

INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME
CLOSING SUBMISSION ON BEHALF OF AN ENHANCED PARTICIPANT

MRS ALISON CLYDESDALE

Introduction

- 1) This submission on behalf of Mrs Alison Clydesdale aims to address the main evidence that relates to her. Given the limited role she played the submission will be brief, however it is also intended to address some more general systemic issues. It is considered that all issues relevant to Alison Clydesdale are addressed within this submission.
- 2) The Northern Ireland Civil Service, “NICS”, has traditionally been modelled on the Whitehall approach to governance. Devolution had only resumed in Northern Ireland in 2007. There is no evidence that there was any consideration given to the orthodoxy of maintaining a Whitehall style civil service, in circumstances where there was pressure for Northern Ireland to not merely follow policy formulated in Whitehall, but to design and develop bespoke Northern Ireland policies. Further, local politicians had little direct experience of running a government department.
- 3) The Inquiry is asked to consider whether the NICS was in fact equipped with sufficient resources and experience to undertake devolved government? Timothy Johnston recognised this issue in his evidence suggesting

“I think one of the questions at the end of this process and before re- establishment, whenever that might be, I think we’ve got to ask ourselves across a huge range of tasks: have we the capacity to do it?” TRA-14137

- 4) David Thomson suggested to the Panel that

“Devolution is a very hard... difficult process to manage...all those things that the large Whitehall Departments did...we were replicating here.” TRA-05659.

- 5) David Sterling suggested in evidence at **TRA-06730** that

“Again, this comes back to the quandary we faced in a devolved Administration, where we are required to develop a policy and where you could argue that it maybe takes as much investment to develop policy for 1.8 million people as it does for 50 million people-plus, but, again, that’s something we wrestle with on a day-to-day basis.

I think, by and large, given the difficulties we face, we do tend to develop good policy in Northern Ireland, we develop a lot of policy which is attuned to the particular circumstances of this place and that that policy has worked well, but I think this scheme now — I think I said before — was really just a project too far for us.” *(emphasis added)*

- 6) The investment being put into the renewable heat incentive policy in Great Britain involved seventy-seven civil servants. This must be compared to the expectations placed on Alison Clydesdale and Peter Hutchinson in 2009.
- 7) It is clear that the significant lack of resources available within the Northern Ireland Civil Service, and in particular Energy Division, was recognised at the highest level. The permanent secretary noting that DETI staff were being

“asked to punch well above our weight in terms of the contribution we were making.”

TRA-06064.

- 8) The Minister also recognised an issue with resources, **WIT-20585**, being aware that *“Energy Division was a small team with limited resources”*. Such was her concern that she flagged this issue up with the permanent secretary and the Head of the Civil Service. She believed that Energy Division was

“under acute pressure to keep on top of their workload (despite working very hard) because of the large number of initiatives that its significantly larger GB counterpart, DECC, was able to produce simultaneously. I observed that this had the effect of Energy Division having to constantly ‘fire-fight’...” **WIT-20596**

“I do think that the officials worked long hours, probably longer hours than some of their colleagues in other parts of the Civil Service...You just can’t expect officials to keep working long hours all the time or there will be a consequence to that.” TRA-08523

(emphasis added)

Background

- 9) Alison Clydesdale was a grade 7 in Energy Division from March 2006 until May 2016. Whilst she was transferred to the Department of Education in September 2016, Andrew McCormick requested she work between both Departments to assist him preparing for the PAC hearings at the end of that month. Alison Clydesdale attended the PAC hearing on 28th September in the place of Chris Stewart who was on leave. It is not clear why Stuart Wightman did not attend the PAC in place of Chris Stewart as by that stage he was the acting Grade 6 in Energy Division.
- 10) As Head of Sustainable Energy Branch, Alison Clydesdale worked between July 2009 and May 2011 on very early stage renewable heat policy development, which was prior to the establishment of the non-domestic RHI scheme. She worked a reduced hours pattern, initially 28 hours and later 32 hours per week. She was responsible for procuring the initial research study to provide evidence in respect of the potential for renewable heat in NI, overseeing the commissioning of the CEPA-AEA economic appraisal and taking forward the necessary legislative consent motion to extend primary renewable heat enabling powers to Northern Ireland.
- 11) Between May 2011 and May 2016, Alison Clydesdale was in a heavily-loaded grade 7 post with no responsibility for the RHI. In May 2016, following a reorganisation of Energy Division, she was appointed to a temporary grade 6 post as Head of Energy Renewables Division. This involved taking over from John Mills and working on the non-domestic scheme post closure.

