

Chapter 9 – The RHI Casework Committee

9.1 Before being in a position to send a Business Case to DFP in order to seek approval to introduce the RHI scheme, DETI Energy Division officials had first to present the policy internally to a DETI Casework Committee. On Friday 9 March 2012 the draft proposals for an NI RHI were brought before such a committee.⁶³¹

The purpose of the Casework Committee

9.2 The Casework Committee was intended to enable DETI to discharge a form of independent challenge and/or reassurance role on behalf of the Permanent Secretary, as Accounting Officer, by way of peer review aimed at ensuring that the policy proposals which came before it represented value for money sufficiently clearly for the policy to be made up into a business case for submission to DFP. Membership of the committee was normally at grade 5 level or above, with a grade 3 chair, and constituted by individuals who were not involved in the project under consideration.

9.3 At the Casework Committee which dealt with the proposed RHI scheme on 9 March the element of independence was supplied by three representatives, namely: Mr Cooper, then acting Senior Finance Director, who chaired the Committee; Philip Angus, then the Director of Human Resources and Central Services at DETI; and Shane Murphy, then the senior principal economist at DETI and head of the Analytical Services Unit (ASU).

9.4 Mr Cooper was a member of the Institute of Chartered Accountants in Ireland and was acting up as grade 3 Senior Finance Director at the time. Mr Cooper had produced a note on DETI Casework Committee minutes for Heads of Division in April 2009, in which he recorded that “The system has worked well and **has ensured that a strong internal challenge function is exercised when considering significant expenditure proposals**” (the Inquiry’s emphasis).⁶³²

9.5 The RHI policy paper was presented by Ms Hepper, Ms McCutcheon and Mr Hutchinson.⁶³³ Also present during the committee meeting was Mr Connolly, the economist with the ASU who was assisting Energy Division with the development of the RHI policy. He was provided with the casework papers on 28 February by Mr Hutchinson, some of which he had seen before, and, on 1 March, he signed off the RHI project, in the form of the draft casework papers which he referred to as an “appraisal”, as both complying with NIGEAE principles and being value for money.⁶³⁴

The Casework Committee papers

9.6 The index to the Casework Committee papers and the subsequent committee minutes show that the committee was provided with a considerable amount of documentation including the following:⁶³⁵

- (i) A Synopsis of Renewable Heat Incentive Scheme Project;⁶³⁶

631 DFE-414011 to DFE-414023

632 WIT-18843

633 DFE-382570 to DFE-382582

634 WIT-10380 to WIT-10385

635 DFE-414011 to DFE-414027

636 DFE-398064 to DFE-398080

- (ii) The AECOM/Pöyry Report;⁶³⁷
- (iii) The full Economic Appraisal – CEPA final report June 2011;⁶³⁸
- (iv) The CEPA additional analysis (the Addendum) February 2012;⁶³⁹
- (v) The Ofgem Feasibility Study;⁶⁴⁰
- (vi) A Risk Register;⁶⁴¹
- (vii) The State Aid Application/Addendum to application;⁶⁴²
- (viii) The Strategic Outline Case provided to DFP on 22 November 2011 together with the response granting approval on 3 January 2012;⁶⁴³ and
- (ix) Mr Connolly’s economist comments of 1 March 2012 dealing with compliance with NIGEAE and value for money.⁶⁴⁴

No draft regulations, draft regulatory impact assessment, draft business case nor any previous submissions to the Minister were included amongst the papers,⁶⁴⁵ although the existence of the draft regulations was referred to in the Ofgem Feasibility Study and the State Aid application.

9.7 The covering letter of 2 March 2012⁶⁴⁶ to Mr Cooper from Mr Thomson, the then grade 3 Head of DETI Policy Group and therefore a member of the DETI Top Management Team, which was copied to the other members of the Casework Committee, included the following opinion:

“I am content that the proposals outlined have been thoroughly researched, analysed and appraised and note the supportive comments from the DETI economist, specifically that the proposed scheme is the most effective way of allocating the resources provided by HMG. From the evidence available, I consider that the implementation of the RHI in Northern Ireland represents the most appropriate way for the renewable heat market to be incentivised to a level of 10% by 2020.”⁶⁴⁷

9.8 Mr Cooper told the Inquiry that he considered the letter from Mr Thomson to be simply the provision of an assurance from the grade 3 that he stood over the submitted case, but that that did not change the nature of the role of the Casework Committee, which was not obliged to accept Mr Thomson’s view.⁶⁴⁸

