in the RHI Scheme (including, if applicable, yourself):
 - a. Breached relevant standards (including, but not limited to, the Nolan Principles, the Ministerial Code of Conduct, the Civil Service Code of Conduct, the Code of Conduct for Special Advisers and/or terms or conditions of employment or service) or acted in a way incompatible with their duties (including, but not limited to, by means of making premature or unauthorised disclosures);
 - b. Acted in circumstances relating to or touching upon the Scheme in any way where they had a real or perceived conflict of interest;

in respect of any such instances, providing details and specifying the basis for any belief that there has been a breach of a relevant standard or duty or that a conflict of interest arose.

14. Specify whether, to your knowledge, you have any connection to a person or body receiving payment under the RHI Scheme or benefiting commercially from the Scheme in some other way (for instance, by supplying equipment, plant, fuel or other goods or services used by Scheme claimants). In this request, a 'connection' includes (but is not limited to) circumstances where the Scheme claimant or beneficiary is a relative, friend, close acquaintance, business associate or (in the case of politicians or special advisers) donor or supporter (either to or of you or your political party).

Whistle-blowing and raising of concerns

15. Identify any instances of which you are aware of whistle-blowing in relation to the NI RHI Scheme, or disclosures made in the public interest raising concerns about the Scheme, setting out details of when this occurred, to whom and by whom any relevant disclosure was made and how it was dealt with.
16. In particular, provide an account of how you dealt with any disclosures raising concerns about the Scheme made or communicated to you at any time. In relation to each such instance, identify precisely how the concerns were communicated to you.

General

17. Summarise the risks, problems, flaws, anomalies, loopholes, or other issues that you consider existed in the RHI Scheme (as enacted on 31 October 2012) and its operation.
18. Set out what responsibility, if any, you consider your Department (and, in particular, your Division, Branch, etc.) bears for any of the said risks, problems, flaws, anomalies, loopholes, or other issues or for any issues that have emerged in the RHI Scheme during the period of its operation.
19. Set out what responsibility, if any, you consider other persons or bodies bear for any of the said risks, problems, flaws, anomalies, loopholes, or other issues

or for any issues that have emerged in the RHI Scheme during the period of its operation.

20. Provide any further evidence within your knowledge or belief which is relevant to the matters which 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.



INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 421 of 2017

DATE: 15 September 2017

Witness Statement of: Joanne McBurney

I, Joanne McBurney, will say as follows: -

Background

1. I have been an employee in the Northern Ireland Civil Service, (NICS), since 1986, working at a range of grades in a variety of posts since that time. Since May 2000 I have worked primarily in the area of public expenditure in the Department of Finance and Personnel, (DFP). I have been a member of the Chartered Institute of Management Accountants since April 2004.
2. I am currently the Head of Central Expenditure Division (CED), Grade 5, in the Public Spending Directorate, (PSD), of the Department of Finance, (DoF). I have been in this post since 1 September 2014. CED is responsible for the planning and management of public expenditure in Northern Ireland. This includes the Northern Ireland Executive's Budget process, the in-year monitoring process, outturn and forecast outturn, AME forecasts, management of borrowing under the Reinvestment and Reform Initiative, liaison with HM Treasury (HMT) and the provision of guidance on technical budget and classification issues. During this period I have had no direct involvement with the Non Domestic Renewable Heat Incentive Scheme, "the RHI scheme". My division, however, is responsible for the provision of AME forecasts to the Office for Budget Responsibility (OBR). AME forecasts are usually requested biannually by OBR in advance of fiscal events such as the Chancellor's Budget or Autumn Statement. Once we are aware that OBR will be seeking a forecast we commission the information from each of the NI Departments. We then perform high level quality assurance on the departmental returns before



submitting the information to OBR. Departments own the forecast information provided to OBR and we do not alter the figures provided. Any queries are referred to the Department providing the forecast, copied to Supply Division. I understand that for the forecast provided prior to Spending Review 2015, which was announced on 25 November 2015, my division liaised with HMT on the number of years to be included in the forecasts for the Non Domestic RHI Scheme in an absence of settlement figures for those years. I do not recall having any direct personal involvement in either of these processes in relation to the RHI Scheme.

In November 2016 I was asked by the Head of Accountability and Financial Management Division to clarify the position with the AME budget. I consequently sent an email, dated 9 November 2016, to Jeff McGuinness, a Grade 7 in my division, asking him to investigate (this is email chain has been provided to the Inquiry (DOF-41477)). Ultimately a response was received from Supply Division.

