

CLOSING SUBMISSION ON BEHALF OF ARLENE FOSTER MLA

Introduction

1. Mrs Foster MLA was DETI Minister from 2008 to May 2015. From May 2015 to January 2016 she was DFP Minister, before becoming DUP Party Leader on 17 December 2015 and thereafter taking up post as First Minister of Northern Ireland in January 2016. She remained First Minister until the resignation of Martin McGuinness as deputy First Minister on 9 January 2017.
2. Mrs Foster was therefore DETI Minister during the period covered by Phases 1 and 2 of the Inquiry's work, DFP Minister during Phase 3, and First Minister during Phase 4.
3. Mrs Foster MLA has given evidence on 5 days in total: on phase 1 and 2 – days 54, 55, 58, and 59 and on phases 3 and 4 on day 93.
4. This submission intends to set out the key points following Mrs Foster's giving of both oral evidence and written witness statements and consideration of the evidence provided by others to the Inquiry. In line with the Inquiry's guidance, it will not seek to rehearse the evidence except insofar as it may assist the Inquiry to draw attention to a particular point that has not been clearly drawn out in the course of the Inquiry hearings. As such, silence on any particular issue should not be taken as an indicator of its relative importance, or an attempt to divert the Inquiry's attention from other significant evidence already provided.

Phase 1

Choice of Scheme

DETI submission 1053/2011 of 8 June 2011 to the Minister

5. DETI sub 1053/2011 8 June 2011 from Fiona Hepper has been said to be pivotal in determining the direction the Department would take. It is stated to have been to "*inform [the Minister] of the conclusions of the economic appraisal on a Renewable Heat Incentive (RHI) for Northern Ireland*". Mrs Foster MLA highlights the following in relation to this submission:
 - (i) This submission was based on the *draft final* CEPA report. Given that the submission was being relied upon as the basis for seeking a decision from the Minister, Mrs Foster's evidence is that she would have expected it to be final save for "*inconsequential issues*" (TRA 01849).

- (ii) In common with other submissions the financial implications were said to be that "*HMT has advised £25m of AME is available over the spending period should Northern Ireland choose to introduce a RHI*" (WIT 00739). There is no indication given that the funding is anything other than 'standard AME'.
- (iii) Ms Hepper stated in her evidence that she was "*pretty sure*" (**TRA 01849**) the Minister was told of the funding arrangements orally. Given the unique nature of the funding it is notable that the funding arrangements were never expressly set out in a Ministerial submission to form part of the record of decision-making, whether in this or any other submission, and it is submitted that had Mrs Hepper in fact set out the unusual nature of the funding, this is something Mrs Foster (and Dr Crawford) were likely to remember. Neither of them do.
- (iv) The submission states at paragraph 23/24 (depending on the version of the submission): "*The NI RHI option is the preferred approach and offers the highest potential renewable heat at the best value*". There is nothing in the submission to support Fiona Hepper's position, as set out in oral evidence (**TRA 01887-90 and TRA 01893**), that this line should be read as meaning the NIRHI was the best of the ongoing incentive Schemes as opposed to the best overall. Mrs Foster MLA was clear that if she had been made aware at the meeting that the CEPA report was saying that the Challenge Fund was best Value For Money, she would not have signed off the submission without seeking it be amended (**TRA 07768**).

14 June 2011 meeting

- 6. A meeting took place between the Minister, her Special Adviser Dr Crawford, and the Head of Energy Division, Fiona Hepper, on 14 June 2011 to discuss Submission 1053/2011 of 8 June 2011. Mrs Hepper believes someone else from Energy Division was likely to have been present but cannot recall whom. No notes or minutes were taken by Energy Division, despite this being the correct procedure in accordance with Private Office guidance.
- 7. Upon scrutiny of the Ministerial diary for 14 July 2011, it appears unlikely that the meeting lasted any longer than 40 minutes (**TRA 08202**). Mrs Hepper states that she provided information to the Minister orally on that date and had not provided the draft final CEPA report to the Minister and her Spad prior to that date. According to Mrs Hepper, the information imparted included that, *inter alia*:

