



The Rt Hon Mrs Arlene Foster MLA
DUP Headquarters
91 Dundela Avenue
Belfast
BT4 3BU

By post and email (arlene@arlenefoster.org.uk)

28 March 2018

Dear Madam

Re: The Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme
Provision of a Section 21 Notice requiring the provision of evidence in the form of a written statement

I am writing to you in my capacity as Solicitor to the Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme (known as 'the RHI Inquiry') which has been set up under the Inquiries Act 2005 ('the Act').

I know that you will be familiar, from my previous correspondence, with the RHI Inquiry's Terms of Reference, which remain available on the Inquiry's website. You will also be aware that the RHI Inquiry is conducting its investigations into the matters set out in its Terms of Reference. In addition to having commenced its oral hearings, the Inquiry is continuing with the process of gathering all of the relevant documentation from relevant departments, organisations and individuals; and requiring individuals who have been, or who may have been, involved in the range

of matters which come within the Inquiry's Terms of Reference to provide written evidence to the Inquiry Panel.

I am writing further to receipt of the second substantive witness statement which you provided to the Inquiry, dated 19 January 2018, in response to Chairman's Notice No 556 of 2017. The Inquiry has had an opportunity to consider the content of that statement and a range of other evidence touching upon your involvement with the RHI Scheme.

It would now be of assistance to the Inquiry if you would provide a further substantive witness statement addressing the questions posed in the Schedule attached to the Section 21 Notice enclosed herewith. This should also assist in focusing your forthcoming oral evidence at the Inquiry in relation to Phases 1 and 2 of the Inquiry's work and, hopefully, ensuring that your oral evidence at this stage can be dealt with as efficiently as possible.

I appreciate that this Notice is being provided to you shortly before you are due to give oral evidence. However, the issues it addresses are relatively limited. They are also, broadly, issues which have not been covered in your latest statement but which have been covered in recent evidence provided by your former Special Adviser, Mr Crawford, such that it would be of assistance to also have your position on them set out in writing in advance of both you and Mr Crawford giving oral evidence.

As with previous Notices received by you from the Inquiry, the Section 21 Notice enclosed with this letter requires you to provide evidence to the RHI Inquiry Panel in the form of a written statement addressing the matters identified in the Schedule to the Notice. As the text of the Section 21 Notice explains, you are required by law to comply with it.

Again, the aim of the enclosed Notice is to require you to provide all relevant evidence you have within your knowledge, information or belief which is pertinent to the Inquiry's Terms of Reference. The Schedule to the enclosed Section 21 Notice provides further detail as to the matters which should be covered in the written evidence which is required from you. In the event that there is a category of

information in respect of which you have no evidence which you can provide, please state this in your response. Where you can provide evidence, the more comprehensive your statement is, the less likely it may be that the Inquiry will have to revert to you at a later stage for clarification, although in many cases this is likely to be necessary to some degree.

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

Also as before, I appreciate that you may require or desire access to some documentation to which you previously had access in your role as Special Adviser to the Minister but to which you no longer have access, in order to assist you in preparing your statement. If so, I understand that the Department for the Economy (DfE) has made arrangements to permit such access, at least in the first instance. You should contact Terence Coyne at DfE, who is the Department's RHI Task Force Information Manager, to organise this. He is contactable at Terence.Coyne@economy-ni.gov.uk. I have informed Mr Coyne that you may be making contact with him to arrange access to documentation; but there is, of course, no obligation upon you to do so.

Many of the documents you may wish to consider are already available to you in the Inquiry's witness statement bundle, which has been disclosed to you and your legal representatives. Some further relevant documents, which you may not have access to in that bundle, have been provided along with the enclosed Notice.

I remind you of the terms of Restriction Order No 2 made by the Chairman of the RHI Inquiry on 22 June 2017. This restriction order prohibits you from publishing any documentation received from the RHI Inquiry (save that you may show it to your legal representative) unless you first obtain the consent in writing of the Inquiry Chairman.

In addition to the four restriction orders made by the Chairman of the RHI Inquiry (which you will find published on the Inquiry website) receipt of this correspondence and its enclosures also places you under a duty of confidentiality to the RHI Inquiry

in respect of them. You may share the correspondence and the enclosed Notice and documents with your legal representative(s), but neither you nor they may show, communicate the contents of, nor provide this correspondence or the Notice or documents to any other person or organisation without the express permission of the RHI Inquiry. Any breach of this duty of confidentiality is actionable at the suit of the Inquiry Chairman.

You will also find attached to the Section 21 Notice a Guidance Note explaining the nature of a Section 21 Notice and the procedures that the RHI Inquiry has adopted in relation to such a notice. In particular, you are asked to provide your evidence in the form of the template witness statement which is also enclosed with this correspondence.

Given the tight time-frame within which the RHI Inquiry must operate, the Chairman of the Inquiry would be grateful if you would comply with the requirements of the Section 21 Notice as soon as possible and, in any event, by the date set out for compliance in the Notice itself.

A copy of this correspondence has also been provided to your legal representative, John McBurney of John McBurney Solicitors (by email only).

Finally, I would be grateful if you could acknowledge receipt of this correspondence and the enclosed notice by email to Patrick.Butler@rhiinquiry.org.

Please do not hesitate to contact me to discuss any matter arising.

Yours faithfully



Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE**[No 22 of 2018]****Phase 1**

1. It appears to the Inquiry from information received by it that, on 30 May 2011, John Gilliland of Rural Generation Ltd wrote to you (see WIT-196772 to WIT-196773) referring to his "*favourite bug bear*", a Northern Ireland renewable heat incentive. He indicated that David Dobbin had stressed to David Sterling and David Thomson that delay of this initiative was severely undermining the Northern Ireland Dairy Industry's competitiveness against his GB competitors. He further indicated that the "*two Davids were at pains to try and reassure us that this would be resolved this calendar year*". As to this:
 - a. Was this typical of representations being made to you and/or, to your knowledge, your officials at this time?
 - b. Did you reply by letter or discuss the matters raised with John Gilliland or anyone else and, if so, please provide details.
 - c. Please describe to the best of your knowledge any other discussions and/or actions that occurred as a result of this letter or the discussions with David Sterling and David Thomson described in it.
 - d. Provide details of your relationship and dealings with John Gilliland during the period 2011-2016, with particular reference to any interactions you had with him in relation to the RHI Scheme.

Phase 2 onwards*Overall budget control in the context of the domestic scheme*

2. Please explain to your knowledge why the cost control mechanism proposed in the July 2013 Phase 2 consultation, which contained controls to be triggered first in the domestic scheme and then in the non-domestic scheme (see DFE-144502 to DFE-144503), were not introduced through the domestic NI RHI Regulations (so as to protect both sides of the RHI Scheme).