On 21 March 2017, Michelle Scott in Supply Division, forwarded an email from DfE to me which included a paper on 'Accounting and Budgeting Treatment of Enforcement Outcomes'. I have annexed a copy of this email chain, including attachments, (Annex A). The paper set out DfE proposals for recouping overpayments under the Non Domestic RHI scheme and sought advice on the budget treatment. I provided some initial views on the paper and then passed it to Pamela Galloway, the Grade 7 in my division with responsibility for AME, to consider further and raise with HM Treasury as appropriate. This was duly done and discussions with HM Treasury are currently ongoing.

From 6 May 2014 to 31 August 2014 I was Head of Supply Division which, like CED, also sits in PSD within DoF, (at that time DFP). Supply Division is responsible for recommending the allocation of, controlling and reporting on, the resources made available to Northern Ireland Departments to optimise the distribution of public expenditure towards achieving the jurisdiction's strategic objectives and priorities. During this time I do not recall having any involvement with the RHI scheme.



From September 2012 to 5 May 2014 I worked in the Department for Justice.

From November 2008 to September 2012 I was a Grade 7 Accountant in CED in PSD. Within this period, between November 2008 and July 2010, I was responsible for the Executive's in-year monitoring process. From August 2010 to September 2012, I was then responsible for the Executive's Budget process. During this period I was not, however, responsible for the AME budget. This is treated as a distinct category of budget, with the responsibility for the provision of AME forecasts to OBR lying with another Grade 7, Agnes Lennon, in CED. My role at that time did not relate to the RHI scheme.

On 6th February 2012 I was asked by the then Grade 3 of PSD, Richard Pengelly, to consider a reference to a renewable heat scheme, (RHI), and the availability of funding for that RHI which had been earmarked in the Spending Review 2010 settlement letter (dated 20 October 2010), (DOF- 02432-02433 refers). As requested, I raised this query with DFP Supply division by email, dated 7th February 2012, and following a series of responses from officials within DFP Supply was informed that my colleague with responsibility for the AME budget had already engaged with Supply on this matter and as a result Supply had engaged with DETI to ensure they included forecast for a renewable heat scheme in their AME forecasts. This email chain has already been provided to the Inquiry (DOF-02434 -02437 refers).

3. I had no direct involvement with the RHI scheme.

In terms of reporting structures: -

As Head of CED I report to the Budget Director (Grade3) which would have been Mike Brenan during this period. Three Grade 7 officers report directly to me, with one responsible for the Budget process, one responsible for the in-year process and the third, Pamela Galloway, responsible for AME forecasting, among other things. The responsibility for AME forecasting entails the commissioning of AME forecasts from each of the NI Departments, the onward



transmission of these forecasts to OBR and liaising with NI Departments to address any OBR queries relating to the forecasts. The main CED function is to act as a conduit ensuring that the information is fed back to OBR. Only basic high level quality assurance is carried out on the forecast which is concentrated on ensuring that departments have provided the information in the form requested by OBR. Departments retain ownership of the data provided and CED do not alter the financial information provided. Any queries are referred to the department.

During my time as a Grade 7 in CED, between November 2008 and September 2012, I reported to the Grade 5 in CED, with one Deputy Principal reporting directly to me.

The RHI Scheme – Involvement with the Scheme or with Officials in respect of it

4.

- a. I had no involvement in the creation of the RHI scheme.
- b. I had no direct involvement in the funding of the scheme. As Head of CED, however, the officials within my division who reported to me would have engaged with OBR on AME forecasts.
- c. I had no involvement in the administration/operation of the scheme.
- d. My only involvement in the projected overspend would have been in 2016-17 when this issue was addressed in the in-year Monitoring papers going to the NI Executive. My role would have been to provide advice on the overall public expenditure position including the availability of funding. This advice would have been provided to the Budget Director and the Finance Minister and would have covered a wide range of issues, not just the potential pressure in relation to the RHI scheme. I did not provide advice on the operation of the RHI scheme nor specifically



on how the RHI pressure should be handled. The decision on how to handle the potential pressure relating to the RHI scheme was taken by the Finance Minister and endorsed by the Executive.

In his statement to the Assembly on the June 2016-17 Monitoring Round the Finance Minister advised that an allocation was not being made to DfE at that time but that he was content that the pressure could be managed within the Executive's DEL controls. My understanding is that at this time the potential RHI pressure was £32.4 million based on a worse-case scenario but that DfE had been asked to provide a more realistic figure.

