

CLOSING SUBMISSION ON BEHALF OF DR ANDREW CRAWFORD

1. Dr Crawford was Special Adviser to the DETI Minister Arlene Foster MLA from May 2011 to May 2015 when he became Special Adviser to Mrs Foster in DFP. In January 2016 Mrs Foster became First Minister and Mervyn Storey MLA became Finance Minister. Dr Crawford remained in DFP as his Special Adviser. In May 2016, following the general election and re-allocation of Ministerial Departments under d'Hondt, Dr Crawford became Special Adviser to Michelle McIlveen in DAERA.
2. Dr Crawford was therefore DETI Spad during Phases 1 and 2 of the Inquiry's work, and DFP Spad during Phases 3 and 4.
3. Dr Crawford gave evidence on 6 days in total: days 53, 54, 56, 57, 68 and 69 of the Inquiry's oral hearings.
4. This submission will address the key issues raised during the course of the Inquiry involving Dr Crawford in light of the oral and written evidence produced to the Inquiry. It is not intended to be exhaustive and will not rehearse the evidence except to the extent necessary to elucidate a point.

Phase 1 - Introduction of the Non-Domestic RHI Scheme ("the Scheme")

DETI submission 1053/2011 dated 8 June 2011 and 14 June 2011 meeting

5. DETI sub 1053/2011 of 8 June 2011 submission from Fiona Hepper (**WIT 00739**) has been the subject of significant scrutiny by the Inquiry. It is viewed as a key staging post in the introduction of the Scheme in the form of an ongoing incentive as opposed to a Capital Grant or Challenge Fund.
6. It is submitted that it is now clear that this submission to the Minister did not accurately present the findings of the draft final CEPA report on which it was based. Further, while the report was entitled "draft final", implying that it was finished bar minor or inconsequential changes, there were in fact significant issues with the report about which the Department reverted to CEPA on 7 July 2011.
7. In line with the natural reading of the submission, Dr Crawford's evidence is that he took the view that when the submission stated that the "*NI RHI is the preferred approach and offers the highest renewable heat output at the best value*" (**WIT 00744**) this was as among the five separate options set out in the submission i.e. (i) do nothing; (ii) a renewable heat challenge fund; (iii) challenge grant funding; (iv) GB RHI and (v) NI RHI. The submission then reinforced the recommendation to proceed with a NI RHI by highlighting at paragraph 30 that if funding was available post- 2015 (the submission having stated this was likely),

the NI RHI would be the better option (**WIT 21573, TRA 07636 and TRA 7905**).

8. It is Dr Crawford's evidence that, if, as Mrs Hepper claims, it was explained that the NI RHI option was only the better option of the two RHI options, the Minister and/or Dr Crawford would have asked for the submission to be amended to accurately reflect that advice (**TRA 07656 and 07659-60**).
9. While Dr Crawford did not at that stage ask what changes might be made in the final report, it is submitted it was not unreasonable for him to expect that all relevant information was being presented in the covering submission, in an accurate way. In any event, the submission stated there was a meeting scheduled between Mrs Hepper and the Minister to discuss the submission.
10. At that meeting, Mrs Hepper claims she told the Minister that "*we don't think it is going to change much*" (**TRA 01864**). Further, Dr Crawford has explained that, while this meeting was clearly significant in that it was setting the direction of travel in terms of consultation, it was a staging post and that there would be further opportunity to discuss the issues down the line (**TRA 07614**).
11. While it is for the Inquiry to determine the reason that there appeared to be a push within the Department towards selecting a Renewable Heat Incentive along the lines of the GB scheme (as opposed to a Challenge Fund or some other mechanism for incentivisation), Dr Crawford was clear that an RHI was not something that was being driven by the Minister or himself (**TRA 07639**). Rather, at the time, the development of a renewable heat scheme was viewed as non-controversial. As such, Dr Crawford proffered the possible explanation that the Department had been doing a lot of work in parallel that would be wasted if the direction of travel changed in or around June/July 2011 (**TRA 07638**).
12. Dr Crawford believes that, in conflict with Ms Hepper's evidence, the Minister and he were not told about the caveat to the AME funding for the Scheme (**TRA 07652**).

5 July 2011 submission

13. Dr Crawford received the 5 July 2011 submission along with the consultation document to go out to the public and the final CEPA report dated 28 June 2011. While it was not brought to the attention of either the Minister or Dr Crawford at the time, it is apparent that the figures had changed significantly from the draft final report upon which the 8 June 2011 submission was based. As the panel is aware, a notable example is the fact that the difference in the net monetised

benefit between the Challenge Fund and the NI RHI- Alt increased from £26million to £242million.

