Chapter 26 – The developing budget problem

26.1 With increasing uptake levels, and without any proper understanding that the increase may be due to underlying problems with the NI RHI scheme being overgenerous and encouraging the generation of unnecessary heat, the need to secure greater levels of funding became a priority.

26.2 By 24 February 2015 Mr Wightman had worked out that there was going to be a funding issue for RHI.[1426] He had been speaking to Moy Park's David Mark about proposed RHI Phase 2 changes, as envisaged at that point. It appears, from Mr Mark's record of the discussion, that Mr Wightman had indicated that the forthcoming legislation, then scheduled for October 2015, would contain a mechanism to reduce RHI payments from 6.3p/kWh (the then tariff for the most popular medium biomass boilers) depending on overall uptake.[1427]

26.3 Mr Wightman, as evidenced by his post-conversation email to Mr Hughes, had worked out that the 200 poultry broiler houses, each with a 99kW boiler, which Mr Mark had explained would be coming forward to the NI RHI scheme from Moy Park growers, would equate to £4.4 million a year of additional RHI expenditure. Mr Wightman ended his email to Mr Hughes by indicating, "We will need to liaise with DECC about future RHI funding asap."[1428]

The March 2015 attempts to gain clarity

26.4 On 12 March 2015 Mr Hughes had addressed an email to Jon Parker at HMT, attaching a copy of the correspondence between DECC Minister Barker and Minister Foster from January 2014[1429] in an attempt to clarify the ongoing budget for the NI RHI scheme. It will be recalled that Mr Parker had been the author of the April 2011 funding email that had been stored in TRIM, and which Mr Wightman had unearthed in September 2014 when dealing with the domestic RHI scheme business case.

26.5 In his evidence to the Inquiry, Mr Hughes was uncertain of the source from which he had obtained a copy of the Parker email of 15 April 2011.[1430] In response to a question from Inquiry Counsel he said "It would have been passed to me. There is no way I would have had that on my system."[1431] It transpires that by the time of Mr Hughes' email Mr Parker had left HMT and the email from Mr Hughes "bounced back".[1432]

26.6 On 13 March, after advice from Nadia Carpenter of Ofgem, Mr Hughes redirected his enquiries to Nicola Barbour at DECC.[1433] On 16 March she responded by directing him to the DECC funding contact at HMT, Sam Smyth-Murray.[1434] Mr Hughes duly emailed him. On 20 March Mr Smyth-Murray informed Mr Hughes that he covered the GB RHI at HMT and advised him to speak to DFP NI "in the first instance".[1435] Mr Hughes confirmed in his evidence to the Inquiry

1426 DFE 106830; DFE-331197; WIT 263925; TRA 08593
1427 WIT 263925
1428 DFE 106830; DFE-331197
1429 WIT-18713
1430 TRA-08626
1431 TRA-08626 to TRA-08627
1432 TRA-08628
1433 TRA-08631
1434 TRA-08632
1435 TRA-08632

that he was not aware of the unwritten protocol in Northern Ireland that DFP should lead in any engagement with HMT on behalf of Northern Ireland Departments.[1436]

26.7 The Energy Division officials' sense of a need for cost control was clearly increasing in the context of growing demand and the Moy Park prediction, which may have been a significant underestimate of applications from the poultry industry. On 23 March 2015 Mr Wightman emailed Sandra Thompson who worked on the finance payments in the Co-Ordination Branch of DETI Energy Division.[1437] The email's ultimate intended destination was DETI Finance Branch, and a slightly altered version of Mr Wightman's email, sent by Mr Wightman on 25 March, was forwarded by Ms Thompson to DETI Finance's Jeff Partridge on 26 March 2015.[1438]

26.8 In his 25 March email,[1439] Mr Wightman pointed out that the level of uptake of the non-domestic RHI scheme had increased significantly over the previous few months and stated they expected uptake to remain high, with over 200 new applications for biomass heating systems from the poultry industry (linked to Moy Park's expansion) anticipated over the coming twelve months. He said there was also the added pressure of annual payments under the domestic RHI scheme, which had been introduced in December 2014.[1440]

26.9 Mr Wightman noted, in the email of 25 March to Ms Thompson, that the RHI budget had originally been £25 million for the four financial years from 2011 to 2015. He said the recent increase in uptake had resulted in the rolling monthly spend rising to £928,000, with an additional £64,000 being added for new accreditations each month. He estimated the projected annual spend for 2015-16 at £16 million and for 2016-17 at £25.5 million. He explained that he was "therefore keen to identify the total RHI budget going forward to ascertain if any tariff reductions will be needed." Mr Wightman suggested that if it was possible to carry over the remaining £17 million of the original £25 million 2011 to 2015 funding allocation, as it had not been spent, it might be possible to cover payments for 2015-16, but he expressed himself to be "much happier" if they also had the 2015-16 allocation on top.[1441]

26.10 Included in the email chain beneath Mr Wightman's email was the exchange between Mr Parker of HMT and Ms Clydesdale of 15 April 2011 in which, as discussed earlier, Mr Parker had set out, in 2011, the position between HMT and DECC over RHI, explaining that the funding was not standard AME, but instead there was a risk sharing arrangement as a consequence of which any spending in excess of the annual profile would have to be borne by DECC's DEL budget, if not recovered through the RHI. Mr Parker said those rules would be applied in equivalent fashion in Northern Ireland.[1442] Mr Wightman told the Inquiry this was the first time he realised that the RHI AME funding was unusual and may have had "…potential strings attached or restrictions".[1443] Mr Wightman said to the Inquiry that prior to this point he regarded the funding as standard AME in the sense that if forecasts had to be increased due to uptake, then the alteration of the forecasting would see the funding provided. He recounted that he was "starting to panic", given he was almost at the start of the new financial year and yet was already seeking clarity over a potential funding gap.[1444]

