



Joanne McBurney
Central Expenditure Division
Department of Finance
Room, P3, Rathgael House
43 Balloo Road
Bangor
BT19 7PR

By Post and Email joanne.mcburney@finance-ni.gov.uk

9 October 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 know you will already be familiar with the work of the Inquiry and its Terms of Reference from my previous correspondence with you.

The Inquiry is grateful for the witness statement you provided to it dated 15 September 2017. That statement has been considered by the Inquiry and there are a number of further matters the Inquiry wishes to ask you about arising out of it.

Therefore, 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 written statement addressing the matters identified in the Schedule to the Section 21 Notice. Unless otherwise stated, references to paragraph numbers in the Schedule to the enclosed Section 21 Notice are references to paragraphs in your previous statement.

As the text of the Section 21 Notice explains, you are required by law to comply with it.

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

I appreciate that you may require or desire access to some documentation in order to assist you in preparing your statement. In particular, you may wish to see documentation to which you previously had access but now no longer have access in your current post. If that applies in your case, I understand that the Department for Finance (DoF) is making arrangements to permit such access, at least in the first instance. You should contact Emer Morelli at DoF to organise this. She is contactable at Emer.Morelli@finance-ni.gov.uk. I have informed her 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.

I also refer you to Restriction Order No 2 made by the Chairman of the RHI Inquiry on 22 June 2017, a copy of which is enclosed for your convenience. This restriction order prohibits you from publishing any documentation received from the RHI Inquiry (save that you may show it to your legal representative) unless you first obtain the consent in writing of the Inquiry Chairman.

In addition to the 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 501 of 2017]*****HMT Jon Parker's email of 15 April 2011 [WIT-30248]***

1. It appears to the Inquiry that Mike Brennan copied you into his email to Stuart Stevenson (DFP Supply), forwarding the email of Jon Parker (of HMT) of 15 April 2011. As to this:
 - a. What role were you performing at the time you were copied into the email?
 - b. What role was Peter Jacobson performing?
 - c. What role was Agnes Lennon performing?
 - d. Prior to receipt of this email had you ever before come across non-standard AME with potential DEL consequences (or capped AME)? If the answer is 'yes', please provide details.
 - e. Did this form of funding carry greater risk for Northern Ireland departments than standard AME?
 - f. If the answer is 'yes', then please explain what the greater risks were.
 - g. If the answer is 'yes', then please set out all steps taken by DFP (if any) to guard against the greater risks?
 - h. Of what discussions are you aware taking place between DFP and HMT about how this non-standard AME (or capped AME) (as disclosed by HMT in April 2011) should be managed? When did any such discussions take place, between whom, and how (if at all) were they recorded?

- i. What steps (if any) did you take to manage the fact that RHI funding was non-standard AME?
- j. What steps (if any) do you say could have been taken by DFP to manage the fact that this particular funding was non-standard AME?
- k. What steps (if any) do you say should have been taken by DFP to manage the fact that this particular funding was non-standard AME?
- l. What steps (if any) do you say should have been taken by DETI to manage the fact that this particular funding was non-standard AME? To your knowledge, were these steps taken? What steps (if any) did DFP take to ensure that DETI was making appropriate arrangements to manage this type of funding?
- m. What, if anything, did you do to flag the 15 April 2011 email from HMT's Jon Parker within DFP and/or DETI?

DFP Joanne McBurney's email of 7 February 2012 [DOF-02434]

- 2. It appears to the Inquiry that, on 7 February 2012, you sent an email to Agnes Lennon (then, as far as the Inquiry understands, Grade 7 within DFP Central Expenditure Division, dealing with HMT in respect of AME) which said:

"Keith [Jarett, in HMT NI Spending Team – added for identification by the Inquiry] said we should run the scheme past him which I'm not sure would have happened. But I'm not inclined to raise it again I would just like to know for my own information what actually happened. I presume you didn't pick it up from the settlement letter therefore we must have come across it from another angle."

As to this please explain:

- a. When did Keith Jarett (HMT NI Spending Team) tell you he wanted the scheme run past him?
- b. Was this recorded in some form? If so, please explain (and, if you contend this has already been provided to the Inquiry, please identify it, if possible, by its Inquiry page reference number).
- c. What were the reasons, as you understood them, as to why Keith Jarett wanted the scheme run past him?
- d. Your email, of 7 February 2012, suggests that by that date DFP had not run the scheme past Keith Jarrett in the HMT NI Spending Team. If you had not done so, please explain why this did not happen?
- e. Why were you, as of 7 February 2012, not inclined to run the scheme past Keith Jarett?
- f. In your view now, should the RHI Scheme have been run past Keith Jarett in the HMT NI Spending Team?
- g. From your experience, what benefits, if any, might have accrued from running the RHI Scheme past Keith Jarett in the HMT NI Spending Team? Please explain the basis for your answer.