3. On 31 May 2013 the DECC Minister wrote to you referring to the non-domestic scheme's first degression announcement (DFE-53262 to DFE-53264). On 23 October 2013 the DECC Minister wrote to you referring to the degression regulations which came into force on 30 April 2013 (DFE-54350). On 29 November 2013 the DECC Minister wrote to you referring to (a) the long-term budget mechanism for the non-domestic RHI having been implemented in April (degression), and (b) setting out further details of proposed budget management for the domestic scheme (degression) (DFE-293680 to DFE-293687). Then, on 16 December 2013 you wrote to the DECC Minister, the Rt Hon Gregory Barker MP, stating that the *"Northern Ireland RHI has only been in operation for 12 months, yet there has been an encouraging level of uptake, with the number of applications for the Northern Ireland scheme being around 7% of the number received by the GB scheme during its first year of operation"* (DFE-293678 to DFE-293679). Given that funding calculated on the population based Barnett formula would be 2.98% of the budget allocated to DECC, did the 7% applications' figure:
 - a. cause you to ask questions around the level of applications in GB in order to gain a better understanding of what *"7% of the number received by the GB scheme during its first year of operation"* signified, and how it translated in terms of the number of applications / budget limits in Northern Ireland; and/or
 - b. cause you to consider whether prioritisation of the introduction of costs controls needed to be considered, or progress on costs controls checked; and,
 - c. if so, what action did you take in relation to this?

Submission on domestic scheme

4. It appears to the Inquiry that, on 16 September 2014, Stuart Wightman sent you (DFE-193697) and your Special Adviser a submission (DFE-193697 to DFE-193902) on the domestic scheme's business case approval and initial scheme announcement. On 20 September 2014 your Special Adviser annotated the submission with two questions: "*Can we not open the scheme before Nov 14*" and "*What are we doing about the non-domestic RHI*" (DFE-303067). These questions were referred back to Stuart Wightman on 22 September 2014 (DFE-193905 to DFE-193906) who responded to the Private Office, again copying in a significant number of more senior officials, on the same day, 22 September 2014 (DFE-193905; DFE-303070). He explained why the domestic scheme could not be introduced earlier, and also explained that implementation of Phase 2 of the domestic scheme was planned for "*next year*" (*i.e.* 2015). Your Special Adviser, on 27 September 2014 (DFE-303067), having received the response from Stuart Wightman, annotated: "*Need to get this launched*". Two days later, on 29 September 2014 (DFE-303067) you annotated the submission with the instruction "*get this launched asap*". On 3 October 2014 a Ministerial public statement was issued (DFE-418496 to DFE-418498). For context, you are also referred to the submission of 17 June 2014 (DFE-144514 to DFE-144537; DFE-144561) and the exchange of 6 November 2014 (DFE-94075 to DFE-94076). Arising out of these interactions:
- a. Please explain the reasons for your approach to the submission of 16 September 2014.
 - b. Please give an account of the discussions and advice you received from your Special Adviser about this submission and the RHI Scheme generally at or about this stage.
 - c. Please confirm your understanding, arising from the outcome of this submission, of the planned timescale for progression of the various workstreams involved in the non-domestic scheme.

- d. Please explain what gave rise to any sense of urgency in relation to, or desire to expedite, the introduction of the domestic RHI scheme, including (but not limited to) any pressure or encouragement you were receiving from any person or organisation in relation to this.

Written Assembly question (September 2014)

5. On 19 September 2014 your Special Adviser wrote to William Irwin MLA setting out a question for DETI as follows: *“Does DETI have any plans to reduce the level of Renewable Heat Incentive (RHI) for new commercial biomass boilers?”* (see DFE-293127). This question from William Irwin MLA was then dealt with by DETI *via* Private Office (see DFE-232098 to DFE-232101). As to this:
- a. Were you aware that the question had originated from your Special Adviser?
 - b. If so, please explain the purpose of your Special Adviser’s email to Mr Irwin.
 - c. Did you, or any other person or group, ask, instruct or in any way encourage your Special Adviser to send this question to William Irwin MLA?
 - d. Please explain the purpose of this question being asked of the Department (i) at that time; and (ii) at all.
 - e. Was it usual to enquire about, or publicise, plans in your own department in this way? If not, why was your Special Adviser so doing on this occasion?
 - f. If you also spoke to your Special Adviser and/or Mr Irwin MLA about this communication, please give an account of that communication.
 - g. What was your understanding, at the time of this email, of the work being progressed in Energy Division in relation to the Non-Domestic RHI scheme?

Increased interest in the non-domestic scheme

6. On 20 July 2015 your Special Adviser wrote in an email to Timothy Cairns (IND-27555): *“The main problem with the non domestic rhi is that DETI have been caught out by the profile of applications. Deti has received a spike in the number of applications over the last number of months as a result of Moy Park suppliers buying biomass boilers for the rhi scheme before the end of the last tax year, this was very attractive as farmers could get the rhi and write off their investment off against tax as a result of the general investment allowances”*.
 - a. Did your Special Adviser discuss any of these issues with you at any time (either in advance of July 2015, at that time, or thereafter)? If so, when were these issues discussed and in what terms?
 - b. Did you have any knowledge of the matters discussed, and/or hold any of the views expressed, above by your Special Adviser? If so, did you share this information with any Government officials and, if so, when and in what terms?

7. On 7 October 2015 Andrew Crawford and John Mills discussed changes to the Non-Domestic RHI scheme (see DFE-293165). Arising out of this, please address the following matters:
 - a. At this time Andrew Crawford was your Special Adviser at DFP?
 - b. Why was he speaking to John Mills about this? Was this at your direction? If it was, what was the purpose?
 - c. Was it usual for Special Advisers and officials from different departments to liaise in this way?

Contact with stakeholders, claimants and others about scheme development, etc.

8. On 3 April 2013 (see DFE-33471) DETI Private Office sent Fiona Hepper a correspondence case which had arrived via DOE. It had the reference COR 148/2013. The then DOE Minister, Alex Attwood, had been written to by a company called Renewable Energy Manufacturing Limited on 13 January 2013 (the REM letter') (DFE-33475 to DFE-33476) (10 weeks into the life of the RHI scheme), following a meeting the company had had with Minister Atwood on 8 January 2013. On 10 April 2013 (DFE-33471) Peter Hutchinson sent the Private Office the draft response submission from Joanne McCutcheon (DFE-33473 to DFE-33479). It had the REM letter as Annex A and a draft reply to REM at Annex B. The annotated submission is at DFE-33525 to DFE-33526. On 16 April 2013 at 08.55 (DFE-33513) Private Office emailed your Special Adviser's queries to Joanne McCutcheon, copying in Fiona Hepper and others. Your Special Adviser appears to have been asking a different question than the point being raised by REM, and it was this: what about 2 boilers being installed at different times and would they not attract greater support than a single boiler. Fiona Hepper sent a response on the same day, 16 April 2013 at 10.28 (DFE-33512). Mrs Hepper's response and the correspondence case (DFE-33525) was then referred back to you on 16 April 2013. On 1 May 2013 (DFE-33525) you annotated that you were content and the Ministerial reply (DFE-33523 to DFE-33524) issued to REM. As to this:
- a. What if anything did your Special Adviser tell you about REM's concerns, the queries he raised, and the response provided to the queries?
 - b. What message did you consider was being conveyed by the response received from Fiona Hepper?
 - c. What further steps, if any, were taken on foot of Fiona Hepper's response?
 - d. Did you discuss the issue of the suggested perverse incentive to install multiple boilers with anyone outside DETI, including stakeholder groups, installers, potential applicants, claimants, and/or family members?