1436 TRA-08630 to TRA-08631
1437 DFE-118567
1438 DFE-118602 to DFE-118610
1439 DFE-119012 to DFE-119013
1440 DFE-118567 to DFE-118571
1441 DFE-118567 to DFE-118571
1442 DFE-118568 to DFE-118571
1443 TRA-09453
1444 TRA-09453 to TRA-09455

26.11 As previously indicated, on 26 March 2015, following a conversation between them, Ms Thompson forwarded Mr Wightman's 25 March email, and its previous email chain together with the Barker 7 January 2014 letter, to Mr Partridge at DETI Finance Division. Ms Thompson's email read as follows:

> "Hi Jeff – As discussed please see below (and attached) re our concerns re RHI/AME budget going forward. I appreciate that we basically secure our budget via AME profiling but it would be helpful if we could establish some parameters as non-domestic commitments made now/in next couple of years will have implications for the next 20 years."[1445]

26.12 There had not been a response to Ms Thompson's 26 March email by the time she sent a monitoring round email to Finance Branch, copying in the policy grade 3 Deputy Secretary, Chris Stewart, and head of Energy Division grade 5 John Mills, on 30 April 2015 about the forthcoming June 2015 monitoring round. Ms Thompson explained in her covering email[1446] that, as the monitoring round did not include AME re-profiling, it was necessary for her to:

> "…flag a significant increased requirement for AME (RHI). Non-Domestic applications in 2014/15 are approximately 430 compared with 130 total for the previous 18 months. We have just completed a major review of current applications including a reassessment of the expected monthly uptake. The expected uptake – including accruals – for 2015/16 is now almost £25m (£3m capital + £22m resource). Based on this profile we will run out of money approx. mid Sep and would be grateful for advice as to how/if this can be managed. We would also be grateful for clarification of the total AME budget available in NI – my earlier e-mail refers."

The frustration within Energy Division

26.13 The lack of response by DETI Finance Branch was also reflected in the 1 May 2015 Energy Division assurance statement for the six months ending 31 March 2015, which was sent by Mr Mills to Mr Stewart on that date.[1447] This document was part of a wider package of assurance statements that Mr Stewart would send to the Permanent Secretary, along with his own, on 29 May 2015. Mr Mills told the Inquiry that he drafted the assurance statement of 1 May 2015 as "one way to raise the matter" since Energy Division was not getting a reply. Clarity had been sought on 26 March and, at the time of sending the assurance statement, it was the end of April.[1448] The original draft of Mr Mill's part of the assurance statement pointed out the need for clarity around AME budgets for RHI (2015-16), and beyond, in the following context:

> "During the first 18 months of the Non-Domestic RHI scheme around 130 applications were processed. During 2014/15 a further 470 applications have been received. The NI scheme is currently outperforming the GB scheme with application numbers over the last few months running at 5% of the GB total. This unprecedented increase in uptake over the last 12 months has impacted on our funding requirement with over £20 million now forecast for 2015/16. ***Despite***

1445 DFE-118602 to DFE-118603
1446 WIT-24254
1447 WIT-14889 to WIT-14939; DFE-312395 to DFE-312464 at DFE-312464
1448 TRA-11034 to TRA-11035

repeated requests for information from Finance Division (and DFP) the Division has yet to receive any clarity around the maximum available going forward. This is essential for future planning in terms of tariff reductions etc. Without this clarification, both schemes may need to be closed to prevent overspends."[1449] (the Inquiry's emphasis).

26.14 In between Mr Mills submitting the Energy Division assurance statement on 1 May, and Mr Stewart finalising the Policy Group's package of assurance statements, plus his own, and submitting them to the Permanent Secretary on 29 May 2015, Mr Wightman, still having received no response to his 26 March email, communicated directly with Mr Cooper, the Finance Director.

26.15 Mr Wightman had mentioned RHI to Mr Cooper in a meeting about another subject on 7 May 2015 and followed up that conversation with a detailed email of the same date. The email Mr Wightman sent included, as part of its chain, the email he had sent to Ms Thompson on 25 March, and hers to Mr Partridge of 26 March. It also included the previous email chain back to the April 2011 HMT Parker email. He further attached a DECC GB RHI forecast prepared for the Office for Budget Responsibility (OBR) that Mr Hughes had obtained from DECC.

26.16 Mr Wightman explained in his email his difficulty in trying to get some clarity around future AME budgets for the RHI and his concern about the dramatic increase in uptake of the non-domestic scheme.[1450] He repeated the same uptake figures quoted by Ms Thompson and set out above, and drew attention to the fact that the current AME profile forecast for 2015-16 was only £11 million whereas it appeared that £22 million would now be required to fund both domestic and non-domestic schemes.

26.17 Mr Wightman recorded that Energy Efficiency Branch had not been given an opportunity to submit a revised AME profile as part of the June monitoring and the branch was keen to revise the AME profile as soon as possible, otherwise they would run out of funds by mid-September. He concluded his email by saying he was keen to take the opportunity afforded by Phase 2 of the non-domestic RHI scheme to include a number of future tariff reductions to help manage the budget and indicating that any clarity that could be provided as to future AME budgets would be greatly welcomed.[1451]

The 20 May 2015 "stop entering commitments" instruction

26.18 On 19 May 2015, almost two months after Ms Thompson had forwarded the email from Mr Wightman with its accompanying chain, Mr Partridge at DETI Finance finally replied to Ms Thompson, copying in Mr Wightman and Mr Hughes.