In his statement on the October Monitoring round the Finance Minister confirmed that £20 million was being held centrally to address the potential RHI pressure and that DfE had sought where possible to manage the budgetary impact of RHI in 2016-17, through a number of internal reallocations. The Executive was to further assess the extent of the pressure in the January Monitoring round. However, no January Monitoring round was conducted due to the lack of an Executive.

- e. I had no involvement in the amendment, suspension or closure of the Scheme.
 - i. None
 - ii. None
 - iii. None
- 5. I do not consider that I 'ought properly to have had' any involvement in or relating to the RHI scheme and the issues mentioned.
- 6. As I had no involvement with the RHI scheme I was not aware of any actual or potential problems with that Scheme other than a general awareness based on



the NI Audit Office Report. Any involvement I had did not materialise until the potential overspend and resulting Departmental Expenditure Limit, (DEL), cost became known. I cannot recall exactly when I was made aware that there was a potential overspend in relation to the RHI scheme. However, this would have been in the context of DETI seeking additional funding through the Executive's in-year monitoring process. To the best of my knowledge this issue was first covered in the Executive paper on the 2016-17 June Monitoring round.

- a. As set out above I was only aware of the potential DEL cost in respect of the RHI scheme.
- b. I cannot recall the exact date I was made aware of the potential DEL pressure. However, as this was covered in the 2016-17 June Monitoring round I would think this was around May/June 2016
- c. As far as I can recall I was notified by Supply division of the potential DEL cost in the context of the June Monitoring round
- d. My role was concerned with providing advice on the overall public expenditure position. As such I did not have to take any action in relation to the RHI scheme.
- e. I do not consider there to be any action I 'ought properly to have taken' in relation to the RHI scheme.

7. I have not performed any roles relevant to the RHI scheme.

The RHI Scheme – Issues in respect of the Funding for the Scheme

8.

- a. At the time the email, to Jeff McGuinness on 9 November 2016, was sent I was Head of CED within PSD, (DFP). I had no direct role in respect of the Non Domestic RHI scheme. My division, however, was responsible for the provision of AME forecasts to OBR. These forecasts are usually commissioned biannually by OBR in advance of a fiscal event such as the



- Chancellor's Budget or Autumn Statement. The CED Grade 7 will commission information from each of the NI Departments, based on the request received from OBR. CED will carry out a high level quality assurance check before the information is transmitted to OBR. This check focuses on ensuring that the requirements specified by OBR are met e.g. the correct number of years are provided. A 'sense check' is also applied to make sure the forecasts provided appear reasonable, for example one year is not considerably higher than the other years in the forecast. We do not alter the data provided by departments. Any queries we may have are referred to the department for resolution or explanation. NI Departments may be asked to provide further information to inform the AME forecast received by CED, for example to provide details of underlying assumptions. Explanations, from the Departments, may be sought at the request of CED, particularly for significant variations from the previous forecast. These explanations might then be provided to OBR, if required. In addition, OBR may also raise queries in relation to the AME forecasts. Any queries raised by OBR are referred back to the appropriate Department, copied to DoF Supply division, for answer. Individual AME programmes are identifiable within the information provided to OBR and AME forecasts provided by DETI/DfE will separately identify the forecast spend on the RHI scheme. At this time, within CED, responsibility for provision of AME forecasts to HMT sat with, Pamela Galloway, (Grade 7), and her team. This process does not routinely require my involvement and I am usually only provided with a high level verbal update on the forecast e.g. benefits have increased, pensions have decreased etc. However, the Grade 7 would make me aware of any significant issues that arise for example if OBR raised concerns about a particular forecast. As far as I can recall no issues with the RHI AME forecasts were brought to my attention.
- b. Jeff McGuinness was the Grade 7 in CED, PSD, (DoF) with responsibility for the Executive's Budget process. Jeff had no role in either the RHI scheme or in relation to AME forecasting. I passed the query to Jeff because the Grade 7 with responsibility for the AME forecasts was not available. I thought Jeff would be in a position to obtain the necessary information.



- c. 'Pamela' is Pamela Galloway who was the Grade 7 within CED, PSD, (DoF), with responsibility for providing AME forecasts to HMT.

'Alison' is Alison Caldwell the Head of Accountability and Financial Management Division which sits within DoF. Amongst other things, Alison was responsible for preparing briefing for the Public Accounts Committee.

'David' is David Sterling who was DoF Permanent Secretary at that time.

While I have no firm recollection of the conversation that preceded the email. I am aware that the Northern Ireland Audit Office had at that point already reported on the failure of DfE to obtain approval for the RHI Scheme post March 2015 which had resulted in irregular expenditure. It would have been in this context that Alison and I discussed this matter. Alison was, as I understand the position, trying to get clarity on the matter for the purposes of briefing David Sterling.