- e. Did you, or to your knowledge, any Northern Ireland Government Minister or Department hear from Mr Turkington again?
 - f. When did the issue of the suggested perverse incentive to install multiple boilers again come to your attention?
 - g. On 15 May 2014 John Mills sent you and your Special Adviser a submission annexing a draft update for the ETI Committee (DFE-230084 to DFE-230090) which stated (at DFE-230087) that uptake in Northern Ireland *"suggests that the NI RHI could experience a higher volume of applications but for smaller installations"*. On 16 October 2014 Stuart Wightman sent you and your Special Adviser a submission annexing a draft update for the ETI Committee (DFE-349415 to DFE-349423) which stated (at DFE-349420): *"The scheme is administered by Ofgem (the GB Utility Regulator) and as of 15 October 2014 they have received 308 applications. Of these applications 222 have been accredited. All but one of these applications are for solid biomass boilers, the other being for a ground source heat pump, and the majority have installation capacity in the 20-99 kWh range."* Did either of these submissions cause you to revisit the issue of whether there was a perverse incentive to install multiple small installations?
9. On 20 October 2014 Stuart Wightman wrote to John Gilliland and Eddie Meenan thanking them for hosting the Minister and DETI officials at Brooke Hall Estate and recording the key points discussed as follows: *"- Consider introducing an uplifted tariff for biomass district heating to incentive (sic) the installation of a smaller number of larger boilers serving multiple buildings rather than many smaller boilers (99kW and below); Consider extending the current 6.6 biomass tariff (for 20-100kWth boilers) to 200 or 300 kWth boilers"*.
- a. You have indicated that you do not recall the specifics of your visit (WIT-20621 to WIT-20622). Does the above correspondence assist you in your recall of why extension of the tariff for <99kW boilers to larger boilers was being discussed? Did this cause you to refer to, or enquire among officials,

about the status of (a) the review of the scheme that was required to commence in January 2014, and/or (b) the non-domestic RHI cost control element of the Phase 2 work?

10. On 7 November 2014 your Special Adviser wrote to Brian Gibson of Moy Park, referring to a previous conversation and attaching a general briefing on RHI (see DFE-293128). Arising out of this:
 - a. Please describe what, to your knowledge, was the nature of your Special Adviser (i) relationship with, and (ii) contact with Moy Park and/or any of its representatives.
 - b. Please provide details of any contact you had with Moy Park in relation to the RHI Scheme (including who the contact was with, when it occurred, and the details of what was communicated by each party).
 - c. Please indicate whether this contact continued after your move out of DETI in May 2015 and, if it did, whether it at any stage concerned RHI. (If so, please provide details).
 - d. Please explain generally the relationship between Moy Park and the Democratic Unionist Party (DUP), including any senior or significant officers, officials, employees or members of the DUP.
11. On 9 January 2015, having been forwarded an email attaching an Ernst & Young report, your Special Adviser wrote to Timothy Johnston: "*It is unlikely that we will be able to support renewable energy post 2016*" (see DOF-35522 to DOF-35551). Are you aware of the basis for this statement and how (if at all) it related to RHI?
12. On 21 January 2015 Brian Haslett forwarded your Special Adviser a message from 'Robert Davidsons', a clothes shop in Portadown, who sought information about business grants available for replacing their oil boiler. On 4 February 2015 your Special Adviser forwarded Brian Haslett various information and said he

was happy to speak to Davidsons or provide more information if required. He also indicated to Glynis Aiken that it would not be necessary to set up a 'cor case' (DFE-293130 to DFE-293131).

- a. Was it usual or routine that a correspondence case was not opened for certain queries? What type of queries were treated in this way? Was there a system for recording them?
 - b. Were you aware of any follow-on communications with Robert Davidsons? If so, please provide details.
 - c. As far as you were aware did your Special Adviser frequently speak with parties interested in the RHI scheme in this way? If so, please provide details.
 - d. Even if your Special Adviser did so only infrequently or on an *ad hoc* basis, please set out, as fully as you can, any interactions your Special Adviser had with parties interested in the RHI Scheme.
13. On 19 February 2015 Energy Division sent advices to you on foot of a correspondence case arising from an invite from Future Renewables (DFE-232558 to DFE-232562). The advice was to decline the invitation to attend the Future Renewables event. It appears to the Inquiry from information received by it that you rejected that advice and indicated that you would attend the event (DFE-232578 to DFE-232579; and DFE-418660). As to this:
- a. How usual was it for you to reject the advice of officials? Please explain your answer.
 - b. Did your Special Adviser advise you in relation to this invitation and, if so, what was the advice?
 - c. Please confirm whether you attended this event. If you did not, please set out why you did not.

14. On 3 August 2015 Howard Hastings, having received an email between Brian Hood and Austen Lennon about prospective changes to the non-domestic scheme, emailed Andrew Crawford stating: "*not on your watch, surely*" (see DOF-02264). Arising out of this:
- a. Please detail any communication you had with Howard Hastings in connection with this communication or the RHI Scheme generally.
 - b. Please detail the nature of your, and the DUP's, connection and relationship with Howard Hastings (if any).
15. Please detail the nature of your, and the DUP's, connection and relationship with Balcas (meaning the Balcas group of companies, including Balcas Limited and Balcas Timber Limited, or any of them) or any senior or significant employee, officer or shareholder of Balcas (if any).

Your Special Adviser's correspondence with Timothy Cairns

16. It appears to the Inquiry from information received by it that, on 16 July 2015 at 14.14, Stephen Brimstone and Andrew Crawford received an email from the then DETI Special Adviser, Timothy Cairns, ('the Cairns 16 July 2015 email') attaching a DETI Energy Division RHI submission about cost controls, together with accompanying Government documents, stating "*Attached is latest on the renewable heat initiative for your info and input*" (DFE-293132 to DFE-293150). It also appears that Andrew Crawford forwarded the Cairns 16 July 2015 email and its attachments to Timothy Johnston on 16 July 2015 at 19.00 (DOF-35520).

Arising from this:

- a. Were you aware that these materials were being shared among, and input sought from, DUP Special Advisers in this way?
- b. If you were not so aware, should you have been made aware?

