

## Chapter 53 – The handling of important RHI related ministerial correspondence

53.1 During 2013 a series of letters passed between the Rt Hon Gregory Barker MP, then Minister of State at DECC, and Minister Foster. How that correspondence was handled was important in relation to the development of the NI RHI, particularly in the context (discussed previously in this Report) where the resources available to DETI in terms of staff and expertise which could be deployed in relation to the development of the NI RHI were very considerably less than those available to its sister Department in Westminster.

### The DETI process for handling correspondence

53.2 DETI's Private Office Guidance,<sup>2864</sup> discussed in the previous chapter, provided at paragraph 1 that: "Private Office will decide whether a letter addressed to the Minister should receive a Ministerial reply, and if so which division should prepare the advice, or whether it can be answered by the Minister's Private Secretary, or an official."<sup>2865</sup>

53.3 There was also a process in place in DETI Private Office for handling and tracking ministerial correspondence.<sup>2866</sup> Where correspondence required an action, it was logged on the 'Knowledge Network' (a digital information management system used in ministerial private offices) on receipt in Private Office. Where correspondence was clearly for information only it was not registered on the Knowledge Network system. Each piece of correspondence was different and needed to be considered on its own merits but there were essentially three courses of action which Private Office could take:

- If the nature of the correspondence indicated that an action was required, for example a response from the Minister, it was issued to the relevant divisional officials for advice, decision and draft reply.
- If the correspondence was considered to be for information only, it was passed to the Minister for information as part of an information folder.
- If the correspondence was of relevance to a particular business area, it was copied to the relevant business area for information. In such cases the Minister subsequently advised Private Office officials as to whether the correspondence had been noted or whether it should be subject to any further action.<sup>2867</sup>

53.4 The outcome of this process ought to have been that the Minister at some point had an opportunity to see the correspondence which had been addressed to her.

53.5 It seems that a practice developed in accordance with which correspondence, deemed as not requiring a response, was printed by Private Office and put in a folder along with any other correspondence and provided to the Minister for information only. This folder was passed to the Minister for information, usually on a weekly basis. Once returned, Private Office staff checked the folder to see if the Minister had made any comments or had requested further briefing.<sup>2868</sup>

---

2864 DFE-416559 to DFE-416571

2865 DFE-416560

2866 DFE-423437

2867 DFE-423437

2868 DFE-423437

- 53.6 Ms Aiken, who as previously noted was Minister Foster’s Private Secretary during her service as DETI Minister, added in a written statement to the Inquiry, that in her time, correspondence for ‘information only’ should have been set up on the Knowledge Network as ‘general mail’.<sup>2869</sup> In her experience the Minister would only have made notes on the correspondence on very rare occasions.<sup>2870</sup> She explained that when Minister Foster took office in DETI she asked to see a hard copy of all correspondence received in Private Office.<sup>2871</sup> That would then be saved onto the Knowledge Network system and placed in a folder to be passed to the Minister once or twice a week.<sup>2872</sup>
- 53.7 Ms Aiken explained that Whitehall Ministers would frequently write to Ministers in the devolved administrations updating them with regard to relevant policy areas.<sup>2873</sup> It was generally accepted that such correspondence did not require a response and it was not the practice in DETI to routinely acknowledge receipt of that type of correspondence.<sup>2874</sup>

### The March 2013 Barker letter

- 53.8 On 26 March 2013, by which time DECC already had its interim budget control or stand-by mechanism in place on the GB RHI scheme and was about to replace it with its degression mechanism, DECC Minister Barker wrote to Minister Foster indicating that it was DECC’s intention to extend the current Renewable Heat Premium Payment (RHPP) scheme (the forerunner of the domestic RHI) for a further financial year while the Government continued to make progress towards finalising all details of the domestic RHI scheme.<sup>2875</sup>
- 53.9 That letter was the subject of a submission to the Minister and her SpAd by Ms McCutcheon, recommending a draft reply confirming that DETI was carrying out analysis work with a view to designing a domestic RHI scheme specific to Northern Ireland and expanding the non-domestic RHI scheme to include more innovative technologies.<sup>2876</sup> The final paragraph of the draft DETI acknowledgement letter read as follows:

“Whilst the Northern Ireland and Great Britain RHI Schemes are separate, I think it would be of great benefit if our respective Officials kept in close contact over the next few months as our respective development work continues.”<sup>2877</sup>