- d. Based on the detail of the email, my understanding is that DfE were saying that because no cap was placed on the AME budget in 2015-16 they thought this would continue and all costs would continue to be covered by AME. This did not appear reasonable to me as a cap had been in place in previous years and it was clear that that limit was determined by applying a population share of funding for the GB scheme as set out in the SR2010 settlement letter (DOF-02432-02433) and the email between Jon Parker in HMT and Alison Clydesdale in DETI in April 2011 (WIT-30248). There was no logical reason to assume that a similar approach would not be taken to funding going forward.
- e. At the time of the email my knowledge or understanding of the funding position in respect of the RHI scheme was limited to the funding arrangements set out in the Spending Review 2010 and Spending Review 2015 settlement letters, the fact that the NIAO report had raised concerns



and that a significant DEL pressure had been identified in DfE through the in-year monitoring process due to spending on the Scheme being forecast to exceed the level of AME funding available.

The purpose of the email was to check what information was held by my division in relation to the preceding period and to share any uncovered information with those who needed to see it.

My comment in relation to 'not any excuse for wasting public money' was not based on any detailed knowledge of the RHI Scheme but rather on the NIAO report and that based on the queries received on the AME funding it appeared that DfE were adopting a position that the RHI Scheme was funded from AME and that project overspend was only cause for concern when it became apparent that the full costs would not be covered by the AME funding provided. To my mind it was irrelevant whether the scheme costs were covered by DEL or AME as both are funded from taxpayer's money and as such there is a duty on department's to ensure value for money.

- f. Based on the response from Angela Millar, (DoF Supply) to on 10th November 2016, to my original email dated 9th November 2016, it was apparent that HMT had neglected to notify us of a cap on AME funding for the scheme in 2015-16. However, based on the Spending Review 2010 and Spending Review 2015 settlement letters it was clear that a cap was in place for both the preceding and subsequent years.
- g. I have no recollection of when or how details of the funding position for 2015-16 were communicated to DETI. However, with no cap in place for 2015-16 there would not have been any need to communicate this to DETI. DETI would have been required to forecast spend on the scheme for that year in line with the requests from OBR.

Promotion of the RHI Scheme

9. I did not promote the RHI scheme in any way.

Lobbying and pressure

10. I have no knowledge or belief of any lobbying or pressure.
11. No influence or pressure was exerted upon me in relation to the RHI Scheme.
I had no direct involvement in the RHI Scheme.
12. I have no knowledge or belief of influence or pressure being exerted on anyone
in relation to the RHI scheme.

Standards of conduct and conflict of interest

- 13.
- a. I have no knowledge or belief of any relevant standards being breached.
- b. I have no knowledge or belief of any real or perceived conflict of interest.
14. To the best of my knowledge I do not have a connection to any person or body
receiving payment or benefiting from the RHI scheme.

Whistle-blowing and raising of concerns

15. I am not aware of any whistleblowing in relation to the RHI scheme.
16. No concerns about the RHI Scheme were communicated to me.

General

17. I do not have sufficient knowledge of the RHI Scheme to make any sort of an
informed assessment as to the risks, problems, flaws, anomalies or loopholes



which have been associated with the Scheme.

18. I do not consider that my division held any responsibility for any issues that have emerged in the RHI Scheme. My division's involvement was in communicating the content of the Spending Review settlement letters to the relevant NI Department, which was done in the usual manner via DoF Supply Division. My division was also responsible for the collection of AME forecasts from NI Departments, the onward transmission of this to OBR and liaising between OBR and the Department on any relevant issues.

The email thread from February 2012, (DOF-02434 refers), did say that our HMT spending team (Keith Jarrett) had indicated that the scheme should have been run past them. However, the SR2010 settlement letter, dated 20 October 2010, only required that 'NIE officials should inform my officials of their intentions to feed into AME forecasts'. The DFP Supply response to my email, dated 7th February, however, demonstrated that forecasts for the RHI Scheme had at that point already been included in the AME forecasts, which the HMT spending team, with responsibility for the devolved administrations, would have seen, before that date. It was also clear from this email that slippage in the GB scheme had also been considered, and indeed NI profiles amended on the back of this, which further indicated that DETI were engaging with colleagues in GB in relation to the scheme. I placed reliance on that fact. Subsequent emails also showed that DETI were in contact with HMT in relation to the NI RHI Scheme and that the NI HMT spending team were aware of this communication. Emails between Alison Clydesdale in DETI and Jon Parker in HMT in April 2011 refer. These emails have already been provided to the Inquiry (WIT-30248-30250). Mark Parkinson who was copied into these emails was a member of the NI HMT Spending Team. Whilst I have no distinct recollection of my thinking at that time, I am assuming that on the basis that the AME budget was not my direct responsibility, but the responsibility of another Grade 7 in CED, Agnes Lennon; who had already been engaging with the DETI Supply team and the scheme had already been included in the AME forecasts and the interaction that I gleaned had been ongoing between DETI and HMT that I took no further action in terms of ensuring that HMT had sight of the NI RHI Scheme.