26.19 In response to the Inquiry's questions about why it had taken so long to reply to Ms Thompson, Mr Partridge explained that following their initial conversation in March he had been under considerable pressure of work, with other exercises ongoing coupled with staff absence, but the bottom line was that he had not prioritised Ms Thompson's email over other work because he considered that the approved forecasts from the most recent profiling exercise matched the most recent budget profile received from Energy Division. He said that in normal circumstances

1449 WIT-14890
1450 DFE-119011
1451 DFE-119011 to DFE-110019

he would have responded within a week to ten days.[1452] He had not spoken to Ms Brankin about the issue until she raised it with him on 19 May.

26.20 His explanation for the delay, according to Ms Brankin, was that he must have opened the email but, before reading it, been diverted to another task without labelling it as "unread", which would have prompted him to return and read it.[1453]

26.21 Mr Cooper was clear in his evidence that the 26 March email from Ms Thompson should have been escalated onwards by Finance Division to the Permanent Secretary at the time it was received "because, potentially, it could've resulted in a breach of our budget — DEL budget."[1454] He considered that the effect of escalating the matter at the end of March would have been to bring forward the point in time at which the issues began to be addressed, as opposed to necessarily changing how they were addressed.[1455]

26.22 In his reply of 19 May Mr Partridge stated that he would contact DFP regarding the questions raised about Northern Ireland's RHI AME allocation for 2015-16, noting the warning in the Parker email of April 2011 that RHI AME was not treated as standard AME, and of overspending consequences for the DEL budget. He advised that Energy Efficiency Branch should take steps to curtail spending to "keep within the likely ceiling of £12.8 million until such times as we obtain clarification from DFP."[1456]

26.23 Mr Wightman who, to use his own words, was now entering "panic mode," replied to Jeff Partridge on the same date emphasising how successful the scheme had proved in terms of take-up with monthly expenditure having effectively tripled since he had joined DETI.[1457] Monthly applications had effectively doubled in the six-month period April–September 2014, as compared to October 2013–March 2014. That was why the AME profile had changed so much. He pointed out that once installations had been accredited, annual payments were committed for 20 years, and emphasised current committed annual spend was already at £17 million (a potential overspend of about £4.2 million). He said that closing the RHI schemes would be very damaging and should be a very last resort, and that the "performance of the NI RHI is a success story and should be taken as positive". His email concluded: "We should surely be making the case for more RHI AME money from HMT/DECC rather than curtailing the scheme."[1458] The fact Mr Wightman expressed himself in this way evidences the issues discussed in the last chapter, i.e. that there was not, by 20 May 2015, an understanding within DETI of the reason why the scheme was so popular. The issue was considered to be a budget question.

26.24 Mr Wightman had copied Mr Cooper, the DETI Finance Director, into his 19 May 2015 email to Jeff Partridge. Mr Cooper forwarded the Wightman email to Ms Brankin at DETI Finance Branch on 20 May 2015. Shortly thereafter, on the same day, Ms Brankin emailed Mr Wightman with the succinct instruction "Please stop entering commitments immediately to ensure that monthly cumulative expenditure does not increase."[1459]

1452 WIT-18235
1453 WIT-24034
1454 TRA-15728 to TRA-15729
1455 TRA-15729 to TRA-15731
1456 DFE-277098 to DFE-277103
1457 TRA-10360
1458 DFE-277098 to DFE-277103
1459 DFE-277180

26.25 It will be recalled that Ms Brankin had been the grade 7 in DETI Finance Branch who, in May 2011, had confirmed during a telephone conversation with Mr Stevenson, the DFP DETI Supply Officer that RHI AME was not standard AME but rather a form of risk-sharing funding and that any overspending could impact the DEL budget. Such impact might, or might not, be by way of a limited penalty but the fail-safe approach, which she had advised Energy Division officials to adopt at the time, in order to protect DEL spending, was to treat it like DEL and stay within budget.

The late May 2015 flurry of activity

26.26 Leading up to a DETI Senior Management Team (SMT) meeting on 29 May 2015 a flurry of activity occurred. Mr Hughes began a new sequence of what turned out to be circular emails with DECC over RHI funding; it led Mr Hughes to tell Mr Partridge (and copy in Mr Cooper) on 27 May 2015 that the question of the RHI budget was "clearly an issue for DFP and HMT to resolve going forward".[1460] Further work was done to try more accurately to forecast likely RHI expenditure[1461] Mr Wightman engaged in an ultimately aborted attempt to have Ofgem queue applications to RHI.[1462] A revised cost control template was sent through to Ofgem by Mr Hughes which now included tiering to be introduced by 1 April 2016, or possibly October 2015 if there was sufficient time for the legislative process.[1463]

26.27 On 27 May 2015 Mr Wightman forwarded to Mr Mills a briefing for the DETI Permanent Secretary, Dr McCormick, who was due to meet a DECC official with regard to the NIRO scheme in London on the following day.[1464] In addition it was hoped that some assistance might be obtained in relation to the NI RHI budget in the context of the unprecedented increase in applications largely attributed to the poultry industry switching from LPG to biomass heating systems supported through the NI RHI scheme. The briefing did not specifically refer to a potential impact on the DEL budget of RHI overspend, although it did state that the scheme was funded by "a form" of AME, but Mr Wightman told the Inquiry that it was hoped to obtain some further clarity with regard to that issue.[1465] The Permanent Secretary subsequently informed Mr Mills that "on RHI the steer was that, as an AME issue, it should not be limited by Barnett and the key was to give HMT early warning of the increased demand."[1466]

