

Chapter 29 – The consideration of the 8 July 2015 submission

- 29.1 What happened to the 8 July 2015 submission during the course of the summer of 2015, and how it was dealt with, was a key issue investigated by the Inquiry.
- 29.2 When it was lodged it was marked “Urgent”. Mr Kerr, the DETI Minister’s then Private Secretary, explained that “Urgent” was used on submissions when they required clearance within three working days. “Immediate” or “Desk Immediate” required a response within 24 hours.¹⁶⁶⁶ In the course of giving oral evidence, Mr Cairns suggested that the terms “urgent” and “desk immediate” had become overused and, as a consequence, taken somewhat for granted.¹⁶⁶⁷
- 29.3 The operative DETI Private Office guidance provided that the SpAd should clear all papers before they were submitted to the Minister, and the evidence to the Inquiry confirmed the general practice to have been that the submission would proceed to the SpAd for clearance before reaching the Minister.¹⁶⁶⁸ In his written evidence to the Inquiry Mr Kerr, explained that, after it had been received electronically, the submission would be recorded in the Private Office information management system and a hard copy prepared.¹⁶⁶⁹ The submission would then be passed on to the SpAd. In due course the SpAd would return it, usually in hard copy form bearing his comments, to the Private Secretary to be passed to the Minister.¹⁶⁷⁰
- 29.4 The submission, which subsequently became SUB1075-2015, went to the Minister’s Private Office in the evening of 8 July,¹⁶⁷¹ and without the important information as to the extent of what was a potential £13 million shortfall in funding for 2015-16 that may have to be met from some other part of the DETI budget being spelt out.
- 29.5 As mentioned previously, it is the case that Minister Bell had received a first-day brief when he became DETI Minister in May 2015. Although it was very generalised, it did record that the allocated RHI budget for 2011-15 had been £25 million whereas the then current forecast for 2015-16 alone was around £22 million.¹⁶⁷² Further, in a written statement of evidence to the Inquiry Dr McCormick said that Minister Bell was later told that the projected spend for 2015-16 was now £23 million at the previously mentioned Issues Meeting of 8 June 2015¹⁶⁷³ although, in oral evidence, he, Dr McCormick, said that he did not remember the meeting vividly.¹⁶⁷⁴ On the same day, Mr Stewart who was also at that meeting sent an email to Mr Mills confirming that Minister Bell had noted the position and asked to be kept informed about the three strands, which included the lack of budget cover. However, Minister Bell was not formally reminded of these facts in the submission of 8 July. Nor did the submission of 8 July apprise him of any risk of potential impact on the other DETI DEL budgets. The Inquiry believes that this was another unacceptable example where a Minister was inadequately briefed and advised by officials.¹⁶⁷⁵

1666 WIT-25851

1667 TRA-12734

1668 DFE-416560; See for example WIT-25822

1669 WIT-25821

1670 WIT-25822

1671 DFE-120439 to DFE-120457

1672 DFE-416349

1673 WIT-10515

1674 TRA-12206

1675 The Inquiry has previously dealt with the inadequate information provided to Ms Foster in respect of the nature of RHI funding and the risks it posed. This subject is further dealt with in chapter 14.

The lodged version of the submission of 8 July 2015

29.6 The lodged submission¹⁶⁷⁶ informed the Minister of the following material aspects:

- The issue was described as “the introduction of cost control measures to manage RHI expenditure and ensuring effective administration of domestic scheme” and was said to be urgent;
- Under “scheme performance” in paragraph 4 it explained that “RHI funding is provided from the Treasury via Annually Managed Expenditure (AME) so does not impact directly on NI Departmental budgets”;
- It was said that the focus had been on improving performance and ensuring RHI allocations were spent and invested in Northern Ireland and not returned to Treasury;
- Applications had increased and DETI was on course to meet its interim target for renewable heat;
- The recent success of the scheme had put pressure on the RHI budget and officials were working with DFP to try to secure additional funding as forecast scheme expenditure now exceeded previous funding allocations;
- The demand had been driven by the poultry sector with nearly 99% of RHI applications being for biomass heating systems;
- Approval from DFP for expenditure beyond 31 March 2015 had not been sought and work was ongoing to regularise the position;
- Due to the budget pressures there was a “need to urgently implement cost control measures to manage future RHI expenditure” and the changes would require legislation. Three options were presented to the Minister:
 - o first, do nothing;
 - o second, introduce tiering *for new applications post October 2015* (the Inquiry’s emphasis) and extend the medium biomass boiler band up to 199kW which was said to be required to help reduce multiple installations, reduce future application numbers and payments. It was said these changes could be brought into effect from 1 October 2015 as legislation was in any event required to introduce a new RHI tariff for CHP; and
 - o third, introduce potentially one of two different forms of a degression mechanism but the Minister was told that the work required would take longer than 6 months.
- It was recommended to the Minister in paragraph 9 of the submission that he proceed with option 2; tiering and extending the medium biomass band, and that officials would also work on a degression mechanism which was also said to be required for the longer term;
- A draft final policy reflecting the recommended option was attached; and
- Separately from the issues with the non-domestic RHI scheme, problems with the in-house administration of the domestic RHI scheme, including the inability to recruit necessary staff, were set out.