**DETI Finance Jeff Partridge's emails of 11 December 2013 and 10 January 2014
[WIT-18730]**

3. It appears to the Inquiry that, on 11 December 2013, Jeff Partridge emailed colleagues in DETI to say that:

"DFP have advised that AME budgets are formulated using the information provided in AME forecasting exercises, and there is no separate bidding process. Therefore, for RHI the current profile is £6.35m 2014/15, £9.5m 2015/16, £13.5m 2016/17, £18.5m 2017/18, £24.5m 2018/19 and £31.0m 2019/20."

In the same vein, on 10 January 2014, Jeff Partridge emailed DETI's Trevor Cooper to say that:

"In relation to AME RHI Budgets, I actually checked this out with DFP last month (short memory lapse on my part!), and it was confirmed that the AME forecasting exercises are used to formulate the Northern Ireland AME budgets. Coincidentally, DFP have this week confirmed the AME Budget 2014 exercise (attached) which shows AME budgets from 2014-15 to 2019-20 and includes the full RHI projections provided by Energy Division."

As to this:

- a. Which person, or which combination of people, in DFP provided this information to Jeff Partridge in DETI Finance?

- b. Was the information, which Jeff Partridge recorded that he had been provided with, accurate? Please explain the basis for your answer.
- c. Why was Jeff Partridge not told that, rather than AME forecasting exercises determining DETI's RHI budget, it was a non-standard form of AME that had both a cap, and DEL consequences for breaching the cap?
- d. Should Jeff Partridge not have been informed of what is set out at c. above? Please explain the basis for your answer.

DETI Finance Bernie Brankin's email of 24 August 2015 [WIT-02741]

- 4. It appears to the Inquiry that, on 24 August 2015, on foot of a conversation with DFP, Bernie Brankin informed DETI Energy Division's John Mills as follows:

"Finance Branch put forward a technical adjustment in the June Monitoring Technical exercise to increase RHI AME in 2015-16 in line with forecast requirements in this financial year. DFP and Treasury approved this technical adjustment. I have checked with DFP to ensure that we definitely have secured the required budget cover in 2015-16 as initially DFP advised that they would not help us until all RHI issues had been resolved. I have confirmed with DFP that the RHI AME budget in 2015-16 has been increased to reflect the £23.178m forecast requirements for the current financial year. However, RHI AME is not standard AME. DECC has confirmed that penalties are applied for overspending."

As to this:

- a. Please explain the concepts of (i) a 'monitoring technical exercise' and (ii) a 'technical adjustment' in this context; along with a brief description of how these processes work in practice.
- b. Please explain what discussions were had between DFP and HMT about DETI's RHI budget for 2015/16, including:
 - i. Who any such discussions were between;
 - ii. When they occurred; and
 - iii. What the discussions entailed.
- c. Please explain how it was possible, given that DETI's RHI budget was supposed to be capped to a Barnett share of the DECC GB RHI budget (with DEL consequences for exceeding the cap), for DETI's 2015/16 RHI budget to be increased through two monitoring rounds from an initial £12.8m (a Barnett 2.98% share of DECC's £430m GB RHI 2015/16 budget) to an eventual approximate £30m?
- d. Please set out what discussions were had between DFP and HMT about the two 2015/16 monitoring round increases that saw the DETI RHI budget increase from an initial £12.8m (a Barnett equivalent to the DECC's £430m GB RHI 2015/16 budget – see [WIT-18707]) to an eventual approximate £30m?

DoF Supply Angela Millar's email of 10 November 2016 [DOF-41476/7]

5. In paragraph 8.f. of your Inquiry statement of 15 September 2017 [WIT-42220], you indicate that *"it was apparent that HMT had neglected to notify us [DFP – added for identification by the Inquiry] of a cap on AME funding for the scheme in 2015-2016"*. As to this:
- a. Is it the case that HMT neglected to inform you of a cap on AME funding for the NI RHI Scheme for 2015/16, or that there was in fact no cap to inform you about? Please explain the basis of your answer.
 - b. Please provide an account of all discussions had with HMT about how it came to be that DFP was either not informed of an NI RHI budget cap for 2015/16, or that there was no such cap. Please include who had the discussions, and when they were had.
 - c. In light of what DFP (and/or DETI) had previously been told about the arrangements for the funding of the NI RHI Scheme, was there any obligation on DFP to raise the issue of a cap with HMT? Please explain the basis for your answer.

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.

Millar, Angela (DoF)

From: Millar, Angela (DoF)
Sent: 10 November 2016 12:09
To: Kennedy, Claire
Cc: Scott, Michelle
Subject: RHI - AME

Claire

The initial £25m allocation for NI was based on 2.98% of GB allocation

	2011-12	2012-13	2013-14	2014-15
RHI AME Allocation	£1.7m	£4m	£7.5m	£12.6m

Treasury didn't notify a "capped allocation" in 25015-16

The detail of the NI settlement, following the outcome of the combined Spending Review and Autumn Statement was communicated to the Minister of Finance on 13 January 2016. This letter set out the following AME profile. Any expenditure above this profile must be funded from the Executive's DEL budget.