- c. Were these Special Advisers acting under your authority in any way? If they were not, or if they were also acting under the authority of another, under whose authority were they acting?
 - d. Why in your view were the materials being shared in this way?
 - e. In your view, are the emails described above consistent with your statement in reply to Section 21 Notice 135 of 2017 (your first statement) that you did not have a role in the amendment of the scheme in Autumn 2015 (WIT-20516) and had no influence whatsoever in relation to the cost controls introduced in 2015 (WIT-20516)?
17. It also appears to the Inquiry that Andrew Crawford also forwarded the Cairns 16 July 2015 email and its attachments to:
- (i) Richard Crawford on 16 July 2015 at 18.44 (DOF-35519);
 - (ii) His own Hotmail account on 20 July 2015 at 19.46 (DOF-35521); and
 - (iii) Wallace and Joan Gregg on 23 July 2015 at 20.53 (DOF-35518).

Arising from this:

- a. Were you aware of any of the instances of Andrew Crawford forwarding a Ministerial submission to his relations and/or to his private email account?
- b. Was this, to your knowledge, typical practice? Are you aware of other Government documents being disseminated in this way by Special Advisers or others?
- c. In each of the cases above, what do you understand was the purpose of the 16 July 2015 email being forwarded in this way?
- d. In each of the cases above, what do you understand was the effect or outworkings of the 16 July 2015 email being forwarded in this way?

- e. In your view did forwarding the Cairns 16 July 2015 email constitute a breach of any codes, rules or principles including:
- i. the Code of Conduct for Special Advisers (2013 version: DOF-00592 to DOF-00631; 2016 version: DOF-00632 to DOF-00664);
 - ii. the NI Civil Service Code of Ethics (2011 version: DOF-00197 to DOF-00284; 2013 version: DOF-00285 to DOF-00380; 2014 version: DOF-00381 to DOF-00464; current version: DOF-00465 to DOF-00555); and/or
 - iii. the Seven Principals of Public Life / the Nolan Principles (included in the NI Executive Ministerial Code of Conduct at DOF-00001 to DOF-00018).

Please provide reasons for your answer.

18. Andrew Crawford's email to Timothy Cairns on 31 July 2015 (see DFE-293158 to DFE-293162) indicates approximate boiler running hours at Moy Park houses and suggests a threshold for payment of the higher tariff different to the threshold referred to in the email of John Mills (further down the email chain). Mr Crawford also indicates that there will be "*a massive spike in applications*" and that "*there is currently a shortage of the necessary pipework required to install boilers*". Arising out of this, please address the following:

- a. Did Andrew Crawford discuss these issues with you or bring them to your attention?
- b. Were you aware of these issues independently of Andrew Crawford? If so, how?

Weekly meetings with the Minister

19. Evidence to the Inquiry indicates that there were weekly "Issues Meetings" with the Minister. In relation to this:

- a. What was the practice regarding the minuting of, and/or the recording of decisions taken at, these meetings?
- b. At the meeting of 5 February 2014 (mentioned at DFE-410119) John Mills was introduced to you. Are you able to give an account of what was discussed at the meeting in relation to RHI?

Question arising from your second statement (No 556 of 2017)

20. In response to question 24 on funding (WIT-20590) you state that you were not told that there was a DEL consequence and that your understanding about the funding was that there was £25m of AME funding over the period of 2011 to 2015. Did you have any concerns or discussions about what would happen if at any stage (a) the overall budget of £25m was exceeded during 2011 to 2015, or (b) the budget for the individual years from 2011 to 2015 was exceeded?
21. In response to question 32 on project management techniques (WIT-20595) you have indicated that you do *not* think formal project management techniques should have been applied to the creation and/or running of the RHI Scheme. Please indicate why you think this. (In this context, you may wish to be aware of the evidence of David Thomson at TRA-05665 to TRA-05778).

NOTE:

It is important for the efficiency of the RHI Inquiry that the issues identified above are addressed as fully as possible and by reference, where available, to the dates and locations of specific incidents to which reference is made. The statement should be broken down into paragraphs, which should be numbered sequentially from '1' to the end. The use of appropriate section headings or sub-headings is also encouraged. A template witness statement is provided with this Notice for your assistance and should be used as the format for your response.



INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 22 of 2018

DATE: 6 April 2018

Witness Statement of: ARLENE FOSTER

I, Arlene Foster, will say as follows: -

Phase 1

1. **It appears to the Inquiry from information received by it that, on 30 May 2011, John Gilliland of Rural Generation Ltd wrote to you (see WIT-196772 to WIT-196773) referring to his “favourite bug bear”, a Northern Ireland renewable heat incentive. He indicated that David Dobbin had stressed to David Sterling and David Thomson that delay of this initiative was severely undermining the Northern Ireland Dairy Industry’s competitiveness against his GB competitors. He further indicated that the “two Davids were at pains to try and reassure us that this would be resolved this calendar year”. As to this:**
 - a. **Was this typical of representations being made to you and/or, to your knowledge, your officials at this time?**

No, I do not believe this representation was typical. Mr Gilliland was particularly passionate about renewables and would have been considered a leading stakeholder in the renewable energy sector. At the start of my tenure as DETI Minister, Jenny Pyper had recommended him to be a member of the Renewable Heat steering group (DFE 101112). He was well respected within the Department as someone who was heavily involved in the renewable energy sector and he would probably have been more aware of what was happening in GB than others.

Therefore, while other stakeholders in the energy sector, such as David Dobbin, may have been interested in the benefits of a potential renewable heat incentive from a commercial point of view i.e. to reduce expenditure on energy, Mr Gilliland was particularly forthright about the need for incentivisation of renewables following the introduction of the Scheme in GB.

In general, I don’t believe there were many other people making similar representations, however, I would not be aware of every representation as often people did not come directly to me as Minister but preferred to contact the Department or my Special Adviser.



- b. Did you reply by letter or discuss the matters raised with John Gilliland or anyone else and, if so, please provide details.**

I do not recall having replied. In general, if I was to respond to a letter, the response would have been on the basis of advice from officials in a correspondence case, as can be seen from other documents before the Inquiry.

- c. Please describe to the best of your knowledge any other discussions and/or actions that occurred as a result of this letter or the discussions with David Sterling and David Thompson described in it.**

I was not privy to, nor aware of any other discussions between John Gilliland and David Sterling and David Thompson.

- d. Provide details of your relationship and dealings with John Gilliland during the period 2011-2016, with particular reference to any interactions you had with him in relation to the RHI Scheme.**

As set out above at a, I was aware of Mr Gilliland as a leading stakeholder in the renewable sector and as a member of the Renewable Heat Steering Group.

I now know from having reviewed the materials provided to me by the Inquiry (in particular submission INV 1100/2011, dated 3 August 2011) that I met Mr Gilliland in August 2011. He had asked for a meeting and came up to Netherleigh to discuss the RHI consultation. I cannot recall the detail of what was discussed at the meeting but I imagine my input would have been in line with the briefing provided to me in advance.

I also recall making a short visit to Brook Hall Estate in October 2014. I was accompanied by Stuart Wightman and Andrew Crawford. Again, I cannot recall the detail of what was discussed.