1676 DFE-120439 to DFE-120457. The actual lodged submission document can be found at DFE-120452 to DFE-120456.

- 29.7 The submission, and the draft policy document attached to it, did not contain any reference to a capped number of hours for which RHI payments would be made on the medium biomass tariff. It would be introduced later in the summer of 2015.
- 29.8 Minister Bell was involved in ministerial meetings and functions until Friday 10 July, when he left for a couple of week’s holiday.¹⁶⁷⁷ Mr Cairns gave evidence that he sat beside Minister Bell and went through the submission with him on 9 July (and again on 30 July after the Minister had returned from holiday).¹⁶⁷⁸ He said that he had the submission in a folder but the Minister did not ask for, and was not given, a copy at that stage.¹⁶⁷⁹ Mr Kerr stated that he could not confirm that evidence and pointed out such discussions could be private, but he confirmed that where Mr Cairns considered a submission to be technically complex/politically sensitive such a discussion would take place with Minister Bell.¹⁶⁸⁰
- 29.9 Mr Cairns stated that Minister Bell did not wish to sign off the submission at that time, on 9 July, and maintained that the Minister was fully aware that the submission would be forwarded to Dr Crawford.¹⁶⁸¹
- 29.10 For his part, Minister Bell gave evidence to the Inquiry that he had no recollection of such a meeting on 9 July 2015; that the normal procedure would be for him to be provided with a copy of the written submission, with the SpAd’s comments added to it, rather than the type of process described by Mr Cairns; and that the meeting as described by Mr Cairns did not happen because, had he been presented with an urgent submission, he would have dealt with it urgently – albeit he left open the possibility (which he did not recall) that Mr Cairns may have had “a chat about it” with him.¹⁶⁸² Indeed, in relation to Mr Cairns’ evidence that sitting beside Minister Bell and going through a submission with him was “the usual way in which Minister Bell was briefed”, Mr Bell gave evidence that, as far as he was concerned, this was “completely made up”.¹⁶⁸³
- 29.11 Nonetheless, Mr Bell’s evidence was also that, at some point (when, he could not recall precisely, so that it might have been in the summer of 2015 or later in 2016) he had been made aware by Mr Cairns that other DUP SpAds were involved in the process of considering the issue. Although Mr Bell’s written evidence clearly suggested that this had been in the summer of 2015, in his oral evidence he suggested it may have been more likely to have been in 2016.¹⁶⁸⁴
- 29.12 Notwithstanding this evidence, Mr Bell also maintained that he was not aware of Mr Cairns sharing the 8 July submission with either Mr Brimstone or Dr Crawford and, indeed, was “completely unaware” of the exchanges between Dr Crawford and Mr Cairns during the summer of 2015.¹⁶⁸⁵

1677 TRA-12332 to TRA-12333

1678 WIT-20204 to WIT-20206; TRA-12741 to TRA-12750

1679 TRA-12743 to TRA-12745

1680 WIT-25853

1681 TRA-12746 to TRA-12747

1682 TRA-12354 to TRA-12355; TRA-12362

1683 TRA-12356

1684 See generally TRA-12364 to TRA-12374

1685 TRA-12395 to TRA-12397

- 29.13 On 9 July the proposed draft NI RHI amendment regulations were sent to the Departmental Solicitor’s Office for consideration.¹⁶⁸⁶ Mr McGinn was asked by DETI to scrutinise the draft amendment legislation that was said to introduce tiering in order “to manage budgets and affordability.”¹⁶⁸⁷ He was subsequently asked to comment upon “capping”, “retrospective capping” and a number of other potential amendments.¹⁶⁸⁸
- 29.14 On 10 July Ofgem provided a feasibility study on its ability to administer the proposed amendments.¹⁶⁸⁹

Mr Cairns involving Dr Crawford and Mr Johnston

- 29.15 On 16 July Mr Cairns, following a short conversation he had with Dr Crawford and Mr Brimstone (at this time a SpAd to First Minister Robinson), forwarded the 8 July submission to Dr Crawford by email sent to his DFP email account,¹⁶⁹⁰ and to Mr Brimstone.¹⁶⁹¹ On the same date Dr Crawford forwarded the submission to Mr Johnston.¹⁶⁹² Mr Johnston told the Inquiry that he had neither opened nor read the attached submission since the subject was not one in which he had any expertise.¹⁶⁹³ In oral evidence to the Inquiry he accepted that he did not have an understanding of the NI RHI scheme:

“And, I mean, I would say, just for completeness, I mean, looking back on it again – you may well say, you know, it should’ve been the case at the time – I think things might have been different had I acquainted myself with the sub and read the sub. I think that was a missed opportunity from my point of view.”¹⁶⁹⁴

- 29.16 He also said that if he had opened the submission and email, he would have had knowledge which he did not otherwise have, adding: “I mean, that’s not anybody else’s fault; that’s my fault. It’s a, it is a missed opportunity in that sense.” Had he opened the document he would have been asking more questions and joining the discussion.¹⁶⁹⁵
- 29.17 Mr Cairns sent an additional email to Mr Johnston on 17 August enclosing material relating to the impending closure of the NIRO scheme, which included the sentences: “We also need to catch up on renewable heat. If we deviate from GB policy it will require a ministerial direction.”¹⁶⁹⁶ Mr Cairns told the Inquiry in written evidence that, bearing in mind that the introduction of tariff controls was the main focus of the 8 July ministerial submission, he believed that, at this point, he was referring back to the statement that “tariff controls will not be introduced” that he believed had been made by Mr Johnston at the 26 June

1686 DFE-120643 to DFE-120649

1687 DFE-120644

1688 DSO-01339 to DSO-01347; DSO-01361 to DSO-01372; DSO-01393 to DSO-01402

1689 DFE-120664 to DFE-120705

1690 DFE-293132; TRA-12766 to TRA-12767

1691 Stephen Brimstone, having replied to Mr Cairns on 16 July 2015 to say he would take a read over the submission (IND-25562), responded substantively to Mr Cairns on 20 July 2015 in which he said the submission was: “*Hard to argue with in light of the suggested changes reflecting GB position*” (IND-25559). Mr Brimstone told the Inquiry during his oral evidence that he regretted not withdrawing from any discussion on the subject despite agreeing with the content of the submission and informing Mr Cairns of that fact on 20 July 2015. This was because, by the time the submission was sent to Mr Brimstone, he already had a boiler ordered that, when installed, was going to lead to an application to the RHI scheme. Mr Brimstone accepted this created a conflict of interest for him concerning the RHI scheme (TRA-13940; TRA-14010 to TRA-14023).

1692 DOF-35520

1693 TRA-14247 to TRA-14248; TRA-14716 to TRA-14717

1694 TRA-14719

1695 TRA-14723 to TRA-14724

1696 IND-25403

attempted reconciliation meeting between Minister Bell and Mr Cairns after their London confrontation.¹⁶⁹⁷

- 29.18 When asked to comment upon this 17 August email, which raised the very serious possibility of a ministerial direction, Mr Johnston told the Inquiry that the sentences “wouldn’t have jumped out or meant anything to me” and suggested that perhaps Mr Cairns assumed that he had “more knowledge than I had” because of his, that is Mr Cairns’, exchanges with Dr Crawford.¹⁶⁹⁸ Mr Johnston accepted that he had not replied to the email asking Mr Cairns to explain the words in question and that he should have done so.¹⁶⁹⁹ He explained that “there was no interest in the RHI scheme at the castle”¹⁷⁰⁰ and that in the first week and a half of August 2015:

“This place is on life support at that stage. You’re in a position where it’s not clear that the devolution process is going to continue and therefore through that the RHI piece gets effectively lost in the floorboards.”¹⁷⁰¹

The Inquiry understands that to have been a reference to the political and media turbulence following the murder of Kevin McGuigan in August 2015.