19. As indicated at paragraph 17, I do not have sufficient knowledge of the RHI scheme nor am I suitably placed to make any informed assessment as to the difficulties with the Scheme or with whom they may be attributed.
20. I am not aware of any other evidence.

Statement of Truth

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

Signed: Joanne McBurney

Dated: 15/9/2017

ANNEX A

From: McBurney, Joanne
To: [Galloway, Pamela](#)
Cc: [McGuinness, Jeff](#); [Scott, Michelle](#)
Subject: RE: Paper re Accounting and Budgeting Treatment of Enforcement Outcomes
Date: 21 March 2017 17:23:00

Sorry – just had another thought and want to share it before I forget.

Given that the overpayments that are being recouped will be related to previous years and in those years there will have been less DEL funding – do we need to take this into account when determining the DEL / AME treatment of the recoupment.

It doesn't seem right if our DEL benefits from recouping an overpayment that was originally made from AME?

Though perhaps we just pose the question to Keith as set out below and see what he says and take it from there?

We can discuss further next week.

J

From: McBurney, Joanne
Sent: 21 March 2017 16:59
To: Galloway, Pamela
Cc: McGuinness, Jeff; Scott, Michelle
Subject: FW: Paper re Accounting and Budgeting Treatment of Enforcement Outcomes

Pamela

Jeff and I have had a look at this in your absence and while we have formed our own conclusions about the correct approach I think the only way we can be sure is to run it past HMT. It seems like more of a technical question for Keith, rather than something for Jon, and given you are the usual point of contact for such queries it might be better coming from you.

Our thinking so far, (roughly following the format of the questions at the end of the paper), is that

it is correct to treat recoupment of overpayments as negative expenditure rather than income. It is correct to adjust in the current year – this applies even where actual payments have not yet been made (i.e. accruals). We are content with the treatment set out as regards debtors etc.

We think there is a case to be made for the recoupment scoring against the DEL RHI costs in the first instance and then the AME line when the DEL element is exhausted. This is on the basis that the DEL cost relates to the amount by which the payments exceed the limit on the AME budget. Anything we do to reduce costs therefore reduces the amount of the 'overspend' and so reduces the DEL liability. We expect that Keith may push back against this – but think we need to ask – if he says no then I think a reasonable position would be to pro-rata against DEL and AME in the same proportion as actual costs that year (on the basis that we can't tell whether the original overpayment was funded from DEL or AME).

Unilateral write-offs cannot automatically score in AME. It will depend on how the credit to the RHI expense was treated when the debtor was created. If it was against the DEL line then the write-off is in DEL – otherwise our Del budget would benefit from a recoupment that never happened and there is no incentive to try and recover debts.

It is correct that a mutual consent write off scores in DEL (regardless of how the credit was treated when setting up the debtor) – as it is the department decision not to pursue the debt and they should bear the cost of their policy decision.

It is for the department to fund the cost of administering and enforcing repayments (of course, they are free to bid in monitoring rounds) – I wouldn't even think of asking Keith about this one!

Interest – correct to score in AME –as don't see why we should benefit from this.

Examples from other schemes – every case is different and for them to make the call.

Of course – you may form a different opinion and are probably closer to the budgeting treatment than me – so we can discuss further when you get back.

In terms of handling with Keith – I don't think we could send their paper as it currently stands (too many references to not benefitting the Executive) so perhaps we could just ask the key questions of Keith setting out how we think it should work and asking him if he agrees.

Joanne

From: Scott, Michelle
Sent: 21 March 2017 10:16
To: McBurney, Joanne
Cc: Morelli, Emer; Benton, Sarah
Subject: FW: Paper re Accounting and Budgeting Treatment of Enforcement Outcomes

Joanne

You may be aware that Pamela was engaging with DfE on the budget treatment of any recoupment of overpayments from non-domestic RHI recipients.