9.9 Despite the bulk of the papers and documents referred to above, Mr Murphy gave evidence that he only received them some seven days prior to the committee meeting, which apparently was not unusual.⁶⁴⁹

637 DFE-398081 to DFE-398254
 638 DFE-398255 to DFE-398400
 639 DFE-398401 to DFE-398444
 640 DFE-398445 to DFE-398612
 641 DFE-398613 to DFE-398625
 642 DFE-398627 to DFE-398690
 643 DFE-398691 to DFE-398702
 644 DFE-398703
 645 TRA-04204
 646 DFE-398062 to DFE-398063
 647 DFE-398063
 648 TRA-04208 to TRA-04210
 649 TRA-02445 to TRA-02446

The Casework Committee meeting

- 9.10 Mr Murphy told the Inquiry that there had been a ‘pre-meeting’ prior to the formal Casework Committee meeting, either shortly before the meeting or earlier that day, at which it was agreed to pursue a line of questioning as to why the Challenge Fund had not been preferred.⁶⁵⁰
- 9.11 At the Casework Committee meeting, as the senior civil servant responsible for the policy, Ms Hepper provided a brief overview of the proposed project. The policy context and the various options were discussed and actions agreed.⁶⁵¹ For the purposes of the Inquiry the following matters are of particular significance.

The funding issue

- 9.12 Ms Hepper informed the Committee that HMT had provided DETI with funding of £25 million over the next four years for the development of the renewable heat market. However, she added that HMT had advised that this funding was only to be used for the RHI scheme itself and not the administration of the scheme. Therefore, any costs of administration would have to be found by DETI from within its DEL budget.⁶⁵² In particular, there was no reference to the earlier Parker, Clydesdale and Brankin email exchanges of April/May 2011 outlining the significant risks and challenges associated with the funding, which are considered in greater detail in chapter 3.
- 9.13 The absence of any reference to, or discussion of, the unusual nature of the funding is surprising since the relevant emails in relation to this had been variously copied at the time to Ms Hepper, Mr Hutchinson and Mr Cooper. When questioned about the absence of any reference to the unusual nature of the funding Ms Hepper accepted that it had not featured in the paperwork for the committee.⁶⁵³
- 9.14 The Casework Committee mechanism was intended to provide the initial reassurance that the scheme proposal in this case would meet the requirements for DFP approval. When asked about the absence of any reference in the minutes to potential impact upon the DEL budget Mr Cooper agreed that it was not expressly mentioned but pointed out that included under the heading “Risk Management” was the risk of insufficient budget resulting from higher than expected uptake. That risk was to be mitigated by liaison with Ofgem, and DETI had been liaising with DECC about future finance for existing commitments. He told the Inquiry that the fact that there were consequences to overspending was “...actually described in terms of, ‘You’re required to stay within your budget here. You can’t overspend here.’”⁶⁵⁴ The Inquiry notes that such a phrase was not included in the final signed minutes⁶⁵⁵ and that Mr Cooper had removed the word “overspend” from an earlier draft.⁶⁵⁶

The Challenge Fund and administrative costs

- 9.15 According to the minutes of the Casework Committee meeting, Mr Murphy enquired as to why the Challenge Fund had not been taken forward as the preferred option rather than the RHI scheme. The Inquiry notes that neither the covering letter from Mr Thomson nor the synopsis

650 TRA-02494 to TRA-02496

651 DFE-04222 to DFE-04233

652 DFE-04222

653 TRA-01848 to TRA-01850

654 TRA-07236 to TRA-07238

655 DFE-382567 to DFE-382582

656 TRA-07237

presented to the committee from Energy Division had raised the Challenge Fund as a realistic alternative to an NI RHI scheme worthy of consideration.