- 29.19 Meanwhile, on 17 July Mr Wightman sent the following email to Mr Mills who had expressed concern to Mr Wightman about the urgent nature of the submission before going on holiday:

“I have spoken to the Minister’s PS about our Submission on tariff changes to the Non-Domestic RHI scheme. He has confirmed that the SpAd has read this Submission and is seeking advice (presumably from their Party) before passing to the Minister. We should hopefully expect a decision during the last week in July when the Minister returns.”¹⁷⁰²

- 29.20 On 20 July Dr Crawford replied to Mr Cairns’ email of 16 July enclosing the 8 July submission. He pointed out that the main problem was that “DETI have been caught out by the profile of applications”. He said the recent spike in applications was the result of Moy Park suppliers buying biomass boilers before the end of the tax year so they could benefit from both the RHI subsidies and the relevant tax allowances. He thought the majority of Moy Park producers would already have converted to biomass by that point but Dr Crawford suggested that Mr Cairns, if he wanted to “get a handle on what is happening” should contact Mr Mark at Moy Park and he also offered to set up a meeting with one of the main biomass installers. He continued:

“The word on the street is that there is going to be changes made in October and you are going to get a massive spike in applications before this date...”¹⁷⁰³

- 29.21 Dr Crawford went on to state in his email that he was a little confused “over what the problem is for the non-domestic scheme” and expressed the view that, since the scheme was AME funded, exceeding the Northern Ireland interim target of 4% of heat from renewable sources by 2015 would simply mean that “we will get more than our fair share of the UK pot.”¹⁷⁰⁴ This response indicated that, as of 20 July 2015, Dr Crawford was not aware of the potential

1697 WIT-20365 to WIT-20366

1698 TRA-14749 to TRA-14751

1699 TRA-14760

1700 This is a reference to Stormont Castle where the office of OFMDFM is based.

1701 TRA-14753 to TRA-14754

1702 DFE-10176

1703 IND-27555

1704 IND-27555

for any overspend beyond RHI AME allocations to impact on DETI's DEL budget. The Inquiry has already found that the potential consequences of the 2011 HMT Parker email were not communicated to Dr Crawford, or his then Minister, when he was the SpAd in DETI dealing with RHI. Dr Crawford indicated that he suspected: "that the problem is that we have only got a guarantee of funding for the next couple of years and long term we may have to pay for the scheme out of the NI block". He said he would check the issue out with DFP, but suggested it was something that Mr Cairns might want to query.

29.22 Dr Crawford sent Mr Cairns a further email on 21 July confirming that he had spoken to DFP.¹⁷⁰⁵ In his written evidence Dr Crawford stated that he had spoken to Mike Brennan who confirmed that there were no concerns about any impact on the DEL budget.¹⁷⁰⁶

29.23 That is disputed by Michelle Scott of DFP, who recalled a telephone conversation with Dr Crawford in which she says he was told that DFP did not know if the scheme was fully AME funded but they were making enquiries.¹⁷⁰⁷ Mr Brennan has given evidence that he does not recall a specific conversation with Dr Crawford about RHI during the summer of 2015 and, in particular, he has no recollection of being told of the possibility of "a massive spike" in RHI applications.¹⁷⁰⁸

29.24 On 20 July Mr Stewart emailed Mr Wightman for an update on the latest RHI position.¹⁷⁰⁹ In the course of his reply Mr Wightman addressed five issues:

- he confirmed firstly that they had completed an economic assessment that demonstrated the continued value for money of new non-domestic RHI scheme commitments for the period April-Sep 2015;
- he confirmed secondly that as far as proposed tariff changes by October 2015 were concerned, the submission was with the SpAd/Minister for clearance, the draft legislation was with DSO and Ofgem was making the necessary changes to its systems;
- they had been in contact with DECC about RHI budget clarification;
- as far as securing additional RHI budget for 2015-16 was concerned, they had submitted an increased AME profile in late May to inform the July budget and were awaiting confirmation; and
- finally, relating to the 'Supplementary Business Case', he had just started work on the draft which would seek: retrospective approval for the irregular expenditure between April 2015 and the expected date of changes in October 2015 by demonstrating continued value for money; prospective approval from October 2015 for five years as he said the scheme would definitely close in March 2020; approval for the continuing use of Ofgem to administer the scheme; and approval for a five-year expenditure profile based on the current forecasts (although he appreciated that RHI budget approval/confirmation from DFP/HMT would need to be sorted out separately).¹⁷¹⁰

29.25 On 23 July Mr Stewart emailed Mr Wightman to confirm that Mr Cairns had spoken to him about the 8 July submission. Mr Stewart recorded that Mr Cairns had expressed concern that

1705 IND-27966

1706 WIT-21627

1707 WIT-43027

1708 WIT-43241 to WIT-43243

1709 IND-05707

1710 IND-05707

the adoption of tariff control legislation in October might lead to a further spike in demand and suggested to Mr Stewart that the changes might be delayed.¹⁷¹¹ Mr Stewart informed Mr Wightman that he countered by observing that there already was a spike in demand, which a well-informed industry would ensure would remain at a high level pending the introduction of controls.

- 29.26 Mr Wightman responded to Mr Stewart confirming that the industry knew that tariff changes were likely to happen in the autumn and that installations were already being accelerated to beat the deadline. He stated that 60-70% of all poultry houses had switched to biomass and delay might allow the remaining 30-40% to access the scheme at the higher rates prior to the proposed tariff changes coming into effect.¹⁷¹²

The 28 July 2015 meeting

- 29.27 On 28 July Mr Cairns called in to Mr Stewart's office where Mr Mills was also present. It appears that Mr Cairns wanted to discuss with Mr Stewart another submission unrelated to RHI. However, upon arriving he found that Mr Stewart was engaged in a meeting with Mr Mills. Rather than ask Mr Cairns to return later, it appears that Mr Stewart asked him to join the meeting because he and Mr Mills were discussing RHI.¹⁷¹³ Mr Cairns recalled that points were made by the officials during that meeting which he did not recall having seen in the 8 July submission (the proposed 400,000 kWh annual cap on heat eligible for tariff payments may have been one such point; this proposal was not included in the submission or the draft policy document sent to the Minister on 8 July). He therefore asked that they submit them to him in writing. Mr Stewart suggested that Mr Cairns evinced a degree of resistance to the proposals set out in the submission and expressed the view that any controls should be no more than was necessary to control the scheme.¹⁷¹⁴
- 29.28 Mr Mills gave evidence to the Inquiry that he formed the view that Mr Cairns was deliberately delaying the matter but he also stated his belief that Mr Cairns was asking officials to provide something in writing that Mr Cairns could then use to persuade others within his party.¹⁷¹⁵ He also noted in a subsequent email (considered further below) that Mr Cairns had expressed the view that there was virtue in making sure Northern Ireland was able to make the best use of the available AME funding to achieve the Northern Ireland Executive's renewable heat targets.¹⁷¹⁶
- 29.29 In his oral evidence Mr Cairns explained that he had not been opposed to cost controls as such, but he was interested in pursuing the latest possible date to which the officials were prepared to work.¹⁷¹⁷ Mr Cairns told the Inquiry that his strategy was informed after a meeting, which he thought might have been in July, with representatives of the Ulster Farmers' Union that he and Minister Bell attended.¹⁷¹⁸ The meeting was not to do with RHI, but Mr Cairns' recollection was that the subject of RHI was raised in the margins. He stated in oral evidence that it was unusual in his experience for officials, a SpAd and his Minister to become involved in an

