RENEWABLE HEAT INCENTIVE INQUIRY

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By post and email: caroline.martin@finance-ni.gov.uk

27 November 2018

Dear Sir

Re: The Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme
Provision of a Section 21 Notice requiring the provision of evidence in the form of a written statement

I am writing to you in my capacity as Solicitor to the Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme (known as 'the RHI Inquiry') which has been set up under the Inquiries Act 2005 ('the Act').

I know that you are by now very familiar with the work of the Inquiry and its Terms of Reference from your previous engagement with it; and the Inquiry remains grateful for the witness statements and oral evidence you have already provided.

However, as you may be aware, the Inquiry continues to seek some further written evidence from witnesses and participants, particularly where issues have arisen in evidence recently provided in respect of which it is necessary, or appropriate, to provide an opportunity for further response. The Inquiry Chairman also retains the right to require witnesses to attend to provide further oral evidence, and consideration will be given to whether that is necessary in light of additional written evidence which is received.

In the circumstances, please find enclosed with this letter a further Section 21 Notice requiring you to provide evidence to the RHI Inquiry Panel in the form of a further written statement addressing the matters identified in the Schedule to the Section 21 Notice.

Where you have been asked about a matter which has been addressed to some degree in your previous written and you are clear that there is no further evidence which you can provide, please simply say so.

In the interests of fairness, you are also encouraged to provide, through the further written statement now being requested of you, any additional information that you can which is relevant to the Inquiry's investigation of the matters falling within its Terms of Reference in relation to any of its phases, in light of any additional matters which have emerged during the course of the Inquiry's evidence-gathering processes, particularly in the period since the completion of your oral evidence on 28 June 2018.

As the text of the Section 21 Notice explains, you are required by law to comply with it.

As before, it is vital that the further witness statement you provide to the Inquiry is your own evidence, absent the influence of others; that it is comprehensive; and that it fully explains your involvement in the matters about which you have been asked.

In the event that you require or desire access to some documentation, the arrangements set out in my previous correspondence continue to pertain; and you may contact Terence Coyne at DfE to make arrangements to permit such access or, alternatively, revert to me.

The questions in the attached notice refer to various documents. For the most part, these documents have already been provided to you or are already available to you in your capacity as an enhanced participant (e.g. references to the bundle of witness statements with a WIT prefix and references to the Inquiry hearing transcript bundle with a TRA prefix). Where they have not been provided previously, a copy of the relevant document is enclosed with the Notice.

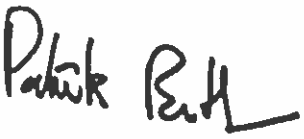
I also remind you, as before, of the restriction orders made by the Chairman of the RHI Inquiry, which affect how you may deal with this correspondence and its enclosures (which are also provided to you under a duty of confidentiality to the RHI Inquiry). You may, of course, share the correspondence and the enclosed Notice and documents with your legal representative(s), under the same conditions as I set out in my previous correspondence.

Given the tight time-frame within which the RHI Inquiry must operate, the Chairman of the Inquiry would be grateful if you would comply with the requirements of the Section 21 Notice as soon as possible and, in any event, by the date set out for compliance in the Notice itself.

Finally, I would be grateful if you could acknowledge receipt of this correspondence and the enclosed notice by email to Patrick.Butler@rhiinquiry.org.

Please do not hesitate to contact me to discuss any matter arising.

Yours faithfully



Patrick Butler
Solicitor to the RHI Inquiry
02890408928

SCHEDULE

[No 234 of 2018]

Letter re appointment of Special Adviser

1. The document at **WIT-26360/1** is a copy of a letter from Minister Bell to Dr McCormick, dated 20 May 2015, confirming the selection of Timothy Cairns as his Special Adviser. In his oral evidence to the Inquiry (at **TRA-12278 to TRA-12284**) Jonathan Bell stated that it was the Private Office in the Department which drafted this letter which was then given to him to sign. As to this, please address the following matters:

   a. Please explain the process undertaken by officials within DETI and, to your knowledge, by the Minister himself or herself, in relation to the appointment of a Minister's Special Adviser? Please also address who developed this process and, insofar as you are aware, whether the process undertaken by officials within DETI was the same as, or similar to, that used in other Departments.

   b. Set out the involvement (if any) which you had in the process of appointment of the Special Adviser.

   c. To your knowledge or belief, who drafted the 20 May 2015 letter from Jonathan Bell to Andrew McCormick and how, when and from whom were they provided with, or did they come by, the statements of fact and statements of opinion contained within the letter?

   d. Set out any other comments you may have in relation to the issue of Special Adviser appointments (particularly with reference to, although not limited to, the appointment of Mr Cairns to work for Minister Bell).

3 June 2015 meeting

2. In relation to the senior team meeting of 3 June 2015 in relation to RHI, Trevor Cooper has said to the Inquiry (see **TRA-15864 to TRA-15868**) that it was at this 3 June 2015 meeting that the idea was put forward of describing the 2013 RHI Phase 2 consultation process as a "*review*", which would then mitigate the fact that the 2014 scheme review (as previously committed to by the Department at the inception of the Scheme) had not been carried out. Trevor Cooper described this as a "*fig leaf*" put forward by Stuart Wightman at the 3 June 2015 meeting. As to this:

   a. Do you recall the idea of describing the Phase 2 development of RHI as a "*review*" being put forward in the meeting on 3 June 2015?

   b. Do you recall any discussion about this within the Department either at that meeting or otherwise? If so, please give details. (Andrew McCormick indicated in his oral evidence – see **TRA-15390/1** – that he did not feel the Department could "*stand over*" the later reference in the addendum business case to the "*first review*" of the RHI Scheme being undertaken in 2013.)

   c. Were you party to any plan or strategy to seek to portray the Phase 2 consultation as a 'review' required by, for instance, the original DFP approval of the RHI Scheme?

3. Insofar as not addressed fully in your written or oral evidence to date, please give as full an account as you can of the matters which were discussed and decided at the meeting of 3 June 2015.

4. Dr McCormick gave evidence in relation to the treatment of the RHI issue at the meeting of 3 June 2015, *inter alia*, during his oral evidence on Day 84 of the Inquiry's oral hearings (see **TRA-12174 to TRA-12186**). In the course of that evidence he indicated that DETI did not take "*the opportunity to step back and do a more fundamental review*" at that stage (which he said was "*a very, very good challenge*") (**TRA-12177**); that DETI was "*not focussed on the potential risks to value for money*" (**TRA-12180**); that he regrets that he "*didn't ask more*

fundamental questions about the scheme at this meeting" (**TRA-12181**); and that, "*in point of fact, we didn't look backwards enough*" (**TRA-12186**). As to this:

a. Is there any material respect in which you disagree with Dr McCormick's evidence as to what DETI ought to have done at this point?

b. What more fundamental steps, if any, do you consider ought to have been taken at or about this point by the senior team in DETI (having regard to the failure to conduct a review of the Scheme, failure to secure DFP re-approval for the Scheme, and predicted budgetary difficulties with the Scheme which had by then been identified)? Please address this issue *without* reference to the benefit of hindsight (whether or not you also wish to make observations *with* the benefit of hindsight).

c. As the next most senior official to Dr McCormick within DETI at that point with direct oversight for Energy Division, what responsibility (if any) do you consider that you bear for any failure to 'step back' and take a broader or deeper look at what had gone wrong (or what was going wrong) with the RHI Scheme at or about this point?

8 June 2015 issues meeting

5. In the course of Timothy Cairns' oral evidence (**TRA-12655**) he was asked about your email to John Mills in relation to the Issues Meeting with the Minister on 8 June 2015 (**WIT-27553**). In the context of the reference in the email to the Minister noting the position and asking to be kept informed, the Inquiry Chairman observed (**TRA-12660**) that this was at odds with former Minister Bell's recollection of Timothy Cairns preventing the officials from raising or talking about RHI (see, for instance, **TRA-12258 to TRA-12261**). In light of the additional evidence which has been given about the conduct and content of the 8 June 2015 Issues Meeting, is there anything further evidence which you can provide to assist with what occurred at this meeting (and, in particular, do you still consider your email to represent an accurate note of what occurred)?

17 June 2015 meeting

6. Provide any further evidence you can about the Senior Team Meeting on 17 June 2015 to discuss the difficulties which had arisen in relation to the RHI Scheme[1]. Insofar as you can, your response should include, but not be limited to, what was said and by whom in relation to:

   a. The Scheme's budget, any limitations on it and the ability, or potential ability, to exceed the scheme budget, including the reason(s) why the RHI Scheme was exceeding, or likely to exceed, its budget;

   b. Possible solutions or proposals for preventing or mitigating the Scheme exceeding its budget, including what the purpose was of introducing the tiered tariff for medium sized biomass boilers and what other possible amendments could be made to the Scheme and the reasons for any such amendment (or, as the case may be, the reasons against pursuing any such amendment);

   c. What inherent, systemic or design problems existed within the RHI Scheme;

   d. The issue of returns under the Scheme, including whether the issue of State Aid was raised together with the context and reasons for it being raised; whether the question of over-compensating recipients or providing a rate of return greater than intended by Energy Division was

[1] For your assistance, Andrew McCormick gives evidence in relation to this meeting at **WIT-26230 to WIT-26233** and at **TRA-12186 to TRA-12199** and **TRA-15147 to TRA-15179** in his oral evidence; Eugene Rooney refers to the meeting at **WIT-24436** of his written evidence; Trevor Cooper gives evidence of the meeting at **WIT-19058 to WIT-19059** and at **TRA -15788 to TRA-15794, TRA-15826 to TRA-15832, TRA-15846 to TRA-15847, TRA-15857, and TRA-15938 to TRA-15948**; Johns Mills gives his account of the meeting at **WIT-14557** and **TRA-11091 to TRA-11099** and **TRA-11116**; Shane Murphy gives evidence of the meeting in his written statement at **WIT-19648 to WIT-19655**; and Stuart Wightman gives his account at **TRA-10684 to TRA-10690**.

discussed; and whether it was considered that the existing Scheme did, or had the potential to, create a 'perverse incentive' to generate heat;

e. The value for money, or otherwise, of the existing Scheme; and

f. The possibility of immediate suspension of the Scheme and, if this was discussed, the context in which such a course of action was proposed and the reasons why such a course of action was rejected.