July 2009 to May 2011

12) In 2008 a key decision was taken not to join in with the DECC RHI scheme. This was before Alison Clydesdale's involvement with RHI. The advice upon which this decision was based is referred to within an April 2009 submission to the Minister. This submission describes that the then Head of Energy Division, Jenny Pyper advised the Minister in September 2008 that the timing was too tight to get a Legislative Consent Motion through the Assembly and there was no evidence the DECC proposals were the best course of action for Northern Ireland, **WIT-07629**. It is unknown what analysis Ms Pyper undertook in September 2008 to provide this advice.

13) When Renewable Heat was added to Alison Clydesdale's job plan in July 2009, she already had an unenviable workload,

"During that period I was also working on 7-8 other policy areas including transposition of a Directive and a major policy area of smart metering. My time was split over all my work areas, and as it was such a heavily loaded post it required frequent prioritisation of work, sometimes on a daily basis." **WIT-12521**

14) Alison Clydesdale was responsible for commissioning a research study in respect of renewable heat in Northern Ireland. The subsequent AECOM-Pöyry report, delivered in 2010, was not controversial and suggested that to achieve a 10% renewable heat share by 2020 was possible but that it would require significant government intervention. It recommended incentivising the market.

15) Consideration of the contemporaneous documentation is made more complicated by the fact that the term 'RHI' was being used interchangeably, in particular in the very early days of this novel scheme. It was used in the generic sense to refer to a general heat incentive and in a more specific sense to refer to the specific type of incentive that was ultimately chosen. This ambiguity in respect of nomenclature is not unusual in a new and novel scheme. It should not be confused with a predetermination to undertake a GB style RHI scheme.

16) It was recognised at economic appraisal stage that the design and analysis of the scheme required specialist heat economists as *"these skills are not available within DETI."*, **WIT-**

07780. The specialised heat economists engaged through a competitive tendering process were CEPA/AEA. CEPA had relevant transferable experience in the field of renewable electricity and AEA had experience in the field of renewable heat, **TRA-01552**. The specification for their contract required them to carry out an economic appraisal using the 10 steps outlines in NIGEAE, **WIT-105245**. In particular they were to

“Make recommendations, based on the evidence gathered and the economic analysis carried out, on the most cost effective structure of a Northern Ireland RHI to increase the level of renewable heat to 10%”. **WIT-105247**.

17) The terms of reference to CEPA, which were formulated with input from DETI economists, clearly required it to look at a range of options for incentivisation. The first CEPA draft report in March 2011 confirmed that

“The analysis concluded that we should explore the option of a Challenge Fund (a competitively allocated grant) and a policy similar to the GB RHI but with modifications to fit NI’s specific circumstances.” **WIT-12557**

18) In April 2011 all options remained open to be explored by the Department and CEPA, both a challenge fund and a scheme similar to the GB RHI. To consider otherwise would have run contrary to the legislative position in 2010. At that stage DETI only had the legislative basis to operate a grant scheme. Further, had the challenge fund option not remained a real consideration, Alison Clydesdale would not have emailed Jon Parker at HMT in April 2011, requesting clarification in respect of the following,

“If the £25m can solely be used for an RHI-or can we use it to incentivise in a different way e.g. grant?” **WIT-12774**

19) A tracked comment to the 31st March 2011 draft report by Peter Hutchinson is illuminative and clearly indicates that all options were being fully considered. At **WIT-12624** he criticises the manner in which the options have been presented by CEPA and states:-

*“There appear 4 options
Do nothing*

Short term challenge fund

Long term challenge fund

NI RHI

Needs to be clearer.”