	2016-17	2017-18	2018-19	2019-20
RHI AME Allocation	£18.3m	£22.3m	£25.7m	£28.9m

I have copied to Michelle as I know Michelle has been answering question and preparing briefing on this

Thanks
angela

From: Kennedy, Claire
Sent: 10 November 2016 10:27
To: Millar, Angela (DoF)
Subject: FW: RHI - AME

Angela,

Please see Jeff's request below regarding RHI AME lines, I'm currently going through AME returns and explanations to respond to Jeff. Would you have any correspondence regarding the increase in the RHI budget ?

Many thanks,

Claire

From: McGuinness, Jeff
Sent: 09 November 2016 10:01
To: Kennedy, Claire
Subject: RE: RHI - AME

Claire – that should be ok – if Joanne wants it earlier I'll let you know.
Jeff

From: Kennedy, Claire
Sent: 09 November 2016 09:59
To: McGuinness, Jeff
Subject: RE: RHI - AME

Jeff – I'll see what I can find. Is late this week ok for a response?

Thanks,
Claire

From: McGuinness, Jeff
Sent: 09 November 2016 09:39
To: Kennedy, Claire
Subject: FW: RHI - AME

Sorry Claire – another one. Can you provide me with details of RHI AME lines and check if we have any correspondence from DETI on the changes to those lines – they might have provided us with some explanations for HMT at some point in the past.

Thanks
Jeff

From: McBurney, Joanne
Sent: 09 November 2016 09:30
To: McGuinness, Jeff
Subject: RHI - AME

Jeff

This one is really for Pamela but in her absence would you ask someone to see what they can find.

Alison was saying yesterday that DfE are saying that because they got additional AME budget at a point in time they thought that this would continue and costs would be covered by AME.

Not any excuse for wasting public money but setting that aside would you check when the RHI budget increased - probably best just to track all movements in RHI AME lines.

Would you also see what correspondence you can find between us and DETI/DfE and/or Supply.

I think they need this before next week when David is up at PAC again - but Alison / Julie could confirm.

Thanks

Joanne

Sent from my BlackBerry 10 smartphone.

From: [Brankin, Bernie](#)
To: [Mills, John \(DETI\)](#)
Cc: [McCormick, Andrew \(DETI\)](#); [Rooney, Eugene](#); [Stewart, Chris \(DETI\)](#); [Cooper, Trevor](#); [Wightman, Stuart](#); [Partridge, Jeff](#); [Hughes, Seamus](#); [Hill, Janice](#); [McIlwrath, Linda](#)
Subject: FW: Update on RHI
Date: 24 August 2015 16:08:50

John

Finance Branch put forward a technical adjustment in the June Monitoring Technical exercise to increase RHI AME in 2015-16 in line with forecast requirements in this financial year. DFP and Treasury approved this technical adjustment. I have checked with DFP to ensure that we definitely have secured the required budget cover in 2015-16 as initially DFP advised that they would not help us until all RHI issues had been resolved. I have confirmed with DFP that the RHI AME budget in 2015-16 has been increased to reflect the £23.178m forecast requirements for the current financial year. However, RHI AME is not standard AME. DECC has confirmed that penalties are applied for overspending. We have a number of supplementary questions around when and how penalties are applied. We think the best way forward is for Sarah Redwood to provide a finance contact so that DETI finance may engage directly with DECC's Finance Team initially by phone and then we will follow up in writing. I would be grateful if you would consider sending the draft follow up email to Sarah Redwood in DECC.

Bernie

Sarah

Thanks for your email. There are a few financial points we would like to discuss. It may be best that our respective finance colleagues discuss by telephone. Could you advise on who we should contact within your finance team.

Bernie Brankin

Finance Branch
Department of Enterprise, Trade & Investment
Netherleigh
Massey Avenue
Belfast, BT4 2JP
Tel: 028 9052 9417 (ext: 29417)
TextRelay: 18001 028 9052 9417
Web: www.detini.gov.uk

Please consider the environment - do you really need to print this e-mail?

From: McCormick, Andrew (DETI)
Sent: 20 August 2015 17:43
To: Mills, John (DETI); Stewart, Chris (DETI)

I will need to speak to Tim myself as the position re the need for change is crystal clear – may need to ask you come to Issues on Monday if we need a more substantive discussion with the Minister.

Copying to Finance re the last point – is the AME in the baseline because HMT has accepted the amended forecast and consciously given us the extra? – if that is confirmed then one of the three critical points has been resolved.

Cc: Wightman, Stuart; McIlwrath, Linda; Hill, Janice; Hughes, Seamus; Cooper, Trevor; Brankin, Bernie

Subject: RE: Update on RHI

Please raise at SMT.

Many thanks.