7. Without prejudice to the generality of the foregoing enquiries, and insofar as not already addressed comprehensively above, arising out of paragraphs 17-20 of Trevor Cooper's witness statement of 4 September 2018 (at **WIT-19058/9**):

a. specify whether you agree that Trevor Cooper "*formally escalated [his] concerns around the potential overcompensation issue*" in the manner suggested by him at paragraph 17;

b. specify whether you agree that Shane Murphy suggested that "*an urgent focussed review of the Scheme be undertaken that would include a review of tariffs across each technology*" in the manner suggested by Mr Cooper at paragraph 18; and

c. specify whether you agree that Mr Murphy advised Energy Division "*to discontinue promotion of the Scheme so that demand was not further increased*" in the manner suggested by Mr Cooper at paragraph 20;

in each instance also describing any response to these suggestions elicited from any other attendee(s) at the meeting and, insofar as you are aware, the reasons for not accepting any suggested or recommended course of action.

8. Please also set out your comments on whether you (and, in your view, others) fully understood and appreciated the severity of the issues and problems relating to the Scheme as they were being discussed in the meeting; whether at the time you felt the outcomes of the meeting sufficiently dealt with the issues

and problems relating to the Scheme and why; and whether you take issue with any of the evidence of the other persons present at the meeting.

9. Unless already comprehensively addressed in your response to the above, set out as clearly as you can what specific responsibility or tasks *you* assumed as a result of the 3 and 17 June meetings to take forward work on resolving the issues with the RHI Scheme.

Consideration of the issue of over-compensation during summer/autumn 2015

10. Trevor Cooper in an email to Shane Murphy of 12 June 2015 **[DFE-146565]** observed that, in respect of the then draft addendum business case in relation to the RHI Scheme, "*the VFM position is a statement… with no real factual position around why it could be considered vfm*"[2]; and that there was "*a fair bit of [naivety] around the issues*", including the possibility of overcompensation. As to this, specify whether, and if so how and the extent to which, you were aware of Trevor Cooper's (and/or Shane Murphy's) concerns about these matters in June 2015 (and, if not, when and in what circumstances, if at all, you became aware of them).

11. Insofar as not already addressed in your written and oral evidence, set out in as full detail as possible any discussion or communication you had with any other officials in the summer/autumn 2015 period in relation to the issues of (a) the value for money of the RHI Scheme, (b) the possibility that the Scheme was over-compensating claimants, and the effect that might have been having on scheme uptake, and (c) the question of whether or not the Scheme offered a perverse incentive[3].

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[2] Assuming the 'not' within that sentence (which has been removed in the above quotation) is a typographical error, which it appears to be in the context of the rest of the email (as to which, please indicate if you disagree).

[3] In this regard, your attention is also drawn to a draft of what became the 2015 Addendum Business Case (see **DFE-147524 to DFE-147549**), which (at paragraph 5.13) refers to "*the risk of "gaming" and installations being operated over and above the required kilowatt hours just to generate RHI income*"; this draft being produced on 27 July 2015.

12. Please also address your view of Trevor Cooper's averment (at paragraph 7 of his witness statement of 4 September 2018: **WIT-19054**) that John Mills did not "*take on board the advice from the head of finance or the head of analytical services unit around potential overcompensation*", insofar as you are able to offer evidence on this point.

13. Insofar as not fully addressed above, set out your understanding of the issue of actual or potential over-compensation in the RHI Scheme (including potential breach of the European Commission's state aid approval) in early June 2015 and, if different, later that summer; including what steps, if any, you took to deal with this or escalate it.

Addendum business case

14. Set out such further evidence as you can about your involvement (if any) in the process of drafting or approving the addendum business case for the RHI Scheme. In the course of your answer, please also address Mr Cooper's contention (**WIT-19059**) that, in terms, Energywise was inappropriately prioritised over work on the RHI addendum business case by Mr Mills; and Mr Mills' response (**WIT-26059 to WIT-26060**) that Mr Wightman was reporting directly to you in this regard.

15. If and insofar as you read or considered the addendum business case, please address the following issues:

    a. What did you make of the reference at paragraph 2.10 (**DFE-04754**) that: "*... the Department undertook its first review of the RHI in 2013 to improve scheme performance*"? In particular:

        i. Did you consider this to purport to be a reference to the review required by the DFP approval for the RHI Scheme? Please give reasons for your answer.
        ii. If so, did you consider this to be accurate? Again, please give reasons for your answer.

iii. If you did not consider the claim to have undertaken a review to be accurate, what, if anything, did you do to question or correct it?

b. What did you make of the reference at paragraph 4.16 **[DFE-04768]** that: "*The introduction of the tiered tariff will also reduce the risk of 'gaming' and installations being operated over and above the required kilowatt hours just to generate RHI income*"? In particular:

i. Did this cause any issues of concern for you?
ii. Did you consider this to be a reference to a perverse incentive?
iii. Did you make any enquiry as to how the RHI Scheme was being gamed and/or whether installations were being operated above required hours just to generate income? If not, why not?
iv. Did you make any enquiry, or cause any enquiry to be made, so as to assure yourself or the Department that the RHI Scheme was not being gamed in this way? If not, why not?

16. Do you consider that a tariff review should have been conducted in advance of adjusting the tariffs in the 2015 Regulations? Please give reasons for your answer. If so, please outline why (in your view) a tariff review was not conducted at that time.

Classification of material for Minister's consideration

17. In his oral evidence to the Inquiry (at **TRA-12734**), when asked about the 8 July 2015 submission to Minister Bell which had been marked "*Urgent*", Timothy Cairns stated that "*... perhaps the demarcation of urgent maybe isn't as urgent as what officials might say it is. Certainly, that was in my mind*"; and "*I think I say in my evidence officials often used "desk immediate" and "urgent" at times when it may well be inappropriate...*" See also Mr Cairns' written evidence at **WIT-20204**. As to this, please address the following matters:

a. Set out your understanding of what was meant by the demarcation of 'urgent' or 'desk immediate' on documents or material being submitted to the Minister, including (insofar as you can) (i) the level of urgency required for each such classification; and (ii) how quickly you would expect a submission bearing each such classification to be read and approved.

b. Would you agree that there was an inconsistency in the way in which such classifications were used on submissions? Please give reasons for your response.

c. To your knowledge or belief, was any guidance on the use of such demarcations given to officials within DETI or the wider NICS?

d. Would you agree that these classifications were "*often abused*" (as Mr Cairns' suggests)? Please give reasons for your answer and, if appropriate, the steps you took as Deputy Permanent Secretary in DETI to ascertain the genuine level of urgency of particular submissions.

Jonathan Bell's email accounts

18. Attached to this Notice is a sample of emails received in evidence by the Inquiry (**INQ-64006 to INQ-64011**, **INQ-66001 to INQ-66008** and **INQ-66031**) showing departmental business, including Ministerial submissions, being sent to Minister Bell's private email account (jonathanbell620@hotmail.com) by departmental officials and by his special adviser. Further attached to this Notice are documents (**INQ-64012, INQ-62013, WIT-21908 to WIT-21910 and WIT-21911 to WIT-21912**) which appear to show Minister Bell transacting departmental business, including giving his approval to a Ministerial submission, using his private email account (johnathanbell620@hotmail.com). As to this, please explain in detail:

a. The email addresses you used to communicate with Minister Bell for the purpose of transacting departmental business, including who gave you

each of those email addresses, when was each given to you and whether any limitation was placed on the circumstances under which departmental business should be sent to that email address;

b. Whether, and if so how often and why, you sent emails containing departmental business to Minister Bell's private email account rather than an NICS account; and

c. Any instructions of which you are aware given by Minister Bell as to whether departmental business could or should – or could or should not – be sent to his private email account.

Contact with the Minister and Special Adviser in summer 2015

19. In his oral evidence to the Inquiry (at **TRA-12332 to TRA-12333**) Jonathan Bell gave evidence, in relation to his holiday(s) during the summer of 2015, to the effect (a) that he gave instructions that, if there was anything urgent which needed to be addressed *before* he went on holiday (on 10 July 2015), that should be addressed before he left; and (b) that he left instructions that, if there was anything urgent which needed to be addressed while he was *away* on holiday, that should be forwarded to him by email. As to this:

a. Please comment on Jonathan Bell's assertion that all urgent business was to be cleared before he left on holiday. In particular:

i. Do you accept that such an instruction was given?
ii. Were you aware of any such instruction?
iii. What steps, if any, did you take to ensure compliance with this instruction generally and in respect of the 8 July 2015 submission in particular (especially in light of your evidence that you played some role in the approval of the draft submission)?

b. Please comment on Jonathan Bell's assertion that he told officials he could be contacted on holiday regarding urgent matters. In particular:

i. Do you accept that such an instruction was given?

ii. Were you aware of any such instruction?

iii. What steps, if any, did you take to ensure compliance with this instruction generally and in respect of the 8 July 2015 submission in particular?

iv. What is your response to the evidence of Timothy Cairns (see, for instance, **TRA-12861** and **TRA-12933**) to the effect that, if officials wanted the RHI issue deal with more speedily during the summer of 2015, they could have taken steps to achieve that?

v. To your knowledge or belief, were there any urgent matters which were brought to your attention during the Minister's holiday in respect of which he was then contacted?