In January Pamela had asked Stephen McMurray to set out the questions which needed to be put to HMT.

I know Pamela is on leave at present but I am not sure when she returns. Would it be possible for another member of your team to consider in Pamela's absence?

Thank you

Michelle

From: Reid, Victoria
Sent: 21 March 2017 10:04
To: Scott, Michelle; Galloway, Pamela
Cc: McMurray, Stephen; Montgomery, Paul
Subject: RE: Paper re Accounting and Budgeting Treatment of Enforcement Outcomes

Pamela/Michelle

Further to earlier correspondence, please find attached a paper re the Department's interpretation of Managing Public Money NI, Consolidated Budgeting Guidance and FReM in respect of the appropriate treatment of enforcement outcomes (i.e. potential recoupment of overpayments). The finer detail of the Department's interpretation of the potential accounting and budgeting treatment is included in the excel Annex (Annex C).

Regards
Victoria

From: Galloway, Pamela
Sent: 22 January 2017 22:27
To: McMurray, Stephen
Cc: Scott, Michelle; McBurney, Joanne
Subject: Re: RHI

Stephen

The Consolidated Budgeting Guidance provides the general rule for most things but in terms of RHI payments/recoupments/reduction of future payments I would not commit to the general rule. Before stating anything as fact we should check what that fact would be, hence the need for a paper with more detail. The circumstance which results in income will result in the treatment and if there is more than one circumstance there could be more than one treatment decision. And from what you indicated to Michelle it seems there are more than one combination of factors being considered here.

There is not a straight forward answer.
Pamela

Sent from my BlackBerry 10 smartphone.

From: McMurray, Stephen
Sent: Sunday, 22 January 2017 20:59
To: Galloway, Pamela
Cc: Scott, Michelle
Subject: Re: RHI

Thanks Pamela, as you can imagine it's all pretty frenetic with RHI at the minute. In terms of any claw back received by a Department now what is the general rule, does it go back to ni centre? Back to treasury?

Stephen

Sent from my BlackBerry 10 smartphone.

From: Galloway, Pamela
Sent: Friday, 20 January 2017 16:58
To: McMurray, Stephen; Scott, Michelle
Cc: Quail, Andrea; Morelli, Emer; Millar, Angela (DoF); McBurney, Joanne
Subject: RE: RHI

Stephen

To enable us to approach HM Treasury seeking clarification on the treatment of potential income you may be able to secure will require more specific information.

We will need a paper outlining the circumstances which will lead to income being received by DfE. In this we will need you to provide as much detail as possible but this should include an estimate of the amount of anticipated income which relates to each year in which expenditure has already occurred. HMT will not provide approval to retain income if this is not a concrete proposal.

If you wish HMT to provide an indicative view at this time because you are unable to provide estimates of amounts, the paper will still need to outline the circumstances which would lead to income being received.

Reductions in forecast of future expenditure will of course fall outside of the scope of the paper.

Hope this helps

Pamela

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Bangor

Tel: 028 91858010
Internal: 68010
email: pamela.galloway@finance-ni.gov.uk

Please note any attachment with the suffix .tr5 is a TRIM reference which can only be accessed by DFP and OFMDFM

From: McMurray, Stephen
Sent: 20 January 2017 16:28
To: Scott, Michelle; Galloway, Pamela
Cc: Quail, Andrea; Morelli, Emer; Millar, Angela (DoF)
Subject: RE: RHI

Thanks Michelle

Are you assuming you will be able to secure a repayment of funds from recipients?

Yes

What period will this funding relate to?

From the inception of the programme

Is this an adjustment to accrued expenditure or actual cash payments?

Both

Does the question only relate of expenditure already incurred, or does it extend to under spend against future AME profiles?

Relates to expenditure already incurred and future expenditure

Stephen

Stephen McMurray

RHI Taskforce

Department for the Economy

Netherleigh

Massey Avenue

Belfast, BT4 2JP

Tel: 028 9025 7810 (ext: 57810)

Mob: Personal information redacted by the RHI Inquiry

TextRelay: 18001 028 9025 7810

Web: www.economy-ni.gov.uk

From: Scott, Michelle

Sent: 20 January 2017 16:22

To: McMurray, Stephen; Galloway, Pamela

Cc: Quail, Andrea; Morelli, Emer; Millar, Angela (DoF)

Subject: RE: RHI

Stephen

We will need more detail on what exactly the query is before we approach HMT – for example

Are you assuming you will be able to secure a repayment of funds from recipients?

What period will this funding relate to?