26.28 Mr Wightman had also forwarded the briefing note to Mr Partridge, Mr Cooper and Ms Brankin at DETI Finance Division on 27 May with an explanatory email which referred to the need for DFP to liaise with HMT with regard to whether there were opportunities to carry over previous RHI AME underspends and whether the budget for 2015-16 could be based on the £23.2 million then forecast, which would represent "5% of DECC's allocation rather than 2.98%."[1467]

1460 DFE-277205
1461 DFE-277199
1462 OFG-61743 to OFG-61744; OFG-61780
1463 OFG-32332
1464 DFE-119486 to DFE-119488
1465 DFE-119487; TRA-10721 to TRA-10722
1466 WIT-10587
1467 DFE-119489 to DFE-119492

The 29 May 2015 SMT meeting

26.29 On 29 May 2015 there was a sharp exchange between Mr Mills and Mr Cooper over RHI at the DETI SMT meeting. SMT meetings were attended by all grade 5s and above; so the meeting would have potentially involved 13 people.[1468]

26.30 Mr Mills told the Inquiry that during the exchange he expressed frustration at Finance not taking the matter seriously.[1469] For his part Mr Cooper explained in his evidence to the Inquiry that at this meeting he was not yet aware of the additional problem that the DFP RHI approval had lapsed, nor the content of the assurance statement, but he said that he pointed out to Mr Mills the scheme had already overspent and that there were more control issues than just securing more budget.[1470]

26.31 As there had been "…a bit of a shouting match" the Permanent Secretary closed the discussion down.[1471] He explained to the Inquiry that he was of the view there was a shared collective responsibility to solve the problems. He called a special urgent meeting on RHI to take place on 3 June.[1472]

The assurance statement

26.32 As mentioned previously, and also on 29 May 2015, Mr Stewart submitted the Policy Group six-monthly assurance statements to the Permanent Secretary.[1473] Accompanying this was his own assurance statement, where at paragraph 10 he had transposed the same content as that which Mr Mills had sent him on 1 May 2015 in the Energy Division assurance statement:

> "Despite repeated requests for information from Finance Division (and DFP) the Division has yet to receive any clarity around the maximum available going forward. This is essential for future planning in terms of tariff reductions etc. Without this clarification, both schemes may need to be closed to prevent overspends."

26.33 The assurance statements, which were then being summarised for the Departmental Audit Committee, were drawn to the attention of Mr Cooper[1474] on 29 May 2015, though after the SMT meeting had occurred.[1475] Reading the criticism of Finance Division led him to seek an explanation from Mr Partridge as to what had occurred.[1476] In response Mr Partridge produced a detailed timeline of events.[1477] It did not contain any reference to the DFP approval having expired, as the requirements of the approval had not yet re-surfaced.

26.34 Discussions took place between Finance Division and Energy Division and ultimately the assurance statement was amended with regard to the reference to repeated requests for information from Finance and DFP. Alternative drafts were circulated on 3,[1478] 5[1479] and

1468 TRA-15642
1469 TRA-11037
1470 TRA-15770
1471 TRA-12075
1472 WIT-26231
1473 DFE-387511 to DFE-387513
1474 DFE-277236 to DFE-277239
1475 TRA-15770
1476 DFE-277258
1477 DFE-278003 to DFE-278005
1478 DFE-387532; DFE-387557; DFE-387559
1479 DFE-387558

17 June[1480] until a final version was agreed and submitted on 22 June.[1481] The final version of the statement was modified to state that: "Energy officials were working with Finance and DFP to ensure appropriate approvals and revised funding requirements were in place…".

26.35 It seems that the amendment was made at the request of Mr Stewart, following representations from Finance Division, and Mr Mills accepted that it was not the done thing to record internal criticism of colleagues in formal documents."[1482] He assumed that such documents would have gone to the Departmental Board and Audit Committee and agreed that Finance Division might see it as a 'bad mark'.[1483]

26.36 In a written statement of evidence provided to the Inquiry Dr McCormick said of this amendment to the assurance statement:

> "On the specific issue of the Assurance Statement, I think that it is important to stress that it is not appropriate for an Assurance Statement to raise an unresolved difference of view between Divisions."[1484]

26.37 When the Inquiry raised the consequences of the amendment with Mr Cooper and suggested that the amendment was concealing the problem he accepted that it was "not a model of plain speaking".[1485] In his oral evidence Dr McCormick was asked by the Inquiry what was wrong with telling the truth; to which he replied that there was nothing wrong, continuing:

> "Again, my sensitivity on this is that the emergence of that as an issue should not have been confined to the assurance statement. It should've come another way before and, therefore been acted on such that we could then get to a place where there's some resolution. Now, of course, even by the time we reached accounts, we were far from resolution, but I think- I stand by what I said that this wasn't the right context and place for a dispute to be highlighted."[1486]

26.38 The Inquiry would not wish to make too much of this substitution of a negative statement for a positive interpretation and acknowledges that the Deputy and Permanent Secretary were aware of DETI's difficulties in obtaining responses from Finance Division, which undoubtedly led to delay, but the evidence did little to support the confidence placed in the assurance statement system by senior leaders within DETI.