20. In his oral evidence to the Inquiry (at **TRA-12861 to TRA-12863**) Timothy Cairns said there was a build-up of Ministerial submissions while Minister Bell was on holidays during the summer of 2015; and that the Minister's Private Secretary and he agreed it was "*unsatisfactory*" that Minister Bell was not present for periods at this time. Please provide your comments on this evidence by Timothy Cairns including, but not limited to, describing (a) whether you agree with Mr Cairns' evidence and (b) if so, any action you took to bring the backlog of submissions to Minister Bell's attention or any other person's attention.

21. In his written and oral evidence to the Inquiry, Mr Cairns has also indicated that he talked the Minister through the 8 July 2015 submission shortly before the Minister went on holiday in July 2015 and a further time at or about the end of July 2015 before the Minister went to his holiday house in Portstewart (see, for instance, **WIT-20071**; **WIT-20204 to WIT-20206**; and **TRA-12741 to TRA-12750**). This appears to be at odds with Minister Bell's account (see **WIT-22627/8**, **TRA-12353 to TRA-12357** and **TRA-12403 to TRA-12406**). As to this:

a. Are you in a position to offer any evidence as to whether or not Mr Cairns discussed the 8 July 2015 submission in detail with Mr Bell on either of

the two occasions he so alleges? If so, please provide as full details as possible.

b. In the course of your response, please also express your view, from your experience, as to whether Mr Cairns sitting beside Minister Bell in his office going through submissions in detail with him was "*the usual way in which Mr Bell was briefed*" (as Mr Cairns appears to suggest; but which Mr Bell appears to deny: see, for example, **TRA-12356**).

22. As to the suggestion in your evidence that it seemed as though there was opposition from the Special Adviser in relation to the changes proposed in the 8 July 2015 submission and/or that it seemed that you were on 'different teams':

a. Mr Cairns has made the point that no one suggested this to him at the time (see **TRA-12825/6** and **TRA-12857/8**). What, if anything, do you wish to say in response to that?

b. Mr Cairns also asserts that he mentioned to officials at that time his experience with NIRO as a basis for his concerns about too swift an implementation of the RHI changes (see **TRA-12858**). What, if anything, do you wish to say in response to that?

23. As to the 'additional caveats' on the AME funding which you have indicated you discussed with Mr Cairns at the meeting with him on 28 July 2015:

a. Why, in your view, do later documents emanating from officials not reflect this caveat (e.g. the revised version of the 8 July 2015 submission) (see the discussion at **TRA-12836/7** and **TRA-12880**)?

b. Please provide a response to Timothy Cairns' suggestion (**WIT-20214**) that, following John Mills' email to him of 30 July 2015, he (Mr Cairns) asked for further information from you and, specifically, for this to be corroborated with DFP (but that he received no further clarification). Without prejudice to the generality of the foregoing:

i. Do you accept that Mr Cairns asked you for further information in relation to the funding position?

ii. If so, please provide as full details as possible of the request and what, if anything, you did on foot of it?

iii. Did you have any engagement with DFP in relation to funding issues as to RHI (over and above your discussion with DFP officials about the possible need for a Ministerial Direction, already referred to in your evidence)?

24. Please provide a response to the suggestion from Mr Cairns (**WIT-20212/3**) that, in the meeting between him and yourself and John Mills on 28 July 2015, matters were discussed which "*had not been included properly or fully in the [8 July 2015] submission*" and that you and John Mills "*agreed that this was unacceptable and agreed to provide a summary in writing*".

25. Please explain why your email to Timothy Cairns rejecting the suggestion of increasing the tier threshold to 3,000 hours (**DFE-278983**) was sent by you to Trevor Cooper (an issue raised by the Inquiry Chairman at **TRA-12854**).

26. What comments do you have to make on Timothy Cairns' evidence to the effect that he pursued with you the issue of delaying the date for the implementation of tiered tariffs beyond 1 October 2015 in late July and determined that the date could not be moved (see **TRA-12854/5**)?

27. What comments do you have to make on Timothy Cairns' written evidence to the effect that "*it is clear that in the summer of 2015 senior civil servants had private concerns with Mr Bell's competence that they later shared with [him]*" (**WIT-20205/6**)?

Warnings re abuse of the RHI Scheme

28. In his written evidence to the Inquiry (at **WIT-20078 to WIT-20080**), Timothy Cairns stated that he had raised with you and Dr McCormick concerns

regarding potential fraud in the RHI scheme. You responded to this contention in your written evidence at **WIT-27536 to WIT-27538** and in your oral evidence at **TRA-11722 to TRA-11726.** Timothy Cairns has made subsequent remarks relevant to this issue in his oral evidence (at **TRA-12819 to TRA-12820** and **TRA-12842 to TRA-12845**) and in a further written statement (at **WIT-20215 to WIT-20220**), including that he raised "*all issues in Dr Crawford's email*" of 31 July 2015 with you (see the email at **IND-27552/3**). Please provide a response to this further evidence from Timothy Cairns. Without prejudice to the foregoing:

i. Do you accept that Mr Cairns raised with you the suggestion that "*the current problem is that it pays producers to heat houses when their houses are empty…*"?

ii. If so, please provide as full details as possible of what was passed on to you (and when) and what, if anything, you did on foot of it?

iii. If not, can you think of any conversation(s) or exchange(s) with Mr Cairns which might lead him to believe or recall that he raised these matters with you?

iv. Please provide any comments you may have on whether (i) the reference to "*suggestions of heating empty sheds*" in John Mills email to you of 11 August 2015 (**WIT-11708**), and/or (ii) the evidence the Inquiry has heard generally as to Mr Cairns' tendency to be more open with officials than might usually be expected of Special Advisers, might be thought to be corroborative of his evidence that he passed on to you the content of Andrew Crawford's email to him of 31 July 2015.

29. In the course of his oral evidence on Day 102 of the Inquiry's hearings, Andrew McCormick was asked about concerns of potential abuse of the Scheme which were raised with Ofgem (as a result of concerns which Timothy Cairns had raised with you, although possibly also as a result of concerns which Andrew Crawford had raised with Dr McCormick which he had passed on to you): see **TRA-15267 to TRA-15280**. In the course of that evidence Dr McCormick was

referred to Stuart Wightman's letter of 19 October 2015[4] to Ofgem referring to "*anecdotal evidence of 'gaming'*" (**DFE-408261/2**); and Stuart Wightman's email to Trevor Cooper of 17 November 2015 referring to checking that an installation "*isn't simply heating an empty building*" or "*isn't being run excessively to claim increased RHI payments*" and other means by which the Department could "*help minimise the risk of boilers being run just to generate RHI income*" (**DFE-286119 to DFE-286120**). As to this:

a. Please outline the extent to which you were aware of these documents and/or the issues of substance being discussed in them.

b. Is there anything else you wish to say about the apparent awareness, within DETI, at this stage about the possibility of "*boilers being run just to generate RHI income*" and/or concerns about heating empty buildings? If so, please provide the details in response to this Notice.

c. In light of the matters identified above, and the further evidence in the recent statement of Claire Hughes (**WIT-18168 to WIT-18188**)[5] as to the state of knowledge of (at least) rumours of abuse which were being discussed within the Department in and around November 2015:

    i. Why, in your view, did the Department not initiate an Internal Audit Service investigation or review at that point (as occurred later, in response to the anonymous whistle-blower allegations passed on by the First Minister in January 2016)?

    ii. Why (if indeed this was the case) was no other step taken at this stage to enquire more deeply into the level of compensation available under the tariffs applicable before the November 2015

[4] Erroneously dated 19 October 2014.

[5] In which she indicates that she believes that information gleaned from her installer would have been passed on at the DETI Board meeting of 17 November 2015 (by which time there were "*widespread rumours of abuse*" that were being discussed and "*news already in the public domain of allegations of fraud*", (to which you have been referred above)

amendments to the Scheme and/or the Scheme's vulnerability to exploitation or abuse?

4 February 2016 submission

30. Can you confirm that the version of the February 2016 submission at **DFE-289353** (i.e. the version which does *not* include tracked changes of the changes requested by Timothy Cairns) is the one which was sent to the Minister (as opposed to one with tracked changes on it, as Timothy Cairns believed to have been the case).

31. Please provide any further comments you may have in relation to Timothy Cairns', or Jonathan Bell's, evidence as to the meeting at which the changes to the 4 February 2016 submission were discussed (see **TRA-12952 to TRA-12955** and **TRA-12543 to TRA-12554** respectively). (In the course of your answer, if you consider that Minister Bell received a copy of the submission *without* tracked changes, please also explain how, to your knowledge or belief, the Minister was aware of the alteration to the submission in order to raise questions about it).