20) A Legislative consent motion was undertaken in February 2011. The timetable for this was driven by DECC Westminster legislation. Given the DECC legislation going through parliament, it was possible to take enabling powers. This allowed DETI to keep its options open. If a recommendation was made for a GB style RHI, the enabling powers allowed the Department to lay regulations to do so. As the Department already had the powers to undertake a challenge fund there was no need to refer to it in this motion, **TRA-00962 and 00963**. Alison Clydesdale was able to confirm in evidence the legislative power which would have permitted giving financial assistance for the operation of a challenge fund, Art 61 of the Energy (Northern Ireland) Order 2003.

21) It is of note that the 31st March 2011 draft CEPA report was an early iteration and did not contain relevant data, such as recommended tariffs for biomass boilers. The tariff work was therefore at a very early stage. Alison Clydesdale had not seen any details of the modelling or cost-benefit analysis, **TRA-00955**.

April 2011 Email

22) At all times Alison Clydesdale acted conscientiously and diligently. This is exemplified in her pursuit of a clear understanding of the funding arrangements for any incentive scheme; in particular how DECC got approval for a scheme that made future commitments beyond the period of the budget. Whilst she maintained close contact with the renewable heat team in DECC they were unable to sufficiently explain their budgetary position, other than to suggest that it was very complicated, **TRA-00975**. Consequently she was referred by DECC to its energy policy specialist in HMT, Jon Parker. Whilst there has been a suggestion that there was a protocol arrangement whereby DfP would lead on discussions with DECC, no written policy has been identified in respect of this during this Inquiry and any such protocol, whether oral or in writing, was not brought to the attention of Alison Clydesdale at that time. The evidence suggests that even in late 2015, DfP officials were

suggesting to Departments that they should engage directly with HMT and Departments. A DfP email of June 2015 at **DOF – 03298** suggests

“..In light of the spend profile for the SR 2010 period being different to that forecast have DETI consulted with DECC or HMT?”

23) Alison Clydesdale spoke to Jon Parker and followed this up with an email which was saved to the TRIM system in a folder entitled “RHI Funding”. It is of note that Jon Parker’s response copied in Mike Brennan of DfP. Alison Clydesdale is clear that the email response indicated that the budget was for £25million, could only be for installations up to the end of the period in 2015 and there should not be an overspend. This was discussed with Bernie Brankin both orally and via email. Ms Brankin indicated that the budget should be treated as DEL, rather than AME, **TRA-00986**. She confirmed that any underspend in a year would be lost, any overspend would be deducted from the budget in the following year and reminded Alison Clydesdale that if she was considering grants these could be *“fraught with control problems”*. As a consequence Alison Clydesdale alerted Peter Hutchinson (copying in Fiona Hepper and Sam Connolly) to the issues raised by Ms Brankin. She suggested that CEPA should be asked to factor the need to control over or under spending into the economic appraisal.

24) As the CEPA-AEA economic appraisal was being progressed Alison Clydesdale could see that if her workload continued to include renewable heat, along with the other seven or eight work areas that she was working on, it would not be possible to progress all of these work streams with the resources available, **WIT-12522**. This was raised with Fiona Hepper who recognised the pressure on resource and took immediate steps to address this. The result was an additional Grade 7 who would be responsible for the renewable heat work . Further this would become a dedicated stand-alone branch with the new Grade 7, but retaining Peter Hutchinson. Responsibility for renewable heat was transferred to Joanne McCutcheon in May 2011.