The 3 June 2015 RHI meeting

26.39 The 3 June 2015 meeting of senior DETI officials about RHI was arranged by Dr McCormick following the sharp exchange between Messrs Cooper and Mills referred to above. It was to allow more detailed discussion, of the issues which had arisen with the NI RHI scheme, to occur outside the confines of the more general SMT meeting. The 3 June meeting was attended by Dr McCormick, Mr Rooney, (Deputy Secretary and Senior Finance Director), Mr Cooper from Finance Division, and Mr Mills and Mr Wightman from Energy Division.[1487] Although Mr Stewart

1480 DFE-387562; DFE-387568
1481 DFE-387570; DFE-387596
1482 TRA-11039
1483 TRA-11040
1484 WIT-26232
1485 TRA-15786
1486 TRA-12170
1487 WIT-10588

might ordinarily have been expected to attend such a meeting, he did not attend on this occasion as he was in Dublin that day.[1488]

26.40 It was the day before this meeting, 2 June 2015, that Mr Cooper had sought the DFP approval letter and, from it, identified that the April 2012 DFP approval for the NI RHI scheme had lapsed on 31 March 2015.[1489] That, and the fact that spending on the RHI scheme after that date was therefore irregular, were discussed at the meeting. Indeed, Mr Stewart noted in his oral evidence to the Inquiry that, when the lapse in approval was discovered:

> "We had moved from something which was important but not a serious threat — that is, uncertainty around a budget — to something that was a very serious matter indeed: irregularity."[1490]

26.41 There is no formal note or minute of the meeting of 3 June but Dr McCormick did make "informal notes" which he "jotted down" on his iPad at the meeting.[1491] From these notes Dr McCormick was able to say, in his written evidence to the Inquiry, that it was discussed at this meeting that there was a high number of applications in the poultry sector; that the recommended review of tariffs had not taken place; that, unlike in GB, tariffs were not tiered; and that there was no mechanism to alter tariffs apart from new legislation. There was still no appreciation of, or reference to, the fact that the subsidy was higher than the cost of fuel.[1492]

26.42 Dr McCormick also explained to the Inquiry that the direction he gave when appraised of the problems, as they were then understood, was to act to ensure value for money, accompanied by appropriate control on costs, as these would be essential to secure DFP approval.[1493] There were three tasks identified at the meeting for urgent action in this regard, namely

(i) to engage further with DECC and DFP to seek additional budgetary cover;

(ii) to identify and take the steps necessary to secure a new DFP approval for the scheme, by drawing up a new business case (which would include the introduction of new cost controls and the reduction of the incentive in order to provide evidence of both value for money and effective control of expenditure); and

(iii) to seek to resolve the irregularity of the expenditure, ongoing from 1 April 2015, as soon as possible.[1494]

26.43 In an email of 8 June 2015 to Mr Mills (giving feedback on a Ministerial Issues Meeting which had occurred that day) Mr Stewart referred to "the three strands of remedial action" in relation to the RHI scheme in slightly different (albeit not inconsistent) terms to those identified in Dr McCormick's evidence to the Inquiry, namely "securing budget cover (or addressing the consequences of not securing it); seeking approval from DFP; and legislation to pursue tariff changes/controls."[1495]

1488 WIT-11534 to WIT-11535
1489 DFE-10097
1490 TRA-11615
1491 WIT-10513; WIT-10588
1492 WIT-10513
1493 WIT-10514
1494 WIT-10513; see also Dr McCormick's oral evidence to the Inquiry at TRA-12176
1495 WIT-27553

26.44 Dr McCormick candidly accepted in his evidence to the Inquiry, however, that, albeit there were a number of problems which needed to be addressed at this time, early June 2015, the point which was not addressed:

> "Was the major issue of the increase in the expenditure on the Scheme – the fact that the tariff was higher than the cost of fuel, and hence the absence of tiering, high usage (above the level required to compensate for the up-front capital investment) was excessively rewarded."[1496]

26.45 Dr McCormick said to the Inquiry that he did not ask for a detailed technical explanation as to how the RHI scheme worked until May 2016, and, looking back at events, told the Inquiry that in his view it was now very clear that "we were not focused on the potential risks to value for money and far too focused on seeking additional budget cover."[1497]

26.46 In a later witness statement to the Inquiry, Dr McCormick also said:

> "My personal regret, which is with the benefit of hindsight, is that I did not ask more fundamental questions about the Scheme at the meeting on 3 June 2015. I accepted too readily the perspective that we only had three problems… – a shortage of budget cover, and the need for prospective and retrospective approval of the expenditure."[1498]

26.47 In the same statement, Dr McCormick also said that he regretted not asking more basic questions about the scheme at this stage.[1499] Dr McCormick supplemented these views in his written evidence when he gave oral evidence in the course of the Inquiry hearings. He indicated that, by the time this meeting occurred on 3 June, the context was that "we've now got a crisis",[1500] particularly with a spending irregularity having arisen. He said that there was "… maybe a trap I fell into, possibly, of focusing just on solving the presenting problem, rather than taking the opportunity to step back and do a more fundamental review",[1501] including a "mistake" of not re-opening Energy Division's plans as to the introduction of tiering and the raising of the upper limit of the medium biomass tariff from 99kW to 199kW.[1502]

26.48 Dr McCormick also agreed that, with what was known about the difficulties with the NI RHI scheme at that point, this was "a classic opportunity for a step-back moment" but said that that did not happen "because we were too focused on solving what we thought were the problems."[1503]

26.49 The three identified actions, arising from the meeting of 3 June mentioned above, were described by Dr McCormick as "conjoined triplets" – each requiring to be dealt with together in order to achieve a total solution[1504] – with no particular priority between them.[1505] Dr McCormick considered that these actions were at one level quite rational in light of the position in which the Department found itself but said "the opportunity to step back is very clear now."[1506]