From: Mills, John (DETI)
Sent: 20 August 2015 17:05
To: McCormick, Andrew (DETI); Stewart, Chris (DETI)

From: [Partridge, Jeff](#)
To: [Cooper, Trevor](#)
Subject: FW: Correspondence -- Ref. Number: COR/595/2013 : PUBLICATION OF GOVERNMENT RESPONSE FOR THE NON-DOMESTIC RENEWABLE HEAT INCENTIVE (RHI) CONSULTATIONS, AND DOMESTIC RHI COST CONTROL
Date: 10 January 2014 12:42:52
Attachments: [DETI AME Forecast Budget 2014 Confirmation Print.xls](#)

Trevor,

In relation to AME RHI Budgets, I actually checked this out with DFP last month (short memory lapse on my part!), and it was confirmed that the AME forecasting exercises are used to formulate the Northern Ireland AME budgets.

Coincidentally, DFP have this week confirmed the AME Budget 2014 exercise (attached) which shows AME budgets from 2014-15 to 2019-20 and includes the full RHI projections provided by Energy Division.

Jeff

From: Partridge, Jeff
Sent: 11 December 2013 16:45
To: McCutcheon, Joanne
Cc: Brankin, Bernie; Donaldson, Linda (DETI)
Subject: RE: Correspondence -- Ref. Number: COR/595/2013 : PUBLICATION OF GOVERNMENT RESPONSE FOR THE NON-DOMESTIC RENEWABLE HEAT INCENTIVE (RHI) CONSULTATIONS, AND DOMESTIC RHI COST CONTROL

Joanne,

DFP have advised that AME budgets are formulated using the information provided in AME forecasting exercises, and there is no separate bidding process. Therefore, for RHI the current profile is £6.35m 2014/15, £9.5m 2015/16, £13.5m 2016/17, £18.5m 2017/18, £24.5m 2018/19 and £31.0m 2019/20.

Regards,

Jeff

From: McCutcheon, Joanne
Sent: 10 December 2013 12:29
To: Partridge, Jeff
Cc: Brankin, Bernie
Subject: FW: Correspondence -- Ref. Number: COR/595/2013 : PUBLICATION OF GOVERNMENT RESPONSE FOR THE NON-DOMESTIC RENEWABLE HEAT INCENTIVE (RHI) CONSULTATIONS, AND DOMESTIC RHI COST CONTROL

Jeff

As discussed. You will see that the GB RHI budget for 2015/16 has been confirmed. Grateful if you could check the NI RHI position with DFP. I'll let you know if we hear anything back from this letter

Thanks

Joanne

From: McCutcheon, Joanne
Sent: 10 December 2013 12:27
To: Private Office DETI; Thomson, David
Cc: Dolaghan, Paul; Neth_Energy; Sterling, David; Rooney, Eugene; Aiken, Glynis; Stevenson, Valerie (DETI Private Office); DG_DETI Press Office; Hegarty, Damien; McLaughlin, Christine (DETI); Hutchinson, Peter; Sinton, Dan
Subject: FW: Correspondence -- Ref. Number: COR/595/2013 : PUBLICATION OF GOVERNMENT RESPONSE FOR THE NON-DOMESTIC RENEWABLE HEAT INCENTIVE (RHI) CONSULTATIONS, AND DOMESTIC RHI COST CONTROL

Draft response to Correspondence Case 595.

Joanne

Joanne McCutcheon

From: [Brennan, Mike](#)
To: [Stevenson, Stuart](#); [McBurney, Joanne](#); [Jakobsen, Peter](#); [Lennon, Agnes](#)
Subject: FW: [RESTRICED] RE: RHI NI
Date: 15 April 2011 14:53:15

Stuart

I am not really aware of this initiative. Do you know what DETI are up to?

We just need to be sure about what PE commitments they might be entering into and the possible wider consequences for the NI Executive - especially if the DETI actual spend deviates from forecast and the Centre has to pick up the pressure (even if it all remains in AME)

M

From: Clydesdale, Alison [<mailto:Alison.Clydesdale@detini.gsi.gov.uk>]
Sent: 15 April 2011 12:36
To: 'Parker, Jon - HMT'
Cc: Hutchinson, Peter; Garcia, Nicolas - HMT; Parkinson, Mark - HMT;
Mike.brennan@dfpni.gsi.gov.uk
Subject: RE: [RESTRICED] RE: RHI NI

Jon

Many thanks - this is most helpful and will help us clarify our options in our economic appraisal.

We will of course still require Ministerial and DFP approval in due course for any scheme proposed here.

DFP would, I think, lead on feeding back to you on forecasting so I have passed on your email to our finance team here who will liaise with DFP in that regard.

Best Regards

Alison

Alison Clydesdale

Sustainable Energy

Department of Enterprise, Trade & Investment

Netherleigh

Massey Avenue

Belfast, BT4 2JP

Tel: 028 9052 9248 (ext: 29248)

Mob: Personal information
redacted by the RHI Inquiry

Textphone: 028 9052 9304

Web: www.detini.gov.uk

Please consider the environment - do you really need to print this e-mail?