There may have been other instances when I met Mr Gilliland informally at Energy events or other events such as the Balmoral Show but I cannot recall specifics of any conversations with him.

Phase 2 onwards

Overall budget control in the context of the domestic scheme

- 2. Please explain to your knowledge why the cost control mechanism proposed in the July 2013 Phase 2 consultation, which contained controls to be triggered first in the domestic scheme and then in the non-domestic scheme (see DFE-144502 to SFE-144503), were not introduced through the domestic NI RHI Regulations (so as to protect both sides of the RHI Scheme).**

I don't know why officials determined that the cost control mechanism should be introduced alongside the non-domestic elements of the Phase 2 consultation, rather than



at the same time as the domestic regulations. I was never asked to make a decision in relation to this or provided with the reasons. The submission presented to me only covered the domestic element of the consultation and contained both the consultation responses and the policy for the domestic scheme. Usually the consultation responses and the final policy would have been the subject of separate submissions.

- 3. On 31 May 2013 the DECC Minister wrote to you referring to the non-domestic scheme's first degression announcement (DFE-53262 to DFE-53264). On 23 October 2013 the DECC Minister wrote to you referring to the degression regulations which came into force on 30 April 2013 (DFE-54350). On 29 November 2013 the DECC Minister wrote to you referring to (a) the long-term budget mechanism for the non-domestic RHI having been implemented in April (degression), and (b) setting out further details of proposed budget management for the domestic scheme (degression) (DFE-293680 to DFE-293687). Then, on 16 December 2013 you wrote to the DECC Minister, the Rt Hon Gregory Barker MP, stating that the *"Northern Ireland RHI has only been in operation for 12 months, yet there has been an encouraging level of uptake, with the number of applications for the Northern Ireland scheme being around 7% of the number received by the GB scheme during its first year of operation"* (DFE-293678 to DFE-293679). Given that funding calculated on the population based Barnett formula would be 2.98% of the budget allocated to DECC, did the 7% applications' figure:**

- a. cause you to ask questions around the level of applications in GB in order to gain a better understanding of what *"7% of the number received by the GB scheme during its first year of application"* signified, and how it translated in terms of the number of applications/budget limits in Northern Ireland; and/or**

No, it didn't. There were no budgetary concerns flagged to me by officials about the NI applications being 7% of the GB applications in the first year and I was not advised about the need to introduce budgetary controls. I understood that the scheme was being monitored by both Ofgem and the Department and therefore if there had been any concerns, they would be brought to me.

- b. cause you to consider whether prioritisation of the introduction of costs controls needed to be considered, or progress on costs controls checked; and**

No, I believed there was adequate protection in place through tariff design, monitoring, and review of the scheme. It was my understanding that the tariffs had been set by experts and were at an appropriate level. There were also no red flags in the budgetary papers that were coming to me. Trevor Cooper was a very competent and effective civil servant and I believed that if there were budget problems, he would have raised those to me.

- c. if so, what action did you take in relation to this?**

I did not take any action as I did not receive any advice on the issue from officials.



Submission on domestic scheme

4. It appears to the Inquiry that, on 16 September 2014, Stuart Wightman sent you (DFE-193697) and your Special Adviser a submission (DFE-193697 to DFE-193902) on the domestic scheme's business case approval and initial scheme announcement. On 20 September 2014 your Special Adviser annotated the submission with two questions: "*Can we not open the scheme before Nov 14*" and "*What are we doing about the non-domestic RHI*" (DFE-303067). These questions were referred back to Stuart Wightman on 22 September 2014 (DFE-193905 to DFE-193906) who responded to the Private Office, again copying in a significant number of more senior officials, on the same day, 22 September 2014 (DFE-193905; DFE-303070). He explained why the domestic scheme could not be introduced earlier, and also explained that implementation of Phase 2 of the domestic scheme was planned for "*next year*" (*i.e.* 2015). Your Special Adviser, on 27 September 2014 (DFE-303067), having received the response from Stuart Wightman, annotated: "*Need to get this launched*". Two days later, on 29 September 2014 (DFE-303067) you annotated the submission with the instruction "*get this launched asap*". On 3 October 2014 a Ministerial public statement was issued (DFE-418496 to DFE-418498). For context, you are also referred to the submission of 17 June 2014 (DFE-144514 to DFE-144537; DFE-144561) and the exchange of 6 November 2014 (DFE-94075 to DFE-94076). Arising out of these interactions:

- a. **Please explain the reasons for your approach to the submission of 16 September 2014.**

There had been a delay in the introduction of the domestic RHI Scheme. I was aware that stakeholders, people within the Industry, and the ETI Committee were seeking to know when it would be introduced. There had been a lapse in time from the public consultation and the CEPA report on which it was based, and I was concerned that delay could mean the report's findings would become outdated, and I was keen to avoid a situation where, for example, another report might be needed.

- b. **Please give an account of the discussions and advice you received from your Special Adviser about this submission and the RHI Scheme generally at or about this stage.**

I would have been aware from the annotation on the face of the submission and from general conversation with my Special Adviser around this time that the Scheme had been delayed.

- c. **Please confirm your understanding, arising from the outcome of this submission, of the planned timescale for progression of the various workstreams involved in the non-domestic scheme.**

I understood that once the Domestic Scheme was introduced, proposals would be brought to me about the other elements of the Phase 2 consultation as soon as possible thereafter.



- d. Please explain what gave rise to any sense of urgency in relation to, or desire to expedite, the introduction of the domestic RHI scheme, including (but not limited to) any pressure or encouragement you were receiving from any person or organisation in relation to this.

I wasn't receiving any pressure as such but I was aware there were a lot of people interested in the Scheme and there was a perception that Northern Ireland was being disadvantaged by being left behind GB. I was also concerned that the Department wasn't making full use of the money that was allocated by HMT for renewable heat.

Written Assembly question (September 2014)

5. On 19 September 2014 your Special Adviser wrote to William Irwin MLA setting out a question for DETI as follows: *"Does DETI have any plans to reduce the level of Renewable Heat Incentive (RHI) for new commercial biomass boilers?"* (see DFE-293127). This question from William Irwin MLA was then dealt with by DETI via Private Office (see DFE-232098 to DFE-232101). As to this:

- a. Were you aware that the question had originated from your Special Advisor?

No, I was not aware.

- b. If so, please explain the purpose of your Special Advisor's email to Mr Irwin.

I am not aware of the purpose but I presume my Special Adviser may have thought there was concern that tariffs would be reduced and felt it was important to reassure potential applicants that there were currently no plans to reduce the level of payments.

- c. Did you, or any other person or group, ask, instruct or in any way encourage your Special Advisor to send this question to William Irwin MLA?

No.

- d. Please explain the purpose of this question being asked of the Department (i) at that time; and (ii) at all.

See above at a.

- e. Was it usual to enquire about, or publicise, plans in your own department in this way? If not, why was your Special Advisor so doing on this occasion?