1711 DFE-10131

1712 DFE-10131

1713 WIT-20212; TRA-12823 to TRA-12827

1714 WIT-11536

1715 TRA-11129 to TRA-11130

1716 WIT-11730

1717 TRA-12789 to TRA-12791

1718 WIT-20024; TRA-12771 to TRA-12775

interaction with an interested group of commercial stakeholders.¹⁷¹⁹ The Inquiry acknowledges that such meetings with stakeholders may be appropriate as part of a carefully managed process of engagement and consultation. However, as noted elsewhere in this Report, the process of engagement with stakeholders during the spring and summer of 2015 was neither conducted appropriately nor subject to adequate management.

29.30 On 30 July Mr Mills sent Mr Cairns a lengthy email,¹⁷²⁰ copying in Mr Stewart and Mr Hughes. It referred to the 28 July discussion that had taken place between them with regard to the submission and complying with his promise made at the 28 July meeting to provide a short note on arrangements that needed to be brought into operation by 1 October. He emphasised that both he and Mr Stewart believed there was:

“An urgent need to put appropriate measures in place to ensure proper control of budgets and comply with approvals. Part of this means introducing measures set out in the submission.”

29.31 He noted that, during the recent discussions, Mr Cairns had cautioned that introducing restrictions too suddenly might be seen as overreaction and lead to a return of the previous underperformance. Mr Mills accepted that “while we need to take action urgently we do not necessarily need to try to do everything at once”. While there was a sound case that degression arrangements might require longer consideration, the introduction of a tiered tariff structure for the medium sized biomass technology was required to manage NI RHI spending and bring NI RHI more into line with the GB RHI scheme.

29.32 In such circumstance he repeated the detailed proposals for a tiering threshold at 1,314 hours and set out the new proposal of an overall tariff cap at 400,000kWh as a maximum annual heat payment. In addition to the urgent need for cost controls Mr Mills reminded Mr Cairns that Mr Stewart had expressed concern that the AME funding might have “additional caveats”.

29.33 The email from Mr Mills was forwarded by Mr Cairns to Dr Crawford during the evening of 30 July with the explanation:

“It’s an introduction of tariff controls to stop misuse rather than full reform from 1 October.”¹⁷²¹

Dr Crawford’s email of 31 July 2015

29.34 On 31 July Dr Crawford replied to Mr Cairns stating “I think you will need to make changes from the 1st October as the system at the moment has no upper limit to the amount of support.”¹⁷²² He suggested that one thing to consider was whether the tiering proposal should be altered so that the proposed initial tier, which would be paid at the higher tariff, should include the first 3,000 hours of use, rather than the proposed 1,314 hours. His email said:

“One thing to consider if increasing the number of hours from [sic] moving from the higher to lower tariff. Moy Park houses currently run for approximately 6000 hrs for a 99kW boiler when in their normal production cycle. The current problem is that it pays producers to heat houses when their houses are empty as the rates

1719 TRA-12776 to TRA-12777

1720 WIT-02756

1721 IND-27958

1722 IND-27957

are attractive and some use boilers for more than 6000 hrs per annum.

If a Moy Park producer puts in a 199kW boiler he can expect to run it for approximately 3000 hours. From these calculations you can see why Moy Park producers will be in a rush to refit their houses before the 1 October. If you increased the step from 1314 to 3000 there will be no incentive for producers to install before 1 October.

There is going to be a massive spike in applications before the 1 October. There is currently a shortage of the necessary pipe work required to install boilers.”¹⁷²³

- 29.35 The Inquiry notes that this proposal was not discussed by Dr Crawford with his Minister, Ms Foster, who was then at DFP, and related to a very substantial commercial enterprise for which he appeared, at times, to be a key personal point of contact within the Northern Ireland Executive and with which members of his family were involved. The Inquiry notes that Mr Cairns did not forward Dr Crawford’s email to DETI officials (nor indeed Dr Crawford’s earlier email of 20 July). Mr Cairns does however appear to have raised concerns about the scheme with Mr Stewart.
- 29.36 In the course of giving oral evidence to the Inquiry Dr McCormick was initially very critical of the apparent failure by Dr Crawford and Mr Cairns to pass on the relevant information, particularly with regard to the ‘perverse incentive’ that was reflected in Dr Crawford’s email of 31 July 2015 when he referred to the current problem being that “it pays producers to heat houses when their houses are empty”, and told the Inquiry that “It seems very clear to me that it is withholding information that was relevant to the submission that they both had.”¹⁷²⁴ Inquiry Counsel referred Dr McCormick to the evidence of Mr Stewart confirming that Mr Cairns had raised issues with him more than once, although it remains unclear in precisely what terms.
- 29.37 The Inquiry also notes that, as early as 9 June 2015,¹⁷²⁵ Mr Hughes had emailed Cathal Ellis at CAFRE, copying in Mr Wightman. The communication, seeking assistance with the heat needs of the poultry sector, included the statement “anecdotally we are led to believe that some houses are running 24/7 and if this is the case we are seeking an understanding of why this is happening.” Mr Ellis had replied that there were such rumours, but he didn’t think they applied to Northern Ireland yet.
- 29.38 Mr Stewart’s recollection was that the concerns Mr Cairns raised with him were clearly serious and needed to be looked at, but that they were not specific or based upon any specific evidence. Mr Stewart thought these concerns were discussed with him some time during the summer of 2015, although he could not be more specific than that. Mr Stewart had asked Mr Wightman to check with Ofgem whether any similar developments had been disclosed by its inspection scheme. However, according to Mr Stewart, the response, relayed by Mr Wightman, had been that in the findings by the Ofgem team “only a small number of isolated issues had arisen” and the inspection scheme was not picking up evidence of heating empty sheds or heaters being run for excessive periods. In his oral evidence to the Inquiry Mr Stewart acknowledged that Mr Cairns’ information had raised concerns of fraud and abuse of the scheme with him and he accepted that he should have sought further information from Mr Cairns.¹⁷²⁶