- 9.16 Mr Hutchinson confirmed in the meeting that the CEPA final report of June 2011 had suggested that a Challenge Fund option could produce the most renewable heat at the lowest cost but that a number of very influential factors had been taken into account by Energy Division in reaching the decision to proceed with the RHI option. These included affordability of administration, the reliability of the Challenge Fund assumptions, the ability to meet targets over set timescales, risk, consistency with GB and the example of the NIRO.⁶⁵⁷
- 9.17 Mr Murphy gave evidence to the Inquiry that, during the Casework Committee discussion, he had noted down his impression that HMT funding had been restricted to an NI RHI scheme.⁶⁵⁸ The Inquiry notes that such an impression was clearly not consistent with the email from Jon Parker of HMT in April 2011.⁶⁵⁹
- 9.18 As noted above, Ms Hepper had confirmed to the Casework Committee that HMT would not pay administration costs⁶⁶⁰ and the Casework Committee minutes record that the presenting officials advised that “the costs of running a Challenge Fund were considered to be prohibitive.” The committee was also told that a Challenge Fund “dealing with commercial applications and involving complex evaluation metrics” could be expected to be at least as costly, if not more so, than the Reconnect Scheme (the previous DETI renewable energy grant scheme operated between 2006 and 2008 that had been for domestic customers only and operated on a first come first served basis, and discussed previously in chapter 2 of this Report). The Casework Committee was told that Reconnect demonstrated administration costs of some 14% of the total expenditure of the grant scheme, and consequently administration costs of running a Challenge Fund could equate to potentially £3.5 million over the first four years.⁶⁶¹ However, the Inquiry notes that the presenting officials do not appear to have carried out any detailed analysis of the potential administration costs of a Challenge Fund. In addition, the 28 June 2011 CEPA report had analysed the issue of administration costs and suggested that for any scheme (Challenge Fund or RHI) the administration costs would be around 10% of total spend, and that CEPA had utilised that figure in its calculations.⁶⁶² Further, the Inquiry’s investigation established that the presented administration costs for Reconnect were not an accurate comparator to use because the figures included substantial marketing costs.⁶⁶³
- 9.19 No one appears to have appreciated or to have made the case, or certainly did not document in the Casework Committee minutes, that the CEPA report had demonstrated that any additional administrative costs of a Challenge Fund, as compared to those of an NI RHI scheme, would be easily absorbed in the overall comparative lifetime costs in favour of the former. To the layman, opting for a scheme that was hundreds of millions of pounds more costly overall in order to save a couple of million pounds in administration costs might appear to be an enormous false economy.

657 TRA-03391 to TRA-03393

658 TRA-02413 to TRA-02414

659 DFE-62062 to DFE-62063

660 DFE-04222

661 DFE-04225

662 DFE-398335 to DFE-398336; DFE-398351

663 WIT-24135 to WIT-24139

- 9.20 As already noted (in chapter 3) the funding that was already available for the RHI scheme could not be used for the administration costs. The Inquiry notes that, in 2012, there were tremendous austerity pressures on spending, which would have made even small increases in administration budgets difficult. Nevertheless, DETI officials did not even appear to explore the trade-offs and how these could be managed to realise the potential savings offered by the Challenge Fund.
- 9.21 Ms Hepper sent a letter to the Top Management Team on 15 March 2012 bidding for the administration costs of RHI,⁶⁶⁴ which was effective in obtaining approval of the budget she requested. No similar letter seems to have been considered with regard to obtaining a budget for the administration of a potential Challenge Fund. When such a possibility was raised with Mr Connolly by the Inquiry’s Counsel, he accepted that a similar letter could have been written using the argument that preferring the RHI scheme to a Challenge Fund represented a substantial false economy.⁶⁶⁵
- 9.22 In the course of his evidence to the Inquiry Mr Murphy described the fact that administration costs for an RHI scheme were not to be covered by HMT as being for him, a “stop/go” factor, so that once it was established that such costs were not to be covered, he saw little purpose or weight to be given to other reasons for preferring an RHI scheme.⁶⁶⁶ For Mr Murphy the other reasons were only “balance of advantage and convenience factors.”⁶⁶⁷ However, in the same context, Mr Murphy accepted that he had not noted down or raised with the committee the obvious substantial overall saving represented by the Challenge Fund.⁶⁶⁸ He said in evidence that he recognised “in my head”⁶⁶⁹ that the overall cost of the RHI scheme was at least £200 million more expensive. As a result, the rejection of the Challenge Fund on the basis of higher administration costs would have represented a false economy.
- 9.23 The Inquiry also notes that, by the time the RHI scheme actually went live in December 2012, the estimates for the RHI administration costs had increased by around 16%⁶⁷⁰ and as a result Ms Hepper and Mr Cooper were involved in a significant dispute which had to be escalated to the Permanent Secretary for resolution. Mr Cooper made the case that this increase was a material change to a major factor discussed at the Casework Committee and might now require further consideration by the committee and Ms Hepper disagreed.⁶⁷¹ This further suggests that the evidence base for comparing the administration costs of a Challenge Fund and the RHI scheme was not well founded.
- 9.24 On the other hand, at the time of the Casework Committee meeting, Mr Angus did not perceive administration costs to be terminal in the same way as Mr Murphy. He considered he would have weighed up the six different issues said to affect the Challenge Fund, of which administration cost was one, and was not sure he would have given any one greater weight than another at the time of the meeting, though, in his oral evidence to the Inquiry, he did appreciate: “the fact that, if you don’t have the money to find the staff to administer a scheme, then it is a bit of a show stopper.”⁶⁷²