- (i) If a grant scheme is chosen, the Challenge Fund would be preferred but, if going for a 'RHI' the NIRHI was preferred. It is submitted this is contrary to the common sense interpretation of the 8 June 2011 submission (**TRA 01877-8**);
 - (ii) The Minister was taken to the relevant tables in the CEPA report and talked through the relative costs of each option including the fact that as between the NI RHI and the GB RHI the NI RHI will provide the most potential renewable heat at the best value (**TRA 01889**);
 - (iii) The cost of the schemes in terms of funding the 'tail' after the initial £25m spend to 2015 (**TRA 01891**).
 - (iv) The fact that, while there was a £218m difference in the cost of a Challenge Fund versus a RHI, the difference could be reconciled because of 'non-monetary benefits' (**TRA 01891-2**).
 - (v) There would be changes in the final report as a result of ongoing modelling but that the relative positioning as between the Challenge Fund and the NIRHI would not change. In Mrs Hepper's words she said: "*here's what it looks like, we don't think it's going to change much*" (**TRA 01864**).
8. Crucially, in support of (v), Ms Hepper's evidence was that Energy Division had spoken to CEPA between receipt of the draft final report and the meeting with the Minister and been told that the position would not change. CEPA have responded to this assertion and in Mark Cockburn's witness statement received 22/2 18, he states (**WIT 108111 to 108112**):

"CEPA is not aware of our communicating anything to DETI on or before 14 June 2011, that the balance between RHI and challenge fund would not change, or would not change significantly, as between the draft final report of 31 May 2011 and the final report.

As set out in response to Question 1A, DETI provided comments on the draft final report on 7 June 2011, some of which would have had potential to have significant impacts on the modelling: for example, a request to revise the tariffs to hit the 10% renewable heat target. As also set out in response to Question 1A, an initial written response to the comments from CEPA to DETI was not provided until 15 June 2011 and a teleconference to discuss our responses to the comments was not held until 21 June 2011, once Iain Morrow (the CEPA Project Manager) had returned from two weeks of annual leave. While we may not have had any reason to expect there to be a change in results one way or another

prior to 15 June 2011, we consider it highly unlikely that we would have advised that the balance between options would not change without having first resolved the comments raised by DETI and then being able to complete model runs, something that would not have been possible until after 20 June 2011."

9. In fact the change in the NPC as between the Challenge Fund and the NI RHI moved from being a cost difference of £26m (Table 10.3 Draft Final CEPA Report **DFE 187844**) to a cost difference of £218m in the Final report (**Table 10.3 Final CEPA Report WIT 00688**).
10. It is for the Inquiry to consider whether it was sufficient to place this matter before the Minister prior to the receipt of the final report. It is submitted that part of that consideration should include whether, in a meeting likely to have lasted no more than one hour, it would have been possible for Mrs Hepper to have talked Mrs Foster through the submission and figures in the accompanying CEPA report in the detail she claims, and in sufficient detail to allow Mrs Foster to make a decision based on non-monetary benefits. To have made this decision on this basis would have been to disregard CEPA's recommendation that the Challenge Fund represented best Value for Money in circumstances where the final report was not yet to hand, and where the recommendation that Mrs Hepper says was explained to the Minister was at odds with the plain reading of the submission that Mrs Foster had been provided with prior to the meeting. Mrs Foster's evidence is that she believes it would have been highly unlikely that she was taken through the report in detail (**WIT 20567**) and, had she been made aware of the detail in the way Mrs Hepper outlined, she would not have signed off the submission at the meeting (**TRA 07783-4**).
11. While the final CEPA report was later provided to the Minister, the Minister's evidence is that where complex technical reports were provided, she relied on officials accurately summarising their content in submissions, and on the advice of her Special Adviser. Despite a submission having been provided to the Minister at that time, the changes within the report, which can only be described as significant and material, were not drawn to her attention.