From: Parker, Jon - HMT [<mailto:Jon.Parker@hmtreasury.gsi.gov.uk>]
Sent: 15 April 2011 12:13
To: Clydesdale, Alison
Cc: Hutchinson, Peter; Garcia, Nicolas - HMT; Parkinson, Mark - HMT;

Mike.brennan@dfpni.gsi.gov.uk
Subject: [RESTRICTED] RE: RHI NI

Alison,

Sorry for the delay in coming back to you. Taking your points in turn:

- i) With DECC, we have agreed that they can make commitments to spending in future years (up to 20 years) for installations that are installed within the SR period (i.e. the initial payments have to be affordable within the SR profile), and providing that the policy is set up so that payments should be basically flat over the 20 year period in real terms (i.e. no backloading to ease short-term affordability pressures). This same agreement would apply to any NI scheme.
- ii) DECC's GB RHI profile is £56m/133m/251m/424m. NI's share of this is 2.98%. so £1.7m/4.0m/7.5m/12.6m. The NI scheme would need to follow this profile as much as possible – on which further below. We will need you to feed into us forecasts of NI RHI spending for the Office of Budget Responsibility's bi-annual forecasts – this can be fed through me or Mark Parkinson (in the Devolved Countries Unit within Treasury).
- iii) This funding does have to be used for renewable heat, but if NIE decide you would like to use it for a grant scheme or some such then this would be permissible as long as the cost of NIE spending is constrained to the AME consequential.

The other key point it is necessary to let you know about is that the DECC RHI spending is not being treated as standard AME, where the Exchequer takes on all risks of overspend. Instead, there is a risk-sharing arrangement whereby should RHI spending in one year exceed the SR profile, then DECC would need to repay this in future years. They can do this through announcing changes to the SR that will bring cost savings relative to the SR profile in future years. However, a small proportion of any required future savings (still to be determined, but likely to be of the order of 5%) will have to be funded through contributions from DECC's DEL. Again, these rules would be applied in equivalent fashion to NI.

Happy to discuss any of these issues in more detail.

Jon

Jon Parker | Joint Head, Energy Branch | Energy, Environment and Agriculture
HM Treasury, 1/N2, 1 Horse Guards Road, SW1A 2HQ | 020 7270 5641

 Please consider the environment before printing this email.

www.hm-treasury.gov.uk

From: Clydesdale, Alison [<mailto:Alison.Clydesdale@detini.gsi.gov.uk>]

Sent: 11 April 2011 13:00

To: Parker, Jon - HMT

Cc: Hutchinson, Peter

Subject: RHI NI

Jon

We spoke briefly the other day about the £25m allocation to NI for an RHI.

Can I ask you to clarify for me :-

- (i) The position with the commitment to 20 year payments within NI.
- (ii) The process for advising on the spending profile of the £25m AME that we have been allocated.
- (iii) If the £25m can solely be used for an RHI - or we can use it to incentivise in a different way e.g grant ?

Happy to discuss.

Alison

Alison Clydesdale
Sustainable Energy
Department of Enterprise, Trade & Investment
Netherleigh
Massey Avenue
Belfast, BT4 2JP
Tel: 028 9052 9248 (ext: 29248)
Mob: Personal information redacted by the RHI Inquiry
Textphone: 028 9052 9304
Web: www.detini.gov.uk

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INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 501 of 2017

DATE: 23 October 2017

Witness Statement of: Joanne McBurney

I, Joanne McBurney, will say as follows: -

HMT Jon Parker's email of 15 April 2011 [WIT-30248]

1.

- a. At the time of this email I was a Grade 7 in Central Expenditure Division (CED), in the Public Spending Directorate of the Department of Finance and Personnel, (DFP). I was the Grade 7 responsible for the Executive's Budget process. This involved commissioning information from NI Departments relating to their DEL budget, analysing this information and using it to provide recommendations on DEL Budget scenarios to the Finance Minister and ultimately to the NI Executive for agreement.
- b. Peter Jakobsen was a Grade 7 in CED. He was the Grade 7 responsible for the Executive's In-year Monitoring process.
- c. Agnes Lennon was a Grade 7 in CED. She was the Grade 7 responsible for, among other things, the commissioning and onward transmission to OBR of Departmental AME forecasts.
- d. I was aware of the 'cap' placed on AME funding for the RHI scheme from the Spending Review 2010 settlement letter, dated 20 October 2010. I am not aware of any other specific AME funding which is capped in this way. However, it would be usual practice for any AME costs arising from



a break in parity with GB policies to be a cost to the Executive's DEL. For example, when a delay in the implementation of welfare reform measures led to increased benefit costs in AME this led to a reduction in the NI Executive's DEL in 2013-14 to 2015-16.