664 DFE-62230 to DFE-62233

665 TRA-03586 to TRA-03590

666 TRA-02419 to TRA-02420

667 TRA-02419 to TRA-02420

668 TRA-02458 to TRA-02460

669 TRA-02490

670 DFE-144168 to DFE-144169

671 TRA-04136; TRA-04139

672 TRA-02618

- 9.25 Ms Hepper herself also did not regard administrative costs as a single determining factor. She told the Inquiry in oral evidence that her principal reasons for preferring an RHI scheme over a Challenge Fund were consistency with GB: managing the risk of installations not producing heat and previous experience with NIRO.⁶⁷³
- 9.26 The Inquiry was informed that the Casework Committee only considered “shovel ready” policy proposals and did not have the power to choose between policies.⁶⁷⁴ As Mr Murphy put it in evidence, the Energy Division had come to the meeting with “all their ducks lined up.”⁶⁷⁵ However, inherent in the committee’s challenge/reassurance role, if it were to have any real significance, must have been that it did have the power to refuse to approve a “shovel ready” policy and to send it back pending informed investigation of whether it did in fact represent value for money in public expenditure terms.⁶⁷⁶ Mr Murphy said that once the issues over not progressing the Challenge Fund were explained (and the explanations satisfied him at the time) then there was no good reason to block the RHI from progressing.⁶⁷⁷
- 9.27 In the course of giving evidence, Mr Angus referred to “a momentum”⁶⁷⁸ in relation to an RHI scheme, in that this was the proposal that was brought to casework (as opposed to the RHI scheme and the Challenge Fund being brought to casework for the Casework Committee members to choose whichever they preferred).
- 9.28 In one of his written statements, Mr Cooper also noted that the RHI scheme had progressed to a much more advanced stage than the Challenge Fund and, at the time of the Casework Committee meeting, there was an obvious disadvantage surrounding the length of time that it would have taken to get a Challenge Fund up and running.⁶⁷⁹ That does not appear to have been an argument that was recorded in the minutes but it may reflect the delivery attitude (to “get on with it”) that appears to have motivated much of the Department’s activity.

Inaccurate scheme costs information provided by the presenting officials

- 9.29 The Inquiry notes that the net present costs (NPC) of the NI RHI were quoted at paragraph 50 of The Synopsis of the Renewable Heat Incentive Scheme Project provided to the Casework Committee, by using the June 2011 CEPA final report figure of £242 million, which took no account of the increase in scheme subsidy costs from £334 million to £445 million as recorded in the CEPA February 2012 addendum. This reliance on a potentially redundant NPC was not spotted at the time, but when pointed out by Inquiry Counsel, both Mr Murphy and Mr Angus stated that the committee should not have been invited to approve a policy on the basis of inaccurate information.⁶⁸⁰ Further evidence of incorrect or incomplete information in the casework papers emerged with both Mr Angus and Mr Murphy confirming that they had not been told that the Minister had received and approved Ms Hepper’s submission in favour of an NI RHI scheme in June 2011 based on a completely different set of tariffs and costs.⁶⁸¹

673 TRA-02341 to TRA-02342

674 WIT-19575

675 WIT-19562; TRA-02440

676 WIT-19545

677 TRA-02440

678 TRA-02608

679 WIT-27314

680 TRA-02632 to TRA-02634

681 TRA-02558 to TRA-02559; TRA-02622

The proposed scheme tariffs

- 9.30 In answer to an enquiry from Mr Cooper as to how the tariffs had been designed, Mr Hutchinson explained to the Casework Committee that tariffs would vary, depending upon the type and size of technology, to ensure financial support was targeted for a specific installation and to avoid overcompensation. He explained that the scheme would be open for new installations until 31 March 2020 and, since the tariffs were “grandfathered”, the final payments would be made in 2040.⁶⁸²
- 9.31 The minutes do not refer to any discussion of the risk of overcompensation or the perverse incentive and there does not appear to have been any discussion as to why no tiering of the tariff for the biomass boilers had been adopted in Northern Ireland despite the fact that biomass fuel cost was clearly shown to be less than the proposed subsidy (being set out upon consecutive pages of the synopsis as well as the CEPA documentation). Such an omission may be considered surprising since Mr Murphy’s written statement to the Inquiry confirmed that he had read the CEPA footnote stating the opposite.⁶⁸³ The table at paragraph 19 of the synopsis recorded the cost of biomass as 4.39 p/kWh and paragraph 22 demonstrated this to be cheaper than the proposed subsidy for boilers between 20kW and 100kW at 5.9 p/kWh.⁶⁸⁴ However, it is also the case that this was one of a number of different tariffs for different technologies, and at a time before the launch of the scheme, and before uptake was actually known. The Casework Committee was also expressly told by Energy Division in its synopsis, at paragraph 22 and footnote 9⁶⁸⁵ (having set out the proposed biomass tariffs and the GB equivalents that included tiering), that:

“Tiering is used to ensure the technology is not ‘over-used’ just to receive an incentive. It works by dropping the paid tariff after the technology reaches its optimum use for the year; this is deemed at 1314kWhrs [sic] (15% of annual hours). After this level is reached the tier 2 tariff is paid. Tiering is not included in the NI scheme because in each instance the subsidy rate is lower than the incremental fuel cost.”

The final sentence in footnote 9 was incorrect, but it could have led the reader of the synopsis to understand that the matter had been considered and a reasoned decision taken that tiering was not necessary. In turn, this may have made it more difficult for the attention of the committee members to be drawn to the fact that the fuel cost was also documented to be lower than the proposed subsidy.

Proposed scheme protections

- 9.32 The risk of subsidy levels proposed for the RHI being either too high or too low was discussed. That risk was proposed to be managed through regular, planned reviews of subsidy levels. Ms Hepper explained to the Casework Committee that the RHI would have scheduled reviews “built-in” to the scheme to allow DETI to ensure that the scheme remained fit for purpose and value for money.⁶⁸⁶ Both Ms Hepper and Mr Hutchinson told the committee that a first

682 DFE-04226 to DFE-04227

683 WIT-19552 to WIT-19553

684 DFE-398068; DFE-398070

685 DFE-398070

686 DFE-179470

scheduled review would take place in 2014,⁶⁸⁷ with Mr Hutchinson explaining that any proposed changes would be implemented in 2015.⁶⁸⁸ Ms Hepper also advised the committee that the Department had “included an option to hold emergency reviews” should the need arise.⁶⁸⁹

- 9.33 Nobody appears to have questioned the basis upon which the scheme incorporated such scheduled ‘built-in’ or emergency reviews, or whether they were to be included in the draft regulations. It seems that Energy Division officials were not asked to provide any further detail as to where such an option had been “included” or how it would operate, nor did they furnish any further explanation.
- 9.34 Mr Cooper told the Inquiry that he accepted on trust the assurances from Ms Hepper and Mr Hutchinson that there would be regular reviews and monitoring. While he did not associate the words ‘built-in’ or ‘in-built’ with a statutory or regulatory framework, he was aware that similar undertakings were recorded in the synopsis and risk register.⁶⁹⁰
- 9.35 The committee was also informed that a monitoring board would be created.⁶⁹¹ As has been noted elsewhere in this Report, no such board came into existence. In his evidence to the Inquiry, Mr Hutchinson agreed that such a board would have been helpful, but he was unable to say why it had not been created.⁶⁹²
- 9.36 Mr Hutchinson also informed the committee that, if necessary, the scheme could be closed to new applications mid-year if applications were higher than expected and budgets risked being overspent.⁶⁹³ He told the Inquiry that this was intended as a reference to using the normal procedure of public consultation followed by amending legislation, although he accepted that at the time he would not have known how long such a procedure would have taken.⁶⁹⁴ It is difficult to understand how that could be reconciled with the obviously expeditious assurance of “mid-year” closure, but if that was the intended mechanism it should certainly have been clarified for the committee.
- 9.37 The draft regulations, which contained no power to close or otherwise suspend the scheme, do not appear to have been separately included with the documentation provided for the committee meeting as a discrete appendix. It is possible that a copy of the draft regulations may have been annexed to the State Aid papers. However there was evidence which suggested that the annexed document may have been the 2011 enabling Act rather than the draft regulations.
- 9.38 Mr Cooper told the Inquiry that if the explanation provided to the Inquiry by Mr Hutchinson as to what he meant had been provided to the committee (namely that closure of the scheme mid-year was to be by way of legislative amendment), he would have said “That doesn’t work!”⁶⁹⁵ He told the Inquiry that he had no detailed experience of legislation.⁶⁹⁶ However, he did not ask Mr Hutchinson to explain the mechanism for closure to which he referred, despite having been