### The May 2013 Barker letter

- 53.10 As mentioned in earlier chapters of this Report, on 31 May 2013 Minister Barker wrote<sup>2878</sup> to Minister Foster again, informing her of “significant developments” on the non-domestic GB RHI scheme. The letter was three pages in length. It related to a review of tariffs on the GB RHI scheme, a consultation on the new tariffs following the review, and information on the first degression announcement (the degression mechanism having replaced the interim cost control or stand-by mechanism on the GB RHI scheme in April 2013). The letter appears to

---

2869 WIT-13476  
2870 WIT-13478  
2871 WIT-13480  
2872 WIT-13480  
2873 WIT-13480  
2874 WIT-13480  
2875 DFE-33445  
2876 DFE-33446 to DFE-33450  
2877 DFE-33448  
2878 DFE-53262 to DFE-53264

have been accompanied by a DECC RHI press announcement and a longer briefing document for information.

- 53.11 The letter was sent by DETI Private Office to Ms Hepper to consider and advise if a response was required.<sup>2879</sup> Ms Hepper sent it on to Ms McCutcheon to deal with. Ms McCutcheon then provided advice to the Minister on 3 June 2013.
- 53.12 The contents of this letter from Minister Barker would not necessarily have been news to Ms McCutcheon. On 21 May 2013 Mr Hutchinson, who worked to Ms McCutcheon in Renewable Heat Branch, had received an email from an official in DECC informing him of the forthcoming announcements of the DECC consultation following the tariff review, and of the triggering of a degression of the GB RHI medium biomass tariff. The DECC official provided the tariff review consultation document in draft form.<sup>2880</sup> It covered subjects such as exploitation of banding, overcompensation and cost control,<sup>2881</sup> with detailed annexes on the tariff model.
- 53.13 On 24 May 2013 Mr Hutchinson replied<sup>2882</sup> to the DECC official, copying in Ms McCutcheon. Amongst other things, he explained the ongoing work on the NI RHI scheme. Cost control did not feature among the long list of matters mentioned.
- 53.14 The DECC official responded twice on 29 May 2013<sup>2883</sup> to Ms McCutcheon and Mr Hutchinson and, in the second email, included DECC's weekly RHI update, which also had references to the tariff review and the degression of the medium biomass tariff.
- 53.15 Returning to the 31 May 2013 letter from Minister Barker, it now formally confirmed for DETI that DECC had conducted a tariff review as part of DECC's RHI budget management policy. The letter explained that the review had indicated that there was a case for updating tariff input assumptions and that a short consultation was to be launched. The Minister explained that:
- “In reviewing these tariffs we have taken a different approach than that taken to date in setting non-domestic tariffs: ***rather than relying primarily on modelled outputs to identify the required tariffs we have also drawn on market intelligence, stakeholder views and expert opinion to make judgements about the level of tariff to propose.***”<sup>2884</sup> (the Inquiry's emphasis)
- 53.16 The letter went on to confirm the publication of the first degression announcement as part of the GB RHI scheme's budget management mechanism. Minister Barker stated in the letter that DECC had published figures showing that deployment of small and medium sized biomass installations in the course of the non-domestic RHI scheme had proved a real success, beyond DECC's initial expectations. The forecast expenditure on the medium tariff band was such that a 5% degression of that tariff was now going to occur.<sup>2885</sup>
- 53.17 Having been asked to consider the appropriate response, on 3 June 2013 Ms McCutcheon informed DETI Private Office that she did not think that a response to the DECC Minister was required.<sup>2886</sup> Her email contained the following:

---

2879 WIT-02450 to WIT-02451

2880 DFE-53210 to DFE-53252

2881 DFE-53230 to DFE-53231

2882 DFE-53253

2883 DFE-53256; DFE-53259 to DFE-53261

2884 DFE-53263

2885 WIT-02446 to WIT-02448

2886 WIT-02449 to WIT-02450

“The Minister previously received similar correspondence from Mr Barker and responded on the 16th of April 2013 thanking him and indicating that she looked forward to hearing more of the GB proposals. The current letter provides an update and the only response to this letter would be to thank him again. We continue to liaise with DECC at official level and there will most likely be further updates from them in the months to come.”