14. This difference was not brought to the attention of the Minister notwithstanding the fact that Ms Hepper claims she had previously advised at the 14 June 2011 meeting that Energy Division didn't "*think it [was] going to change much*", see above. The fact that the draft final report was not provided with the 8 June 2011 submission (such that a direct comparison of the two reports could not be made), coupled with this assertion, makes it inexplicable that this change, particularly in light of its magnitude, was not specifically highlighted to the Minister and Dr Crawford.
15. It will be for the panel to determine whether Energy Division provided accurate and sufficient information in the 5 July 2011 submission and were fulsome in explaining the findings of the CEPA report, given that there had been material changes since the draft final report. Further, it is clear that the recommendation that the Challenge Fund was the best value for money was not stated in the covering submission. The panel must also consider the extent to which Dr Crawford and his Minister ought to have been able to rely on the text of the submission as being a faithful translation of the content of the expert report that had been commissioned. It is submitted that, taken to its obvious conclusion, (and accepting that some degree of skepticism on the part of the Minister and Spad is healthy and desirable), if the panel finds that the Minister and Special Adviser are not able to rely on officials' advice as being basically accurate, this would call into question the entire system of government.
16. In any event, in light of the fact it appears the 5 July 2011 submission and the 28 June 2011 CEPA report were not compatible, Dr Crawford has stated that he didn't study the CEPA report in sufficient detail and that had he done so he would have realised the inconsistency (**TRA 07967 and TRA 07977**).

2012

17. Dr Crawford and Minister Foster were not provided with the 16 February 2012 CEPA addendum in which the lifetime cost of the subsidy increased by £111million. This change was not drawn to the attention of Dr Crawford or Minister Foster. Similarly, the business case and casework committee minutes were not provided, nor were the outworkings of the casework committee highlighted to the Minister and Special Adviser.
18. Following the provision of the DETI Financial and Operational Procedures Manual from the Department to the Inquiry it is also now apparent that the correct procedure was that the business case (that

would have included the final and addendum reports as well as the casework committee minutes and DFP approval) should have been sent to the Minister. Dr Crawford gave evidence that he was not aware of this document and the requirements set out within it for officials.

19. Energy Division also did not keep the Minister and Dr Crawford apprised of significant developments with the GB Scheme. A consultation paper was published by DECC on 26 March 2012 dealing with cost controls. The ministerial foreword explained that interim controls were being introduced until such time as the more flexible mechanism of degeneration could be brought in, and that this was being implemented notwithstanding that take up of the scheme was such that they were unlikely to be required. Dr Crawford's evidence is that this should have been brought to the Minister's attention to give her the opportunity to consider whether it ought to be reflected into the NI scheme (TRA 08025), or at a minimum so that she would be at least aware of it should it be raised in Assembly questions or similar (TRA 08028).
20. Dr Crawford is also clear that he was not made aware of the Ofgem warning conveyed to energy division officials on 26 June 2012. The first point Dr Crawford makes in relation to this is that the matter ought to have been put before the Minister in a submission setting out the issue, the risks, and the options in terms of proceeding. This was not done (TRA 08044). Dr Crawford believes that there was no face to face meeting as he would have been present at such a meeting if it had taken place. Finally, he also does not believe there was a telephone call between Minister Foster and Ms Hepper because (i) if there had been Minister Foster would have been likely to ask that the issue be addressed in a submission; and (ii) Minister Foster would have discussed the issue with Dr Crawford, and she did not (TRA 08043).

Absence of tiering

21. The documentary evidence shows that the Minister and Dr Crawford were told in the 16 March 2012 submission, in a footnote, that:

"Tiering is not included in the NI scheme because in each instance the subsidy rate is lower than the incremental fuel cost." [SEP]

22. Dr Crawford did not interrogate this statement to assess whether or not it was accurate. Dr Crawford was not in possession of the business case, or other documents setting out how the tariffs were arrived at. However, even if he had been, CEPA were external independent experts who had been engaged to provide advice, their reports had been considered by the DETI officials responsible for delivering the scheme, DETI Economists, DFP officials, and had gone through the

casework committee process. None of these officials, whose specific role was to scrutinise the proposal, and who *had* the business case showing that the tariff was higher than the cost of fuel on consecutive pages, picked up on the error. Dr Crawford was first and foremost a political adviser to the Minister. He had experience with DETI issues as a result of having been in that role for some time, but he was not brought in as an expert adviser, whether on energy or any other issue.

23. As such, Dr Crawford stated in his evidence that he would have taken a high level view of the Scheme, including who in the public and industry would be interested in it, and how it would work in practice but this would not have involved digging down to look behind the figures presented. He would not have known, for example, of the capital costs of biomass boilers, the price of fuel, or the running costs (TRA 08076). However, given that experts had produced the tariffs, he would have been reassured when looking at the table of tariffs, and noticing that the GB scheme had tiering, that there was an explanation provided in the footnote (TRA 08079) as to why tiering was not included i.e. tiering had been expressly considered but rejected as not being necessary.
24. It is submitted that in the circumstances outlined above, and the breadth of the DETI portfolio, it is not unreasonable that Dr Crawford did not realise the lack of tiering was a critical mistake. While a Special Adviser's role is to advise the Minister and provide a challenge function to officials, this must necessarily be at a high level, providing an 'outside world' perspective, rather than interrogating every detailed figure brought forward by officials, especially where there is just one Special Adviser across the whole Department. As Dr Crawford stated he would not have expected officials to bring forward a critically flawed scheme.

Funding

25. Dr Crawford was not made aware when he was DETI Special Adviser that there were any conditions or caveats to the funding. It was presented as AME (TRA 08083-4).