687 DFE-179466; DFE-179470

688 DFE-179470

689 DFE-179466

690 TRA-04213 to TRA-04218

691 WIT-06795 to WIT-06796; DFE-179472

692 TRA-02023

693 DFE-179472; WIT-08683

694 TRA-02162 to TRA-02164

695 TRA-04230

696 TRA-04213

copied in to the email of 3 May 2011 from Ms Brankin advising that, in view of the nature of the funding, details of proposed controls to prevent significant under/over spending would be required in order to obtain DFP approval.⁶⁹⁷ Mr Cooper told the Inquiry that he simply accepted the assurance that there was an emergency “big red button” to stop the scheme. He accepted that he had not picked up that no such emergency provision had been included in the DETI risk register.⁶⁹⁸

- 9.39 Mr Connolly said in evidence that it seemed obvious to him that DETI would just tell Ofgem to refuse further applications when an annual budget had been breached.⁶⁹⁹ He was clearly unaware that the proposed regulations would provide that, if eligible, an installation had to be accredited and that, once accredited, a participant would be entitled to subsidy. He did not ask any questions as to how costs were to be controlled and he accepted Mr Hutchinson’s assurance that “the scheme could be stopped mid-year.”⁷⁰⁰ In the course of his evidence Mr Connolly accepted that he should have raised such enquiries.⁷⁰¹
- 9.40 Mr Murphy also told the Inquiry that he was “upset” when he later learned the real nature and duration of the procedure needed to introduce controls.⁷⁰² In evidence to the Inquiry Mr Murphy also said that he believed at the time that there would be some mechanism, not necessarily statutory, which would allow changes in tariffs to be effected.⁷⁰³ However, he does not appear to have raised an enquiry during the casework discussion itself as to what that mechanism might have been.

The RHI Risk Register

- 9.41 The Risk Register, a copy of which was included in the committee documentation, was opened on 1 March 2012 and was described as a “dynamic document” that required any newly identified risks to be added and any risks no longer considered to be appropriate to be removed as the scheme progressed.⁷⁰⁴ The register was to be held by the ‘project manager’, who was to be responsible for its upkeep.⁷⁰⁵ The register included the identification of the following particularly relevant risks:
- (i) Incorrect tariff levels set either too high or too low, one indicator of which was said to be “Higher than expected uptake or overspending on profiled budget (indicating that tariffs are over generous).” The register recorded that external consultants had advised on determining tariff levels and there were to be planned reviews so that tariffs could be revised depending on market conditions.⁷⁰⁶
 - (ii) Insufficient budget secured for RHI payments or for administration of the scheme. The indicators were specified as “Tariffs set at too high/generous a level leading to a higher than expected uptake” and “External circumstances making the tariffs more generous” including “reduction in renewable heating costs.” Actions required included ongoing

697 TRA-04224

698 TRA-04222 to TRA-04224

699 TRA-03397 to TRA-03398

700 TRA-03397 to TRA-03399

701 TRA-03399

702 TRA-02467

703 TRA-02465 to TRA-02466

704 DFE-398613 to DFE-398625

705 DFE-398615

706 DFE-398620

engagement with key industry stakeholders, liaison with the administrator and planned reviews.⁷⁰⁷

- (iii) The risk of inadequate resources “to deliver the project/separate key functions including staff.” The risk indicators included the following: the fact that there was a “small team”; that the scheme involved “complex and technical issues”; and that there were “Varied requirements i.e. policy development, legislation, resource management, programme management, liaison with Ofgem, liaison with stakeholders etc.”⁷⁰⁸ Actions required to manage this risk fully included “Clear programme management structures, monitoring of progress...” and the need for “additional resource.” The impact and likelihood of this risk was specified as “high” and the need for resources noted to be “immediate.”⁷⁰⁹

9.42 Further risks appearing in the register included low uptake, harm to other sectors such as the gas market, failure of renewable heat supply, failure to meet EU and Executive targets, failure to qualify for State Aid, failure in administration and instances of fraud.⁷¹⁰ However, despite the clear identification of a number of risks that were to play a fundamental role in the development of the RHI scheme, there is no objective evidence that the register ever appears to have been further used in the way it was intended. Indeed the deputy principal, Mr Hughes, who joined DETI on 30 June 2014 and effectively took over responsibility for the day-to-day running of the scheme from that time, reporting to Mr Wightman, said that he had not seen the document prior to the Inquiry.⁷¹¹

Project management

9.43 In a written statement to the Inquiry Mr Cooper stated that the committee had sought assurances from Energy Division about the need for robust project management arrangements.⁷¹² The only reference to project management in the casework minutes related to the governance and management of Ofgem management arrangements with a note that Mr Cooper had asked “what controls would be in place for the project management aspect of the contract with Ofgem?” It seems that Ms McCutcheon advised that discussions had taken place with Ofgem.⁷¹³ In a subsequent email Ms Hepper expanded upon the proposed details of the Agency Services Agreement. It does not appear that any questions were raised with regard to the potential application of project management principles to DETI’s own administration of the RHI scheme.