RIA in relation to Scheme suspension

32. On 24 February 2016, Minister Bell was provided with a submission and accompanying Regulatory Impact Assessment (RIA) in relation to the timing of suspension of the Scheme (*after* it had been determined to suspend the Scheme and, following the expedition of Scheme suspension, a further decision to permit potential applicants a further two-week delay within which to make applications for accreditation, which had been given effect to by the Department by the issue of a notice under the recently approved 2016 Regulations): see **DFE-226738 to DFE-226746** (with the version bearing the Minister's signature of that same day at **DFE-226747/8**). The submission makes clear that an earlier RIA had now been "*revised to take into account the postponement of the suspension until the 29th February*" (paragraph 2). It also states (paragraph 3) that: "*All four options show that the RHI has a positive impact on the NI*

economy (i.e. the benefits outweigh the costs). The largest net benefit lies in keeping the scheme open." The RIA itself also suggested that each of the four options, ranging from immediate Scheme closure to keeping the Scheme open to new entrants until 2020, had a positive impact on the economy (*i.e.* Scheme benefits outweighed Scheme costs), with the largest net benefit being in keeping the Scheme open to 2020. In due course, the RHI was published with the 2016 Regulations (see **LEG-00109 to LEG-00114**). In his oral evidence to the Inquiry on 12 September 2018, Timothy Cairns stated that he was "*uncomfortable*" with the picture painted in these documents and that it "*jarred*" with him; that it was "*bizarre*"; that neither he nor the Minister believed it; and he agreed that it was false (see **TRA-12960** to **TRA-12962**). In respect of the said documents, please address the following matters:

a. Explain your involvement (if any) in their creation.

b. Set out your knowledge of the reasons why these documents present such a picture of the RHI Scheme's benefits.

c. Explain the action (if any) you took to challenge or question what was stated in these documents;

d. Set out your view of the accuracy of what was stated in these documents and, in particular, whether you agree with Mr Cairns' recent evidence that they presented a false picture.

e. The RIA specifically notes that "*four suspension dates have been considered*". Please explain, insofar as you can, in light of the way in which decisions had been taken as to the timing of suspension of the Scheme, how it could be said that these four options had been considered.

f. The RIA also specifically states that, "*another large spike is not anticipated under option 2*" (the option which was selected). Please set out your understanding of the assessment undertaken as to the level of spike which might be anticipated under option 2 (the provision of a further

two weeks before Scheme suspension) and any analysis underpinning that assessment.

g. The RHI also states that, "*The RHI Schemes have been very successful*". Please explain, insofar as you can, the basis on which this was said. In the course of your answer you may also wish to address the recent oral evidence of witnesses such as Simon Hamilton to the effect that he was concerned that, even after urgent Scheme closure had been required and concerns about gaming or fraud within the Scheme had become known, Energy Division still appeared to consider the Non Domestic RHI Scheme to have been a success.

Michael Woods' evidence

33. In the course of the evidence of Michael Woods, given on 19 October 2018, he appeared to make a number of express or implied criticisms of Messrs Wightman and Hughes and/or other officials within Energy Division's conduct in relation to, *inter alia*, an asserted failure to bring relevant matters in relation to the attention of Internal Audit (and/or the DETI Audit Committee) during 2015 and 2016, including a potential failure to provide full information to Internal Audit in the course of its investigation into the RHI Scheme or to the Department in its preparation for the PAC investigation into the Scheme. As to that:

a. Have you any comments you wish to make in relation to Mr Woods' evidence?

b. Without prejudice to the generality of the foregoing, please indicate whether Mr Woods ever raised with you, directly or indirectly, concerns about the cooperation he was receiving or had received in the course of any such investigations or enquiries (cf., for instance, the evidence of Mr Hughes at paragraph 3 of his witness statement of 20 November 2018: see **WIT-14119 to WIT-14120**; and the evidence of Mr Mills at paragraph 12 of his witness statement of 14 November 2018: see **WIT-26087/8**).

Anonymous provision of emails to Dr McCormick

34. Evidence provided to the Inquiry establishes that a number of emails where provided (anonymously) to Dr McCormick, in January 2017, dating from the summer 2015 period and showing information about intended changes to the RHI Scheme being circulated within industry, having been disclosed by Departmental officials. The evidence suggests that these emails were also provided to a journalist who then wished to report on the issue, including by publication of the names of the officials involved. As to this:

    a. Describe the concerns (if any) you had about the publication of the names of the officials involved and, in particular, any interaction you had with Minister Hamilton or his Special Adviser about this (and, if any, their response).

    b. Specify when (and how) you became aware of who sent these emails to Dr McCormick.

    c. Assuming that you became aware of the identity of who sent the emails to Dr McCormick in the course of the Inquiry process (see, for instance, Simon Hamilton's evidence at TRA-**16217 to TRA-16224**), please provide any further evidence you may wish to provide in relation to that matter (and, relatedly, any comments you wish to make on the statement of John Robinson of 20 November 2018 dealing with this issue: see **WIT-22039 to WIT-22048**).

General

35. To the extent that you consider the evidence of any other witness or participant contradicts your evidence on a significant issue, or is materially incomplete in respect of any significant issue, you should take this opportunity to address those issues by way of further written evidence, but only to the extent (a) that the said issues have not already been addressed in your existing oral and written evidence and (b) that the further material you wish to provide constitutes

evidence of fact as opposed to mere commentary on the evidence of another witness or participant which would be more appropriate for submissions.

36. Please set out any further significant evidence you have or of which you are aware, having regard to the Inquiry's Terms of Reference, which has not been addressed either adequately or at all in your previous written or oral evidence.

NOTE:

It is important for the efficiency of the RHI Inquiry that the issues identified above are addressed as fully as possible and by reference, where available, to the dates and locations of specific incidents to which reference is made. The statement should be broken down into paragraphs, which should be numbered sequentially from '1' to the end. The use of appropriate section headings or sub-headings is also encouraged. A template witness statement is provided with this Notice for your assistance and should be used as the format for your response.

RENEWABLE HEAT INCENTIVE INQUIRY

INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 234 of 2018

DATE: 4 December 2018

Witness Statement of: CHRISTOPHER FREDERICK STEWART

I, Christopher Frederick Stewart, will say as follows: -

Letter re appointment of Special Adviser

1. The document at **WIT-26360/1** is a copy of a letter from Minister Bell to Dr McCormick, dated 20 May 2015, confirming the selection of Timothy Cairns as his Special Adviser. In his oral evidence to the Inquiry (at **TRA-12278 to TRA-12284**) Jonathan Bell stated that it was the Private Office in the Department which drafted this letter which was then given to him to sign. As to this, please address the following matters:

   a. Please explain the process undertaken by officials within DETI and, to your knowledge, by the Minister himself or herself, in relation to the appointment of a Minister's Special Adviser? Please also address who developed this process and, insofar as you are aware, whether the process undertaken by officials within DETI was the same as, or similar to, that used in other Departments.

      In my experience, officials have no direct role in the selection of a Special Adviser for appointment, other than the provision of advice to the Minister on the procedure to be followed. Following selection, officials would, of course, carry out the necessary appointment processes, such as sending a letter of offer, and making the necessary payroll arrangements.

Typically, following the selection process, a Minister would be asked to provide a letter (such as that at WIT 26360) to confirm that the required process had been followed. It is unlikely that the letter would have been drafted within the Private Office – it is much more likely to have been provided by the Director of Human Resources (The Department for the Economy should readily be able to confirm this). Similar letters would be used in all Departments, as they must reflect the requirements of the relevant Code. It is incumbent on a Minister to recognise that, in signing the letter, he/she is confirming that the required process has been followed. It follows that the Minister must accept responsibility if this was not actually the case.

b. Set out the involvement (if any) which you had in the process of appointment of the Special Adviser.

I had no involvement in the appointment of any Special Adviser during my time in the Department for Enterprise Trade and Investment (DETI) / the Department for the Economy (DfE).

c. To your knowledge or belief, who drafted the 20 May 2015 letter from Jonathan Bell to Andrew McCormick and how, when and from whom were they provided with, or did they come by, the statements of fact and statements of opinion contained within the letter?

See above. The letter is likely to have been a standard draft, provided by the Director of Human Resources (or a member of her Division), to reflect the requirements of the Code. In providing the draft, no official was making the statements of fact or opinion in the letter; rather they were inviting the Minister to adopt those statements, if true. The Minister would be entirely free to amend the draft if the process actually used differed; but should be mindful of the requirements of the Code when doing so. If any Minister signed the letter, knowing it to be inaccurate, then he or she represented a falsehood to the Department.

d. Set out any other comments you may have in relation to the issue of Special Adviser appointments (particularly with reference to, although not limited to, the appointment of Mr Cairns to work for Minister Bell).

The appointment process must comply with the Code. If that proves to be overly restrictive or otherwise impracticable for what are, in essence, political appointments, then there may be a case for reviewing the Code. However, it is clearly not acceptable to continue to regard the current Code as: "a custom more honoured in the breach than the observance."

In oral evidence I emphasised the importance of mutual trust in the three-way relationship between a Minister, Special Adviser, and senior officials. Each party in the relationship must be able to rely on that trust existing between the other two parties. The Special Adviser is an important channel of communication and advice to officials on the Minister's thinking. If officials cannot rely on the existence of trust between the Minister and the Special Advisor, then the conduct of business will be seriously impaired.

3 June 2015 meeting

2. In relation to the senior team meeting of 3 June 2015 in relation to RHI, Trevor Cooper has said to the Inquiry (see **TRA-15864 to TRA-15868**) that it was at this 3 June 2015 meeting that the idea was put forward of describing the 2013 RHI Phase 2 consultation process as a "*review*", which would then mitigate the fact that the 2014 scheme review (as previously committed to by the Department at the inception of the Scheme) had not been carried out. Trevor Cooper described this as a "*fig leaf*" put forward by Stuart Wightman at the 3 June 2015 meeting. As to this:

a. Do you recall the idea of describing the Phase 2 development of RHI as a "*review*" being put forward in the meeting on 3 June 2015?