CEPA addendum February 2012 and Regulatory Impact Assessment

12. Mrs Foster MLA was not provided with the CEPA February 2012 addendum report, the casework committee papers or minutes, or the DETI business case to DFP. On 13 April 2012 she signed off the Regulatory Impact Assessment (**DFE 70749**). That document did not set out that the lifetime cost of adopting a RHI scheme had increased

by £111m since the Final report of June 2011 but again stated that the NI RHI was *"the preferred approach"* offering *"the highest potential renewable heat at the best value"* (DFE 70754). Mrs Hepper accepted in her evidence that the increase in overall cost from the May 2011 CEPA report to the February 2012 addendum of £218m was not specifically brought to the Minister's attention (TRA 02226-7).

13. Further, there were a number of assurances given to the Minister in this submission and RIA that were not subsequently followed up within the Department. These include that:

- (i) there would be regular, planned, reviews of subsidy levels (DFE 70751) that would begin in January 2014 with changes implemented by 1 April 2015; and
- (ii) a joint project team between Ofgem and the Department would be established to mitigate the *"risk of failure in administration of RHI"* (DFE 70753).

June 2012 Ofgem warning

14. There is a conflict of evidence between Mrs Foster MLA and Mrs Hepper on this issue. Mrs Foster's evidence is that she was not clearly and straightforwardly made aware of the risks of proceeding with the scheme without cost controls.

15. The choice Mrs Hepper claims she presented at this time was either (a) push back introduction of the Scheme until February or March 2013 to allow DETI to implement interim cost controls; or (b) launch the scheme as planned and legislate to bring in cost controls later, as DECC had done. Mrs Hepper made explicit reference to the fact that DECC did not think it would ever have to use the power but that they were bringing in interim cost controls pending work on implementing degeneration, and had operated the scheme for 10 months without cost controls. She stated she had talked the issue out with David Thomson and thereafter put the two options to the Minister.

16. Mrs Foster has no recollection of this conversation, and believes that, if it did take place, and the risks been presented in clear and stark terms, it is likely: (a) that she would have some recollection of the conversation; (b) she would have required the matter to be set out in a Ministerial Submission for proper consideration and so that there was a record of the decision she was being asked to make; and (c) she would have discussed the issue with Dr Crawford (TRA 08238 - 08254 and TRA 08262).

17. There is no record in the Ministerial diary from the period of any meeting (DFE 423739) despite it being usual practice that if an official wished to speak urgently to the Minister, this would be arranged by the Minister's Private Secretary and recorded in the diary (TRA 08240).

Launch of Scheme

18. Mrs Foster was keen that the Scheme be launched as soon as possible. However, this did not mean that officials should proceed to implement a Scheme that was not fit for purpose or contained inherent risks or flaws (**WIT 20584-6**).
19. Mrs Foster's evidence is that she was not told of Ofgem's warnings about proceeding with the Scheme without amendment in November 2011, either at that time, or in the months afterwards, including, for example, in the submission of 16 March 2012 and accompanying documents (including the RIA), or later by Fiona Hepper in June 2012. She was also not told or made aware of the fact that DECC had issued a consultation document dated 26 March 2012 setting out the intention to bring in interim cost controls to protect the budget until such time as depression could be implemented (**TRA 08258**).
20. It is submitted that without this information, Mrs Foster was not placed in a position where she could make an informed decision about whether to introduce the Scheme without cost controls. After the Scheme was introduced, this lack of awareness meant she was unable to raise the issue of the need for cost controls and ensure they were progressed within the Department, see further below.

Notes and Minutes

21. Mrs Foster's position in relation to the taking of notes and minutes can be summarised as follows:
- (i) The lack of notes or minutes from meetings with Officials was a shock given that at each meeting at which Officials were present, invariably those Officials wrote notes in notebooks;
 - (ii) Given this unvarying practice, Mrs Foster assumed that the notes would be placed on file as a record of what had taken place;
 - (iii) The Minister's Private Secretary would have taken a note of action points to which Mrs Foster MLA could later refer as required;
 - (iv) Mrs Foster believed the notes being taken were converted into a formal record (**TRA 08278-9**);

- (v) Mrs Foster never gave a direction not to take minutes because of freedom of information (TRA 08282).