Practice around reading submissions and technical reports and providing advice to the Minister

26. The Inquiry has heard evidence from Dr Crawford regarding the usual practice between his Minister, Arlene Foster, and himself concerning submissions. It is Dr Crawford's evidence that, as a general rule, he would not have read long, technically complex expert reports in full. He relied on officials' expertise regarding reports (TRA 07558) and relied on them to accurately summarise their content. In so doing he assumed that the submission was a true reflection of the report (TRA

07560). It is submitted that, in the context of the breadth and complexity of the Ministerial portfolio, that this was an appropriate way of working.

27. During his evidence on day 53 (**TRA 07530**), Mr Aiken presented figures as to the documentary workload in 2012. There were 3956 items passed to the Minister consisting of correspondence cases, submissions, general mail, invitations, and responses for information only. This averaged 16 items per day on top of a full Ministerial diary of meetings, Assembly debates, invitations, and events, and would not have included matters such as oral questions, and other issues.
28. Dr Crawford received the submissions in hard copy from the Minister's Private Office and considered them before passing back to the Private Office. The submission would then be directed to the relevant division, if there was a query that required to be answered by officials, or given directly to the Minister.
29. Given that Dr Crawford and his Minister would not be considering submissions together, Dr Crawford would on occasion write a note for the Minister on a post-it, if he wanted to discuss some aspect of the matter further. This would permit the Minister to speak to Dr Crawford at a time that was convenient to her, when she had had opportunity to consider the content of the submission (**TRA 07539**). The notes were not preserved. As was highlighted during the oral evidence, had Dr Crawford simply spoken to Minister Foster, there would also be no record. While the panel are understandably concerned about the lack of note-taking and record-keeping in relation to decisions, it is Dr Crawford's position that the use of this system between himself and Minister Foster was a simple and expeditious way for Dr Crawford to communicate with his Minister. If there was an issue that required to be followed through within the Department, Minister Foster would write that on the face of the submission for consideration by officials (**TRA 07540 lines 2 to 4**).
30. In relation to note-taking by officials and the keeping of minutes of meetings and decision-making, Dr Crawford is firm in his recollection that at every meeting he was at, officials did take notes (**TRA 07927 line 12-13 and 07929 line 11-12**). The procedure thereafter for filing those notes was unknown to Dr Crawford but he accepts that a formal note coming back to the Minister via the Private Office should have been sought (**TRA 07926 and 07929**). Dr Crawford is similarly clear that the Minister never directed that a note should not be taken in his presence (**TRA 07926**).

Phase 2

General

31. Following the introduction of the Non-domestic RHI Scheme, there were a series of significant issues or events affecting the Scheme that Dr Crawford was not made aware of, or where advice to the Minister (and therefore Dr Crawford) was not all it could have been.
32. First, it appears that the system for correspondence from DECC to be brought to the attention of the Minister and responded to was not reliable and was therefore was not working in the way in which the Minister and Dr Crawford believed at the time. This means that opportunities to highlight issues to the Minister were missed. These issues appear to have included the fact that DECC were introducing interim cost controls at a time when the GB Scheme was underspent (these were later referred to obliquely in a submission to the Minister) (**TRA 08146**); the introduction of degression (**TRA 08156-7**); the commencement of tariff reviews (**TRA 08131, WIT 02449**); tariff changes (**DFE 420830**).
33. Second, officials advised the Minister that it was not possible to install multiple boilers but rather that *“the regulation prevents scenarios where applicants seek to install a number of smaller boilers in attempt to receive higher incentive payments”* (**TRA 08118-9**). When Dr Crawford asked a question to explore the matter further, he was given an inaccurate response. It is submitted that even on a detailed reading of the regulations it would have been difficult for Dr Crawford to have come to the conclusion that the officials who were dealing daily with the Scheme were wrong in this advice, particularly in circumstances where ultimately Ofgem applied an interpretation to “heating system” such as to permit multiple boilers heating the same space provided they were “hydraulically separate”.
34. Third, officials did not draw the Minister and Special Adviser’s attention the fact that in 2013 CEPA’s final report now stated that it was unlikely the 10% target for renewable heat will be met. This is despite this target being contained within the Programme for Government signed off by the Executive. Indeed, officials did not provide this report. It is submitted this indicates that the practice within the Division was, that it being a technical report and a summary of it having been provided, it was not necessary for the Special Adviser or Minister to read it. This was also not drawn to the attention of the Minister or Special Adviser when provided with a response to an oral question regarding uptake of the Scheme in January 2014 (**IND 27205, TRA 09787**).
35. Fourth, the 26 June 2013 submission on Phase 2 did not place any emphasis on the need to introduce cost controls. Indeed, cost control is the last of three issues to be dealt with in the fourth chapter of the consultation. Further, it advises that DECC are working to introduce

depression, despite it already having been introduced, and no mention is made of the fact that DECC had interim cost controls in place prior to that (**TRA 08150**).