- e. This form of funding is different from 'standard AME' where demand led costs are covered in full in AME, provided that parity is maintained with GB policy. However, in my view, it poses no greater risk to Departments, given that for projects/programmes funded from the DEL budget, Departments would be alert to the fact that the costs must remain within the budget allocation available in any given year.
- f. I do not see this form of funding as posing any greater risk than Departmental Finance Divisions, and those responsible for managing projects, should be used to addressing. Controlling spend within budget should be normal practice.
- g. As above, I do not see this as posing a greater risk. At the time DFP took the action necessary by informing DETI that there was a cap on the level of AME funding available for this Scheme. Once DETI had been informed of the cap the onus was on DETI to manage within this limit as well as managing the Scheme in line with other public expenditure guidance such as Managing Public Money NI and the Consolidated Budgeting Guidance. DETI would also have been aware of the funding principles set out in the Statement of Funding Policy: funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly, which states at paragraph 3.3 that:-

"Where a devolved administration wishes to offer more generous terms for an AME programme, then the excess over that implied by adopting broadly similar criteria to the relevant UK government department or body (and therefore broadly comparable costs) for that programme must be met from within their DEL budgets."



- h. I am not aware of any discussions with HMT on how this should be managed other than that this cap was in place and that AME funding should be limited to that cap. HMT would not usually be involved in discussions on how spending was to be managed within a set budget. I am aware that later discussions took place between Pamela Galloway in CED and Keith Jarret in HMT, around October 2015, on what should be reflected in AME forecasting after March 2016, given that the UK Spending Review, setting out the arrangements for 2016-17 to 2019-20, had not yet been announced. The advice from HMT was that no new RHI Scheme installations should be included in the forecast position after March 2016.
- i. I did not take any steps to manage the fact that RHI funding was non-standard AME. While I was not responsible for AME forecasting at that time I do not consider that any additional steps should have been taken by either myself or the Grade 7, with responsibility for commissioning and transmitting AME forecasts to OBR/HMT. As stated above, in my view, once DETI had been notified of the cap on AME funding for the financial years 2010-2011 to 2014-2015-it was DETI's responsibility to manage its budget allocation within that cap. The CED responsibility was to query with DETI if any of the AME forecasts they provided exceeded that cap. As far as I am aware, the AME forecasts provided by DETI from the inception of the Scheme up to and including 2014-15, did not exceed the cap.
- j. For the reasons set out above, I am not aware of any steps that could have been taken by DFP.
- k. For the reasons set out above, I am not aware of any steps that should have been taken by DFP.
- l. I have had no direct engagement with DETI in relation to the RHI scheme and would not have sufficient knowledge of the Scheme or DETI to comment.



- m. I did not take any steps to flag the email from Jon Parker either with DETI or within DFP. At that time I had no responsibility for AME. However, I was responsible for the Executive's Budget process. Therefore my view was that I was sent this email, for information, in case a public expenditure commitment was identified which might then become an issue for the Executive's Budget. No such issue was identified at that stage. In addition, as the email from Jon Parker was between DETI and HMT, there was no need to raise this with DETI, DETI was already aware.

DFP Joanne McBurney's email of 7 February 2012 [DOF-02434]

2.

My explanation as requested is:

- a. As far as I can recall, Keith Jarett (HMT), would have made this comment when I contacted him in and around the start of February 2012 regarding a query from the Grade 3, Richard Pengelly, (Public Spending Director in DFP), in relation to the mention of AME funding for this Scheme in the 2010 Spending Review settlement letter. (DOF – 02432 to DOF-02433)
- b. As far as I can recall this would have been a telephone conversation and there is no written record, of which I am aware.
- c. As a member of the HMT Devolved Regions Spending Team, Keith's role would be to ensure the NI Executive complied with HMT's Consolidated Budgeting Guidance and with the terms of Spending Review settlement letters. Therefore, as far as I can recollect, my assumption was that Keith's interest in this Scheme would have been in ensuring that DETI's forecast spend for the RHI Scheme was within the cap notified in the Spending Review settlement letter. It never entered



my mind that the content of the RHI Scheme Regulations or draft Regulations should be shared with Keith, as the scheme itself was a devolved matter.

d.

As stated above, my assumption was that Keith's primary interest would be in the level of forecast AME expenditure for the RHI Scheme. It was apparent from the email chain with DFP Supply (Sylvia Sands DOF-02435 to DOF-02436) that the RHI Scheme was already being factored into AME forecasting which was available to Keith.

In addition there was no requirement in the Spending Review 2010 settlement letter to provide details of the Scheme to HMT. Indeed, it would not be usual practice to provide this level of detail on a devolved matter. The settlement letter simply said that 'NIE officials should inform my officials of their intentions to feed into AME forecasts'. Based on the emails from DFP Supply (Sylvia Sands DOF-02435 to DOF-02436) the RHI Scheme had already been included in AME forecast and therefore this condition had been met.