No. I was not present at this meeting. My diary confirms my recollection that I was in Dublin, meeting Irish counterparts on tourism policy. For the avoidance of doubt I do not have any recollection of anyone reporting to me after the meeting that the Phase 2 development of RHI was, at that meeting, being described as a "review."

b. Do you recall any discussion about this within the Department either at that meeting or otherwise? If so, please give details. (Andrew McCormick indicated in his oral evidence – see **TRA-15390/1** – that he did not feel the Department could "*stand over*" the later reference in the addendum business case to the "*first review*" of the RHI Scheme being undertaken in 2013.)

I do not recall ever participating in a discussion on that particular matter. I do not think that I was aware in early June 2015 of the detail of the conditions of the scheme approval. If I had been, then I consider it highly unlikely that I would have agreed to any suggestion that the 2013 consultation satisfied the requirement for a review.

c. Were you party to any plan or strategy to seek to portray the Phase 2 consultation as a 'review' required by, for instance, the original DFP approval of the RHI Scheme?

No.

3. Insofar as not addressed fully in your written or oral evidence to date, please give as full an account as you can of the matters which were discussed and decided at the meeting of 3 June 2015.

I was not present at the meeting.

4. Dr McCormick gave evidence in relation to the treatment of the RHI issue at the meeting of 3 June 2015, *inter alia*, during his oral evidence on Day 84 of the Inquiry's oral hearings (see **TRA-12174 to TRA-12186**). In the course of that evidence he indicated that DETI did not take "*the opportunity to step back and do a more fundamental review*" at that stage (which he said was "*a very, very good challenge*") (**TRA-12177**); that DETI was "*not focussed on the potential risks to value for money*" (**TRA-12180**); that he regrets that he "*didn't ask more fundamental questions about the scheme at this meeting*" (**TRA-12181**); and that, "*in point of fact, we didn't look backwards enough*" (**TRA-12186**). As to this:

   a. Is there any material respect in which you disagree with Dr McCormick's evidence as to what DETI ought to have done at this point?

      No, I agree entirely with the points made.

   b. What more fundamental steps, if any, do you consider ought to have been taken at or about this point by the senior team in DETI (having regard to the failure to conduct a review of the Scheme, failure to secure DFP re-approval for the Scheme, and predicted budgetary difficulties with the Scheme which had by then been identified)? Please address this issue *without* reference to the benefit of hindsight (whether or not you also wish to make observations *with* the benefit of hindsight).

      *With the benefit of hindsight, the obvious step would have been to enact legislation to suspend the scheme, pending a comprehensive review. Absent hindsight, I agree with what I take to be the assessment of Dr McCormick, namely that we should have taken "the opportunity to step back and do a more fundamental review" (**TRA-12177**) and that we should have asked "more fundamental questions about the scheme" (**TRA-12181**). This may have revealed the governance and control weaknesses and, may have uncovered some (if not all) of the fundamental flaws in the scheme itself, leading to more fundamental corrective action.*

c. As the next most senior official to Dr McCormick within DETI at that point with direct oversight for Energy Division, what responsibility (if any) do you consider that you bear for any failure to 'step back' and take a broader or deeper look at what had gone wrong (or what was going wrong) with the RHI Scheme at or about this point?

As explained above, I was not in attendance at the meeting of 3 June 2015. I would, however, accept that I bear responsibility along with Dr McCormick (and other senior officials) for the failure to take a step back in order to assess what had gone wrong and was going wrong.

It is a matter of regret that I did not intervene more directly on RHI matters, as I was doing with NIRO. The reason for not doing so is that the risks were not apparent to me at the time, and the appropriate steps appeared to be being taken on foot of clear instructions from the Permanent Secretary.

In contrast, the case for intervening in NIRO was compelling – at one point there appeared to be a risk to some £900 million of future investment, and an existential threat to an energy-from-waste plant that was considered essential to the financial security of Bombardier. There was no agreed way forward, with policy options being the subject of sharp dispute with the Assembly's economy Committee and DECC. Therefore, in determining my own priorities at that time, it appeared to me (wrongly, with the benefit of hindsight) that NIRO represented by far the greater and more urgent risk.

It was also the case that there was close alignment between the Permanent Secretary, me, and Energy Division on the way forward in relation to RHI. By contrast, Energy Division disagreed with my view on what was required in respect of NIRO, and I had to intervene to direct that a particular approach be taken in relation to legislation.

8 June 2015 issues meeting

5. In the course of Timothy Cairns' oral evidence (**TRA-12655**) he was asked about your email to John Mills in relation to the Issues Meeting with the Minister on 8 June 2015 (**WIT-27553**). In the context of the reference in the email to the Minister noting the position and asking to be kept informed, the Inquiry Chairman observed (**TRA-12660**) that this was at odds with former Minister Bell's recollection of Timothy Cairns preventing the officials from raising or talking about RHI (see, for instance, **TRA-12258 to TRA-12261**). In light of the additional evidence which has been given about the conduct and content of the 8 June 2015 Issues Meeting, is there anything further evidence which you can provide to assist with what occurred at this meeting (and, in particular, do you still consider your email to represent an accurate note of what occurred)?

I am satisfied that my email is accurate. This was a low-key meeting. The Minister's response to the matter was clear, simple and succinct, and I consider it highly improbable that I misunderstood it. The RHI was not, at that point, in crisis, and the matter was raised simply to make the Minister aware that problems had arisen, and to assure him that corrective action was in train. In those circumstances the Minister's response appeared natural and proportionate.

More generally, I am not aware of Timothy Cairns ever having prevented the inclusion of the RHI in a meeting agenda, or of his having curtailed discussion on that subject.

17 June 2015 meeting

6. Provide any further evidence you can about the Senior Team Meeting on 17 June 2015 to discuss the difficulties which had arisen in relation to the RHI

Scheme[1]. Insofar as you can, your response should include, but not be limited to, what was said and by whom in relation to:

a. The Scheme's budget, any limitations on it and the ability, or potential ability, to exceed the scheme budget, including the reason(s) why the RHI Scheme was exceeding, or likely to exceed, its budget;

Whilst I cannot be as definitive as for the 3 June meeting, I do not believe that I was present at the 17 June meeting. I have no recollection of it whatsoever. The meeting is not in my diary. That, in itself, is not conclusive, as the meeting may have been arranged at short notice. However, I was at a meeting of the NI Civil Contingencies Planning Group for most of the morning, and had a further meeting with a local government representative in the early afternoon. The references provided helpfully by the Inquiry are not entirely conclusive, but tend to reinforce my belief that I was not present. Andrew McCormick provides a list of the meeting attendees at ***WIT 26231*** *(paragraph 29) which does not include me. John Mills suggests at* ***WIT 14557*** *(paragraph 161) that I did attend, but accepts that his recollection is not clear, and that he may be conflating his memory of a number of discussions at around that time. I also note that none of the written or oral evidence refers to any contribution by me on any matter that was discussed during the meeting. If I had attended, I think it highly unlikely that I would not have expressed some view (and have a recollection of having done so) of the significant matters that were discussed.*

[1] For your assistance, Andrew McCormick gives evidence in relation to this meeting at **WIT-26230 to WIT-26233** and at **TRA-12186 to TRA-12199** and **TRA-15147 to TRA-15179** in his oral evidence; Eugene Rooney refers to the meeting at **WIT-24436** of his written evidence; Trevor Cooper gives evidence of the meeting at **WIT-19058 to WIT-19059** and at **TRA -15788 to TRA-15794, TRA-15826 to TRA-15832, TRA-15846 to TRA-15847, TRA-15857, and TRA-15938 to TRA-15948**; Johns Mills gives his account of the meeting at **WIT-14557** and **TRA-11091 to TRA-11099** and **TRA-11116**; Shane Murphy gives evidence of the meeting in his written statement at **WIT-19648 to WIT-19655**; and Stuart Wightman gives his account at **TRA-10684 to TRA-10690**.

Whilst I can shed no light on the discussion, my understanding of those matters at around that time would have been:

- *The scheme was demand-led, had no controls, and carried an obligation to make payments. Therefore, it was impossible (at that point) to constrain expenditure to the budget profile.*

- *Expenditure was rising because the benefits of the scheme had been recognised by stakeholders, and demand was rising after a sluggish start. I did not, at the time, attribute the rising demand to a realisation by industry of the inherent overcompensation of the scheme, or its vulnerability to abuse (that realisation came much later).*

- *I do not recall those points being made in my presence at that time. I also find it a little difficult to reconcile from the evidence how colleagues apparently gained an insight into the weaknesses of the scheme so easily at that time, when such insight had eluded them when the RHI was first established.*

- *I mistakenly shared the same view as Trevor Cooper, that exceeding the budget profile would result in a penalty (of around 5% of the overspend) being applied to the Departmental Expenditure Limit (DEL) budget, with the remainder of any overspend being recouped by constraining expenditure in future years (necessitating the introduction of controls). If future spending could not be so constrained (because, for example, all future budget had been committed, or the scheme was approaching the end of life) then the DEL penalty could be greater.*

b. Possible solutions or proposals for preventing or mitigating the Scheme exceeding its budget, including what the purpose was of introducing the tiered tariff for medium sized biomass boilers and what other possible amendments could be made to the Scheme and the reasons for any such

amendment (or, as the case may be, the reasons against pursuing any such amendment);

My understanding of tiering was that it would function as a spending control, dampening demand, and thereby bringing the expenditure profile back into line with the budget profile. This was seen as an initial step, pending the introduction of a budget control (degression) which would constrain expenditure to the budget profile. The suspension power that had been proposed in the 2013 consultation had been superseded by degression, and was no longer regarded as being fit for purpose[2]. Once again, I do not recall the discussion of any alternative approach around that time.

c. What inherent, systemic or design problems existed within the RHI Scheme;

Apart from the absence of controls, I was not aware at that time of the range of weaknesses and flaws in the scheme that have been evidenced so comprehensively during the Inquiry. I do not recall any discussion of those matters around that time.

d. The issue of returns under the Scheme, including whether the issue of State Aid was raised together with the context and reasons for it being raised; whether the question of over-compensating recipients or providing a rate of return greater than intended by Energy Division was discussed; and whether it was considered that the existing Scheme did, or had the potential to, create a 'perverse incentive' to generate heat;

I do not recall being aware of the State Aid matter at that time. I was not aware of the 'perverse incentive' until the preparation of the NIAO report in 2016.