36. The Minister was not asked to make a formal decision regarding moving forward with the domestic scheme over the non-domestic scheme. While it was mentioned in submissions from November 2013 onwards, there was no advice given to the Minister that there might be risks flowing from taking such an approach. The first time this was mentioned as a possibility was in the 26 November 2013 submission from Ms Hepper to the Minister to update the ETI Committee, and the reason this approach was said to be possible was given, erroneously, as the fact that the domestic scheme did not require State Aid. The Minister (and ETI Committee) were each also told that the domestic scheme could probably be brought in by Spring 2014.
37. When the submission seeking approval for the domestic scheme was provided to the Minister in June 2014 there was no explicit mention of cost controls and Dr Crawford's evidence is that he believed that the domestic scheme was to be introduced first and that cost controls would have come in later "lumped in" with the non-domestic issues (**TRA 09828**). Dr Crawford believes he may have thought at the time that there was little point bringing in cost controls for the domestic scheme without having them in the non-domestic scheme as there was a need to control the *"overall pot, there's no point controlling a small percentage of the pot"* (**TRA 09829**).
38. There was significant slippage in date for the introduction of the domestic scheme. In November 2013, the Minister was being advised the domestic scheme could be brought in in Spring 2014. The advice later stated it would be by Summer 2014, and then by October 2014 before being told in September 2014 that it would not launch before November 2014. This prompted Dr Crawford to comment on the 16 September 2014 submission *"need to get this launched asap"*.
39. No review of the Scheme was conducted contrary to the assurances given in the earlier submissions to bring in the Scheme that this would be a key method of ensuring that the Scheme was fit for purpose and Value for Money. The lack of review was not communicated to the Minister or Special Adviser.

The Phase 2 draft consultation document

40. Dr Crawford accepts that he sent the Phase 2 draft consultation document that he received on 1 July 2013 to his cousin Richard Crawford on 6 July 2013 by email. Dr Crawford was unaware he had done so at the time of writing his first statement as he had no access to his Government email account from which it had been sent. Dr

Crawford explains that he believes he sent it on foot of a discussion he had with his cousin at Clogher Valley Livestock market. Richard Crawford was erecting a third poultry house and intending to use gas to heat it rather than biomass. At that time the Scheme was under-subscribed and Dr Crawford sent Richard Crawford the consultation document for information.

41. There was no further engagement on the issue and it was not sent with the purpose of seeking Richard's views on potential changes to the draft. As Dr Crawford highlighted in his oral evidence, the changes that were made prior to the consultation being launched were very specific to the tallow industry and would not have benefitted his cousin in any way.
42. Richard Crawford later did go on to install biomass but over a year later. While the document should not have been sent in advance of publication, the document was published a matter of weeks later largely unchanged.
43. Dr Crawford accepts sending the submission was wrong and has apologised unreservedly (**TRA 08712**).

Moy Park - interaction with Brian Gibson in late 2014

44. Moy Park is one of the largest employers in Northern Ireland and the largest private sector investor. The Executive, various government departments, and divisions within those departments worked closely with the company on a range of issues. As part of that relationship, Dr Crawford explained that he and the Minister had travelled to Brazil to meet the CEO and CFO of Moy Park's parent company.
45. Dr Crawford has explained to the Inquiry that Brian Gibson, a Moy Park employee who deals primarily with new growers, lives near to Dr Crawford's home farm and as such Dr Crawford knows Mr Gibson and his family well (**TRA 09864**).
46. Dr Crawford provided information for clarification to Mr Gibson on 7 November 2014 (**WIT 21615**). That information would already have been in the public domain. It is submitted that this would not be strange or unusual but would have occurred in practice when stakeholders engaged with Government. There was no attempt to provide Moy Park with commercial advantage. As can be seen from various other engagements with stakeholders from other politicians and Government departments, it is a part and parcel of the way in which Government works i.e. that responses for information from stakeholders are responded to in order to foster good relationships. This does not mean that material that is not otherwise in the public domain should be selectively shared. However, Dr Crawford is clear

that that was not the position in the instant case (TRA 09875).

Knowledge in 2014 and 2015 from engagement with family members

47. It is now well known that Dr Crawford is from a farming background and that he has a brother (James Crawford) and two cousins (Richard Crawford and John Crawford) who are recipients under the Scheme. Dr Crawford's home farm is a dairy farm.
48. James Crawford entered into the poultry farming business in 2015 following his return from India where he worked as an Engineer. He erected two poultry houses on land adjacent to a smallholding purchased by Dr Crawford. Dr Crawford has no recollection of discussing the RHI Scheme, or of seeing the quotation from R and S Biomass dated 19th February 2015, for installation of biomass boilers to benefit from RHI with James Crawford (TRA 13016-7). As context, Dr Crawford explained that setting up poultry houses was a large construction project of which the heating system was just one part. Further, because it was James' intention to supply Moy Park, much of the technical specification was prescribed (TRA 13018). There would therefore have been no need for discussion about the relative benefits of biomass versus gas, for example. James Crawford has stated that he: *"cannot recall having any conversations and ha[s] no record of receiving any information from Andrew Crawford, my brother, in relation to the Scheme"* and that he: *"was not encouraged, received no assistance or information from Andrew Crawford in relation to applying or considering to apply or seeking accreditation to the scheme"*. (WIT 265610)
49. In relation to Dr Crawford's interaction with his cousin Richard regarding the Scheme, Dr Crawford has given evidence that he was aware that Richard was installing biomass boilers in his poultry houses. Richard Crawford initially erected three poultry houses and then erected a further three in 2015. Again, Dr Crawford is clear that he did not have a conversation with Richard Crawford from which he could have gained awareness that the scheme was providing greater than anticipated returns. Richard Crawford states that he discussed farming with Andrew Crawford but it was not as a result of his contact with Dr Crawford that he applied to the Scheme. Rather, the installation of biomass was to improve productivity and bird welfare, and this was encouraged by Moy Park based on benefits seen in the UK (WIT 266010).
50. Dr Crawford had no interaction with his cousin John Crawford about the Scheme. John Crawford confirms there was no contact in his witness statement (WIT 265109).