The emails between Alison Clydesdale in DETI and Jon Parker in HMT in April 2011 (WIT 30248-30250) make it clear to me at the time that there had already been engagement with HMT and DETI on this matter. Mark Parkinson, who was copied into these emails, was, as far as I am aware, Keith's line manager at that time.

Therefore, as a consequence of the settlement letter, the DETI/HMT interaction and the AME forecasts already provided, I felt it was not necessary at this time to run the Scheme past Keith as these events had superseded Keith's request. It was never my understanding from the phone call with Keith Jarrett that he wanted sight of the detail of the Scheme Regulations or draft Regulations.



- e. I was not inclined to raise this matter with Keith again for the reasons set out in (d) above – at that point the RHI Scheme had already been included in AME forecasts which had been provided to HMT and there was ongoing engagement with DETI and HMT. In my view, these events superseded Keith's request.

- f. Given that the Scheme was already being included in AME forecasts and there was engagement between DETI and HMT, including the HMT Devolved Regions Spending Team, I do not feel there was an additional requirement to run the Scheme past Keith once this had been ascertained. As I understood, Keith was only have been concerned with the forecast AME spend and would not have been concerned with the details of the RHI Scheme Regulations. Indeed, CED would not have been in a position to provide this detail as the information could only have come from DETI.

- g. Mark Parkinson in the HMT Devolved Regions Spending Team was already involved in engagement between Jon Parker in HMT Energy Branch and DETI on the scheme. In my view Jon Parker as Joint Head of HMT Energy Branch would have been closer to the details of, and funding arrangements for, the GB Scheme. Therefore, in my view, Keith would not have added anything further, particularly as his focus, in my opinion, would have been on the forecast AME numbers which at that stage would have been within the cap.

***DETI Finance Jeff Partridge's emails of 11 December 2013 and 10 January 2014
[WIT-18730]***

3.



As to this:

- a. Prior to this Inquiry and receipt of the s.21 Notices, I was not previously aware of these emails. At the time of Jeff Partridge's emails I worked in the Department of Justice. Therefore I am not aware of which person, or combination of people, may have provided this information.
- b. The information was correct in relation to there being no separate bidding process in respect of AME. It is also the case that AME forecasts are the means of notifying OBR/HMT of AME requirements. This could be said to formulate NI AME budgets, however as the majority of AME forecasts are demand led it would be more accurate to say that the forecasting process provides estimates of future AME spend, which along with the accompanying information provided by departments, may be used by OBR/HMT to check the underlying assumptions being applied and that figures provided are reasonable.

In terms of this process confirming or altering the RHI profiles, which were subject to a cap determined by HMT in Spending Review 2010 and notified by a letter from the Chief Secretary to the Treasury's letter, DETI was already aware that the funding for RHI was not standard AME. The forecast RHI spend up to 2014-15 remained within the cap. While no cap had been notified by HMT for 2015-16, at the time of Jeff's Partridge's emails the forecast spend was not at a level which would raise concerns. Therefore in my opinion, the information provided was accurate. It is also the case that as there had not yet been a Spending Review announcement for the period from 2016-17 to 2019-20 there was no cap in place for that period.

- c. As stated at (a) above I was not aware of this email at the time. However, as stated above, the cap would not yet have been in place for the majority of the period covered (2016-2017 to 2019-20), as there had not yet been



a Spending Review announcement for that period and indeed for 2015-16, whilst there had been settlement letter, (8th July 2013), no cap had been notified. In addition DETI was already aware that RHI funding was not standard AME from their earlier engagement with Jon Parker in HMT.

- d. As explained above, a cap was not yet in place for the majority for the period covered. A cap had not been notified by HMT for 2015-16. The settlement letter, for the 2015-2016 year, from the Chief Secretary to the Treasury dated 8 July 2013, simply stated that, the NI AME "budget for 2015-16 remains in line with the latest forecast provided by you to the Office for Budget Responsibility", indicating that HMT were not proposing any changes to AME budgets at that time. The letter did not specifically mention RHI Schemes either in GB or NI or specifically impose an upper limit on AME spending in 2015-2016. Similarly there had not yet been a Spending Review announcement for the period from 2016-17 to 2019-20. As I do not have any other details of this exchange I cannot tell what was, or was not, said. However, DETI had already been informed of the basis on which the RHI AME funding was provided for the years 2011-12 until 2014-15. Also, I would expect Trevor Cooper, as DETI Finance Director, to be fully aware of the funding arrangements and limitations that applied to the RHI Scheme.

DETI Finance Bernie Brankin's email of 24 August 2015 [WIT-02741]

4.

As to this:

(a)

- (i) This issue is addressed in the DoF Corporate Statement (WIT 30048-WIT30049). The in-year monitoring process provides a formal system for reviewing spending plans and priorities for the NI departments in the current financial year in the light of the most up to date position. The focus of in-year monitoring rounds is primarily on the DEL budget.