- 53.18 The Inquiry is satisfied that this was neither an accurate nor a sufficiently comprehensive description of the letter of 31 May in the circumstances. Degression had been introduced in GB by amending regulations implemented in April 2013, less than eighteen months after the passage of the 2011 GB RHI regulations bringing into force the GB non-domestic RHI, and now, less than two months later, the first degression reduction was to take place as part of the scheme’s budget management. It was important that the DETI Minister should have been made aware of this development given DETI’s decision in June 2012 not to copy DECC’s interim budget controls from the outset of the NI RHI scheme. In her oral evidence the Minister confirmed that she did not remember seeing the Barker letter of 31 May 2013.<sup>2887</sup> Private Office staff have confirmed that there is no record of comments or requests being raised by the Minister in relation to this specific piece of correspondence.<sup>2888</sup>
- 53.19 When, on 26 June 2013, Ms Hepper advanced a submission to Minister Foster with regard to the intended consultation on the proposal to introduce the domestic RHI and expand the non-domestic scheme as part of Phase 2, no mention was made of the issues raised by the Barker letter of 31 May 2013 or the other material discussed above.<sup>2889</sup> That submission did not specifically refer to the cost control mechanism proposed to apply to both the domestic and non-domestic NI RHI schemes as described in the consultation paper, and did not provide any detail as to why DETI was going to introduce its proposed form of cost control in contrast to what DECC had done.<sup>2890</sup> The draft letter to the Chair of the ETI Committee which was annexed to the 26 June submission for signature by Minister Foster, did refer to “minor administrative amendments” to the non-domestic NI RHI scheme which included “introducing a cost control mechanism.” No further information was provided.<sup>2891</sup>

## The October and November 2013 Barker letters

- 53.20 On 23 October 2013 Minister Barker wrote again to Minister Foster informing her that DECC was laying regulations to rectify two errors that had been identified within the GB non-domestic RHI regulations and to introduce an additional clause to protect applicants to the scheme from potential tariff degression due to an error.<sup>2892</sup> The Minister told the Inquiry that she “did not read that letter in detail” before passing it to officials.<sup>2893</sup>
- 53.21 More significantly, Minister Barker wrote yet again on 29 November 2013, setting out the details of three consultations directed towards extending and improving the GB non-domestic RHI scheme and ensuring that the scheme offered value for money to the taxpayer. This was

---

2887 TRA-07899

2888 DFE-423437

2889 DFE-97366 to DFE-97371

2890 DFE-382732 to DFE-382743

2891 DFE-382743

2892 DFE-54350

2893 TRA-08487

a detailed five-page letter, with two annexes. It summarised the outcome of the tariff review consultation he had written about in May, and the further development and refinement of the budget management policy in relation to the non-domestic scheme to ensure that the scheme remained financially sustainable. It also confirmed that the domestic RHI budget would also be managed by degression.<sup>2894</sup>

- 53.22 On 4 December DECC Minister Barker published a detailed statement<sup>2895</sup> announcing the changes to be made as a result of considering a large number of policy questions on the GB RHI. The accompanying 94-page policy document ‘Improving Support, Increasing Uptake’<sup>2896</sup> included a chapter on budget management and the re-calibration of its degression mechanism. A document dealing with the proposed GB domestic scheme was also published, the major portion of which was concerned with budget management.<sup>2897</sup>
- 53.23 On 10 December 2013 Ms McCutcheon lodged a submission with the Minister with a proposed draft response to the letter of 29 November for the consideration of Minister Foster.<sup>2898</sup> That submission made no mention of budget management or cost control although the draft letter in reply to Minister Barker did refer to cost control in its heading, but no further detail on that subject was included.
- 53.24 The Inquiry does not consider that the submission of 10 December 2013 was adequate given the potential significance of the information provided by DECC, nor was it a response that would have helped to focus the Minister’s attention on the development and significance of a cost control mechanism.
- 53.25 Following this submission from Ms McCutcheon, Minister Foster replied to the 29 November Barker letter on 16 December 2013<sup>2899</sup> using the suggested draft and expressing her appreciation of the shared information. Minister Foster indicated in her letter that there had been an encouraging level of uptake with a number of applications for the non-domestic NI RHI scheme being around 7% of the GB applications during the first year of operation. She confirmed that DETI had recently consulted on a similar proposal to expand the NI non-domestic RHI scheme and to introduce new tariffs for more innovative technologies. She continued:
- “In addition, consideration has been given to issues such as enhanced preliminary accreditation, biomass sustainability and cost control.”<sup>2900</sup>
- 53.26 The letter also sought clarity on the RHI funding arrangement, given that Minister Barker’s letter of 29 November had referred to the DECC RHI budget for 2015-16. That request would elicit a subsequent reply from Minister Barker on 7 January 2014.