1496 WIT-10513 to WIT-10514
1497 WIT-10514
1498 WIT-26230
1499 WIT-26231
1500 TRA-12177
1501 TRA-12177
1502 TRA-12178
1503 TRA-12182 to TRA-12183
1504 TRA-12177
1505 TRA-12177; TRA-12179
1506 TRA-12183

26.50 Although Dr McCormick found it difficult to answer whether that opportunity should have been identified without the benefit of hindsight (and that is something which the Inquiry has had to carefully consider), he did concede that, in light of what was known about previous departmental failings, he could not argue with the suggestion that a Gateway review in relation to the scheme should have happened at this point.[1507] He also gave evidence that, in light of the attempts to move forward in problem-solving mode, the Department did not look backwards enough in order to determine how the NI RHI scheme had come to be in the position in which it was, and whether there was "something more below the surface".[1508]

26.51 Mr Cooper, in his oral evidence to the Inquiry, broadly agreed with Dr McCormick's recollection of the 3 June meeting. He felt there had been an in-depth discussion of the big issues as they were understood at that time, with concern about how long it would take to sort them because legislation was required.[1509]

26.52 Mr Mills does not appear to have a clear recollection of the 3 June meeting in particular, given that there were a range of such meetings during this period, but described it as a briefing session in which, in his view, there was a good deal of "wandering discussion". For his part, however, he told the Inquiry that at this stage he "wanted to introduce the tiered tariff as soon as possible" as he "saw this as solving most of the problem in the short term".[1510] His evidence to the Inquiry was also consistent with that of others, referred to above, as to the three strands of work emerging from the meeting.[1511]

The 17 June 2015 RHI meeting

26.53 Between the 3 June meeting and when the senior officials next met specifically about RHI on 17 June 2015, there had been much work undertaken and many meetings held. This included:

- The Permanent Secretary raising RHI at an Issues Meeting with the DETI Minister on 8 June 2015;
- Mr Cooper meeting with DFP, but also expressing his views to Mr Murphy that there may be value for money issues with the scheme spend,[1512] and, as discussed in the previous chapter, that there was naivety in Energy Division around the issues and that the NI RHI scheme may in fact be overcompensating;[1513]
- Mr Wightman preparing and circulating a draft submission which suggested that DETI needed to ensure that DECC/HMT "don't continue to restrict NI funding by the Barnett's formula"[1514] and proposing consultation on the introduction of the then cost control plan of tiering and annual tariff reductions;
- Mr Hughes seeking legal advice from DSO on whether the NI RHI regulations would provide for "temporary suspension of the scheme for new applications until budget confirmation has been obtained";[1515] and

1507 TRA-12185
1508 TRA-12185 to TRA-12186
1509 TRA-15830
1510 WIT-14557; see also TRA-11092
1511 WIT-26023
1512 DFE-146538
1513 WIT-18759 to WIT-18765
1514 DFE-278171 to DFE-278177
1515 DFE-349919 to DFE-349923

- Mr Cooper circulating the first draft of what would become the 1 July 2015 memo from DETI to DFP.[1516]

26.54 The meeting on 17 June 2015 was attended by Dr McCormick, Mr Rooney, Mr Cooper, Mr Murphy, Mr Mills and Mr Wightman. The Inquiry has received a considerable amount of evidence as to what is said to have been discussed at the meeting. Some of this is discussed in further detail elsewhere in this Report, but at this remove it is impossible to determine with confidence precisely what was said, or in what terms, by the various participants.

26.55 As with the meeting on 3 June 2015, Dr McCormick again made an informal note during the course of the meeting on his iPad[1517] which records headline subjects of the DFP approval, the available budget, and value for money. The note also suggests that action had to be taken "to minimise costs asap"; that the legal advice Mr Hughes had been seeking was discussed, summarised by the phrase that "we have no means to put the brakes on" before legislative change was properly introduced; and that tiering was discussed as a change to the scheme which could be made quickly whereas "more complex change may be more difficult". There also appears to have been some discussion about the fact that a power to suspend the GB scheme had been included by DECC in earlier legislation, albeit that had then been revoked (or, more accurately, replaced by the degression mechanism).

26.56 Most witnesses appear to agree that, during the course of this meeting, Mr Murphy suggested that a swift scheme review be undertaken, which was not taken forward.

26.57 Ultimately, Mr Rooney circulated a memo the following day[1518] setting out the actions required arising from the meeting. The memo recorded that actions were required on three elements, namely to regularise the approvals for the scheme; budget provision; and value for money improvements (reflecting the three headline points in Dr McCormick's note). As to these:

(i) On the issue of regularising the expenditure position, four steps were identified to be taken. These included seeking prospective and retrospective approval from DFP; clarifying RHI AME profiling arrangements with DFP; reviewing the governance statement for the DETI annual accounts for 2015-16 with a proposed amendment to the governance statement to be provided to the Departmental Audit Committee (discussed later in this Report); and discussion with the NIAO about the actions being taken and to agree the changes in order for the DETI annual accounts to be finalised.

(ii) On the issue of budget provision two actions were to be taken. Firstly, DETI was to "approach DECC on the 2015/16 RHI funding allocation and projected position". It was noted that "An AME allocation would suggest that DECC regularly review projected demand and can adjust profile". Secondly, DETI was to explore options with DFP to get the RHI AME allocation adjusted to match the anticipated spend profile for 2015-16.

