

## Chapter 27 – The new DETI Minister and his Special Adviser

### The appointment of Minister Bell

- 27.1 Following a DUP ministerial reshuffle in May 2015 Ms Foster left DETI to become the Minister at the Department of Finance and Personnel (DFP). Jonathan Bell, who had been a Junior Minister in the Office of First Minister and deputy First Minister, became the Minister at DETI. Just like Ms Foster, Mr Bell did not have any energy-related qualifications and no specific experience in the area.
- 27.2 The Inquiry notes that the only reference to the non-domestic RHI scheme in the new Minister's first-day brief, a fairly lengthy document approaching 300 pages, was just over a single page prepared by Mr Mills and Mr Wightman. With regard to RHI funding, an incomplete if not inaccurate picture was presented. The entry read:

“The allocated DETI budget for 2011-14 was £25 million. Work is ongoing to get clarity on future RHI budgets for 2015/16 onwards. Current RHI forecasts are that annual RHI expenditure in 2015/16 will be around £22 million.”<sup>1554</sup>

There was nothing in the brief to suggest there were problems with the NI RHI scheme, much less any major or urgent one (although this is perhaps not surprising as the issue had not yet been escalated to the Permanent Secretary for his attention). The Minister was not therefore told about any of the concerns set out in the Energy Division communications to Finance Division (Mr Wightman's emails of 25 March 2015,<sup>1555</sup> Ms Thompson's email of 30 April 2015,<sup>1556</sup> or Mr Wightman's email of 7 May 2015),<sup>1557</sup> in particular that the then current RHI spending forecast for 2015-16 amounted to some £22 million, whereas the then available funding for the same period was only some £11 million, and that this meant, if the RHI AME profile could not be increased, that the RHI scheme would “run out of funds in mid September”.<sup>1558</sup>

### The appointment of Timothy Cairns

- 27.3 Dr Crawford had followed Ms Foster to DFP as her SpAd, and in his place Timothy Cairns was appointed to act as Mr Bell's SpAd at DETI. Mr Cairns had been a SpAd to Jonathan Bell during his time in OFMDFM. He confirmed to the Inquiry that, for the purpose of his initial appointment as a SpAd in June 2012, there had been no application or competition. Mr Cairns said he had been attending a DUP Party Executive meeting when he was approached by the then First Minister, Peter Robinson, who said he would like to have a private word. He was then invited to succeed Gavin Robinson as SpAd for Mr Bell. Mr Cairns accepted the offer and he then had a brief conversation with Timothy Johnston, who was a SpAd to DUP First Ministers Paisley and Robinson from 2007 to 2016, who told him to report to Stormont Castle.<sup>1559</sup>
- 27.4 In May 2015, on the day that Mr Bell was appointed to DETI, Mr Cairns was brought in to the First Minister's office five minutes before the announcement of the ministerial reshuffle and

1554 DFE-416349

1555 DFE-118602 to DFE-118603

1556 WIT-24254

1557 DFE-119011

1558 DFE-119011

1559 TRA-12596 to TRA-12598

told that he would be moving as a SpAd to DETI with Minister Bell.<sup>1560</sup> Mr Cairns also had no qualifications, nor any meaningful experience, in energy matters.

27.5 Mr Cairns made it clear to the Inquiry that he was not enthusiastic about being reappointed as a SpAd to Mr Bell. He told the Inquiry that Mr Bell did not read his briefs in detail and civil servants would have to go through the material from A to Z in brief pre-meetings. He also described Mr Bell as ‘volatile’ and referred to an incident relating to Valentine’s Day 2013 when he had advised Mr Bell to take his wife out rather than attend an event. He said that when Mr Bell was teased about it by another SpAd he became very angry and aggressive with Mr Cairns which made Mr Cairns feel apprehensive.<sup>1561</sup>

27.6 A number of witnesses gave evidence to the Inquiry supporting Mr Cairns’ view of what he considered were Mr Bell’s shortcomings, even though, according to First Minister Foster, Minister Bell appears to have enjoyed a very close relationship with First Minister Robinson.<sup>1562</sup>

27.7 In his written evidence to the Inquiry, Mr Timothy Johnston made the following comments in respect of Mr Cairns’ appointment:

“It would be fair to say that in general terms there would not have been great enthusiasm for an offer of working for Jonathan Bell.”<sup>1563</sup>

Mr Johnston also expressed concern about the competence of Minister Bell as DETI Minister.<sup>1564</sup>