Phase 3 - May 2015 to introduction of tiered tariffs in November 2015

June 2015

51. Dr Crawford became Special Adviser in the Department of Finance following the May 2015 general election. Dr Crawford recalls speaking to Timothy Cairns generally upon Mr Cairns taking up post in DETI about issues within the Department, but not about RHI. This is likely to have been in or around the end of May 2015 and therefore prior to RHI having been escalated by officials to Ministerial level as a matter of concern (**TRA 13027**). While Timothy Cairns was not asked specifically about this interaction, his evidence that he was not aware of issues regarding RHI until 8 June 2015 (**TRA 12649**), is consistent with Dr Crawford's evidence.
52. Timothy Cairns does recall speaking to Minister Foster and Dr Crawford after the 8 June 2015 issues meeting at which he states he was told by the Permanent Secretary that the Department had 'dropped the ball'. Dr Crawford has stated he does not remember this meeting but it is possible he was present (**WIT 21607**).
53. Dr Crawford does recall Timothy Cairns ringing him on 10 June 2015, following the events in London, such that Dr Crawford was aware that the relationship between Timothy Cairns and Jonathan Bell was not good (**TRA 13031**).
54. The next interaction Dr Crawford recalls takes place in or around the end of June 2015 in Parliament Buildings when Stephen Brimstone was also present. This was after the 26 June mediation meeting to try to resolve the differences between Timothy Cairns and his Minister, when Mr Cairns had returned to work. It was at this point that Dr Crawford recalls RHI being specifically raised by Timothy Cairns (albeit there was no detail on the issues discussed at that stage (**TRA 13042**)) and it was agreed that Timothy Cairns could send Dr Crawford the submission when it came up.
55. In the interim period, while Timothy Cairns was off, and therefore there was no Special Adviser within DETI, and a new Minister in post, Dr Crawford was asked to provide advice in relation to the NIRO Scheme. That advice was provided to the DETI Minister, the First Minister, and Timothy Johnston (**WIT 21894, 21908 - 21931 and TRA 13034**).
56. While discussing NIRO with Timothy Johnston on 14 July 2015, Dr Crawford recalls mentioning to Timothy Johnston that Timothy Cairns would be sending a submission on RHI to Dr Crawford to consider (**TRA 13044**). Until Dr Crawford was sent the 8 July 2015 submission by Timothy Cairns on 16 July 2015, he did not know what was being proposed.

Communication with Timothy Cairns on 20 July 2015 re 8 July 2015 submission

57. Dr Crawford received the 8 July 2015 submission from Timothy Cairns on 16 July 2015. Thereafter, on 20 July he forwarded the email from his DFP email account to his Hotmail account for ease of reading, particularly of the attachments (**TRA 13057**). The DFP email account was only readable on the Government-issued Blackberry device whereas Dr Crawford could read emails sent to his Hotmail account on his Government-issued iPad.
58. Dr Crawford has accepted he was wrong in having sent the submission to his cousin Richard Crawford on 16 July 2015, and has apologised both in his written statements and in oral evidence (**TRA 13068**) for having done so.
59. However, the context in which the submission was sent is significant. Richard Crawford had already installed biomass boilers and was in the process of installing three more. Richard Crawford was aware that changes were expected to the Scheme, as this was something that was widely known in the industry (**TRA 13061**). The submission was sent to reassure him that the proposed changes would not affect the boilers that were already installed (**TRA 13063**).
60. Dr Crawford also sent the submission to Timothy Johnston on 16 July 2015 on foot of the 14 July telephone conversation (**WIT 21619-20**) concerning the NIRO that Dr Crawford had been assisting with, in which he told Timothy Johnston that there were issues with the RHI Scheme. This conversation explains the lack of content in the body of the email. Dr Crawford forwarded it to Timothy Johnston for his information and explained in his oral evidence, that if he was assisting another Special Adviser it would not have been uncommon to copy one of the FM Special Advisers into the email to provide him with some cover (**TRA 13064**). Dr Crawford believes this would have enabled a high level discussion about the political implications, rather than about any of the technical detail (**TRA 13069**). Dr Crawford is clear that he was not expecting any direction from Mr Johnston, and that he did not have any further discussion with him to the effect that cost controls should not be introduced, to formulate a party position, or issue a direction or instruction to Timothy Cairns (**TRA 13044-5 and WIT 21894-5**).

Engagement with Timothy Cairns following receipt of 8 July 2015 submission

61. Dr Crawford believes he had two telephone conversations with Timothy Cairns following receipt of the 8 July 2015 submission as well as the email communications with which the panel are now familiar.