Phase 2 - Cost Controls

22. It is clear, as summarised by Mr Scoffield QC (TRA 08310-08312), that throughout the period from June 2012 to January 2013, cost controls were not expressly set out as one of the issues to be addressed in bringing forward proposals for Phase 2 of the Scheme. It is submitted this supports Mrs Foster's view that the need for interim cost controls, and the risk of these not being introduced was not highlighted, sufficiently or at all, to the Minister prior to the introduction of the Non-Domestic Scheme.
23. Mrs Foster was provided with DETI sub 322/2013 dated 26 June 2013 annexing the Phase 2 consultation document. The consultation document included a section on "*setting standards, improving performance and cost control*" (WIT 02375 and WIT 02407 et seq.). A proposal to permit suspension of the scheme when certain trigger points within the budget were reached was outlined. The controls would apply across both the domestic and non-domestic schemes.
24. However, despite the consultation, by November 2013, in an update to the ETI Committee that the Minister received and read (TRA 08338- 9), Energy Division indicated that the changes to the domestic and non-domestic scheme could be separated (or de-coupled) as the domestic scheme could be dealt with more quickly as it did not need State Aid approval (advice that turned out to be incorrect).
25. Mrs Foster's evidence was that this did not ring any alarm bells at the time because: (a) she had not been warned in stark terms of the need for cost controls in June 2012 or at any other time, and (b) there was no explicit advice from officials regarding the implications of separating the domestic and non-domestic elements (including cost controls) of the Phase 2 consultation, and (c) the scheme was underspent (something Mrs Foster knew from monitoring rounds as well as submissions). What is clear, and has been accepted by John Mills, is that his assertion in October 2015 (WIT 02435 to 02438) that it had been a Ministerial decision to defer the introduction of cost controls was incorrect.
26. The Department proceeded to introduce the domestic scheme in priority to making changes to the non-domestic scheme. While cost controls had been consulted on in 2013, there was no explicit reference made to cost controls throughout the period during which the domestic scheme was being introduced, nor were they raised as an issue by officials whether orally or in submissions to the Minister. In

particular, in May 2014, the submission to the Minister to update the ETI Committee refers to “*technical changes in legislation*” (DFE 230086), rather than stating explicitly that these include cost controls and there was also no explicit reference in the submission dated 16 September 2014 to bring in the domestic scheme (DFE 147389). Further, the Minister was not presented with the results of the consultation in relation to cost controls. As a result, as Mrs Foster has stated (TRA 08382 - 3), they were not a live issue either in her mind, in the Department, or the Assembly, at the time.

27. The Inquiry may consider that the fact cost controls were not clearly and expressly raised to the Minister, but rather appear to have dropped out of the Department’s consciousness as the Energy Division team changed, indicates procedural and structural deficiencies in the operation of the Department. A number of different management techniques may have prevented this from happening. Suggestions raised throughout the course of the inquiry include: (i) implementation of project management; (ii) greater monitoring of substantive issues by the Minister’s Private Office or a separate delivery unit, (iii) better handover among civil servants; (iv) consideration of whether Energy Division was the most appropriate division to implement the Scheme; and, generally, (v) better minuting/ note-taking of decision-making.

Monitoring of the Scheme

28. Mrs Foster stated in evidence that she had been receiving ‘mixed messages’ in relation to the Scheme’s performance. The Inquiry explored the fact that she received information about the Scheme’s performance in the course of updating the ETI Committee and DECC about aspects of the Scheme, but there was no formal regular reporting to the Minister of Key Performance Indicators. This could have included analysis of performance against expectation, an indication of spend or percentage tracking against GB or provide information about applications and accreditations in a meaningful way (TRA 08415). The Inquiry may consider that had such a regular formal reporting mechanism been in place it may have focused the minds of officials on the figures and also allowed the Minister to more clearly understand the position. The situation that prevailed was one in which the Scheme was seen as being underspent but the Minister was also being told that it was “*punching above its weight*” as against the UK Scheme uptake (January 2014 DFE 33776) i.e. there appears to have been no structured analysis presented to properly understand the Scheme’s performance (as discussed at TRA 08416).