This is not unusual. It is a fairly widely used mechanism both in the NI Assembly and, as I understand, in Westminster, to ask a party colleague to put forward an Assembly question as a way of getting information into the public domain.



- f. If you also spoke to you Special Advisor and/or Mr Irwin MLA about this communication, please give an account of that communication.

I did not speak to either my Special Adviser or Mr Irwin MLA in relation to this communication.

- g. What was your understanding, at the time of this email, of the work being progressed in Energy Division in relation to the Non-Domestic RHI scheme?

I understood from the submission dated 17 June 2014 from the Head of Energy Division, John Mills, that the Domestic Scheme was being prioritised at this point. I believed that once it was implemented the other Phase 2 elements would follow as soon as possible.

Increased interest in the non-domestic scheme

6. On 20 July 2015 your Special Advisor wrote an email to Timothy Cairns (IND-27555): *"The main problem with the non domestic rhi is that DETI have been caught out by the profile of applications. Deti has received a spike in the number of applications over the last number of months as a result of Moy Park suppliers buying biomass boilers for the rhi scheme before the end of the last tax year, this was very attractive as farmers could get the rhi and write off their investment off against tax as a result of the general investment allowances."*

- a. Did your Special Advisor discuss any of these issues with you at any time (either in advance of July 2015, at that time, or thereafter)? If so, when were these issues discussed and in what terms?

No, he did not.

- b. Did you have any knowledge of the matters discussed, and/or hold any of the views expressed, above by your Special Advisor? If so, did you share this information with any Government officials and, if so, when and in what terms?

No, I had no knowledge of the matters raised in this email.

7. On 7 October 2015 Andrew Crawford and John Mills discussed changes to the Non-Domestic RHI scheme (see DFE-293165). Arising out of this, please address the following matters:

- a. At this time Andrew Crawford was your Special Advisor at DFP?

Yes, he was.

- b. Why was he speaking to John Mills about this? Was this at your direction? If it was, what was the purpose?



I do not know why he was speaking to John Mills about this. It was not at my direction.

- c. Was it usual for Special Advisers and officials from different departments to liaise in this way?**

Generally, I do not know whether this is usual or not. However, I personally wouldn't have thought it particularly unusual for Andrew to speak to officials that he knew from DETI, or for him to have an interest in how things were going there, given that he had been Special Adviser in the Department for such a long time.

Contact with stakeholders, claimants and others about scheme development, etc.

- 8. On 3 April 2013 (see DFE-33471) DETI Private Office sent Fiona Hepper a correspondence case which had arrived via DOE. It had the reference COR 148/2013. The then DOE Minister, Alex Attwood, had been written to by a company called Renewable Energy Manufacturing Limited on 13 January 2013 (the REM letter') (DFE-33475 to DFE-33476) (10 weeks into the life of the RHI scheme), following a meeting the company had had with Minister Atwood on 8 January 2013. On 10 April 2013 (DFE-33471) Peter Hutchinson sent the Private Office the draft response submission from Joanne McCutcheon (DFE-33473 to DFE-33479). It had the REM letter as Annex A and a draft reply to REM at Annex B. The annotated submission is at DFE-33525 to DFE-33526. On 16 April 2013 at 08.55 (DFE-33513) Private Office emailed your Special Adviser's queries to Joanne McCutcheon, copying in Fiona Hepper and others. Your Special Adviser appears to have been asking a different question than the point being raised by REM, and it was this: what about 2 boilers being installed at different times and would they not attract greater support than a single boiler. Fiona Hepper sent a response on the same day, 16 April 2013 at 10.28 (DFE-33512). Mrs Hepper's response and the correspondence case (DFE-33525) was then referred back to you on 16 April 2013. On 1 May 2013 (DFE-33525) you annotated that you were content and the Ministerial reply (DFE-33523 to DFE-33524) issued to REM. As to this:**

- a. What if anything did your Special Advisor tell you about REM's concerns, the queries he raised, and the response provided to the queries?**

My Special Adviser did not tell me anything additional to the annotation on the face of the submission. The exchange between Andrew Crawford and DETI officials took place before I saw the submission and I was content with the response.

- b. What message did you consider was being conveyed by the response received from Fiona Hepper?**

I believe the message was as summarised in the penultimate line of Fiona Hepper's response i.e. that: *"the regulation prevents scenarios where applicants seek to install a number of smaller boilers in attempt to receive higher incentive payments"*.



- c. **What further steps, if any, were taken on foot of Fiona Hepper's response?**

There was no need to take any further steps as Fiona Hepper had clearly stated there was no issue.

- d. **Did you discuss the issue of the suggested perverse incentive to install multiple boilers with anyone outside DETI, including stakeholder groups, installers, potential applicants, claimants and/or family members?**

No.

- e. **Did you, or to you knowledge, any Northern Ireland Government Minister or Department hear from Mr Turkington again?**

No, not that I can recall.

- f. **When did the issue of the suggested perverse incentive to install multiple boilers again come to your attention?**

I believe this was probably at the time of the Northern Ireland Audit Office report.

- g. **On 15 May 2014 John Mills sent you and your Special Advisor a submission annexing a draft update for the ETI Committee (DFE-230084 to DFE-230090) which stated (at DFE-230087) that uptake in Northern Ireland *"suggests that the NI RHI could experience a higher volume of applications but for smaller installations."* On 16 October 2014 Stuart Wightman sent you and your Special Advisor a submission annexing a draft update for the ETI Committee (DFE-349415 to DFE-349423) which stated (at DFE-349420): *"The scheme is administered by Ofgem (The GB Utility Regulator) and as of 15 October 2014 they have received 308 applications. Of these applications 222 have been accredited. All but one of these applications are for solid biomass boilers, the other being for a ground source heat pump, and the majority have installation capacity in the 20-99 kWh range."* Did either of these submissions cause you to revisit the issue of whether there was a perverse incentive to install multiple small installations?**

No.

9. **On 20 October 2014 Stuart Wightman wrote to John Gilliland and Eddie Meenan thanking them for hosting the Minister and DETI officials at Brooke Hall Estate and recording the key points discussed as follows: *"- Consider introducing an uplifted tariff for biomass district heating to incentive (sic) the installation of a smaller number of larger boilers serving multiple buildings rather than many smaller boilers (99kW and below); Consider extending the current 6.6 biomass tariff (for 20-100kWth boilers) to 200 or 300 KWth boilers"*.**

- a. **You have indicated that you do not recall the specifics of your visit (WIT-20621 to WIT-20622). Does this above correspondence assist you in your recall of why extension of the tariff for 99kW boilers to larger boilers was being discussed? Did this cause you to refer to, or enquire among officials, about the status of (a) the**



review of the scheme that was required to commence in January 2014 and/or (b) the non-domestic RHI cost control element of the Phase 2 work?

No, I don't recall this having been discussed with me.