27.8 Dr McCormick told the Inquiry that Mr Cairns’ evidence about Mr Bell’s shortcomings as a Minister “made sense” and struck him as sound.<sup>1565</sup> He also agreed that he had stated in witness statements to the Inquiry that after an incident involving Minister Bell and Mr Cairns in London in June 2015 (also considered later in this Report) there was, in the relationship between Minister Bell and Mr Cairns, a “degree of distrust which made the difficult RHI issue significantly harder to resolve” and, in his view, that difficult relationship “did have an adverse effect on the Department dealing effectively with the RHI issue.”<sup>1566</sup>

27.9 In a written statement of evidence to the Inquiry Mr Stewart described the relationship between Minister Bell and Mr Cairns, subsequent to the events in London described in greater detail in the remainder of this chapter, as “at times, strained” and that the root cause of tension “appeared to be resentment on the part of Minister Bell to Mr Cairns’ ‘party liaison’ role and how it was exercised.” He agreed with Senior Counsel to the Inquiry that the disagreement in London was the most obvious example of this tension.<sup>1567</sup>

27.10 Mr Cairns expressed the view to the Inquiry that every SpAd in OFMDFM had experienced Mr Bell’s reluctance to make himself effectively familiar with his brief.<sup>1568</sup> In written evidence Sean Kerr, Minister Bell’s Private Secretary in DETI, confirmed that on several occasions the Minister had told him that he had not read all the detail in a submission or annex but was guided by the SpAd’s comments.<sup>1569</sup>

1560 WIT-20172

1561 WIT-20174; TRA-12614 to TRA-12618

1562 TRA-13592

1563 WIT-74108

1564 WIT-74127 to WIT-74128

1565 TRA-15304

1566 TRA-12235

1567 TRA-11637 to TRA-11638

1568 TRA-12613

1569 WIT-25822

27.11 For his part, Mr Bell gave evidence to the Inquiry that Mr Cairns would not have been his “first choice” and that, even though he had worked for him before, there were other SpAds with “superior skill sets”.<sup>1570</sup> When giving oral evidence he told the Inquiry:

“In the course of four years of working with Gavin Robinson, Emma Little, Timothy Johnston, Richard Bullick, I would have chosen any of those in advance, and there were also several highly qualified distinguished people in outside life that I would have chosen for the job if I had’ve been allowed to make a choice on it.”<sup>1571</sup>

### The June 2015 London meeting and its aftermath

27.12 It is perhaps not surprising that the potential tensions that existed in the relationship between Mr Cairns and Minister Bell did not take long to become manifest. On 9 June 2015, the day after potential problems with RHI were first raised with him by Dr McCormick, Minister Bell travelled to London in advance of meeting the Rt Hon Amber Rudd MP, then DECC Secretary of State. He was accompanied by Mr Cairns, Dr McCormick, Mr Mills and his private secretary, Mr Kerr.<sup>1572</sup>

27.13 The purpose of the meeting was an attempt to persuade Ms Rudd not to curtail the life of the NIRO, the support scheme to encourage the increase of renewable electricity generation. It seems that a number of Northern Ireland businesses had invested on the basis that there was a working understanding from Government that the scheme would continue for two years plus a one-year period of grace. Subsequent to the 2015 general election, the new DECC Secretary of State, Amber Rudd, had indicated the intention to reduce this period by a year.<sup>1573</sup>

27.14 The meeting had been arranged for 10 June and on 9 June Minister Bell, Mr Kerr and Mr Cairns attended an Indian restaurant in London for an evening meal.<sup>1574</sup> During the course of the meal it seems that there was a discussion about the approach to be adopted at the following day’s meeting with the DECC Secretary of State, one of the main points discussed being the circumstances in which any resultant decision would be taken. Minister Bell, as the Minister in charge of DETI, emphasised that the decision would be his alone, while Mr Cairns advised that any decision should be tentative and would need to be formally affirmed by “party officials” and First Minister Robinson. Mr Bell told the Inquiry that whenever he indicated his line of reasoning and the nature of the decision at which he was likely to arrive, Mr Cairns interjected with observations such as “oh, we need to watch that...You may not be able to – you’ll not be able to make a decision on that.” Minister Bell responded by emphasising that the decision was for him to take and that “the buck rests with me”.<sup>1575</sup> Minister Bell told the Inquiry that he thought it was a deliberate attempt by Mr Cairns to limit his powers in accordance with the maxim “Ministers come and go – SpAds remain.”<sup>1576</sup>

27.15 On the following morning Mr Kerr had arranged a breakfast pre-meeting with Minister Bell, Mr Cairns, Dr McCormick and Mr Mills.<sup>1577</sup> During that meeting Minister Bell told the Inquiry that

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1570 WIT-22624

1571 TRA-12319

1572 TRA-12664

1573 TRA-12286 to TRA-12287

1574 WIT-25827; TRA-12664

1575 TRA-12288

1576 TRA-12290

1577 WIT-25826

Mr Cairns again spoke across him and contradicted the various suggestions that he made.<sup>1578</sup> Mr Kerr told the Inquiry that he recalled Dr McCormick and Mr Mills pressing the Minister to make a decision on the future of NIRO at the very latest some time during that day.