(iii) On the issue of value for money improvements, two steps were to be taken. Firstly, a "revised (supplementary) business case" was to be urgently produced on proposed changes to improve value for money to support the case for DFP approvals and inform consultation. Secondly, Energy Division was to develop proposals for legislative change. In respect of the latter the memo recorded two questions, namely "what could be done quickly (e.g. step down on hours; tariff changes?)" and "what needs consultation?"[1519]

1516 DFE-146623 to DFE-146625
1517 WIT-10599; and see Dr McCormick's written evidence at WIT-10516
1518 DFE-146865 to DFE-146866
1519 DFE-146866

26.58 While Mr Rooney's memo, through the sub-title "value for money improvements" and its corresponding narrative about "proposed changes to improve value for money" does imply a recognition on the part of officials that there were problems that needed to be addressed in this regard, the memo itself does not clearly articulate what those problems were, nor record the putting in train of any investigation of them. It also did not make specific reference to the issue of overcompensation which Mr Cooper had raised in his 12 June 2015 email to Mr Murphy.

26.59 Mr Cooper's evidence to the Inquiry was that, at this meeting, he "formally escalated [his] concerns around the potential overcompensation issue by explaining [his] view that payments under the Scheme could be in breach of State Aid rules…".[1520] In his evidence, Dr McCormick explained that he does not believe that this issue was formally escalated,[1521] albeit he has no conscious memory of the meeting,[1522] He indicated that he could not dispute that the issue of State Aid was raised at the meeting but he had no memory of precisely in what terms it was raised and it did not "stand out".[1523] Nonetheless, Dr McCormick did accept that he and others ought to have "pushed back harder" in relation to the view taken by Energy Division at that time that the RHI scheme was a good scheme which was finally succeeding.[1524]

26.60 For his part, Mr Murphy has told the Inquiry that he has "a very clear recollection" about State Aid issues being raised at meetings in relation to the RHI scheme in June 2015, in relation to the Department not having lived up to its commitments around keeping tariff levels under review and up-to-date,[1525] including at the meeting of 17 June. However, he could not say whether something was specifically raised by Mr Cooper during that meeting in relation to the possibility of overcompensation being a factor that might be at play within the scheme.[1526] He does recall Mr Cooper raising a question about overcompensation with Energy Division around this time and being assured that this was not occurring. Although he could not be specific about when this exchange occurred, he thought that this was at an earlier meeting with Energy Division than the meeting of senior officials on 17 June.[1527] Mr Wightman, with whom this exchange is said to have occurred, has indicated that he has a vague recollection of Mr Cooper asking him whether someone could make money from the scheme around this time (early June 2015). He cannot recall the detail of the conversation and does not believe that he would have provided as firm a reassurance as suggested; but also acknowledges that his understanding at that point about whether money could be made from the scheme was wrong.[1528]

26.61 In any event, Dr McCormick's evidence was that there was consensus at the 17 June meeting, on the basis of what Energy Division was saying and its understanding of the legal advice which it had received, that there was nothing else that could be done urgently other than the identified actions referred to above.[1529] This is also consistent with Mr Murphy's evidence that, although other options such as scheme suspension or closure and tariff reviews were raised, the response from Energy Division was that the various suggested courses of action were either

1520 WIT-19058
1521 TRA-15152
1522 TRA-15157
1523 TRA-15153
1524 TRA-15152 to TRA-15155
1525 WIT-19649 to WIT-19650
1526 WIT-19654
1527 WIT-19650; WIT-19654
1528 WIT-17903
1529 TRA-15156

not legally feasible or would take far too long and that the only plausible or available course of action was to tier the tariffs and so dampen demand. His recollection is that the advice from Energy Division, in particular around what was legally feasible, "was pivotal in the Department's decision making in early June of 2015."[1530]

Engaging with DFP, DECC and HMT

26.62 Prior to the above meeting on 17 June 2015 Mr Cooper had met with DFP Supply Officer, Michelle Scott, on 12 June 2015 to discuss RHI. The records of the meeting indicate that there was not a proper understanding in DFP Supply of the RHI funding position. Ms Scott recorded in the aftermath of the meeting that, in the context of funding and affordability, she had "asked DETI to clarify the agreement between themselves and DECC on the AME available."[1531] There was of course no such agreement.

26.63 Following the meeting, on 17 June 2015, Ms Brankin provided Ms Scott with the Barker/Foster correspondence of late 2013/early 2014, discussed elsewhere in this Report, and said: "From these letters, it would not seem likely that we could approach DECC for additional funding."[1532] Mr Cooper followed that up with an email to Ms Scott on the same day saying:

> "We will still engage with DECC around where they stand in overall terms ref the scheme and their uptake as regards potential for any funding not taken up to be applied here. But we don't believe we can square all of the circles on this without dfp [sic] assistance in terms of possible engagement with treasury [sic] as required."[1533]

26.64 Mr Cooper had already sent[1534] a brief summary to colleagues in respect of his meeting with DFP, along with an initial draft of the formal memo from DETI to DFP that would eventually be sent on 1 July. The original draft did not refer to engaging with DECC or HMT. Following the 17 June DETI RHI meeting involving senior officials, Mr Mills sought clarity on what the memo to DFP was to include as a result of the discussion at the meeting. Mr Mills set out his understanding of the issues to be included, and how they were to be framed. In respect of the "budgetary position and the issues around DECC/HMT" he recorded that the point to be made was that DETI "have contacted DECC but need you to contact HMT".[1535] Mr Rooney confirmed that Mr Mills' email covered the points and asked him to send through drafting changes for the memo.[1536]

26.65 When Mr Mills did that on 29 June[1537] his redraft included the following statement in the budget section of the memo:

> "We are in the process of writing formally to DECC, following verbal and email exchange at all levels to explore the position. From DECC's perspective, NI expenditure on RHI has nothing to do with them. They advise that AME expenditure for RHI should not be subject to any Barnett consequential type arrangement and

1530 WIT-19651
1531 DOF-03309
1532 DFE-146814 to DFE-146818
1533 WIT-18766
1534 DFE-146623 to DFE-146625
1535 DFE-146893
1536 DFE-146893
1537 DFE-147422 to DFE-147423

> that the matter should be pursued with HMT via DFP. Although we will continue to engage with DECC we would be grateful if you could also explore with HMT."