[2] That view remains valid in respect of the normal operation of the scheme. However, I accepted in oral evidence that it would have served as a useful 'emergency brake' during the crisis of 2015.

e. The value for money, or otherwise, of the existing Scheme; and

I do not recall any discussion on value for money around that time.

f. The possibility of immediate suspension of the Scheme and, if this was discussed, the context in which such a course of action was proposed and the reasons why such a course of action was rejected.

I do recall that matter being explored, and ruled out following receipt of legal advice.

7. Without prejudice to the generality of the foregoing enquiries, and insofar as not already addressed comprehensively above, arising out of paragraphs 17-20 of Trevor Cooper's witness statement of 4 September 2018 (at **WIT-19058/9**):

a. specify whether you agree that Trevor Cooper "*formally escalated [his] concerns around the potential overcompensation issue*" in the manner suggested by him at paragraph 17;

I have no recollection of this, and do not believe that I attended the meeting.

b. specify whether you agree that Shane Murphy suggested that "*an urgent focussed review of the Scheme be undertaken that would include a review of tariffs across each technology*" in the manner suggested by Mr Cooper at paragraph 18; and

Please see answer at 7a. above.

c. specify whether you agree that Mr Murphy advised Energy Division "*to discontinue promotion of the Scheme so that demand was not further increased*" in the manner suggested by Mr Cooper at paragraph 20; in each instance also describing any response to these suggestions elicited from any

other attendee(s) at the meeting and, insofar as you are aware, the reasons for not accepting any suggested or recommended course of action.

Please see answer at 7a. above.

8. Please also set out your comments on whether you (and, in your view, others) fully understood and appreciated the severity of the issues and problems relating to the Scheme as they were being discussed in the meeting; whether at the time you felt the outcomes of the meeting sufficiently dealt with the issues and problems relating to the Scheme and why; and whether you take issue with any of the evidence of the other persons present at the meeting.

Whilst I do not believe that I attended this particular meeting, it is clear that the severity of the deficiencies in the scheme was not fully understood or appreciated by me, or by colleagues in Energy Division. I can draw no informed conclusion on the state of knowledge of other colleagues at that time. However, if there was a better appreciation on anyone's part, I struggle to understand why (or how) it was not conveyed to me, or to Andrew McCormick.

9. Unless already comprehensively addressed in your response to the above, set out as clearly as you can what specific responsibility or tasks *you* assumed as a result of the 3 and 17 June meetings to take forward work on resolving the issues with the RHI Scheme.

I assumed no specific responsibility or task as a result of either meeting. I would not have expected to do so, as the detailed work was to be taken forward by Energy Division.

Consideration of the issue of over-compensation during summer/autumn 2015

10. Trevor Cooper in an email to Shane Murphy of 12 June 2015 [**DFE-146565**]

observed that, in respect of the then draft addendum business case in relation to the RHI Scheme, "*the VFM position is a statement… with no real factual position around why it could be considered vfm*"[3]; and that there was "*a fair bit of [naivety] around the issues*", including the possibility of overcompensation. As to this, specify whether, and if so how and the extent to which, you were aware of Trevor Cooper's (and/or Shane Murphy's) concerns about these matters in June 2015 (and, if not, when and in what circumstances, if at all, you became aware of them).

I was not aware of those concerns in June 2015. It is likely that I did not become so aware until the Business Case Addendum (BCA) was being finalised later in the summer. I recall being aware that the prevailing view was that the vfm case was not strong. However, it was the view of the Department's economists that a rudimentary case could be made on the simple basis that the net benefits of the scheme would exceed the net costs. Therefore, it was felt that the scheme could be fairly described as providing vfm in absolute terms, but certainly not as providing 'best vfm'. From the evidence presented to the Inquiry, I am now aware that even that modest claim cannot be sustained, as the BCA was fundamentally flawed.

11. Insofar as not already addressed in your written and oral evidence, set out in as full detail as possible any discussion or communication you had with any other officials in the summer/autumn 2015 period in relation to the issues of (a) the value for money of the RHI Scheme, (b) the possibility that the Scheme was over-compensating claimants, and the effect that might have been having on scheme uptake, and (c) the question of whether or not the Scheme offered a perverse incentive[4].

[3] Assuming the 'not' within that sentence (which has been removed in the above quotation) is a typographical error, which it appears to be in the context of the rest of the email (as to which, please indicate if you disagree).

[4] In this regard, your attention is also drawn to a draft of what became the 2015 Addendum Business Case (see **DFE-147524 to DFE-147549**), which (at paragraph 5.13) refers to "*the risk of "gaming" and installations being operated over and above the required kilowatt hours just to generate RHI income"*; this draft being produced on 27 July 2015.

I do not recall any discussion or communication on value for money during that period, other than in the context of the BCA. I do not recall any discussion or communication on any inherent overcompensation in the scheme. I did see references from time to time to the risk of abusing the scheme by generating heat purely for the purposes of obtaining subsidy[5]*. I did not appreciate the severity of that risk, or how it was compounded (and rendered obvious to industry) by the perverse incentive of the tariff error. I also took false comfort from the assurance provided by OFGEM that there was no evidence of such abuse actually occurring. I was not aware of the perverse incentive stemming from the tariff error until the preparation of the NIAO report in the summer of 2016.*

12. Please also address your view of Trevor Cooper's averment (at paragraph 7 of his witness statement of 4 September 2018: **WIT-19054**) that John Mills did not "*take on board the advice from the head of finance or the head of analytical services unit around potential overcompensation*", insofar as you are able to offer evidence on this point.

Unfortunately I can provide no evidence on this point as I have no direct knowledge of this.

13. Insofar as not fully addressed above, set out your understanding of the issue of actual or potential over-compensation in the RHI Scheme (including potential breach of the European Commission's state aid approval) in early June 2015 and, if different, later that summer; including what steps, if any, you took to deal with this or escalate it.

As noted above, I was not aware of that matter in early June 2015, nor later that summer, and took no steps to deal with it or escalate it.

Addendum business case

[5] I was aware of such a risk as it is specifically addressed in the legislation.

RENEWABLE HEAT INCENTIVE INQUIRY

14. Set out such further evidence as you can about your involvement (if any) in the process of drafting or approving the addendum business case for the RHI Scheme. In the course of your answer, please also address Mr Cooper's contention (**WIT-19059**) that, in terms, Energywise was inappropriately prioritised over work on the RHI addendum business case by Mr Mills; and Mr Mills' response (**WIT-26059 to WIT-26060**) that Mr Wightman was reporting directly to you in this regard.

I was not involved in drafting the BCA. I have a recollection of having cleared it, but I have been unable to trace the relevant email.

*Mr Wightman was, indeed, reporting direct to me for the purposes of Energywise. (This was a modest attempt on my part to alleviate the pressure on John Mills.) I did not ask Mr Wightman to prioritise Energywise over RHI (being responsible for both, I would have had no selfish interest in doing so), nor am I aware of any such instruction from John Mills. Such action would have made little sense. Energywise was a significant and important project but, unlike RHI, it was not subject to any critical time pressure. Energywise was intended to replace an existing programme – the Northern Ireland Sustainable Energy Programme (NISEP). NISEP remained fit for purpose, and it could be (and, indeed, was) extended while Energywise was being developed. It would have made more sense to prioritise RHI over Energywise – something that I did, in fact, suggest later, on 21 December 2015. (**WIT 11739**)*

I understand the frustration that was felt by Finance Division and DfP colleagues over the time taken to complete the BCA. However, I know that Energy Division was seized of the need for action, and was, itself, understandably keen to get RHI (as a flagship renewable energy project) back on track. If there was a perception that effort was focussed on Energywise, this may have been (at least in the early summer) because of a pragmatic allocation of scarce resource in recognition of a particular constraint that Finance colleagues have not sufficiently recognised in their evidence: - <u>the BCA could not proceed without</u>

the inclusion of firm proposals for cost controls. Without this it would have been rejected out of hand by DfP. Therefore, Energy Division's ability to make progress on the BCA was, to some degree, constrained by the delay and attempts to dilute the cost controls during the summer of 2015.

15. If and insofar as you read or considered the addendum business case, please address the following issues:

a. What did you make of the reference at paragraph 2.10 (**DFE-04754**) that: "*… the Department undertook its first review of the RHI in 2013 to improve scheme performance*"? In particular:

i. Did you consider this to purport to be a reference to the review required by the DFP approval for the RHI Scheme? Please give reasons for your answer.