Engagement with Janette O’Hagan

29. Mrs Foster MLA has reiterated that Ms O'Hagan is deserving of a sincere apology for the way in which her concerns were handled when she brought them to the Department, and subsequently when she became the focus of the media's attention.
30. As Mrs Foster stated in her evidence (**TRA 08434**) in December 2016 she was only aware of two emails that had been sent by Ms O'Hagan to her as Minister of DETI. It later transpired that Ms O'Hagan had sent three emails directly to Minister Foster (two on 26 August 2013 and one on 3 September 2013 when she had received no response). Mrs Foster had in fact passed one of the earlier emails to DETI Officials to deal with but it took some time for them to issue a response.
31. Mrs Foster regrettably did not pick up the additional information provided in the 3 September 2013 email to the effect that the incentive was leading to misuse (**TRA 08437**). When Ms O'Hagan subsequently met with officials it is Mrs Foster's view that officials did not believe her that people would put in an installation simply to get a subsidy (**TRA 08446**). Mrs Foster was not made aware of the outcome of the meeting or the topics discussed. Officials did not revert to her following the meeting. It is submitted that it was not unreasonable for Mrs Foster to have expected officials to have thoroughly dealt with the issues raised at the meeting without Mrs Foster having to 'check up' later. This is particularly so given the breadth of the Ministerial role and the volume of correspondence received.
32. Mrs Foster was unaware that Ms O'Hagan continued to pursue the issue with officials throughout 2014 and 2015.
33. Mrs Foster accepts that in or around December 2016, when the media spotlight was thrown onto Ms O'Hagan, not enough was done to protect her identity and ensure that her wishes regarding the release of emails were properly respected. The lack of clarity between the Department and the DUP about Ms O'Hagan's wishes led to emails being released without her consent. In turn, Mrs Foster accepted that this raises questions about the way in which 'whistle-blowers' from both within and without the system should be treated and the protection they ought to be afforded.
34. The way in which Ms O'Hagan was treated also exposes the lack within the Department of an appropriate mechanism to record or file correspondence from a particular individual for reference, whether by Energy Division or within Private Office. Had there been such a file, the previous correspondence may have alerted an official that the issue required further investigation and escalation within the Department and to the Minister (**TRA 08465**).

DECC letters

35. The Inquiry provided Mrs Foster MLA with copies of letters from the DECC Minister throughout the 2013/14 period that made reference to changes DECC were making to the GB Scheme including tariff reviews, expansion of the non-domestic scheme, the announcement that degression would take place for small to medium biomass, and budget management.
36. Mrs Foster gave evidence that in her time in the Department she had instituted a procedure whereby she would be provided with correspondence before it was provided to the appropriate Division to be considered and responded to (**TRA 08496**). At this stage, knowing that the letter would be going into the Department for a response, she would be "*casting her eye over it*" rather than reading the letter in detail. While Mrs Foster MLA would have expected letters from Ministers to be responded to as a matter of courtesy, she did not realise that some of the letters coming in were not coming back to her as a correspondence case after consideration by the Division. Mrs Foster expressed her regret that no further steps were taken on foot of the letters, and that she did not read them in greater detail such that she would have been able to question officials or ensure the information contained within them was being used appropriately (**TRA 08495**).

Resources in Energy Division

37. Mrs Foster MLA stated in her second witness statement that, while Minister, she was aware of, and raised her concern about, the lack of resources in Energy Division (**WIT 20585 and WIT 20595**). Mrs Foster raised those concerns initially in 2011 with Sir Bruce Robinson (**DFE 430091**) and then with Malcolm McKibbin (**DFE 430219**) during David Sterling's performance appraisals. This was not only in terms of the number of Energy Division staff generally but also the lack of specialism in the Division to deal with complex and technical policy areas such as the Single Electricity Market, the Gas to the West project, and renewable heat (**TRA 08524**).
38. Mrs Foster also stated in her oral evidence that she raised her concerns about the lack of resources in Energy Division directly with David Sterling at issues meetings (**TRA 08522**). Mrs Foster stated that while there was a good team in Energy Division, she had noticed that submissions often had short turnaround times indicating that matters might be being rushed and that Energy Division officials tended to work longer hours than their colleagues, which long term was likely to have consequences. (**TRA 08523**).