62. Dr Crawford received the submission from Timothy Cairns on 16 July 2015. He believes he would have read the covering submission at a minimum on that date before he sent the email on to anyone.
63. On 16 or 17 July 2015 he had a chance meeting with David Robinson of R and S Biomass who was installing the systems in Dr Crawford's brother's poultry shed, adjacent to Dr Crawford's smallholding.
64. Dr Crawford's recollection is that Mr Robinson freely offered information such as: (i) he was very busy with installations; (ii) that there was a shortage of pipework; (iii) a large number of boilers had been purchased before the end of the 2014/15 tax year and were then being installed; (iv) that the vast majority of Moy Park producers who were going to convert had already converted and (v) that he is likely to have mentioned the talk in the industry being that people were heating empty sheds **(IND 27555 and TRA 13080)**.
65. Dr Crawford first replied to Timothy Cairns about the submission on 20th July 2015 **(WIT 21629)**. He made the following points:
- (a) Moy Park suppliers were installing boilers that had been purchased before end 2014/15, taking advantage of investment allowances;
 - (b) The majority of Moy Park producers would have installed biomass boilers before changes were made as opposed to over the 18 months suggested in the submission - the position could be clarified by speaking to David Mark;
 - (c) That industry was already aware that changes were intended to be made in October and there would therefore be a spike prior to this date;
 - (d) His understanding was that the Scheme was AME funded (i.e. without caveat) so that increased uptake would simply mean that out of the total GB and NI funding, NI would simply receive a greater proportion if it performed better than GB **(TRA 13096-8)**;
 - (e) The main problem re funding therefore was the lack of confirmation of budget **(TRA 13098-9)**, something that would need to be clarified for the ETI Committee - Dr Crawford undertook to check the position with DFP but recommended that Timothy Cairns also checked. This was in the context of the welfare reform issue that was live at the time that made Dr Crawford acutely aware that AME couldn't simply be taken for granted **(TRA 13101)**;
 - (f) He believed introducing tiering was sensible to stop potential abuse but not to the extent that it would stifle uptake and cause the Scheme to once again underperform.

66. The first main point to be made regarding this reply to Timothy Cairns is that Dr Crawford was providing relevant information to the current Special Adviser to the DETI Minister. Dr Crawford was no longer the DETI Spad and was providing information and advice; his role was not to do Timothy Cairns' job for him.
67. It was for Timothy Cairns to flag this information within his Department, including to his Permanent Secretary, Deputy Secretary and Minister.
68. It is unclear why Timothy Cairns would choose to keep this information to himself. There is no evidence, from any witness, to suggest that Dr Crawford had sought the information he freely provided to be kept confidential.
69. Dr Crawford did however speak, as he had undertaken to do, to an official in his own Department, DFP, see further below.
70. There is NO discussion in the email of 20 July of the date for bringing in the proposals suggested within the submission. It is submitted that if there had been a strategy to seek the latest possible date for introduction of cost controls, one would expect some mention of it, particularly as Dr Crawford was frank and forthcoming about other issues. Instead, the information provided by Dr Crawford highlighted the difficulties and therefore provides reason for Timothy Cairns to proceed expeditiously with the proposals in the submission, rather than seeking to delay them (**TRA 13106**).
71. It is submitted that Dr Crawford's proposition that Timothy Cairns of his own volition sought the latest possible date is likely:
- (i) Given the recent difficulties that had been experienced over closure of the NIRO Scheme, (a concern that Timothy Cairns accepts he had at that time (**TRA 12814**));
 - (ii) Because he was concerned about bad publicity about the RHI Scheme coming so soon after the negative publicity about the NIRO Scheme (**WIT 21608 and TRA 13167**) - again accepted by Timothy Cairns as a factor (**TRA 12814**); and
 - (iii) As his relationship with his Minister was poor, his job could potentially be at risk if negative publicity was not managed or prevented (not accepted by Timothy Cairns (**TRA 12815**)).
72. It is notable that Stuart Wightman also proposes the first of these factors in his contemporaneous email dated 23 July 2015 to Chris Stewart - **DFE 10131**)
73. Indeed, Dr Crawford's position is that, having raised the possibility of

a spike, for him to have then suggested delaying the introduction of tiering, was to him, as it was to the officials, totally illogical. As such he is clear he did not suggest such a course (**WIT 21608 and TRA 13138**).

74. It is significant that Chris Stewart's evidence that Timothy Cairns gave him the impression at the impromptu meeting of 28 July 2015 that he needed something to sell to others as a 'do minimum' approach because there was a wider view that this was a good Scheme (**WIT 27530 and TRA 11669**) was simply 'an impression'. As has been observed during the course of the Inquiry it is not uncommon for other people (more often Ministers) to be 'prayed in aid' of a suggestion or proposal, whether or not that person or persons is the source of the suggestion, or even aware of it.
75. Moreover, Chris Stewart was clear that he did not intend to imply anything sinister by the fact that Timothy Cairns did not directly name the others he was relying upon. It is submitted that in terms of seeking the latest possible date or wanting the Department to do the minimum possible, it was convenient for Mr Cairns to 'pray in aid' unnamed others, particularly as Mr Cairns was new to the Department.
76. In any event, as Dr MacLean observed during the course of Dr Crawford's evidence, it is perfectly legitimate to want to manage the timing carefully and be able to demonstrate that they had "*done their best*" (**TRA 13148**). There is no evidence, contrary to the speculation, particularly rife in late 2016 and early 2017, that there was a desire to delay the introduction of cost controls for personal benefit or to benefit friends and family.
77. On 30 July 2015, on foot of an email from Timothy Cairns that included an email from John Mills setting out the outcome of the meeting of 28 July at which John Mills, Chris Stewart and Timothy Cairns were present, Andrew Crawford provided Timothy Cairns with some further advice.
78. The last paragraph of this email from John Mills states: "The arrangements will not reduce the current tariff but are an important safeguard against over-use". The email also sets out that a cap of 400,000 kWhrs is intended to be introduced.
79. Dr Crawford made the following points in the email (**IND 27552**):
 - (i) That he believes "you" i.e. Timothy Cairns and the Department will need to bring in the controls from 1st October in line with what was proposed i.e. there was no suggestion of delaying their introduction.
 - (ii) Dr Crawford suggests that consideration is given to increasing