1723 IND-27957

1724 TRA-15264 to TRA-15266

1725 DFE-107021

1726 TRA-11723 to TRA-11725

- 29.39 While accepting the evidence given to the Inquiry by Mr Stewart, Dr McCormick remained critical of Mr Cairns for not passing on Dr Crawford’s “precise and clear understanding” and for not forwarding the email of 31 July.¹⁷²⁷ The Inquiry notes that Dr McCormick and Mr Mills had both been copied in to the email of 23 July from Mr Stewart to Mr Wightman recording his conversation with Mr Cairns in which the latter had referred to tariff control legislation as likely to lead to a further spike in demand.¹⁷²⁸ Mr Cairns accepted that the 31 July email he received contained a clear recognition of the ‘perverse incentive’ by Dr Crawford.¹⁷²⁹
- 29.40 Dr Crawford was also being informed about matters relating to the RHI scheme. For example, on 3 August 2015 Dr Howard Hastings, Managing Director of Hastings Hotels, forwarded an email to Dr Crawford providing him with “a heads up” about talk that DETI was making moves towards “impeding the abuse” of the NI RHI scheme taking place within the poultry sector where “they are being blamed for running their system night and day even without poultry present.” The abuse was said to centre on the “common no-limit RHI tariff in NI”, which it was being proposed should be changed for a “two-tier tariff similar to UK”.¹⁷³⁰

The August 2015 communications

- 29.41 RHI had arisen for discussion during a DETI SMT meeting on the morning of 7 August 2015. Updates on a number of issues were provided,¹⁷³¹ and it led Mr Stewart, on 7 August 2015, to forward the 8 July 2015 submission to Mr Cairns and say the following:

“Grateful for an update on the position in relation to this submission. You will appreciate that it deals with some very significant financial and Accounting Officer matters, and Andrew [McCormick] is keen to have an early decision.”¹⁷³²

About one hour later Mr Cairns sent Dr Crawford an email saying that:

“I think officials view is that we need to move on the tariff changes by 1st October and I am exploring how we can put the tariff limits up to 3000. I understand DFP are pressing for some change and efforts to be made. I will see what comes of this internally.”¹⁷³³

- 29.42 Mr Stewart had sought a further update on RHI from Mr Wightman on 11 August indicating that he wanted to relay to him the content of a further conversation that he had conducted with Mr Cairns. As Mr Wightman was on leave Mr Mills replied¹⁷³⁴ explaining that additional AME funding had appeared in the RHI baseline; that DECC had no spare funding and arrangements would have to be made with HMT; that the lack of clearance of the submission was preventing DETI notifying the public on the essential tariff change (though the documents were prepared); and that preparation of the business case was ongoing and was close to being finalised. Mr Mills said a positive NPV could be shown for the RHI scheme, but the response to DFP was hampered by not being able to give an assurance on the introduction of the further control measures.

1727 TRA-15271 to TRA-15273

1728 DFE-10131

1729 TRA-12843

1730 DOF-02264

1731 DFE-383257 to DFE-383260

1732 DFE-343944

1733 IND-27552

1734 DFE-278984

- 29.43 Mr Stewart replied indicating that he had spoken to Mr Cairns on the submission¹⁷³⁵ and, while Mr Cairns accepted the need for early control measures, he also asked whether a 3,000 hours limit would be more appropriate for the Tier 1 threshold. Mr Stewart sought some quick advice from Mr Mills on the value for money of that proposal.
- 29.44 Mr Mills responded on the same day pointing out that the 1,314 hours was taken from DECC, which supported parity with GB, thereby ensuring acceptance. Mr Mills advised that it equated to 15% of the maximum possible annual running hours for a boiler, which, given his understanding of the poultry sector, could be defended in value for money terms, before stating “Obviously, suggestions of heating empty sheds cannot.” He said DETI would have no basis for 3,000 hours (or indeed any other figure).¹⁷³⁶ One interpretation of the reference to “suggestions of heating empty sheds” in this email may be that Mr Mills had been informed of such suggestions, perhaps as a result of Dr Crawford’s reference to this in his email to Mr Cairns of 31 July (discussed above). In his evidence to the Inquiry, Mr Mills said that he was not aware of any such suggestion being made and considered that this reference in his email arose simply by nature of the “cyclical nature” of the poultry industry (i.e. that poultry houses would be vacant for periods between crops).¹⁷³⁷
- 29.45 Mr Stewart forwarded Mr Mills’ email to Mr Cairns on the same day, emphasising the difficulty which 3,000 hours would represent and advising that it would raise an Accounting Officer issue for Dr McCormick, meaning he would require to seek a ministerial direction to adopt a proposal which did not seem to represent value for money.¹⁷³⁸
- 29.46 On 12 August Mr Cairns forwarded the email chain to Dr Crawford which recorded the rejection of his suggestion. Mr Cairns’ covering email said:
- “Seems we have no choice but to proceed on the previous sub from early July i.e. follow GB policy from 1 Oct.”¹⁷³⁹
- 29.47 Mr Stewart also spoke to DFP about the question of a ministerial direction. DFP confirmed that a course of action that would not provide value for money would require a direction from the Minister; DFP officials would then be in a similar position and would have to be directed by the Finance Minister to approve the proposal. That further information was transmitted to Mr Cairns on 13 August.¹⁷⁴⁰
- 29.48 Minister Bell had returned to work from 28 to 31 July, which was during some of the interactions discussed earlier in this chapter. He had attended meetings on 28 and 30 July together with Dr McCormick, Mr Stewart and Mr Mills before leaving again to spend some time in his holiday home in Portstewart, but no decision on the submission was forthcoming.¹⁷⁴¹
- 29.49 In the course of giving oral evidence Mr Cairns confirmed that Minister Bell’s Private Secretary, Mr Kerr, had been pressing Mr Cairns about a number of urgent submissions during August, including that of 8 July.¹⁷⁴² It seems that Minister Bell had left an instruction that there were to

1735 TRA-12845 to TRA-12846

1736 DFE-278983 to DFE-278984

1737 TRA-11137 to TRA-11138

1738 DFE-278983

1739 IND-27660

1740 DFE-278983

1741 DFE-423823; TRA-12382 to TRA-12384

1742 TRA-12862 to TRA-12863

be no appointments in the first three weeks of August.¹⁷⁴³ Mr Cairns accepted that he could have arranged for the submission to be sent to Minister Bell in Portstewart but, in view of the complexity and significance of the issues concerned, he believed that, by that stage, the RHI submission required an oral briefing from the relevant officials.