Phase 3**June 2015 Interaction with Timothy Cairns**

39. Timothy Cairns stated in his evidence that he recalls speaking to Mrs Foster shortly after the 8 June 2015 issues meeting at which RHI was raised. While Mrs Foster has no clear recollection, she accepts she may have conflated this interaction with the later interaction she believes took place after the 26 June 2015 'reconciliation' meeting.
40. Mrs Foster MLA believes that in June 2015 she would have been aware that there were issues with energy generally following the election of the Conservative Government in the Westminster elections. She would have understood NIRO to have been the "*priority problem*" for DETI at that time (TRA 13582).
41. Mrs Foster recalls an exchange in late June with Timothy Cairns in which he asked for help from Andrew Crawford but does not recall any detail about RHI being discussed. (TRA 13585 - 6, TRA 13598 and WIT 20606 and WIT 20691). Peter Robinson, party leader, had already made Mrs Foster and the other Party Officers aware that there had been a disagreement between Jonathan Bell and Timothy Cairns at a Party Officers' meeting in June.
42. Mrs Foster agrees with the view that if there had been a better relationship between Timothy Cairns and Jonathan Bell during the Summer 2015 period, some of the RHI difficulties may have been easier to resolve (TRA 13591-2) and that with the knowledge gained by the Inquiry, it is now apparent the 'reconciliation' brokered was not conducive to establishing a good working relationship and the trust and rapport necessary for a relationship between Minister and Spad (TRA 13592).

Interaction between DUP Special Advisers during Summer 2015

43. Mrs Foster MLA was not made aware of and did not know about the specific interactions taking place between Timothy Cairns and Dr Andrew Crawford during Summer 2015 (WIT 20618, WIT 20699, TRA 13619 - 21 and TRA 13626). Mrs Foster's view is that she should have been made aware, in her capacity of DFP Minister, of the issue of potential abuse of the scheme and insofar as it might have had budgetary implications, the potential for a spike in demand (WIT 20657 and TRA 13622).

Knowledge within DFP during Summer 2015

44. DFP officials did not raise RHI as an issue to the Minister over the Summer of 2015. Mrs Foster MLA made the point in evidence that, having read the statements from the DFP and DETI officials it is unclear what they believed the funding position to be at that time. If the lack of clarity had been raised to the Minister she would have sought the needed clarity. Mrs Foster has also reflected that if she had been made aware of the need for greater flexibility from HMT this could have been raised in the Autumn talks leading up to the Fresh Start agreement **(TRA 13630)**.

Sending of submissions to third parties

45. Dr Crawford has accepted that he sent the 8 July 2015 submission to his cousin and brother-in-law, and that he had previously sent the draft July 2013 submission to his cousin. Mrs Foster MLA was not aware that this had taken place at the time. Had she been, her evidence is that she would have advised Dr Crawford to tell the Permanent Secretary. If had not done so himself, Mrs Foster would have spoken to the Permanent Secretary to make him aware that disclosure had been made outside the Department and seek his advice.

General

Appointment of Special Advisers

46. Mrs Foster gave evidence regarding the appointment of her Special Adviser, Andrew Crawford in 2007 **(TRA 13603 - 4)**. At that time the First Minister and Party Officers identified a small number of potential advisers and Andrew Crawford was identified as someone who would be suitable to be Special Adviser to Mrs Foster in the Department of the Environment. Mrs Foster was asked if she was content with that and she indicated that she was "*more than content*" **(TRA 13603)**.

47. In relation to the appointment of Timothy Cairns as Special Adviser to Jonathan Bell, Mrs Foster made the point that this was taking place as a result of her move to DFP from DETI rather than after Assembly elections when all the Ministerial and Special Adviser posts would have been under consideration. Timothy Cairns had been Jonathan Bell's adviser when he was a Junior Minister in OFMdfM and therefore there was a relationship between the two men. Mrs Foster does, however, believe that, if either man had had a difficulty with the proposed appointment, a resolution would have been sought **(TRA 13607)**.

