

## Chapter 34 – The 2015 RHI Casework Committee

- 34.1 As mentioned already, before submission of the Business Case Addendum to DFP, it was assessed by a Casework Committee in DETI on 21 October 2015. Previously in this Report, when examining the operation of the 2012 RHI Casework Committee, the Inquiry recorded that the purpose of any DETI Casework Committee was to apply a degree of independent scrutiny and challenge to a project on behalf of the DETI Accounting Officer before it was forwarded to DFP for consideration.
- 34.2 In fact Mr Murphy confirmed in his oral evidence to the Inquiry that in Casework Committees there should be sufficient separation between the advisory and challenge activities to ensure that DETI officials were not marking their own homework.<sup>1905</sup>
- 34.3 However, this 2015 RHI Casework Committee included Mr Cooper and Mr Murphy, both of whom had been involved to a greater or lesser extent in advising on or drafting the Business Case Addendum the committee was then having to consider.
- 34.4 While, in his written evidence to the Inquiry, Mr Murphy did not consider that he formally worked on the Business Case Addendum, and that its preparation was the responsibility of Energy Division,<sup>1906</sup> it is the case that:
- (i) on 23 July 2015 he and Mr Cooper received the value for money assessment and NPV analysis that Alan Smith had prepared;<sup>1907</sup>
  - (ii) on 27 July 2015 he and Mr Cooper received the early draft of the Business Case Addendum circulated by Mr Wightman;<sup>1908</sup>
  - (iii) on 14 August 2015 Mr Cooper informed Mr Rooney that Mr Smith and Mr Murphy “have been working on numbers in terms of arriving at a positive NPV” and that “Shane [Mr Murphy] explained the approach to DFP in meeting [sic] on 12 August”;<sup>1909</sup>
  - (iv) on 4 September 2015 Mr Cooper and Mr Murphy received the then latest draft of the Business Case Addendum and exchanged emails on 13 and 14 September 2015 identifying the deficiencies and gaps they considered it had, and that Eugene [Mr Rooney] was going to arrange a round table discussion about it;<sup>1910</sup>
  - (v) on 7 October 2015 Mr Murphy set out his views on an updated Business Case Addendum that Mr Cooper had sent him for comment. Mr Murphy indicated that he thought, recognising that a lot of effort and analysis had (by that time) gone into the document, that:  
  
“...we have given ourselves a fighting chance on the NON Dom RHI, and there is enough for DFP to “hang their hat on” if they want (or are motivated) to find a way out of this situation.”<sup>1911</sup>

1905 TRA-02411 to TRA-02412

1906 WIT-19655 to WIT-19656

1907 DFE-278671 to DFE-278673

1908 DFE-147524

1909 DFE-278972

1910 DFE-279369

1911 DFE-148114 to DFE-148115

- 34.5 Indeed, in Mr Cooper’s case, he performed some, albeit not terribly substantive,<sup>1912</sup> tracked changes to the Business Case Addendum in October 2015<sup>1913</sup> during collaborative work with Mr Wightman shortly before the then draft was sent to DFP for its early consideration in advance of the DETI Casework Committee meeting. Mr Cooper explained to the Inquiry in his oral evidence that “my involvement would have been ensuring that the case actually had the things in it that DFP actually needed”,<sup>1914</sup> and that he did still ask questions of the presenting officials during the Casework Committee meeting.<sup>1915</sup> Mr Cooper also explained that no one suggested that he should stand aside and that did not occur to him as necessary.<sup>1916</sup>
- 34.6 On 30 September 2015 a meeting took place between DETI Finance and DFP Supply officials at which there was discussion of the draft Business Case Addendum.<sup>1917</sup> On the same date, Mr Cooper sent an explanatory email to Mr Mills and others setting out areas that DFP suggested should be included in the business case.<sup>1918</sup> On 13 October a draft was submitted informally by Mr Cooper to Ms Scott of DFP Supply.<sup>1919</sup> Ms Scott subsequently provided, on 20 October 2015, views and comments seeking, in particular, further information as to why the cost control proposal in the DETI 2013 public consultation had not been implemented and whether, on the face of it, the 2013 document appeared to contradict paragraph 4.11 of the Business Case Addendum.<sup>1920</sup>
- 34.7 On 16 October the Business Case Addendum, together with annexes, had been sent to the members of the Casework Committee<sup>1921</sup> (who, in addition to Messrs Cooper and Murphy, included Eugene Rooney, the grade 3 Senior Finance Director, as Chair).
- 34.8 The Casework Committee meeting was due to take place on 21 October 2015, however the Casework Committee members appear to have had a pre-meeting on 20 October 2015 and considered the comments that Mr Cooper had received from Ms Scott.<sup>1922</sup> On the morning of 21 October 2015 Mr Rooney emailed Mr Cooper and suggested it would be useful to have Energy Division’s view on the points DFP had raised. Further, Mr Rooney indicated:
- “I am wondering should we have a different approach to this Casework and a more interactive discussion with DFP than normal given the involvement of FD [Finance Division] and ASU [Analytical Services Unit] in the development of the approach in the papers. If so we should alert DFP in advance. What do you think?”
- 34.9 The RHI Casework Committee meeting did take place on 21 October 2015. According to the minutes, in addition to the three committee members, the presenting DETI Energy Division project team consisted of Mr Mills, Mr Wightman, Mr Hughes and the economist, Mr Smith.
- 34.10 There were also four representatives from DFP present: Ms Morelli (then head of DFP Supply), Ms Scott, Ms Miller and DFP economist, Mr McNally. The attendance of DFP representatives