29.50 On 20 August Mr Mills sent an email to Dr McCormick and Mr Stewart setting out the current position with regard to the various RHI workstreams. He advised:

“We have effectively done everything we can and now await clearance of the Submission. The team is fielding daily telephone queries on when our proposed changes will happen. Even if we receive clearance this week and publish the final policy, we’re only effectively giving the industry 6 weeks’ notice and risking legal challenge. Stuart has been speaking informally to Moy Park who are supportive of our proposals for a tariff tier and cap. It is the individual applicants and installers where we are liable to receive flak.”¹⁷⁴⁴

29.51 He addressed five distinct issues and pointed out that they had responded to various SpAd queries, noting that Mr Stewart had highlighted the need for the submission to be cleared as soon as possible, but they were still waiting for ministerial clearance on the proposals.¹⁷⁴⁵ He also recorded that the DSO was considering: the draft regulations; that the proposed changes had been relayed to Ofgem; that the business case had been taken as far as it could be and it showed a positive NPV for post 1 April 2015 commitments; and that the additional AME required for the current year had now appeared in their baseline. In the circumstances, Mr Mills indicated he was not sure how to take the matter forward and enquired whether the issues should be raised at the SMT meeting arranged for 24 August.¹⁷⁴⁶

29.52 Dr McCormick agreed that the issues should be raised and said he would speak to Mr Cairns himself as the “need for change is crystal clear”. He suggested he may need Mr Mills to come to the ministerial Issues Meeting also scheduled for 24 August.¹⁷⁴⁷

The 24 August 2015 meetings

29.53 On 24 August it appears that Minister Bell’s attendance at the Issues Meeting was somewhat delayed and that, accordingly, a pre-meeting discussion took place between Dr McCormick, Mr Mills and Mr Cairns.¹⁷⁴⁸ During the course of that discussion Mr Cairns enquired as to whether 1 October would be the latest date for the proposed changes to be put into operation.¹⁷⁴⁹ Mr Cairns told the Inquiry that this was a “gentle softball question” and that there was no possibility of advising the Minister to consider a ministerial direction.¹⁷⁵⁰ He explained to the Inquiry that, although several weeks earlier he and Dr Crawford had agreed that they had reached the end of the process of pursuing the latest date for the implementation of the proposed changes¹⁷⁵¹ (a process in respect of which Dr Crawford has, in his evidence to the

1743 TRA-12861

1744 DFE-10132

1745 DFE-10132

1746 DFE-10132

1747 DFE-10133

1748 WIT-20225

1749 WIT-20022

1750 TRA-12869

1751 TRA-12854 to TRA-12856

Inquiry, denied any involvement),¹⁷⁵² he had nonetheless been concerned to be able to show anyone subsequently questioning the tariff changes that every step had been taken properly. To use his own words:

“If Moy Park comes ranting and raving to the party, or, you know, an installer comes and says ‘My business is going bust because of the decision you made’ he would be able to say that the officials were interrogated but would not move on the date being 1 October.”¹⁷⁵³

- 29.54 Mr Cairns stated that, after some reflection, Mr Mills suggested an extension of a further month to 4 November.¹⁷⁵⁴ It seems that, by this stage, Mr Mills was anyway becoming concerned that complying with the 1 October date would not be practicable. Indeed, when he returned to colleagues in Energy Division to direct amendment of the submission he received advice that not only would 1 October have been impracticable but that 4 November was going to be a challenge.¹⁷⁵⁵ It seems that by that time Mr Mills was relieved simply to achieve agreement on a firm date.¹⁷⁵⁶
- 29.55 The Inquiry notes that Dr McCormick’s memory of this 24 August meeting, although limited, aligns with that of Mr Cairns.¹⁷⁵⁷ He told the Inquiry that no-one thought to ask Mr Cairns whether he had been influenced by others in making this request, but he had “the impression” that Dr Crawford had been involved.¹⁷⁵⁸ He was a bit surprised at the willingness of Mr Mills to volunteer the extension. He also told the Inquiry that he subsequently regretted not pressing him for reasons.¹⁷⁵⁹
- 29.56 Mr Cairns confirmed that when Minister Bell arrived at the 24 August meeting Dr McCormick took the lead in briefing him in relation to the submission proposals and the recent discussions in very clear and cogent terms. Mr Cairns also accepted that he had asked a number of questions to ensure that the Minister was fully and clearly informed. Minister Bell does not seem to have raised any significant difficulties or objections. According to Mr Cairns, the Minister asked him whether “others would be happy”, which Mr Cairns took to be a reference to Dr Crawford and Mr Johnston.¹⁷⁶⁰ Mr Cairns told the Inquiry that he subsequently passed on the outcome of this meeting to Dr Crawford and Mr Johnston.¹⁷⁶¹
- 29.57 The decision taken on 24 August 2015 was an important one in the context of the RHI Inquiry. However, as appears to have happened at other key points during the creation and operation of the NI RHI scheme, there was once again no minute of the meeting where this significant decision was taken.
- 29.58 When asked by the Inquiry about the failure to record this decision, Mr Mills’ attention was drawn to paragraphs 37 and 38 of the then operative DETI Private Office Guidance¹⁷⁶² about the

1752 WIT-21619 to WIT-21620; WIT-21608; WIT-21898; TRA-12973 to TRA-12979; TRA-13104 to TRA-13110; TRA-13137 to TRA-13139; TRA-13184 to TRA-13193

1753 TRA-12856

1754 TRA-12869 to TRA-12870

1755 TRA-11158 to TRA-11159

1756 TRA-11154

1757 WIT-11287

1758 TRA-15291

1759 WIT-11287

1760 WIT-20221 to WIT-20222; TRA-12875

1761 WIT-20227; TRA-12877

1762 DFE-423702

obligation directed by the Permanent Secretary that it was the relevant division's responsibility to minute the meeting (discussed elsewhere in this Report) and Mr Mills was unable to recall if he had been aware of this at the time.¹⁷⁶³