the number of hours the boiler may run before the tariff is reduced, and outlines that running a 199kW boiler for 3000 hours would be the amount required by poultry producers.

- (iii) The proposal in (ii) would remove the incentive for poultry farmers to install prior to the introduction of tiering, thus preventing a spike.
 - (iv) A large spike should be expected and there was a shortage in the required pipework at that time.
80. There are two main points to be made about the content of this email. The first is that Dr Crawford says "you will need to make changes" (emphasis added). If Dr Crawford had felt this was a party decision or matter in which he had control, it is submitted it would have been more natural for him to have said "we".
81. Second, and most significantly, Dr Crawford has explained that his primary concern was the need to bring in tariff controls to prevent over-use or abuse of the Scheme, in line with the key message at the end of John Mills' email. Dr Crawford's suggestion was intended to permit legitimate use of the Scheme but remove any incentive to abuse the Scheme by heating poultry sheds when they were empty (**TRA 13178**). Crucially, he did not at this point know this level of usage could constitute overcompensation (**TRA 13179**), and believed the key problem with funding to be that the Scheme had become irregular due to the failure to seek reapproval.

Summary re delay in the introduction of cost controls in Summer 2015

82. One of the key matters to be examined under the Inquiry's Terms of Reference is the delay in the introduction of cost controls in November 2015.
83. Jonathan Bell alleged in his interview with Stephen Nolan that Spads in OFMdfm and DFP namely Timothy Johnston and Andrew Crawford involved themselves in the Scheme in the Summer of 2015. This was following his recording of conversations with Andrew McCormick in which Dr McCormick confirmed Jonathan Bell's suggestion that there were others in the party (particularly OFM SpAds) who wanted "*another month to keep the thing open*" (**WIT 11308**), and then suggested the following day that it was Andrew Crawford who was involved. Andrew McCormick had no evidence to support these assertions/allegations.
84. Jonathan Bell meanwhile claimed that Timothy Cairns had told him Timothy Johnston (and not at that stage Andrew Crawford) had been the source of the suggestion that the scheme be delayed (**WIT 11309 and 11330**).

85. In his oral evidence to the Inquiry, Timothy Cairns said that discussion with officials, on foot of what he claims was part of a 'process' he believed he had to go through following the meeting of 26 June 2015 with Timothy Johnston (disputed by both Timothy Johnston and Andrew Crawford (**WIT 21518 and 21619**)) about pursuing a later date for cost controls to be introduced, had taken place in or around 23 July 2015 (as documented contemporaneously in Chris Stewart's email of 23 July 2015 (**DFE 10131**)).

86. Dr Crawford was clear in his evidence that he never suggested that a later date be sought. However, even if the Inquiry were to prefer the evidence of Timothy Cairns on the point, Timothy Cairns was unequivocal in his oral evidence that by the middle of the Summer Dr Crawford had accepted that the cost controls should be introduced on 1 October 2015 (per the 31 July 2015 email), and that by 12 August 2015:

"At that point in time, I think myself and Dr Crawford are in common cause. The process was at an end, it's Minister Bell needs to get back and you know, the submission is the submission" (**TRA 12856**).

87. Thereafter, at the 24 August 2015 issues meeting Timothy Cairns decided of his own volition to raise the issue of moving the date back one last time in the full expectation that officials would refuse.

88. However, officials did, to Timothy Cairns' surprise, acquiesce to the request. It is submitted that one possibility for this was that the issues meeting, and therefore clearance of the submission, did not take place until 24 August. By this time it is likely it would have been difficult to get the necessary legislation in place by 1 October 2015. Officials, and indeed Timothy Cairns, had the option of seeking Minister Bell's return to the Department earlier to facilitate sign off of the submission. Indeed, it is now apparent that Jonathan Bell was engaged in departmental business at various points throughout the Summer of 2015, providing opportunity to have sought an issues meeting on RHI earlier than 24 August 2015. This was not done.

Howard Hastings' email of 3 August 2015

89. Dr Crawford received an email from Howard Hastings forwarding an email from Brian Hood that referred to abuse of the scheme. Dr Crawford had already raised potential abuse with Timothy Cairns, the DETI Spad, and would have expected him to take that information seriously and take appropriate action (**TRA 13212**). However, the allegations of abuse that Dr Crawford was becoming aware of and passed on were non-specific and would not have permitted specific investigations to take place. Timothy Cairns for his part says that he

did repeatedly raise the potential for abuse with officials. Chris Stewart disputes the number of times concerns were reported but agrees they were mentioned to him by Timothy Cairns on two occasions (**TRA 11723**) prompting him to check with Ofgem about its inspection regime. In the context, therefore, it is difficult to see that anything different would have taken place if Dr Crawford had taken the additional step of forwarding the Howard Hastings email to DETI albeit Dr Crawford now believes, with hindsight, that forwarding the email directly to Dr McCormick may have prompted the matter to be taken more seriously (**TRA 13214**).