48. In terms of appointment of Special Advisers generally, Mrs Foster stated she believed the DUP to be no different from any other political

party in the way in which Special Advisers were appointed, except that Sinn Fein placed former Special Advisers into backroom roles when legislation to prohibit those with criminal convictions from being appointed, was enacted. Further, in Westminster, the Prime Minister is similarly involved in the Special Adviser appointment process and signs off on the appointment of each Special Adviser. However, under the ministerial code in Westminster, a Special Adviser is said to work for the Government as a whole. Mrs Foster has highlighted that the mandatory coalition means there is no such collective responsibility in Northern Ireland. As such, there may be difficulties in requiring a Special Adviser to be responsible across Government. Mrs Foster took no issue with the Westminster code providing that a Minister is responsible for the conduct of his or her Special Adviser (**TRA 13614**).

Alleged Hierarchy of Special Advisers

49. The Inquiry has been considering whether, and to what extent, there is a hierarchy of Special Advisers within the DUP, and whether Timothy Johnston was at the top of that hierarchy. Mrs Foster's evidence in her written statements and orally is that Timothy Johnston was a Special Adviser to the First Minister. Any authority he had he derived from his Minister, who appointed all other Ministers (**WIT 20612, WIT 20619, TRA 13645**). However, by virtue of the fact that OFM Special Advisers may be considered to be speaking on behalf of the party leader, and the nominating officers for all other Ministers under whom other Special Advisers serve, this may lead to an informal hierarchy and their views being given more weight than those of other non-OFM Special Advisers (**WIT 20612-3**).

Responsibility as Minister

50. Ministers are accountable to the Assembly for the work of their Department. A key role is to set the policy direction for the Department in line with the Programme for Government and their mandate. By the nature of the democratic process and process for selection of Ministers, each individual Minister has little control over when their tenure will come to an end. The Permanent Civil Service therefore provides the continuity within a Department. The Permanent Secretary as Accounting Officer has overall responsibility for the management of his or her Department, its operation and structure. In that context, while Ministers can guide and direct on particular issues, they do not usually involve themselves in management. In recognition of this distinction, Ministers and Special Advisers do not, for example, have access to the TRIM document management system. They are therefore reliant on their officials to bring matters to their attention in an accurate and timely way.

51. Regrettably it appears the Minister's attention was not properly drawn to relevant matters as it should have been. It is for the Inquiry to consider to what extent she can have been expected to "*root around*" in policy issues given the breadth of the Ministerial role, particularly within DETI. It is notable that, by comparison, GB had an entire department devoted to climate change whereas this was just one of many areas over which DETI had responsibility. Mrs Foster MLA and Dr Crawford gave evidence that it would not be unusual to have received 30 submissions (of varying length and complexity each day). This would have been on top of dealing with Assembly business, Ministerial engagements, and constituency matters.
52. It is therefore submitted that it is not difficult to see that a Minister would not have the capacity to delve into the depths of each of the various policies within her remit to the extent that she might wish.

Conclusion

53. Mrs Foster has stated on repeated occasions that the Renewable Heat Incentive crisis has been her biggest regret both politically and personally¹ and has apologised for the mistakes made.² She has also been clear that she is accountable to the Assembly for the failings that occurred within DETI during her tenure as Minister of that Department. She has welcomed the Inquiry as a means of establishing the facts of what went wrong with the Scheme and how to ensure it does not happen again.
54. It is clear, however, that there were many issues that were not raised to Ministerial level for either information or decision-making. It will be for the Inquiry to determine the impact the lack of Ministerial input on certain key issues has had, and whether, in light of the issues that were not raised, Mrs Foster was in a position to have done anything differently such that the Scheme's adverse outcomes could have been avoided.

Julie Ellison BL
27 November 2018

¹ See, for example, speech to the Assembly 19 December 2016 (INQ 15156), and TRA 07676 Day 54 transcript, 12 April 2018.

² Speech to the DUP Party Conference 24 November 2018.