- 29.59 Mr Stewart told the Inquiry that he was aware of the Private Office Guidance and that a record should have been made by the business area concerned since this was a decision taken by a Minister to approve a significant amendment to a submission.¹⁷⁶⁴
- 29.60 Dr McCormick told the Inquiry that the potential for “leakage” of information was the biggest single factor for the devolved administration at that time.¹⁷⁶⁵ The Inquiry has been told in the course of its representation process that this evidence was offered as a partial explanation of what happened rather than an excuse.
- 29.61 On the afternoon of the same day as the meeting with the Minister, Ms Brankin sent an email to Mr Mills, which was copied to a number of others including Dr McCormick, Mr Rooney, Mr Stewart, Mr Cooper and Mr Wightman.¹⁷⁶⁶ Ms Brankin stated that she had re-confirmed with DFP that the RHI budget for 2015-16 had in fact been increased to reflect the £23.178 million forecast (as DFP had previously indicated to DETI in July 2015),¹⁷⁶⁷ but went on to remind them that “RHI AME is not standard AME”, that penalties were applied for overspending and that enquiries were ongoing with DECC.¹⁷⁶⁸
- 29.62 Mr Wightman accepted that they were receiving feedback from the market confirming that hours of use were far in excess of the original CEPA 17% usage assumption, that the use of multiple boilers was being exploited and that people were making large sums of money from the scheme but, at the time, officials were still fairly confident that more funds would be released and that the RHI, in its entirety, was still a worthwhile venture.¹⁷⁶⁹ In this regard, on 16 June Chris Johnston of AFBI's Environment and Renewable Energy Centre had emailed Mr Wightman and Mr Hughes pointing out that, on the basis of the information which they had provided to him, load factors appeared very high.¹⁷⁷⁰

The revised submission of 8 July 2015 and its approval on 3 September 2015

- 29.63 On 28 August Mr Wightman circulated a revised version of the submission amended to reflect the agreed change of dates.¹⁷⁷¹ The revised version continued to assert that the funding was provided by HMT via AME and so did not impact directly upon the NI departmental budgets.¹⁷⁷² In addition, the level of committed monthly payments had been corrected upwards from

1763 TRA-11152

1764 TRA-11692 to TRA-11694

1765 WIT-26327; TRA-15330

1766 DFE-194700

1767 DETI had sought additional 2015-16 AME funding for RHI (approximately £11.3 million) through the June 2015 monitoring round in line with its then 2015-16 forecast RHI expenditure. DFP indicated to DETI on 9 July 2015 that the additional funding was available to match its new RHI forecast for 2015-16 (£23.179 million); DFE-176363 to DFE-176365 and DFE spreadsheet DFE-179394. This was confirmed by DETI on 10 July 2015; DFE-176363 to DFE-176365 and DFE spreadsheet DFE-179394. DFP provided a confirmation print confirming the allocation on or about 20 July 2015; WIT-43755; DFE-176378 to DFE-176379 and WIT-37016. DFE-279008; DFE-147605 to DFE-147607 and DFE-462956

1768 DFE-194700

1769 TRA-10845

1770 DAE-15560

1771 DFE-279077 to DFE-279096

1772 DFE-279093

£1.4 million to £1.5 million.¹⁷⁷³ The revised submission itself did not mention the annual 400,000kWh cap, but the revised policy response document did.

- 29.64 On 3 September the submission was finally signed off by Minister Bell.¹⁷⁷⁴ On 8 September DETI issued a press release providing details of the proposed legislative amendment.¹⁷⁷⁵ Dr McCormick accepted that, in the circumstances, the press release was “probably not” helpful in the sense that it could, in theory at least, have contributed to a spike in applications.¹⁷⁷⁶ As it turned out, and as we will come on to consider later in this Report, there was already a high degree of knowledge in the market about DETI’s proposed RHI changes.

1773 DFE-279094

1774 DFE-279071 to DFE-279076

1775 DFE-279243 to DFE-279244

1776 TRA-15368 to TRA-15369

Findings

- 161.** The Inquiry agrees with Mr Johnston that his omission in not even looking at the copy of the 8 July submission was, in his own words, “a missed opportunity” and that it was not very impressive on his part.¹⁷⁷⁷ This was sent to him in the context of Mr Johnston’s status as the SpAd to the First Minister. It was dealing with a need to control public expenditure and it followed his recent involvement with Mr Cairns and Minister Bell in seeking to resolve difficulties in their relationship.
- 162.** The Inquiry has given careful consideration to the conflict of evidence between Mr Cairns and Mr Johnston as to whether Mr Johnston had expressed a view that tariff controls would not be introduced. On balance, taking into account the oral evidence given by both individuals and the email of 17 August 2015 from Mr Cairns to Mr Johnston (considered earlier), the Inquiry prefers the account given by Mr Cairns and finds that Mr Johnston was much more involved in the RHI scheme discussions, including on tariff controls, than Mr Johnston’s evidence to the Inquiry would suggest. In particular, the Inquiry considers that the contemporaneous email evidence was consistent with and supports the evidence of Mr Cairns that Mr Johnston had made a statement about not introducing tariff controls, however ill-informed Mr Johnston’s basis was for doing so.
- 163.** The Inquiry has previously set out that DETI officials did not correctly explain the funding position to Minister Foster, or her then SpAd Dr Crawford, during their time in DETI. It is clear that up to at least 20 July 2015 Dr Crawford, then DFP Minister Foster’s SpAd, still wrongly believed that the RHI funding was standard AME with no potential impact on Northern Ireland’s DEL budget.
- 164.** Dr Crawford alerted Mr Cairns by email on 20 and 31 July that there was likely to be a “massive spike in applications before October”.¹⁷⁷⁸ Minister Bell should have been informed but told the Inquiry that he was never advised of the anticipated spike.¹⁷⁷⁹ The Inquiry was not provided with any evidence to confirm that Minister Bell was informed of a potential for a spike by Mr Cairns, although the Inquiry acknowledges that Mr Cairns did notify Mr Stewart who, in turn, notified Mr Wightman, Dr McCormick and Mr Mills.
- 165.** Dr Crawford, in his role as SpAd to the Finance Minister, did not pass on to Minister Foster his market intelligence about gaming or about “a massive spike” in applications.¹⁷⁸⁰ The Inquiry finds this unacceptable considering the potential financial impacts that would very clearly be of interest to Ms Foster as Minister for DFP.
- 166.** Mr Cairns did not provide DETI officials with the email of 31 July from Dr Crawford but he did raise serious issues of fraud and abuse with Mr Stewart who ought to have pressed him further for any relevant details.