The decision of the Casework Committee

9.44 Ultimately, as reflected in the final version of the minutes of the Casework Committee of 30 March 2012, the Casework Committee confirmed they “were content to approve the RHI and RHPP schemes to proceed to DFP”, conditional upon a number of agreed actions being completed by the Energy Division officials.⁷¹⁴ The matters to be dealt with were set out in the minutes.⁷¹⁵

707 DFE-398620

708 DFE-398623

709 DFE-398623

710 DFE-398622 to DFE-398624

711 TRA-05863 to TRA-05864

712 WIT-27313

713 DFE-382578

714 DFE-179464 to DFE-179476

715 DFE-179476

- 9.45 As a matter of fairness to the members of the Casework Committee, it is of note that they did require (at the initial request of Mr Angus, but with which his committee colleagues agreed) an addition to the draft minutes specifically to record an action required of the presenting officials that “the business case to DFP (and the Minister) should explicitly address the reasons why the RHI is favoured over the Challenge Fund.”⁷¹⁶ This was so even though the presenting officials had not included any reference to the Challenge Fund in the synopsis they initially presented to the Casework Committee.

Findings

54. The synopsis provided for the Casework Committee, upon which the members of the committee were bound to focus, was incomplete and contained inaccurate information in some key respects. In addition, the evidence base for comparing the administration costs of the Challenge Fund and the RHI scheme was not well founded. The Inquiry agrees with Mr Angus that the committee should not have been invited to approve a policy on the basis of inaccurate or incomplete information. The Inquiry accepts that additional information was available in the further documentation supplied to the committee but, as suggested above, it is obviously important that the relevant matters were clearly and accurately set out in the synopsis itself, which was designed to summarise the key issues for consideration by the committee.⁷¹⁷
55. The incomplete and inaccurate information that was provided to the Casework Committee did disclose a significant difference (over £200 million) between the overall cost of the Challenge Fund and the preferred RHI. Given that the committee was concerned to understand why the RHI was preferred in the context of the Challenge Fund option being said to produce the most renewable heat at the lowest cost, the minutes should have clearly set out how much more expensive the chosen policy was over what appeared to be a viable alternative, and detailed why the committee accepted the reasons put forward by Energy Division for preferring the RHI.
56. Ms Hepper accepted that no comparison of the costs of administration of a Challenge Fund as an alternative to an RHI scheme was placed before the committee.⁷¹⁸ In the course of evidence, reference was made to the generally constrained financial circumstances that existed at the time when the Casework Committee was considering these issues and the difficulty in persuading HMT to reconsider any decision not to provide the costs of administration out of AME funds that it was providing. If the committee considered that (what was said to be) the unaffordable cost of the administration of the Challenge Fund meant that a much more expensive policy (in overall terms) was to proceed, then this should have been clearly recorded in the casework minutes. The Inquiry finds it difficult to understand why the committee would not have drawn specific attention to the overall cost disparity as disclosed in the material, and required that the reasons for proceeding in spite of that disparity be specifically drawn to the Minister's attention.
57. Inherent in the committee's challenge/reassurance role must have been that it did have the power to refuse to approve a "shovel ready" policy and to send it back pending informed investigation of whether it did in fact represent value for money in public expenditure terms. However, as Mr Murphy pointed out, the "shovel ready" approach encouraged the assumption by the Casework Committee that the material put before it was accurate.⁷¹⁹ In the case of the RHI scheme there had been a lot of development including a public consultation and State Aid application. Mr Murphy told the Inquiry that the committee did not have a strong reason to reject the proposal and his own view was that the lack of administrative funding took the Challenge Fund "off

717 TRA-02632

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719 TRA-02459 to TRA-02460

the table”.⁷²⁰ In the course of giving oral evidence, Mr Angus noted that the proposal was presented by Energy Division officials, based on what was said to be CEPA’s position as “This is the option that seems to be preferred” reflecting “a momentum” in favour of an NI RHI scheme, although, in his view, not for any reason other than the Energy Division officials felt it was the best option.⁷²¹