90. It appears likely, and it is accepted by Dr Crawford, that he did forward this email to David Mark of Moy Park in order to make him aware of what industry was saying and, if his growers were responsible for abuse, to permit him to bring it into line (**TRA 13249**).

Phase 4 - closure of the Scheme to new applicants.

Involvement in January/February 2016

91. Dr Crawford, as Special Adviser to the DFP Minister, had a comparatively minor role during the period from December 2015, when it became apparent that the financial difficulties with the Scheme were significant in that HMT confirmed that the overspend would have to be met from the DEL budget, until the Scheme was closed to new applicants.
92. While closure of the Scheme to new applicants was cross-cutting, and therefore involved the DFP Minister, much of the substantive policy making and decision taking was done by the DETI Minister and OFMdfM.
93. Dr Crawford was asked about a meeting that took place between the newly appointed Finance Minister, Mervyn Storey, Janet McCollum, then Chief Executive of Moy Park and Mike Mullan of Moy Park on 15 January 2016. The Finance Minister had been in post three days. Dr Crawford explained that he believed this meeting had been in Mr Storey's diary from prior to his becoming a Minister to discuss a constituency matter, but it then gained an added dimension as by the time it came around Mr Storey was attending as Finance Minister, and not solely as a local representative (**TRA 13251**).
94. Dr Crawford is clear that at that time he had no information that the Scheme was to be closed (**TRA 13257**) and therefore would have been unable, in common parlance, to have 'tipped Moy Park off'. His best recollection is that there was a discussion about the RHI Scheme and its benefit to growers and in that context he might have made some comment about budgetary issues (**TRA 13257**).

95. In any event, it appears that Moy Park had by this time, 15 January 2016, already been made aware that the Scheme was to close from some other source given that on 11th or 12th January 2016 John Mills was reporting to others in DETI that *“Moy Park had instructed suppliers that RHI would close end March and to act quickly to get applications in”* (IND 05881). Dr Crawford categorically denies having provided this information to Moy Park, and again, believes he could not have as he did not have this information at this time in order to be capable of passing it on.

Allegation of altercations with DFP Officials

96. The allegation made by Jonathan Bell that there was a verbal altercation with David Sterling is completely unsupported by any other evidence and denied by both Dr Crawford and David Sterling (WIT 05187, TRA 16501 and TRA 13217). Similarly, the allegation of Timothy Cairns that this altercation was in fact with Mike Brennan is also denied by both parties, and unsubstantiated (TRA 13223).

Removal of reference to the poultry industry

97. The Inquiry examined the removal on 1 February 2016 of the reference in the draft Urgent Procedure Paper from Minister Storey to OFMdfM (DOF 02301) of a line attributing the surge in uptake to be primarily attributable to the poultry industry’s use of biomass to heat poultry houses.

98. Dr Crawford explained both in his second witness statement and in his oral evidence that his rationale was that it appeared to him to be singling out one particular sector and that given the matter would be the subject of very public debate, this singling out was unfair (WIT 21900 and TRA 13238-9).

99. It bears reiterating that, while there has been much criticism of Dr Crawford for his connection to Moy Park, that connection was borne out of necessity in his role as Special Adviser in DETI over 7 years. Moy Park is Northern Ireland’s largest employer, and was legitimately supported through Invest NI grant schemes, and the AgriFood strategy in order to create more jobs and support investment. DETI was therefore actively encouraging the company’s growth.

Events post Phase 4

Conversation with Dr McCormick - NIFDA Dinner

100. Dr Crawford has recently submitted a reply to the claim made by Dr McCormick at the final evidence session, that Dr Crawford said to him at a NIFDA dinner in October 2016 *“I thought this was AME and we could fill our boots”*. Dr Crawford categorically denies having said

this. Indeed, it is notable that Dr McCormick makes reference to this conversation in his three previous lengthy and detailed statements in considerably more vague terms. It is submitted that had Dr Crawford used the colourful language claimed by Dr McCormick in oral evidence, he would have previously recounted that in his written evidence. Rather, Dr McCormick states in his written evidence, for example, *"I do not recall any details of the conversation"* (WIT 26294).

Conclusion

101. As Special Adviser to the DETI Minister during 2011 to 2015, Dr Crawford's role in relation to the RHI Scheme has been the subject of significant scrutiny. Regrettably for Dr Crawford, by virtue of having been Special Adviser in DETI for such a considerable period, he was then drawn in to provide some general advice to the new DETI Special Adviser Timothy Cairns in Summer 2015. The central allegation levelled against him publicly by Jonathan Bell in his interview with Stephen Nolan, and later by Dr McCormick to the PAC, was that he was involved in delaying the introduction of cost controls in Summer 2015. While Dr Crawford has accepted and apologised unreservedly for other matters that have arisen in the course of the Inquiry, it is submitted that contrary to that central allegation, there was no attempt by him to delay the introduction of tariff controls.

Julie Ellison BL

27 November 2018