### The use made of such correspondence from DECC

- 53.27 The enquiry made in Minister Foster’s letter of 16 December 2013 about the DECC RHI budget for 2015-16, referred to immediately above, is one of the very limited instances of DETI picking up on information which had been provided to it in a letter from the DECC Minister and making

---

2894 WIT-18705 to WIT-18709

2895 INQ-40893 to INQ-40895

2896 INQ-24901 to INQ-24997

2897 INQ-24886 to INQ-24900

2898 DFE-33748 to DFE-33750

2899 WIT-02469 to WIT-02470

2900 WIT-02469

further enquiries of DECC in order to assist it (DETI) in the exercise of its own functions in relation to RHI.

- 53.28 Quite apart from the DETI Private Office process for handling correspondence and the information and correspondence files, Minister Foster assured the Inquiry that it was always her habit to respond to a letter from a fellow Minister in Westminster by way of a courtesy acknowledgement, even if no detailed response was required. That does not appear to have occurred in respect of all of the Barker correspondence and it may be that some of the letters did not even reach the Minister. Minister Foster accepted that some of the letters sent to her by Minister Barker were quite significant and, whilst advice that she received from officials was that there was no need to respond, she considered that a formal reply should have been sent even just to acknowledge the fact that the information had been sent to her.<sup>2901</sup>
- 53.29 Whilst the Inquiry certainly appreciates the propriety of responding to such letters as a matter of courtesy, the Inquiry considers that it is more important to have a proper system in place to ensure that important information contained within letters from other Departments (such as those from DECC which may have assisted DETI in the exercise of its functions, or caused it to make some further enquiries) is both appreciated and acted upon appropriately.
- 53.30 Whilst acknowledging the evidence received by the Inquiry about the processes in place for dealing with correspondence to a Minister, (as mentioned earlier in this chapter) the totality of the evidence considered by the Inquiry was not such as to permit the Inquiry to gain a clear picture of precisely how such ministerial correspondence was dealt with generally or in every particular case relating to the RHI scheme. Indeed, it appears that there may not have been an entirely consistent approach to classification and management of such correspondence. This might well have been because of the judgment required in each case – which might not have been straightforward, depending on the subject matter – as to whether the correspondence was ‘for information only’ or not; and, even if it was for information only and did not require a letter in response, whether the information provided was of such significance that it required some further action to be taken within DETI.

## Findings

- 300.** The Inquiry notes that in some instances the Minister was provided with summaries of correspondence relevant to the NI RHI scheme that were neither accurate nor sufficiently comprehensive descriptions of the content of that correspondence.
- 301.** The Inquiry finds that officials did not always provide the Minister with good quality advice to form the basis of an adequate draft response to correspondence which the Minister signed. In particular, there was a failure to provide either an adequate summary or an appropriate draft response to the Minister Barker letter of 31 May 2013 and, to a somewhat lesser extent, his letter of 29 November 2013.
- 302.** Despite the Minister's evidence that it was always her intent to respond to a letter from a fellow Minister in Westminster by way of a courtesy acknowledgement even if no detailed response was required, this does not appear to have occurred in respect of all correspondence from Minister Barker.
- 303.** There can be little doubt that the repeated references to degression in the correspondence from DECC should have alerted the Minister and her SpAd, and more particularly the relevant officials, to the need for careful consideration of cost controls in Northern Ireland, bearing in mind the similarities of the GB and NI RHI schemes. The Inquiry considers that the collective failure to identify the significance of this issue was unacceptable in the circumstances.
- 304.** The departmental procedures that were in place for dealing with correspondence in relation to the RHI scheme do not appear to have been adequate and DETI do not appear to have adhered consistently to those which were in place. This was particularly unfortunate given the additional resource and expertise which was available to DECC, as compared with DETI, and the DETI Minister's laudable avowed intent that the Departments should work closely together.