58. A fundamental error in the synopsis provided to the Casework Committee was the statement from Energy Division officials that tiering of tariffs was not included in the NI RHI scheme because in each instance the subsidy rate was lower than the incremental fuel cost. This statement was made to the Casework Committee despite the fact that the synopsis also included information that showed the price of biomass fuel to be less than the comparative price of oil, and, more importantly, less than the proposed subsidy. While the primary responsibility for the fundamental error lay with the expert consultants, CEPA, Energy Division officials, having decided to recommend the RHI scheme for approval, and in the light of the risk of overcompensation which had been identified, should have identified this error and not repeated it to the Casework Committee.
59. The Inquiry can understand, in the circumstances, that it may have been difficult for the Casework Committee members (who had not been engaged with the consultants, had not developed the policy and who were reading a lot of information about a new scheme over a short period of time, including a synopsis that specifically told them tiering was not necessary in the NI RHI scheme) to notice the error.
60. The evidence available to the Inquiry indicates that the Casework Committee sought and received a number of assurances from Energy Division officials about the RHI scheme, which the members of the committee took at face value. However, some of those assurances were without substance. In addition, some assurances were given to the committee, but the action thereafter required to make good on the assurance was not taken. The Inquiry finds that there was no effective mechanism for ensuring that the assurances given to the Casework Committee were subsequently honoured.
61. Further, the evidence available to the Inquiry indicates that the Casework Committee did identify steps that the presenting officials needed to take following the grant of approval by the committee. The Inquiry notes there was also no effective mechanism for ensuring those steps were actually taken.
62. Mr Hutchinson had claimed to the Casework Committee that “if necessary the scheme could be closed to new applicants mid-year if applications were higher than expected and budgets risked being overspent.”⁷²² He did not explain the mechanism by which this budget protection was said to be available. He should have done. In addition, while the Casework Committee panel was entitled to operate on the assumption that what it was being told was accurate, the issue of budget protection was sufficiently important that the committee should have sought and obtained confirmation of the mechanism by which this budget protection was said to have been available.

720 TRA-02542 to TRA-02543

721 TRA-02608

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63. The Energy Division presenting officials should have known, arising from the April 2011 email exchanges between Ms Clydesdale and Mr Parker,⁷²³ that the funding for the RHI was a form of AME that carried a potential DEL consequence. As a result, Energy Division had received an instruction from DETI Finance in May 2011⁷²⁴ to treat RHI as if it was funded through DEL, and to avoid any overspends. The fact that RHI was funded through AME, but had potential DEL consequences and was to be treated as DEL, should have been specifically brought to the attention of the Casework Committee by the Energy Division presenting officials. Had it been, it is likely that there may have been greater testing of the controls which the presenting officials asserted would be in place. The chair of the Casework Committee had also been copied into the April/May 2011 emails in his role as Finance Director. It was unfortunate that he did not remember about them during the 2012 casework process.
64. It seems that even the final draft of the Casework Committee minutes may not have recorded all relevant exchanges. Mr Cooper told the Inquiry that, in the casework meeting, he had raised with Ms Hepper the issue as to whether, given its novelty and complexity (both technical and economic), the scheme should ever have been accepted as suitable for an already overstretched Department to develop and operate. He told the Inquiry that he had queried whether the scheme was appropriate at all for DETI and why it had not been outsourced to a more specialised body such as Invest NI. He also said that he asked why it had been decided not to combine with the GB-based scheme using appropriately adjusted NI rates. Mr Cooper told the Inquiry that he received a complicated explanation based on legislation and legal reasons. These were all important points, which should have been recorded in the minutes of the Casework Committee if they were discussed at the meeting as Mr Cooper contends they were. Mr Cooper said that, with hindsight, he wished that he had ensured that these exchanges had been included in the minutes.⁷²⁵
65. The presentation of the RHI policy to the Casework Committee (responsibility for which lies with the Energy Division presenting officials) was incomplete, included errors, and failed to identify a number of potential risks; those problems went undetected. Further, a number of assurances sought by the committee, and given by the presenting officials, were not subsequently honoured. Consequently, the Inquiry considers that the casework process did not fulfil its purpose as an effective challenge and assurance mechanism.

723 WIT-00842; WIT-00843

724 WIT-00840; WIT-00841

725 TRA-04118 to TRA-04121