- 27.16 Mr Cairns advised Dr McCormick and Mr Mills that, before making such a major policy decision, it was customary that the Minister would consult some of his party colleagues and, therefore, it was unlikely that a decision could be made that day. Mr Kerr observed that this approach infuriated Minister Bell who interpreted it as an attempt by Mr Cairns to undermine his authority. According to Mr Kerr, the disagreement became very heated and the meeting came to an abrupt conclusion, without agreement, when the Minister dismissed Dr McCormick, Mr Mills and Mr Kerr from the table.<sup>1579</sup>
- 27.17 Dr McCormick confirmed that there had been some “fierce exchanges” although he was unable to remember who had been initially responsible. He agreed that the extent of Minister Bell’s authority appeared to be at issue and that Mr Cairns intervened, talked over the Minister and emphasised that the ultimate decision would need to go to “party colleagues”. Dr McCormick said that the interventions were tense, that they jarred and were “a sharper rebuke to a Minister from a special adviser than I’d seen before.”<sup>1580</sup>
- 27.18 In the course of his oral evidence to the Inquiry, Mr Cairns accepted that this was not “a savoury incident” nor the “proudest moment in my career”.<sup>1581</sup> He accepted that he was frustrated and that there were sharp exchanges between him and Minister Bell. Mr Cairns said he felt very frustrated because the Department appeared to want to close the NIRO scheme while he was aware that the DUP wanted a number of concessions from DECC.<sup>1582</sup> Mr Cairns knew that Minister Bell had a very close relationship with Mr Robinson and advised that he should speak to him on the basis that he, as First Minister, would be able to express the views of the Party.<sup>1583</sup>
- 27.19 After the others had left the dining table, Minister Bell summoned Mr Cairns to return alone and demanded that he apologise for his conduct in public. Mr Cairns accepted that there were further heated exchanges at this point, that he had been wagging his finger at Minister Bell and he had used inappropriate language. Mr Cairns refused to make a public apology and Minister Bell told him that he was sacked.
- 27.20 For his part, Mr Cairns gave evidence to the Inquiry that Minister Bell threatened to break his, that is, Mr Cairns’, finger. That allegation was emphatically denied before the Inquiry by Mr Bell. Following their altercation Mr Cairns did not attend the meeting with the Secretary of State but travelled home to Belfast alone believing himself to have been sacked.<sup>1584</sup>
- 27.21 On the same day, 10 June, Mr Cairns entered into a text message exchange with Emma Little-Pengelly, then a SpAd to First Minister Robinson, about these events. In the course of that exchange, referring to Minister Bell, Mr Cairns wrote:

“...I now owe him nothing and will report his every transgression to TJ [Timothy

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1578 WIT-22617

1579 WIT-25826

1580 TRA-12226 to TRA-12227

1581 TRA-12670

1582 TRA-12672 to TRA-12673

1583 TRA-12677

1584 WIT-20160 to WIT-20161

Johnston] who wants him out. Also I've made sure Andrew and Arlene know that he is messing up their department."<sup>1585</sup>

27.22 When asked by the Inquiry about his impression that his authority was being limited by Mr Cairns' interventions, Minister Bell said:

"Yes, I think it was a limitation of ministerial authority because I think, to be fair to him [Timothy Cairns], he felt responsible to the other senior SpAds; more responsible to them than he did to his Minister."<sup>1586</sup>

27.23 Mr Bell later added "I think it – on reflection, I think, on many occasions, it was SpAds that were taking decisions."<sup>1587</sup> He explained to the Inquiry that it was always assumed that there could be differences of opinion between the Minister and the SpAd, but they were usually passed to the Minister quietly in the form of a note after which it was up to the Minister to make the decision. The SpAd would not be held accountable by the Party for the political advice he gave if he gave the advice and the Minister took a different position. Here the context was clearly important. Mr Bell continued in the following terms:

"But what was difficult in these meetings was Timothy Cairns was openly, in front of my Permanent Secretary, in front of some of my Senior Management Team, saying 'no, the Minister won't make that decision. We'll make that decision' and that's where the difficulties came. And when I was stating that I would fulfil my function as a Minister, he was saying 'you won't', and that's when it became very uncomfortable, even for Andrew McCormick and my Senior Management Team, cos [sic] the SpAd was saying they would make the decision."<sup>1588</sup>

27.24 Mr Johnston, the First Minister's SpAd, was involved in the aftermath of the events in London. In the course of his oral evidence to the Inquiry he accepted that the incident constituted evidence of a highly dysfunctional relationship.<sup>1589</sup>

27.25 Whatever may have been the truth of the London incident and the allegations that arose as a result, it is clear that these interactions served to underline the absence of the personal relationship of trust and rapport between Minister Bell and Mr Cairns that the Code for appointment of SpAds sought to ensure existed.

27.26 Mr Cairns went to Stormont Castle on his return to Belfast that day where he met Mr Johnston and Mr Bullick, another of the First Minister's SpAds.<sup>1590</sup> Mr Cairns described Mr Johnston to the Inquiry as being at the top of the SpAd hierarchy and the most important person in the DUP after the party leader.<sup>1591</sup>

27.27 The following day Mr Cairns spoke to First Minister Robinson and Mr Johnston and accepted his responsibility.<sup>1592</sup> He was informed that Mr Johnston had telephoned Minister Bell to inform him that he did not have the authority to sack his SpAd.<sup>1593</sup> Mr Cairns told the Inquiry that it

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1585 IND-25375

1586 TRA-12291

1587 TRA-12291

1588 TRA-12295

1589 TRA-14768 to TRA-14769

1590 WIT-20161

1591 TRA-12636 to TRA-12641

1592 TRA-12680

1593 WIT-20161

was an extremely stressful experience and that, as a consequence, he went to see his doctor and was certified unfit for work for a period of two weeks.<sup>1594</sup>

## The 26 June 2015 meetings

27.28 On 26 June 2015 a series of meetings were held in an attempt to resolve the damage to the relationship that had resulted from the London events. Mr Cairns and Minister Bell were separately interviewed by First Minister Robinson and Mr Johnston and, subsequently, there was a joint meeting between Minister Bell and Mr Cairns in the presence of Mr Johnston. Mr Cairns recognised both the inappropriateness and seriousness of his conduct and made a full apology. It appears that he was also expecting Minister Bell to make some form of apology but said to the Inquiry that Minister Bell refused to do so because he maintained that he had done nothing wrong.<sup>1595</sup> No record or minute was made of the meeting.<sup>1596</sup>

27.29 Mr Cairns' sense of resentment at the lack of an apology may be seen in subsequent text messages that he sent to Mr Johnston in which he expressed frustration at the failure to deal with Minister Bell's temper.<sup>1597</sup> Mr Johnston told the Inquiry that he was both surprised and disappointed by the content of the text message from Mr Cairns the following day.<sup>1598</sup> Mr Johnston responded to Mr Cairns that "you will both be left a little dissatisfied" and, essentially, he appears to have believed that they were both as bad as each other.<sup>1599</sup>

27.30 In his written evidence to the Inquiry, Mr Johnston stated that:

"The working relationship between Mr Cairns and Mr Bell appeared to get back on track after those events, however, with hindsight trust appeared in short supply between the two men and neither appeared to respect the other."<sup>1600</sup>

He continued:

"In my view it is highly likely that the aforementioned may have had an adverse impact on both Mr Cairns and Mr Bell on matters pertaining to the RHI... looking back the two men did not appear to like one another much less trust one another."<sup>1601</sup>

27.31 In his written evidence to the Inquiry Minister Bell stated that, apart from the incidents dealt with above, there were many other occasions when Mr Cairns spoke over him and contradicted him and the perspective that he was taking at ministerial meetings. He stated that, after the incidents in London and the apology, the adverse behaviour significantly decreased but did not end. Minister Bell believed that Mr Cairns saw himself as working for the other SpAds rather than his Minister.<sup>1602</sup>