Is this an adjustment to accrued expenditure or actual cash payments?

Does the question only relate of expenditure already incurred, or does it extend to under spend against future AME profiles?

Thanks

Michelle

From: McMurray, Stephen

Sent: 20 January 2017 16:08

To: Scott, Michelle; Galloway, Pamela
Cc: Quail, Andrea; Morelli, Emer
Subject: RE: RHI

Thanks Michelle\Pamela, can you take this note as my official request, with the approval of Finance Division, to request this information from Treasury. I cannot give an estimation of how much we are talking about as this will only become clear after 100% inspections have been completed.

Stephen

Stephen McMurray

RHI Taskforce

Department for the Economy

Netherleigh

Massey Avenue

Belfast, BT4 2JP

Tel: 028 9025 7810 (ext. 57810)

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From: Scott, Michelle
Sent: 20 January 2017 16:00
To: McMurray, Stephen; Galloway, Pamela
Cc: Quail, Andrea; Morelli, Emer
Subject: RE: RHI

Stephen

I have just had a chat with Pamela and we suggest at point 1 you simply say

Clarification will be sought from DoF and Treasury.

Michelle

From: McMurray, Stephen
Sent: 20 January 2017 15:44
To: Scott, Michelle; Galloway, Pamela
Cc: Quail, Andrea
Subject: RHI

Michelle\Pamela

Suggested lines, in red, I was proposed to give to Andrew McCormick for Monday morning committee session

1. Clarification on whether savings/money clawed back from remedial measures will stay within NI AME in full or whether part may go to Treasury.

Clarification will be sought from Treasury, it is most likely that ring fenced RHI AME claw back would return to Treasury as it was supplied for a specific purpose.

ii. Regulations expired in March 2015 but spending continued, how was the period from April to September covered?

DoF approval expired in March 2015 and spending for committed RHI continued from April to September and beyond. This is still the case and all expenditure since the date approval expired (March 2015) is deemed irregular and the Departments accounts will be qualified on that basis. The new business plan once approved by DoF will seek to regularise non domestic RHI expenditure in the future.

Stephen

Stephen McMurray

RHI Taskforce

Department for the Economy

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Tel: 028 9025 7810 (ext: 57810)

Mob: Personal information
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Flowchart of potential outcomes

Circumstance giving rise to consideration of recoupment	Potential action taken by DIE under circumstance	Method of Recoupment	Other considerations	Final action	Potential Accounting Treatment	Potential Budgeting Treatment	Double Entry
1 Fraudulent claims	Reclaim - Attempts will be made to reclaim 100% of fraudulent claims.	Repayment	Payment to participant made on claims to date	Repayment to be sought resulting in recoupment of monies to DIE in current/future year relating to payments/accruals made in previous years.	Create a Debtor in the resource accounts pending recovery. Offset amount to be reclaimed against current year RHI payments (expense code)	Debtor only impacts on the budgeting framework through any related impairments and write-offs. "Income" (see rationale in Paper), the total repayment is offset against the RHI Payment record number in the current year (DEL or AME - to be advised by DoF/Treasury). If repayment is to be classified as income, DoF/Treasury advice is required on CFER implications.	Dr Receivables (SoFP) Cr Expense - RHI Payments (DEL/AME) (SoCNE) <i>being creation of debtor</i> Dr Bank Cr Receivables (SoFP) <i>being settlement of debt</i>
			No claims made to date/ No payment made to participant to date - i.e. Accrued payments only	Previous accruals overstated. Period end accruals to be amended to remove those where payment deemed inappropriate as a result of a discovered fraud.	Normal accruals process (excluding payments in respect of fraud)	None - potential underspend on RHI Payments record number (DEL/AME) (DEL or AME classification to be advised by DoF/Treasury)	None - Reversing accrual will result in credit to Expense - RHI Payments (DEL/AME) in current year. Reducing the amount payable in the current year will result in the expense being less in the current year.
			Whilst full repayment sought where repayment cannot be obtained, despite being deemed repayable.	Write-off of amounts due.	Create a Debtor in the resource accounts pending recovery/write-off. Write-off bad debt through the accounts. The SoCNE scores the impairment of the Debtor. A losses statement is required in the resource accounts incorporating all losses. A separate statement is required where individual losses exceed £250k. DoF approval required for write-off.	The creation of an impairment is reflected in the resource budget and the balance sheet value of the debtor will be reduced. DoF/Treasury advice required on whether impairment should score as DEL or AME. The Department is aware of the provisions of Consolidated Budgeting Guidance as set out below: Unilateral write off - uneconomic to seek to settle the debt, or the debtor has in some way disappeared. Mutual consent - If the write-off is by mutual consent, the write-off will score in DEL, reflecting the fact that this is a policy choice.	Dr Receivables (SoFP) Cr Expense - RHI Payments (DEL/AME) (SoCNE) <i>being creation of debtor</i> Dr Impairments (SoCNE) Cr Receivables (SoFP) <i>being write-off of recoupment (bad debt)</i>
2 Inaccuracies/inefficient use etc. not deemed "fraudulent" but where recoupment deemed appropriate	Reclaim - Always the assumed scenario unless specific circumstances dictate otherwise	Repayment	Payment to participant made on claims to date	Repayment to be sought resulting in recoupment of monies to DIE in current/future year relating to payments/accruals made in previous years.	Create a Debtor in the resource accounts pending recovery. Offset amount to be reclaimed against current year RHI payments (expense code)	Debtor only impacts on the budgeting framework through any related impairments and write-offs. "Income" (see rationale in Paper), the total repayment is offset against the RHI Payment record number in the current year (DEL or AME - to be advised by DoF/Treasury). If repayment is to be classified as income, DoF/Treasury advice is required on CFER implications.	Dr Receivables (SoFP) Cr Expense - RHI Payments (DEL/AME) (SoCNE) <i>being creation of debtor</i> Dr Bank Cr Receivables (SoFP) <i>being settlement of debt</i>