1777 TRA-14723 to TRA-14725

1778 IND-27957

1779 TRA-12438

1780 TRA-13620; TRA-13094

- 167.** DETI officials were aware, from around the third week in July, of what they perceived to be a spike in applications. This should have reinforced the need to act with a sense of urgency in terms of cost controls.¹⁷⁸¹
- 168.** The Inquiry notes that despite this emerging awareness of the need for urgent action, when the DETI Minister was back at work in the last week of July he does not appear to have been reminded of the need for urgency or pressed for clearance of the 8 July submission by any of the Energy Division officials, Mr Stewart or the Permanent Secretary.¹⁷⁸²
- 169.** The Inquiry notes that in an email of 11 August 2015¹⁷⁸³ Mr Mills passed on the information that the additional RHI AME funding sought from HMT for 2015-16 had been secured¹⁷⁸⁴ and this positive response to the increased forecast may well have reinforced any misunderstanding that the scheme was funded by standard AME (i.e. that whatever the forecast it could be met). The Inquiry notes that HMT had, during the 2013 Spending Review (which dealt with expenditure for 2015-16), omitted to set a new cap in NI's RHI AME funding for 2015-16.¹⁷⁸⁵
- 170.** Once again, despite the importance of the meeting with the Minister, ultimately held on 24 August, to agree the proposed RHI scheme amendments and, in particular, the decision to postpone the introduction of tiering for a further month, no minute, note or record was kept.¹⁷⁸⁶ The Inquiry finds there was no reasonable justification for the neglect of the need to record meetings, ministerial decisions and the reasons behind them; this was unacceptable in that it undermined the proper conduct, record and transparency of Government business. Meetings with the Minister should have been recorded by DETI officials in compliance with their obligations under the applicable Private Office Guidance.
- 171.** The Inquiry finds that the process in the summer of 2015 in handling decision-making lacked management grip by Dr McCormick, Mr Stewart and Mr Mills. From the point at which the matter was escalated to the Permanent Secretary in May, until the Minister's decision in late August, given the context and the need for action, the process was allowed to drift.
- 172.** The Inquiry considers that there were probably a number of factors that played into the delay in signing off the 8 July submission.
- While the then operative Private Office Guidance provided that submissions should be referred to the SpAd ahead of the Minister, in the case of the 8 July submission this process took an inordinate length of time when the need for it to be agreed by the Minister was clearly urgent. Responsibility for this rests with Mr Bell and Mr Cairns.

1781 DFE-10131

1782 TRA-12385

1783 DFE-278983 to DFE-278984

1784 DETI had sought additional 2015-16 AME funding for RHI (approximately £11.3 million) through June 2015 monitoring round in line with its then 2015-16 forecast RHI expenditure. DFP indicated to DETI on 9 July 2015 that the additional funding was available to match its new RHI forecast for 2015-16 (£23.179 million); DFE-176363 to DFE-176365 and DFE Spreadsheet DFE-179394. This was confirmed by DETI on 10 July 2015; DFE-176363 to DFE-176365 and DFE spreadsheet DFE-179394. DFP provided a confirmation print confirming the allocation on or about 20 July 2015; WIT-43755, DFE 176378 to DFE-176379 and WIT-37016. DFE-279008, DFE-147605 to DFE-147607 and DFE-462956.

1785 DOF-59030 to DOF-59036, as compared to DOF-02333 to DOF-02342 and DOF-42007 to DOF-42012

1786 WIT-26259

- The Minister could have been reached when he was in the office at the end of July or in Portstewart during August. He does not appear to have made any effort to contact his office during that period in relation to RHI issues; and no attempt was made by officials to contact him or bring the submission to him with an oral explanation.
- Mr Cairns may have been concerned that, given the recent adverse public reaction to changes to NIRO, any changes to the RHI scheme could go down badly. That concern, however, should not significantly have played into the urgency to deal with the (completely different) RHI scheme.

173. The Inquiry finds that Minister Bell was fully aware of the agreement for Mr Cairns to liaise with Dr Crawford. Despite Minister Bell's assurance that they had resumed a good relationship, the Inquiry is also satisfied that, at least for Mr Cairns, the evidence confirmed that the London experience continued to have an adverse effect on how they dealt with departmental business.
174. Dr Crawford's suggested amendment to the proposals contained in his email of 31 July¹⁷⁸⁷ was not discussed with Ms Foster, his Minister.¹⁷⁸⁸ While Dr Crawford has maintained that his intention with this proposal was to bring some cost control to the scheme, prevent a spike in applications, and limit payments to legitimate heat use,¹⁷⁸⁹ nonetheless the effect of the proposal, if it had been implemented, would have been to ensure that the scheme remained overgenerous to participants, and to poultry farmers in particular, thereby effectively undermining the intention motivating the objectives of the 8 July submission.
175. The Inquiry notes that Dr Crawford's suggestions made through Mr Cairns to officials were aimed at benefitting poultry farmers and, indirectly, Moy Park, an organisation that dominated the industry in Northern Ireland, an industry in which Dr Crawford's family were clearly involved.
176. Mr Cairns, referring to the meeting of 24 August, described his enquiry about 1 October being the latest possible date for action as a "softball question." However, the fact remains that he did ask the question. The Inquiry notes that Mr Cairns had been actively seeking guidance from Dr Crawford in accordance with the arrangement set up by Mr Johnston, the outcome of which had led him to believe that delay to the latest possible date was desirable. The Inquiry also notes that Mr Cairns maintained that he had no personal interest in the RHI or whether changes were delayed or not.
177. Ultimately the introduction of the changes was extended for a further month without any dissent on the part of Minister Bell or any of the officials present at the meeting on 24 August. The Inquiry accepts that, on the part of the officials, there may have been a degree of concern that, in practical terms, time was beginning to run out if the formalities were to be completed by 1 October and that they were simply grateful that a decision had finally been reached.

1787 DFE-293156

1788 IND-27957

1789 TRA-13173 to TRA-13179

178. Dr Crawford resigned in January 2017. This followed Dr McCormick’s appearance at the PAC where Dr McCormick said he thought Dr Crawford had been the cause of the delay, based on a telephone call he, Dr McCormick, had held with Mr Cairns. Dr Crawford has denied any wish to delay the changes. In his email of 31 July 2015, while suggesting a modification to the tiering proposal, he stated “I think you will need to make changes from 1 October 2015”. After considering the evidence, specifically the email from Dr Crawford to Mr Cairns of 31 July and Mr Cairns’ email to Dr Crawford of 12 August 2015, and hearing from Mr Cairns and Dr Crawford, the Inquiry finds that, ultimately, Dr Crawford did not deliberately delay the introduction of cost controls. This finding holds notwithstanding the Inquiry’s criticism of Dr Crawford for his suggested amendment to the proposals.