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1594 TRA-12687 to TRA-12688

1595 WIT-20162 to WIT-20164; WIT-74118 to WIT-74119

1596 TRA-14166

1597 IND-31977 to IND-31978

1598 TRA-14181

1599 IND-31978

1600 WIT-74096

1601 WIT-74097

1602 WIT-22616

- 27.32 Towards the end of the 26 June meeting with Minister Bell and Mr Cairns, Mr Johnston asked Mr Cairns to liaise with Dr Crawford with regard to energy matters, including RHI, in order to benefit from the considerable experience the latter had gained as Minister Foster’s SpAd during her long service as DETI Minister.<sup>1603</sup>
- 27.33 According to Mr Cairns, Mr Johnston also stated that “tariff controls would not be introduced.”<sup>1604</sup> Mr Johnston has firmly denied making such a statement and given evidence that he suggested that Mr Cairns should liaise with Dr Crawford about “general matters” rather than specifically the RHI scheme.<sup>1605</sup>
- 27.34 However, less than 2 months later following a chance meeting and brief conversation with Mr Johnston at Portrush, Mr Cairns sent Mr Johnston an email on 17 August 2015 enclosing the latest information on the NIRO scheme and including the sentences: “We also need to get a catch up on renewable heat. If we are to deviate from GB policy it will require a ministerial direction.”<sup>1606</sup>

### Mr Bell’s claim that RHI was kept off the agenda

- 27.35 As mentioned previously, RHI appears to have been first raised with Minister Bell by DETI officials at one of the Issues Meetings between the Minister and his officials. Issues Meetings would happen on a reasonably regular basis, and would be used by senior officials to highlight and discuss certain topics with the DETI Minister.
- 27.36 At the Issues Meeting on 8 June 2015 the Minister, Mr Cairns, Dr McCormick, and Mr Stewart were present. A number of issues regarding the NI RHI scheme were mentioned briefly by officials. Mr Cairns acknowledged that these issues were the missed DFP reapproval deadline, budget issues and the need for legislative amendment to introduce cost controls. Mr Cairns recalled that officials stated that a submission on RHI would follow shortly for the Minister’s attention.<sup>1607</sup>
- 27.37 Minister Bell maintained that after that meeting on 8 June, whenever the subject of the RHI scheme was raised, Mr Cairns would interject to state that he was discussing RHI with other SpAds and that it was not to be discussed.<sup>1608</sup> Mr Bell added that Mr Cairns prevented discussion of the topic being included in the agenda of several meetings.<sup>1609</sup>
- 27.38 That evidence is not supported by Mr Kerr, Minister Bell’s DETI Private Secretary, who, having examined DETI archived email records, confirmed to the Inquiry that RHI was on the agenda of the Issues Meetings on 8 June, 24 August, 7 September, 3, 9 and 16 November, 8 December 2015 and 1 and 15 February 2016 – a list which is not exhaustive. Mr Kerr has confirmed that these Issues Meetings were requested by officials and the agendas were set by the Permanent Secretary’s office.<sup>1610</sup>

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1603 WIT-20057 to WIT-20058; WIT-20164 to WIT-20165; TRA-12707 to TRA-12708

1604 WIT-20058

1605 WIT-74102; TRA-14228 to TRA-14235

1606 WIT-20363 to WIT-20364; IND-25403

1607 TRA-12649 to TRA-12653

1608 TRA-12255

1609 TRA-12329

1610 WIT-25824

27.39 Mr Bell also alleged that, generally, Mr Cairns “filtered and filleted” communications between himself and the Department with regard to RHI.<sup>1611</sup> The Inquiry did not find any evidence to support this assertion in respect of events in 2015.

## Findings

- 150.** In the circumstances, it appears that Mr Cairns felt that he had no choice but to agree to become Minister Bell’s SpAd and Minister Bell felt that he had no choice but to accept the appointment of Mr Cairns, a situation that fundamentally undermined the personal nature of the appointment and the “high degree of rapport and trust” between a Minister and his/her Special Adviser recognised as being required by the Code governing the appointment of Special Advisers.<sup>1612</sup>
- 151.** The Inquiry is satisfied that after the events of June 2015 the high degree of rapport and trust contemplated by the Code did not exist between Minister Bell and Mr Cairns at least as far as Mr Cairns was concerned.
- 152.** The Inquiry agrees with the view expressed by Dr McCormick and Mr Johnston that the breakdown in trust between Mr Cairns and Minister Bell probably made resolution of the RHI problems more difficult.<sup>1613</sup>
- 153.** While Mr Johnston has given evidence that his request for Mr Cairns to work with Dr Crawford was “generally about DETI matters”, rather than specifically the RHI scheme, the Inquiry is satisfied that, in practical terms, it was in respect of energy matters such as NIRO and the RHI scheme that Mr Cairns and Dr Crawford understood guidance was to be given and received.<sup>1614</sup>
- 154.** The Inquiry found no objective evidence to support Mr Bell’s allegation that Mr Cairns or others intervened to keep RHI matters “off the agenda” at meetings.<sup>1615</sup>

1612 DOF-00632 to DOF-00634

1613 WIT-10516

1614 WIT-74125; TRA-14820

1615 TRA-12326 to TRA-12328