10. On 7 November 2014 your Special Adviser wrote to Brian Gibson of Moy Park, referring to a previous conversation and attaching a general briefing on RHI (see DFE-293128). Arising out of this:

a. Please describe what, to your knowledge, was the nature of your Special Adviser (i) relationship with, and (ii) contact with Moy Park and/or any of its representatives.

Moy Park are a major stakeholder in the Northern Ireland economy. Because of this, my Special Adviser would have had contact with various people within the business.

b. Please provide details of any contact you had with Moy Park in relation to the RHI Scheme (including who the contact was with, when it occurred, and the details of what was communicated by each party).

I would have met with representatives of Moy Park on a number of occasions, including its Chief Executive Janet McCollum. I visited their plants in Portadown and Dungannon and would have had contact with them at events such as Balmoral Show. I can't recall whether RHI was discussed during any of these contacts; it certainly wasn't the sole or primary purpose of my visits or meetings.

c. Please indicate whether this contact continued after your move out of DETI in May 2015 and, if it did, whether it at any stage concerned RHI. (If so, please provide details).

The contact continued because they were such important player in NI economy but it did not concern RHI at any stage.

d. Please explain generally the relationship between Moy Park and the Democratic Unionist Party (DUP), including any senior or significant officers, officials, employees or members of the DUP.

I am not aware of any significant people within Moy Park who are members or donors, nor do I believe that the company itself is a DUP donor. From time to time, invitations to fundraising functions (such as business breakfasts) would have been sent out to businesses. Moy Park employees may therefore have attended these functions but I can't specifically recall any individuals having done so.

11. On 9 January 2015, having been forwarded an email attaching an Ernst & Young report, your Special Adviser wrote to Timothy Johnston: "It is unlikely that we will be able to support renewable energy post 2016" (see DOF-35522 to DOF-35551). Are you aware of the basis for this statement and how (if at all) it related to RHI?



I am not sure of the basis of this statement but it was public knowledge that the Conservative party were becoming less supportive of renewable energy generally, and subsidies for renewable electricity in particular.

12. On 21 January 2015 Brian Haslett forwarded your Special Adviser a message from 'Robert Davidsons', a clothes shop in Portadown, who sought information about business grants available for replacing their oil boiler. On 4 February 2015 your Special Adviser forwarded Brian Haslett various information and said he was happy to speak to Davidsons or provide more information if required. He also indicated to Glynis Aiken that it would not be necessary to set up a 'cor case' (DFE-293130 to DFE-293131).

a. Was it usual or routine that a correspondence case was not opened for certain queries? What type of queries were treated in this way? Was there a system for recording them?

In my opinion this was simply a query from a colleague who was working for David Simpson and therefore it would be usual for my Special Adviser to deal with it directly rather than setting up a correspondence case.

b. Were you aware of any follow-on communications with Robert Davidsons? If so, please provide details.

I was not aware of either the initial communication or any follow-up.

c. As far as you were aware did your Special Advisor frequently speak with parties interested in the RHI scheme in this way? If so, please provide details.

I am not aware of my Special Adviser speaking, in particular, to parties interested in the RHI Scheme. However, in general, he would have been as helpful as he could be to colleagues, and I would have expected him to be so. He would not have told me about these types of communications unless there was particular reason to do so.

d. Even if your Special Advisor did so only infrequently or on an *ad hoc* basis, please set out, as fully as you can, any interactions your Special Advisor had with parties interested in the RHI Scheme.

I was not aware of the interactions my Special Adviser might have had at the time with parties interested in the RHI Scheme.

13. On 19 February 2015 Energy Division sent advice to you on foot of a correspondence case arising from an invite from Future Renewables (DFE-232558 to DFE-232562). The advice was to decline the invitation to attend the Future Renewables event. It appears to the Inquiry from information received by it that you rejected that advice and indicated that you would attend the event (DFE-232578 to DFE-232579; and DFE-418660). As to this:

a. How usual was it for you to reject the advice of officials? Please explain your answer.



It was unusual for me to reject the advice of officials. I did so on this occasion because the invitation was from a business within my constituency and was being held on a Friday, my constituency day, and therefore I considered that it would be convenient to pop in at some point.

b. Did your Special Advisor advise you in relation to this invitation and, if so, what was the advice?

I can't recall whether he did or not, but because it was a constituency issue he probably left it up to me unless there was a particular issue he felt he needed to make me aware of.

c. Please confirm whether you attended this event. If you did not, please set out why you did not.

If the event took place I did not attend. I cannot recall why I did not attend, it may have been a diary clash.

14. On 3 August 2015 Howard Hastings, having received an email between Brian Hood and Austen Lennon about prospective changes to the non-domestic scheme, emailed Andrew Crawford stating: "not on your watch, surely" (see DOF-02264). Arising out of this:

a. Please detail any communication you had with Howard Hastings in connection with this communication or the RHI Scheme generally.

None.

b. Please detail the nature of your, and the DUP's, connection and relationship with Howard Hastings (if any).

Howard Hastings is a well-known and highly-respected business man in the hospitality sector in Northern Ireland. I appointed him to be Chair of the Northern Ireland Tourist Board in 2008/09 and he served in that capacity for two terms and was a hugely successful Chair. He was Chair at the time of the Northern Ireland 2012: 'Our Time Our Place' Initiative that included the Irish open, the opening of Titanic Centre, and the opening of the visitor centre at the Giant's Causeway. I worked closely with him in that capacity and had a lot of respect for him. I did not once speak to him about RHI.

I don't believe Howard Hastings has a connection to the DUP, save for his relationship with me developed through our working together during my time in Government.



- 15. Please detail the nature of your, and the DUP's, connection and relationship with Balcas (meaning the Balcas group of companies, including Balcas Limited and Balcas Timber Limited, or any of them) or any senior or significant employee, officer or shareholder of Balcas (if any).**

Balcas is a major employer in my constituency of Fermanagh and South Tyrone, and has its headquarters in Enniskillen. I visited Balcas in my capacity as DETI Minister. I do not believe that Balcas have any connection to the DUP.

Your Special Adviser's correspondence with Timothy Cairns

- 16. It appears to the Inquiry from information received by it that, on 16 July 2015 at 14.14, Stephen Brimstone and Andrew Crawford received an email from the then DETI Special Adviser, Timothy Cairns, ('the Cairns 16 July 2015 email') attaching a DETI Energy Division RHI submission about cost controls, together with accompanying Government documents, stating "Attached is latest on the renewable heat initiative for your info and input" (DFE-293132 to DFE-293150). It also appears that Andrew Crawford forwarded the Cairns 16 July 2015 email and its attachments to Timothy Johnston on 16 July 2015 at 19.00 (DOF-35520).**

Arising from this:

- a. Were you aware that these materials were being shared among, and input sought from, DUP Special Advisors in this way?**

No, I was not aware that materials were being shared among DUP Special Advisors nor that input was being sought in this way.

- b. If you were not so aware, should you have been made aware?**

I was aware that Andrew Crawford was assisting Timothy Cairns but I was not aware of the specifics and don't believe I should have been made aware unless it impacted on my role as DFP Minister.