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1912 TRA-15915

1913 DFE-151260

1914 TRA-15899

1915 TRA-15900

1916 TRA-15901

1917 DOF-03323 to DOF-03329

1918 DFE-147640

1919 DFE-283192

1920 DOF-42019 to DOF-42020

1921 DFE-284293 to DFE-284762

1922 DFE-149575

at Casework Committee meetings was as observers, which would involve asking some points of clarification at the end of the meeting. In line with Mr Rooney's suggestion quoted above, Ms Morelli confirmed in her oral evidence to the Inquiry that the 21 October 2015 Casework Committee meeting did have greater involvement from DFP officials:<sup>1923</sup>

“The normal process for casework is that DOF would only have observer status. I suppose that role is really to get more of a contextual background to what we're being asked to approve when it eventually does come to us. We are allowed to ask some points of clarification at normal casework at the very, very end. This is a different — this is — we have an equal opportunity to ask questions of the people presenting the case, and my understanding for that difference in approach was the limited time, because we are now up against a time for regulatory — for the regulations to be introduced, and we don't have our normal three-week consideration period.”

34.11 The minutes of the Casework Committee meeting of 21 October 2015,<sup>1924</sup> which were not signed off until 10 March 2016, indicate that, amongst other things, the following matters were discussed:

- In answer to a question from head of DFP Supply, Ms Morelli, as to whether the proposals required consultation, Mr Wightman told the Committee that “a consultation had taken place in 2013”<sup>1925</sup> and that the final policy was in line with legal advice. Ms Morelli asked if Energy Division were relying on the 2013 consultation and John Mills confirmed that the legislative proposals DETI were bringing forward were being considered as the outworking of the 2013 consultation and that no additional public consultation would be carried out.<sup>1926</sup>
- Ms Morelli also asked if the proposed tariff change was the most effective way to control the scheme at that time. She was assured by Mr Wightman that it was, pending further review and proposals for the next year.<sup>1927</sup>
- Both Mr Mills and Mr Wightman told the Committee that discussions had taken place with representatives from the industry, including both suppliers and installers, and they had spoken to some clients after the notice had been issued some two months earlier to say the legislative changes would be made in early November.<sup>1928</sup>
- Ms Scott, the DETI Supply Officer at DFP, asked why the trigger system of cost control included in the 2013 consultation had not been included. Mr Mills informed her that it had been a “Ministerial decision” to look at the domestic scheme rather than pushing through the trigger points on the non-domestic, which would have significantly delayed the implementation of the domestic scheme.<sup>1929</sup>
- Ms Scott also enquired as to the reason that GB had implemented cost control measures in 2012. Mr Wightman said he was unsure and confirmed that they would check to

1923 TRA-15056 to TRA-15057

1924 DFE-122671 to DFE-122674

1925 DFE-122671

1926 DFE-122672

1927 DFE-122673

1928 DFE-122671 to DFE-122672

1929 DFE-122672

identify the trigger. That task was formally recorded as an action point.<sup>1930</sup> That appears to have led to the inaccurate passages on the subject in Version 4 of the Business Case Addendum referred to above.

- 34.12 The Inquiry notes that the minutes of the meeting do not record that the Casework Committee was informed that tiering of tariffs had not been included in the 2013 consultation. The minutes also do not suggest that the Casework Committee was referred to or discussed the reference under ‘Annual Payment Cap’, in paragraph 4.16 of version 3 of the Business Case Addendum before them, that the introduction of a tiered tariff would “reduce the risk of ‘gaming’ and installations being operated over and above the required kilowatt hours just to generate RHI income.”<sup>1931</sup>
- 34.13 The Casework Committee concluded that the proposed changes set out in the Business Case Addendum seemed to be the best way of approaching the non-domestic scheme in the short term.<sup>1932</sup> Ms Morelli provided the Inquiry with some insight into her impression of the Casework Committee meeting stating to the Inquiry in oral evidence that she wanted to get an assurance: “What are we actually here for, for a start, and, if we are here, what are we being asked to approve, and how did you arrive at it?” She said the explanation that she received was: “This is where we are, we’ve consulted, we’re out there, this is going ahead, it’s happening in November, it will control the scheme, it will bring us back in line, over to you.”<sup>1933</sup>

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1930 DFE-122672

1931 DFE-284311

1932 DFE-122673

1933 TRA-15061

## Findings

- 195. The Inquiry finds that the 2015 Casework Committee was not constituted in a way that provided the required separation between the advisory and challenge functions and therefore it lacked the necessary degree of independent scrutiny.**
- 196. While the Inquiry acknowledges the pressure to implement speedily the changes so as to introduce tiering, the Committee did not pick up or deal with any of the significant errors, omissions or inconsistencies contained in the Business Case Addendum.**
- 197. As discussed previously in this Report, the Inquiry is satisfied that, contrary to what Mr Mills suggested at the Casework Committee meeting, there had been no ministerial decision to prioritise the domestic scheme over the introduction of cost controls or consciously to defer cost controls.**
- 198. The minutes of the Casework Committee were signed off by Mr Rooney on 10 March 2016, some five months after the meeting. The Inquiry finds that a delay of almost five months, with drawn out discussion over content, was unacceptable and clearly a practice that was not consistent either with efficient administration or the production of an accurate contemporary record of the meeting.<sup>1934</sup>**

1934 DFE-122669 to DFE-122674