26.66 Various exchanges on the draft then occurred with Dr McCormick[1538] which resulted in a revision to the above statement, though the central point about needing DFP to engage with HMT remained. Dr McCormick and Mr Stewart[1539] then expressed themselves content.

26.67 However, Mr Cooper revised the draft[1540] before he sent it, and his revisions included the removal of the statement that DETI needed DFP to engage with HMT about RHI funding. The result was that, in spite of the circular correspondence that DETI had already engaged in with DECC in March and May, and the previous emails from Ms Brankin and Mr Cooper to DFP in June, the formal memo that DETI sent to DFP on 1 July[1541] did not ask DFP to engage with HMT over the budget but simply indicated that DETI were writing to DECC as a means of getting further clarity on the exact nature of the funding arrangement and that Mr Cooper would revert to Ms Scott as soon as possible. When Mr Cooper provided his colleagues with the final version of the memo[1542] after he had sent it, he explained that he had made some changes particularly in the section relating to budgets because DFP had been clear that it wanted DETI to "firstly engage with DECC and revert".

26.68 Mr Cooper was questioned on this issue during his oral evidence to the Inquiry and he explained that he had taken out the request for DFP to engage with HMT "in good faith" and that "what I was actually trying to do was move it forward".[1543] This was because he had been the recipient of the strong view expressed by DFP, through its then Supply Officer, that DETI first needed to go to DECC. Mr Cooper thought he could achieve that quickly, despite all the previous clear communications that there had been from DECC to DETI that this was an issue for HMT, and then return to DFP.[1544]

26.69 However, Mr Mills told the Inquiry that his perception was that there was in DETI "a desire not to challenge DFP", which was "sort of cultural".[1545] He said that he did not really understand what the problem was with going back to DFP.[1546] In his written evidence, Mr Mills said:

> "Rightly or wrongly, at the time, my perception was that he (Andrew McCormick) and finance colleagues did not wish to challenge DFP or imply that they might somehow be remiss. As far as I am aware, a straightforward letter asking for budgetary clarity was never sent."[1547]

26.70 For his part, although he thought there was more fault on DETI's side, Dr McCormick accepted that, having asked for help, there was no clear answer coming from DFP. DFP would not go to HMT until DETI got its house in order. Dr McCormick saw that as a "cultural norm" and suspected that it was probably "an attempt to be a sort of mini-me of the Treasury".[1548] On

1538 DFE-147405 to DFE-147424
1539 DFE-147425
1540 DFE-278344 to DFE-278350; DFE-278375 to DFE-278379
1541 DFE-147438 to DFE147441
1542 DFE-278390
1543 TRA-15949
1544 TRA-15948 to TRA-15953
1545 TRA-11043
1546 TRA-11043
1547 TRA-11042
1548 TRA-12151 to TRA-12152

the other hand he also maintained in oral evidence that “I am very clear in my own mind that I’d no difficulty with approaching DFP and the Treasury”.[1549] In the course of his oral evidence Dr McCormick agreed that if ever there was a classic moment for standing back and setting up some form of Gateway review it was May/June 2015.[1550]

1549 TRA-12151

1550 TRA-12043 to TRA-12044

Findings

143. The events of 2015 revealed one of the many consequences of poor staff handover in 2014: the complete failure to ensure that knowledge of the conditional, non-standard nature of the RHI AME funding was effectively transferred to and absorbed by DETI staff responsible for the NI RHI scheme.

144. It is difficult to understand why Mr Hughes' initial enquiries with regard to budget were made to HMT and DECC, rather than to the Finance Division in DETI. Both Mr Cooper and Ms Brankin who still worked in DETI, had been sighted on the original 2011 HMT email exchange about the budget; regrettably at the time this was not known to Mr Hughes.

145. On 26 March Ms Thompson from Energy Division emailed Mr Partridge at DETI Finance.[1551] Mr Partridge did not reply or raise the matter with anyone until Ms Brankin spoke to him about RHI on 19 May. The Inquiry finds it unacceptable that DETI systems and personnel allowed such important correspondence to go nearly two months unanswered.

146. The Inquiry agrees with Mr Cooper that the matters raised in the 26 March 2015 email merited escalation by Finance Division to the Permanent Secretary at that time, and that had this happened it might have brought forward the point in time when matters started to be addressed.

147. In view of the communications that DETI already had with DECC and HMT in March and May 2015 there was no good reason why a direct clear communication to HMT, seeking clarity about RHI funding, could not have been sent by DFP before the end of June 2015.

148. To the extent that Mr Mills' perception of a reluctance to challenge DFP (whom he described as "the real people who run the show")[1552] is correct, there was no good reason for any such reluctance. The Inquiry finds that there was some such reluctance within DETI and that this was a factor in leading to the delay in clarifying the issue of funding.

149. The Inquiry agrees with Dr McCormick's expressions of personal regret that he did not ask more fundamental questions about the scheme at the meeting on 3 June 2015, and accepted too readily the perspective that there were only three problems.[1553] As a result, officials only focused upon solving the three identified problems and thereby trying to deal with the symptoms of the flawed scheme rather than stepping back and undertaking the necessary fundamental reassessment.

1551 DFE-118602
1552 TRA-11042 to TRA-11043
1553 WIT-26230