- c. Were these Special Advisors acting under your authority in any way? If they were not, or if they were also acting under the authority of another, under whose authority were they acting?**

I knew that Andrew Crawford was assisting Timothy Cairns on renewable energy issues.

- d. Why in your view were the materials being shared in this way?**

Presumably because Andrew Crawford was assisting Timothy Cairns on renewable energy issues.

- e. In your view, are the emails described above consistent with your statement in reply to Section 21 Notice 135 of 2017 (your first statement) that you did not have**



a role in the amendment of the scheme in Autumn 2015 (WIT-20516) and had no influence whatsoever in relation to the cost controls introduced in 2015 (WIT-20516)?

I believe this is consistent; I was not aware of the emails and had no input into the amendment of the scheme.

17. It also appears to the Inquiry that Andrew Crawford also forwarded the Cairns 16 July 2015 email and its attachments to:

- (i) Richard Crawford on 16 July 2015 at 18.44 (DOF-35519);**
- (ii) His own Hotmail account on 20 July 2015 at 19.46 (DOF-35521); and**
- (iii) Wallace and Joan Gregg on 23 July 2015 at 20.53 (DOF-35518).**

Arising from this:

a. Were you aware of any of the instances of Andrew Crawford forwarding a Ministerial submission to his relations and/or to his private email account?

No.

b. Was this, to your knowledge, typical practice? Are you aware of other Government documents being disseminated in this way by Special Advisors or others?

It was not typical practice to email Government documents to family members. In terms of emailing documents to private email accounts, I would have been aware that this was done from time to time to allow paperwork to be considered or printed while away from the Department.

c. In each of the cases above, what do you understand was the purpose of the 16 July 2015 email being forwarded in this way?

I have no idea why the submissions were sent in this way to Richard Crawford and Wallace and Joan Gregg. In relation to sending the email to a private email address, this may have been to allow consideration or printing of documents while away from the Department.

d. In each of the cases above, what do you understand was the effect or outworking of the 16 July 2015 email being forwarded in this way?

I don't know what the effect or outworking of the forwarding of the email in each case has been.

e. In your view did forwarding the Cairns 16 July 2015 email constitute a breach of any codes, rules or principles including:



- i. the Code of Conduct for Special Advisers (2013 version: DOF-00592 to DOF-00631; 2016 version: DOF-00632 to DOF-00664);
- ii. the NI Civil Service Code of Ethics (2011 version: DOF-00197 to DOF-00284; 2013 version: DOF-00285 to DOF-00380; 2014 version: DOF-00381 to DOF-00464; current version: DOF-00465 to DOF-00555); and/or
- iii. the Seven Principals of Public Life / the Nolan Principles (included in the NI Executive Ministerial Code of Conduct at DOF-00001 to DOF-00018).

Please provide reasons for your answer.

It was clearly inappropriate for submissions to be forwarded to third parties and may well be a breach of the various codes referred to.

18. Andrew Crawford's email to Timothy Cairns on 31 July 2015 (see DFE-293158 to DFE-293162) indicates approximate boiler running hours at Moy Park houses and suggests a threshold for payment of the higher tariff different to the threshold referred to in the email of John Mills (further down the email chain). Mr Crawford also indicates that there will be "a massive spike in applications" and that "there is currently a shortage of the necessary pipework required to install boilers". Arising out of this, please address the following:

- a. Did Andrew Crawford discuss these issues with you or bring them to your attention?

No, he did not.

- b. Were you aware of these issues independently of Andrew Crawford? If so, how?

No, I was not.

Weekly meetings with the Minister

19. Evidence to the Inquiry indicates that there were weekly "Issues Meetings" with the Minister. In relation to this:

- a. What was the practice regarding the minuting of, and/or the recording of decisions taken at, these meetings?

In my experience, the officials that were present took notes for their own use. My Private Secretary would also have taken a note of the key points that I could refer back to, if required. I never gave a direction not to take notes or minutes at these meetings.



- b. At the meeting of 5 February 2014 (mentioned at DFE-410119) John Mills was introduced to you. Are you able to give an account of what was discussed at the meeting in relation to RHI?

No, I have no recollection of that meeting.

Question arising from your second statement (No 556 of 2017)

- 20. In response to question 24 on funding (WIT-20590) you state that you were not told that there was a DEL consequence and that your understanding about the funding was that there was £25m of AME funding over the period of 2011 to 2015. Did you have any concerns or discussions about what would happen if at any stage (a) the overall budget of £25m was exceeded during 2011 to 2015, or (b) the budget for the individual years from 2011 to 2015 was exceeded?**

No, I would have expected to have been told, particularly by my finance officials, if there were budgetary concerns. The main concern in the early days of the Scheme was that money was being sent back. I can't recall any discussion around what would happen if the Scheme went over the £25m allocated, but my understanding was that it wouldn't have any consequence for the block grant.

- 21. In response to question 32 on project management techniques (WIT-20595) you have indicated that you do *not* think formal project management techniques should have been applied to the creation and/or running of the RHI Scheme. Please indicate why you think this. (In this context, you may wish to be aware of the evidence of David Thompson at TRA-05665 to TRA-05778).**

My reply to question 32 was in the context that it would not have been within my knowledge or remit to know or consider when a formal project management technique should have been applied. I also have no detailed knowledge of what formal project management techniques entail and the advantages or disadvantages of using these techniques. However, if it is considered that formal project management would have prevented some or all of the issues that arose with the Scheme, then I agree that they should have been applied.

Clarification of responses to questions in Notice 556 of 2017

Having reviewed my responses to Notice 556 of 2017 in preparing to give oral evidence, there are three replies that I believe require some further clarification.

Question 26 (a)

Upon reviewing documents provided to me I believe that I was aware during my time as DETI Minister that funding for 2015/16 would be available from correspondence between The Rt Hon Gregory Barker MP, DECC Minister, and me on 16 December 2013 and 7 January 2014. That



correspondence sets out that £430m had been agreed for GB for 2015/16 and that Northern Ireland would receive a population-based Barnett share of that figure i.e. approximately £13m.

Question 35 (b) and (c).

This question concerns whether I appreciated that the cost controls for the Non Domestic RHI Scheme were not being taking forward. I replied that I did not appreciate this. While this is correct, I wish to clarify that I did understand that the cost controls for the Non Domestic Scheme were not being taken forward at the same time as the Domestic Scheme regulations. My understanding was that the introduction of cost controls had been deferred until after the Domestic Scheme was launched.

Question 41 (a).

I stated in reply to this question that the SEIDWG meeting at which finance was discussed took place shortly after the Non-Domestic Scheme was launched in November 2012. It appears from the documents provided to me that this meeting had actually taken place in September 2012, before the Scheme was launched.

Statement of Truth

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

Signed:

A handwritten signature in black ink, appearing to read 'Arlene Foster', is written over a horizontal line.

Dated: _____ 6th April 2018 _____