There are usually three monitoring rounds, or exercises, each year. Some of the transactions proposed by departments during a monitoring round require Executive approval, others require only DoF approval while others do not require any approval but are simply notified by departments to ensure the DoF Budget database (Resource Budget Management system, "RBM") accurately reflects the most up to date position. Some transactions which do not require Executive approval are notified to the Executive for information. Details of these various transactions and associated approval levels are set out in three In-Year Monitoring Guidelines published by DoF each year. These are available at <https://www.finance-ni.gov.uk/topics/finance/year-monitoring>. Due to the political impasse relating to Welfare Reform regarding the June Monitoring round 2015-16 a separate statement was made to the Executive covering a range of technical issues. This was known as the June Monitoring Technical Exercise.

- (ii) A technical adjustment is a budget change proposed by a Department which does not require Executive approval. This may include changes to AME figures. Where a Department is aware of AME changes outside of an OBR forecasting process, and notify DoF during a monitoring round, this is done on the basis that such changes will be reflected in the next return a Department provides to an OBR AME forecast exercise which will be provided to HMT. In the absence of any challenge from HMT on these forecasts CED would operate on the basis that the updated profile had been accepted by HMT.
- b.
- (i) I was not involved in any discussions between DFP and HMT about DETI's RHI budget for 2015-16. However, any discussions which did take place would have been by Pamela Galloway the Grade 7 in DoF with responsibility for AME forecasting.

- (ii) To the best of my knowledge such discussions with HMT took place in October 2015 and have been disclosed to the Inquiry.
 - (iii) These discussions did not relate to the 2015-16 budget but rather to the approach which should be taken in the upcoming AME forecast exercise, given the UK Spending Review, which would set out the arrangements for 2016-17 to 2019-20, had not yet been announced.
- c. As set out above any AME changes notified by Departments during an in-year monitoring round must be reflected in the next OBR AME forecasting exercise. It is only through this latter process that approval for changes is obtained. Therefore DETI's AME budget was not increased through the two monitoring rounds. Instead DETI were simply providing updated local forecasts.

As HMT had not informed DFP/DOF of a cap on RHI AME funding in 2015-16, CED could not place a limit on the level of AME spend which DETI could forecast.

I am now aware that DETI had received correspondence from DECC which referred to the 2015-16 AME budget of £430 million for the GB RHI scheme and that NI's funding would likely be a Barnett share. I was not aware of that correspondence at the time. [WIT17401]

- d. Monitoring round changes are not discussed with HMT. As set out above the OBR forecasting process is the only way of obtaining HMT approval for AME forecasts. Without a cap in place for 2015-16 the increase in DETI's AME budget for 2015-16 was not challenged by HMT.

DoF Supply Angela Millar's email of 10 November 2016 [DOF-41476/7]

5.



- a. The NI Executive Settlement letter for 2015-16, from the Chief Secretary to the Treasury, dated 8th July 2013 did not include a cap on AME funding for RHI. Without official notification of a cap there was no cap for CED to apply to DETI AME forecast for RHI. At this time I was not aware of the correspondence between DECC and DETI which indicated that NI funding would likely be a Barnett share of the £430 million GB RHI Scheme allocation in that year.

- b. I did not have any discussions with HMT in relation to a cap or lack of a cap in regard to 2015-16. I am aware of a meeting with DFP and HMT which took place on 8 December 2015. However, I did not attend that meeting and have no recollection of being informed, at that time, of the issues discussed.

- c. The onus was on HMT to notify us of any cap. The Spending Round 2013 settlement letter, dated 8th July 2013, which detailed the settlement for the Northern Ireland Executive for 2015-16 did not inform us of a cap on RHI AME funding nor mention the Renewable Heat Incentive Scheme in any way. While, with hindsight, we could have raised the lack of a cap with HMT it was not our responsibility to do so and to the best of my knowledge we did not do so. DETI were closer to the arrangements for funding the Scheme through their direct communication with DECC and HMT and given that they were aware that a cap was in place for previous years but that none had been notified for 2015-16, DETI could have chosen to raise this issue with CED, especially if the level of forecast expenditure was increasing disproportionately in that year. This would have allowed CED to raise the matter with HMT on DETI's behalf.

As I am now aware of the correspondence between DETI and DECC which referred to the 2015-16 AME budget of £430 million for the GB RHI scheme and that NI's funding would likely be a Barnett share, my view is that DETI should have notified CED of this at that time. [WIT-17401]



However, in my view it was not the lack of a cap that led to the problems with the RHI scheme. The lack of a cap simply meant that in 2015-16 the full costs were covered by the AME budget. While DEL and AME budgets are managed differently expenditure in both budgets is ultimately funded by the taxpayer and, as such, it is the value for money aspect of any project/ programme which is important not the budget into which that expenditure falls. Therefore it is the total level of expenditure on the RHI Scheme which should be considered and not just the costs which fall to the Executive's DEL budget.

Statement of Truth

I believe that the facts stated in this 12 page witness statement are true.

Signed: Joanne McBurney

Dated: 23 October 2017