				<p>Future payments to participants are reduced by any previous amounts deemed "overpaid" over an agreed future period of time.</p>	<p>Create a Debtor in the resource accounts pending recovery.</p> <p>Offset amount to be reclaimed against current year RHI payments (expense code)</p> <p>When subsequent payments made reduce debtor by overpayment instalment with charge for full payment amount to RHI Payment (expense code).</p>	<p>Debtor only impacts on the budgeting framework through any related impairments and write-offs.</p> <p>Assuming repayment is not classified as "income" (see rationale in Paper), the total repayment is offset against the RHI Payment record number in the current year (DEL or AME -- to be advised by DoF/Treasury).</p> <p>If repayment is to be classified as income, DoF/Treasury advice is required on CFER implications.</p>	<p>Dr Receivables (SoFP) Cr Expense - RHI Payments (DEL/AME) (SoCNE) being creation of debtor</p> <p>Dr Expense - RHI Payments (DEL/AME) (SoCNE) Cr Receivables (SoFP) Cr Bank being payment to participant reduced by instalment of overpayment</p>
Reduction in future payments		<p>No claims made to date/ No payment made to participant to date - i.e. Accrued payments only</p>	<p>Previous accruals overstated. Period end accruals to be amended to remove those where payment deemed inaccurate as a result of a discovered inaccuracy/inappropriate use.</p>	<p>Normal accruals process (excluding payments in respect of inaccuracies/inappropriate use)</p>	<p>None - potential underspend on RHI Payments record number (DEL/AME). (DEL or AME classification to be advised by DoF/Treasury)</p>	<p>None - Reversing accrual will result in credit to Expense - RHI Payments (DEL/AME) in current year. Reducing the amount payable in the current year will result in the expense being less in the current year.</p>	
	<p>Don't reclaim - need to consult DoF - DOF to advise if this treatment is appropriate</p>	<p>None</p>	<p>Write-off of amounts due.</p>	<p>Create a Debtor in the resource accounts pending recovery/write-off.</p> <p>Write-off bad debt through the accounts.</p> <p>The SoCNE scores the impairment of the Debtor.</p> <p>A losses statement is required in the resource accounts incorporating all losses. A separate statement is required where individual losses exceed £250k.</p> <p>DoF approval required for write-off.</p>	<p>The creation of an impairment is reflected in the resource budget and the balance sheet value of the debtor will be reduced.</p> <p>DoF/Treasury advice required on whether impairment should score as DEL or AME.</p> <p>The Department is aware of the provisions of Consolidated Budgeting Guidance as set out below:</p> <p>Unilateral write off - uneconomic to seek to settle the debt, or the debtor has in some way disappeared.</p> <p>Mutual consent - If the write-off is by mutual consent, the write-off will score in DEL, reflecting the fact that this is a policy choice.</p>	<p>Dr Receivables (SoFP) Cr Expense - RHI Payments (DEL/AME) (SoCNE) being creation of debtor</p> <p>Dr Impairments (SoCNE) Cr Receivables (SoFP) being write-off of recoupment (bad debt)</p>	