25) It is submitted that there is no evidence upon which a finding might be made that the handover process was inappropriate. There was no guidance at that time in relation to the handover process. Given the passage of time, Alison Clydesdale does not recall the handover process with Joanne McCutcheon, **WIT-12542**, and Mrs McCutcheon has been

unable to provide evidence to the Inquiry. However, the Deputy Principal and Grade 5 working on renewable heat were not changing. Both were very engaged and they had considerable knowledge of the area. Joanne McCutcheon was briefed by Fiona Hepper on arrival (Alison Clydesdale did not attend this meeting) and had benefit of Peter Hutchinson's considerable knowledge, as well as access to all of the RHI containers and folders on TRIM. Alison Clydesdale remained within the Division and available to discuss and transfer knowledge to Joanne McCutcheon, as requested. There was no loss of continuity or knowledge as a result of this process.

Post 2011

26) Post May 2011 Alison Clydesdale remained within Energy Division but was not involved in RHI issues. She regularly attended Head of Branch meetings. The nature of these meetings changed from the beginning of 2014 when John Mills succeeded Fiona Hepper. They became limited to forward planning, focusing on immediate action required in the next two weeks and not looking collectively at an overview of the RHI or across the many other energy policy workstreams in the Division. Alison Clydesdale's workload remained very busy, John Mills commenting in respect of resources, that

“Well, the divisional level...I can imagine why you might say they were suboptimal but adequate because a few very good people, like Alison Clydesdale, were coping with a large area...” **TRA-09508**

27) Having not been involved with the RHI from 2011, and given the fact that the scheme had gone from the position of a very early draft CEPA report when she left, to final policy choice, implementation and movement to Phase 2, Alison Clydesdale would not have been in a position to offer advice or comment, had it been requested in 2015 when the issues around the spike in demand and DfP reapproval arose. No such advice was requested from her. No evidence has been heard to suggest any specific issue was raised during the Heads of Branch, or any other Departmental meetings, whereby Alison Clydesdale might have usefully commented.

May 2016

28) In April 2016 Alison Clydesdale was successful in her application for a temporary grade 6 post in DETI as head of Energy Renewables Division. This involved an informal oral handover from John Mills in his office in May 2016, **TRA-01020**. By that time the RHI scheme had been closed and Alison Clydesdale had no role its amendment, suspension or closure. During this period Alison Clydesdale applied for, and was successful in, a competition for promotion to substantive grade 6. She was to be released to the Department of Education on the 1st September 2016. The Permanent Secretary, Andrew McCormick requested she work part time on PAC preparation until the hearing at the end of September 2016. She appeared as a witness at that hearing with the agreement of her line manager in Department of Education as Chris Stewart was on leave and she was asked to attend in his place, **WIT-12516**.

29) Peter Hutchinson had not been spoken to by internal audit before its draft report was produced. During her short time as Grade 6 in DETI the focus was on the closed RHI scheme and the internal audit and NIAO reports. She then was responsible for preparing for the PAC hearing. Despite this intense focus and investigation the very relevant handover documentation was not brought to Alison Clydesdale's attention by either Stuart Wightman or Seamus Hughes. When the existence of the handover documentation was brought to Alison Clydesdale's attention by Fiona Hepper just before the PAC hearing on the 28th September 2016, she immediately sought it from Seamus Hughes and Stuart Wightman and sought confirmation from both that they were aware of it. Both confirmed they were aware of it, **TRA-01021**. This document was immediately brought to the attention of the head of Internal Audit and the DfE permanent secretary, Andrew McCormick.

Conclusion

30) Whilst any administrative process subject to normal human frailties may be open to criticism, it would be unfair to allow the benefit of hindsight to retrospectively identify complex and difficult issues as 'obvious'.

31) It is respectfully submitted that the evidence heard by the Inquiry confirms that, at all relevant times, Alison Clydesdale acted professionally and took the appropriate steps during her limited time dealing with RHI issues.

Dated this day of November 2018

Peter Coll QC

Andrew Mc Guinness BL

Leah Treanor BL

Nicholas Compton BL