I would have taken that reference at face value, and did not make the link to the condition of approval. I do not recall whether I had read the original conditions of approval at that time.

ii. If so, did you consider this to be accurate? Again, please give reasons for your answer.

Yes, as a straightforward statement of fact.

iii. If you did not consider the claim to have undertaken a review to be accurate, what, if anything, did you do to question or correct it?

See above. I did not perceive the claim to be inaccurate at the time.

More generally, if it was the aim to present the consultation as satisfying the requirement for a review, then this was misguided. It would have

been better to simply refer to what had been done (the consultation); acknowledge that this was not a full review; commit to a full review later in 2016; and ask DfP to vary the condition of approval.

b. What did you make of the reference at paragraph 4.16 [**DFE-04768**] that: "*The introduction of the tiered tariff will also reduce the risk of 'gaming' and installations being operated over and above the required kilowatt hours just to generate RHI income*"? In particular:

i. Did this cause any issues of concern for you?

No. As noted above, I was aware of that risk, but did not appreciate its significance. I also took false comfort from the OFGEM assurance that such abuse was not occurring and, in any case, I had agreed that the introduction of tiering was an appropriate mitigation.

ii. Did you consider this to be a reference to a perverse incentive?

No. I was unaware of the perverse incentive until 2016. That particular gaming risk exists (albeit to a lesser degree) even in the absence of a perverse incentive.

iii. Did you make any enquiry as to how the RHI Scheme was being gamed and/or whether installations were being operated above required hours just to generate income? If not, why not?

Not at that time. My recollection is that I had made such an enquiry some months earlier, in response to concerns raised by Timothy Cairns. In response, OFGEM provided assurance that there was no evidence of such abuse occurring.

iv. Did you make any enquiry, or cause any enquiry to be made, so as to assure yourself or the Department that the RHI Scheme was not being gamed in this way? If not, why not?

No. Please see answer to question 15 b iii above.

16. Do you consider that a tariff review should have been conducted in advance of adjusting the tariffs in the 2015 Regulations? Please give reasons for your answer. If so, please outline why (in your view) a tariff review was not conducted at that time.

The answer is a qualified 'yes'. It is clear (even without hindsight) that more ought to have been done. Energy Division did make diligent efforts to identify an appropriate set of tariffs for medium biomass boilers, drawing on comparisons with the Great Britain tariffs, and specialist advice from CAFRE[6]. However, if there had been a more in-depth review of the original tariff calculation, and of current and previous fuel prices, then the original tariff error might have come to light. There might also have been an appreciation of the systemic overcompensation that arose (even without abuse) from the actual load factors being higher than those originally assumed. There is at least an element of hindsight in this view.

I don't recall consideration being given to a tariff review. This is likely to have been simply a reflection of limited resources, and the priority given to the introduction of controls.

Classification of material for Minister's consideration

[6] The advice was received in good faith, but is now known to have been inappropriately influenced by a stakeholder.

17. In his oral evidence to the Inquiry (at **TRA-12734**), when asked about the 8 July 2015 submission to Minister Bell which had been marked "*Urgent*", Timothy Cairns stated that "*… perhaps the demarcation of urgent maybe isn't as urgent as what officials might say it is. Certainly, that was in my mind"*; and "*I think I say in my evidence officials often used "desk immediate" and "urgent" at times when it may well be inappropriate…"* See also Mr Cairns' written evidence at **WIT-20204**. As to this, please address the following matters:

a. Set out your understanding of what was meant by the demarcation of 'urgent' or 'desk immediate' on documents or material being submitted to the Minister, including (insofar as you can) (i) the level of urgency required for each such classification; and (ii) how quickly you would expect a submission bearing each such classification to be read and approved.

The classification of 'urgent' is most commonly used when a matter requires a decision, usually within a finite (short) time frame, and where there would be negative consequences if this is not achieved. Where possible, the degree of urgency should be specified in the summary (e.g. 'your approval is requested by x in order to meet the deadline for submission to the Assembly Business Office') and set out in detail in the body of the submission.

It is, of course, not always possible to delineate the urgency in the manner outlined above. In examples such as the 8 July 2015 submission, the 'urgency' falls into the category of: 'There is an urgent and worsening problem and we can't begin to fix it without your approval – please make a decision urgently'.

It is well understood that there must be a genuine reason for urgency, and that 'urgent' must not be used merely for the convenience of officials, or to compensate for a failure to bring the submission forward in a timely manner.

My standard advice to anyone new to policy work is that:

- *the demands on a Minister's time are relentless;*
- *'submission fatigue' can set in very easily; and*
- *Ministers and Special Advisors would quickly spot and challenge any repeated incidence of 'overmarking'.*

From experience, there is sometimes a perception that the urgency is not genuine, simply because it has not been adequately explained or understood. To illustrate: the procedure for taking legislation through the Assembly has a number of process steps and requirements for documentation, all subject to strict timetables. These might strike an observer as being somewhat mundane, and the time criticality can be far from obvious. However, if, for example, paperwork is submitted one day late to the Assembly Business Committee, then it would be held over until the following week's Committee meeting. Thus, a delay of one day is immediately multiplied into a week. That in turn might mean that the scheduling of the legislation's Assembly stages is disrupted, further compounding the delay.

Overall, the reality is that the pressure on officials and Ministers and the volume of work means that 'just in time' is the standard approach to business. It is rarely the case that one has the luxury of inviting a Minister to consider a proposal at his or her leisure. This, in turn, means that Ministers may see 'urgent' rather more often than they- or officials – are comfortable with.

'Desk immediate', as the words imply, it is for matters that require the Minister's immediate attention, interrupting other work if necessary. The expectation is that 'desk immediate' matters would be decided during the working day on which they are received. This classification should be used very sparingly, usually for matters that arise unexpectedly. Any unnecessary use of 'desk immediate' would be readily apparent.

b. Would you agree that there was an inconsistency in the way in which such classifications were used on submissions? Please give reasons for your response.

No, that was not my experience within DETI or DFE. As Head of Policy Group, my practice was to read all submissions to the Minister (not always in minute detail) and all Ministerial responses. I do not recall any particular prevalence of inconsistency, nor any feedback from the Private Office to that effect.

c. To your knowledge or belief, was any guidance on the use of such demarcations given to officials within DETI or the wider NICS?

I do not recall any guidance being issued during my time in DETI. That is not surprising – the preparation of submissions is core to policy work, and something that any experienced policy civil servant would be very familiar with.

d. Would you agree that these classifications were "*often abused*" (as Mr Cairns' suggests)? Please give reasons for your answer and, if appropriate, the steps you took as Deputy Permanent Secretary in DETI to ascertain the genuine level of urgency of particular submissions.

e. No, not at all. The phenomenon of 'overmarking the urgency' is not unheard of, but neither was it commonplace in my experience. As noted above, I read every submission that was presented to the Minister. Beyond that I saw no need for any further action. The vast majority of submissions from Policy Group would have been sent by Grade 7s or Heads of Division (Grade 5 or 6). The Grade 7 cadre was generally experienced, and the four Heads of Division were all senior civil servants of long standing and very considerable experience. All were very familiar with good practice in briefing Ministers.

Jonathan Bell's email accounts

18. Attached to this Notice is a sample of emails received in evidence by the Inquiry (**INQ-64006 to INQ-64011**, **INQ-66001 to INQ-66008** and **INQ-66031**) showing departmental business, including Ministerial submissions, being sent to Minister Bell's private email account (jonathanbell620@hotmail.com) by departmental officials and by his special adviser. Further attached to this Notice are documents (**INQ-64012, INQ-62013, WIT-21908 to WIT-21910 and WIT-21911 to WIT-21912**) which appear to show Minister Bell transacting departmental business, including giving his approval to a Ministerial submission, using his private email account (johnathanbell620@hotmail.com). As to this, please explain in detail:

a. The email addresses you used to communicate with Minister Bell for the purpose of transacting departmental business, including who gave you each of those email addresses, when was each given to you and whether any limitation was placed on the circumstances under which departmental business should be sent to that email address;

In transacting formal business with the Minister, my practice was to use the official Private Office email address (which can be accessed by all Private Office Staff), copied to the individual (official) account of the Private Secretary. I cannot rule out the possibility of having replied to emails sent by the Minister from his private account, but have no recollection of doing so.

I acknowledge that in communicating with Timothy Cairns, a range of email addresses (including some private or party accounts) was used.

b. Whether, and if so how often and why, you sent emails containing departmental business to Minister Bell's private email account rather than an NICS account; and

I have no recollection of doing so, and do not believe that I did.

c. Any instructions of which you are aware given by Minister Bell as to whether departmental business could or should – or could or should not – be sent to his private email account.

I am not aware of any such instruction.

Contact with the Minister and Special Adviser in summer 2015

19. In his oral evidence to the Inquiry (at **TRA-12332 to TRA-12333**) Jonathan Bell gave evidence, in relation to his holiday(s) during the summer of 2015, to the effect (a) that he gave instructions that, if there was anything urgent which needed to be addressed *before* he went on holiday (on 10 July 2015), that should be addressed before he left; and (b) that he left instructions that, if there was anything urgent which needed to be addressed while he was *away* on holiday, that should be forwarded to him by email. As to this:

a. Please comment on Jonathan Bell's assertion that all urgent business was to be cleared before he left on holiday. In particular:

i. Do you accept that such an instruction was given?

I am not in a position to verify that, but the Department for the Economy should be able to do so without difficulty. When a Minister is taking leave, it would be standard practice for the Private Office to issue a note to all staff, advising of the last date for submissions to be sent to the Minister – this is known colloquially as 'closure of the box'.

ii. Were you aware of any such instruction?

I have no recollection of this.

iii. What steps, if any, did you take to ensure compliance with this instruction generally and in respect of the 8 July 2015 submission in particular (especially in light of your evidence that you played some role in the approval of the draft submission)?

If such an instruction was given, I took no steps in that regard, nor would I have expected to do so. The standard practice is for the Private Office to issue such guidance to all staff. This is a common occurrence, and would have been readily understood and acted upon by experienced Grade 7s and Heads of Division within Policy Group.

I note that the 8 July submission did meet the Minister's deadline, and the Inquiry has heard evidence from Stuart Wightman, John Mills and me on the urgency of its preparation in the preceding days, reflecting its intrinsic importance as well as the Minister's deadline.

b. Please comment on Jonathan Bell's assertion that he told officials he could be contacted on holiday regarding urgent matters. In particular:

i. Do you accept that such an instruction was given?

I have no recollection of such an instruction. It would not be unusual for a Minister to say that to the Private Office or the Permanent Secretary; but it would be unusual in my experience for any formal instruction to issue to that effect. In any case, it is much more likely that contact would be made first with the Private Office, to verify the Minister's whereabouts, and that any further contact would be via the Private Office.

ii. Were you aware of any such instruction?

No

iii. What steps, if any, did you take to ensure compliance with this instruction generally and in respect of the 8 July 2015 submission in particular?

I do not recall receiving any such instruction, and took no such steps.

iv. What is your response to the evidence of Timothy Cairns (see, for instance, **TRA-12861** and **TRA-12933**) to the effect that, if officials wanted the RHI issue deal with more speedily during the summer of 2015, they could have taken steps to achieve that?

*Mr Cairns is correct, and such steps were taken, without success. I contacted him on 11 August 2015 (**WIT 11706**), 13 August 2015 (**WIT 11708**) and 20 August 2015 (**WIT 11709**). Unfortunately, as the Inquiry is aware, those efforts met with resistance from others in Mr Cairns' party. Had I known or suspected in July 2015 that this would be the case, I would indeed have contacted the Minister directly. I doubt very much that Mr Cairns would have welcomed my cutting across his efforts in such a manner.*

v. To your knowledge or belief, were there any urgent matters which were brought to your attention during the Minister's holiday in respect of which he was then contacted?

No, to the best of my knowledge.

20. In his oral evidence to the Inquiry (at **TRA-12861 to TRA-12863**) Timothy Cairns said there was a build-up of Ministerial submissions while Minister Bell

was on holidays during the summer of 2015; and that the Minister's Private Secretary and he agreed it was "*unsatisfactory*" that Minister Bell was not present for periods at this time. Please provide your comments on this evidence by Timothy Cairns including, but not limited to, describing (a) whether you agree with Mr Cairns' evidence and (b) if so, any action you took to bring the backlog of submissions to Minister Bell's attention or any other person's attention.

I have no recollection of having been made aware by either the Private Office or Timothy Cairns of such a backlog generally. I took no action, other than in relation to the specific matter of the 8 July submission.

21. In his written and oral evidence to the Inquiry, Mr Cairns has also indicated that he talked the Minister through the 8 July 2015 submission shortly before the Minister went on holiday in July 2015 and a further time at or about the end of July 2015 before the Minister went to his holiday house in Portstewart (see, for instance, **WIT-20071**; **WIT-20204 to WIT-20206**; and **TRA-12741 to TRA-12750**). This appears to be at odds with Minister Bell's account (see **WIT-22627/8**, **TRA-12353 to TRA-12357** and **TRA-12403 to TRA-12406**). As to this:

    a. Are you in a position to offer any evidence as to whether or not Mr Cairns discussed the 8 July 2015 submission in detail with Mr Bell on either of the two occasions he so alleges? If so, please provide as full details as possible.

    No. I have no knowledge of Mr Cairns' approach to briefing Mr Bell.

    b. In the course of your response, please also express your view, from your experience, as to whether Mr Cairns sitting beside Minister Bell in his office going through submissions in detail with him was "*the usual way in which Mr Bell was briefed*" (as Mr Cairns appears to suggest; but which Mr Bell appears to deny: see, for example, **TRA-12356**).

I can offer no evidence on this matter. It is likely that only Private Office staff (particularly the Private Secretary, Sean Kerr) would be in a position to comment from personal observation.

22. As to the suggestion in your evidence that it seemed as though there was opposition from the Special Adviser in relation to the changes proposed in the 8 July 2015 submission and/or that it seemed that you were on 'different teams':

a. Mr Cairns has made the point that no one suggested this to him at the time (see **TRA-12825/6** and **TRA-12857/8**). What, if anything, do you wish to say in response to that?

Unfortunately I was not able to follow Mr Cairns' oral evidence at the time. From the transcript, I assume that he means that, in view of our long-standing and positive working relationship, I might have been more forthright with him in expressing my concern and frustration.

That concern did not arise immediately in July 2015, nor was it the product of any single episode. Rather, it grew over the summer of 2015, as each reasoned response from Energy Division appeared to meet with an irrational counter proposal. Had I known in early July 2015 what lay ahead, it is very likely that I would indeed have expressed my concerns in very direct terms.

In any case, I trust that my evidence has made clear that, from early July, it was apparent to me that the resistance did not stem from Mr Cairns personally, but from others in his party.

By August 2015, when I had to resort to raising the prospect of formal Ministerial Direction, I fail to see how there could have been any doubt about the extent of my concern.

b. Mr Cairns also asserts that he mentioned to officials at that time his experience with NIRO as a basis for his concerns about too swift an implementation of the RHI changes (see **TRA-12858**). What, if anything, do you wish to say in response to that?

I do recall Mr Cairns mentioning that, and I understood his reason for doing so. The closure of the NIRO scheme had been a very bruising experience for the Minister and officials alike. In essence, it involved the premature closure of a popular and successful scheme at the behest (indeed, compulsion) of the Westminster Government. There was considerable 'political flak' for Mr Bell (not least from within his own party). Mr Cairns drew the obvious parallel, and had a legitimate interest in protecting his Minister and party from any avoidable similar phenomenon.

However, there was an important distinction to be drawn, in that the respective drivers for change for NIRO and RHI were quite different. The driver for NIRO was external to Northern Ireland. There was no reason - other than a change in national policy – to end NIRO early. By contrast, the driver to change RHI was local – bringing the scheme under control was a matter of urgent necessity. The undeserved flak in respect of NIRO provided no justification for failing to do the right thing in respect of the RHI, and the Minister would have been rightly criticised for any failure to do so. In fairness to Mr Cairns, I believe that he readily accepted the difference, but may well have encountered difficulty in persuading party colleagues.

23. As to the 'additional caveats' on the AME funding which you have indicated you discussed with Mr Cairns at the meeting with him on 28 July 2015:

a. Why, in your view, do later documents emanating from officials not reflect this caveat (e.g. the revised version of the 8 July 2015 submission) (see the discussion at **TRA-12836/7** and **TRA-12880**)?

The prosaic likely explanation is that the errors and omissions in the 8 July submission (which are a matter of regret) were simply carried forward unthinkingly to subsequent documents.

b. Please provide a response to Timothy Cairns' suggestion (**WIT-20214**) that, following John Mills' email to him of 30 July 2015, he (Mr Cairns) asked for further information from you and, specifically, for this to be corroborated with DFP (but that he received no further clarification). Without prejudice to the generality of the foregoing:

i. Do you accept that Mr Cairns asked you for further information in relation to the funding position?

I have no recollection of this and can neither confirm nor challenge Mr Cairns' assertion. In any case, he makes the entirely valid point in his witness statement that the incorrect advice in the original version of the 8 July 2015 submission was not corrected in the amended version of the submission that was considered in September 2015

ii. If so, please provide as full details as possible of the request and what, if anything, you did on foot of it?

Please see answer at 23 b. i. above.

iii. Did you have any engagement with DFP in relation to funding issues as to RHI (over and above your discussion with DFP officials about the possible need for a Ministerial Direction, already referred to in your evidence)?

24. Please provide a response to the suggestion from Mr Cairns (**WIT-20212/3**) that, in the meeting between him and yourself and John Mills on 28 July 2015, matters were discussed which "*had not been included properly or fully in the [8 July 2015] submission*" and that you and John Mills "*agreed that this was unacceptable and agreed to provide a summary in writing*".

I have no recollection of this. There is a reference in John Mills' note of 30 July to 'funding caveats'. The reference in the note to 'funding caveats' may have been included at Mr Cairns' request.

25. Please explain why your email to Timothy Cairns rejecting the suggestion of increasing the tier threshold to 3,000 hours (**DFE-278983**) was sent by you to Trevor Cooper (an issue raised by the Inquiry Chairman at **TRA-12854**).

I do not recall this precisely. I believe that, a matter of courtesy, I informed Trevor in advance of my intention to contact DfP colleagues (contact with DfP is normally through Finance Division), and that my email was simply to confirm that the outcome was as expected.

26. What comments do you have to make on Timothy Cairns' evidence to the effect that he pursued with you the issue of delaying the date for the implementation of tiered tariffs beyond 1 October 2015 in late July and determined that the date could not be moved (see **TRA-12854/5**)?

I agree with Mr Cairns' evidence on that point. I would not have been at all receptive to any suggestion of delaying the date, as no valid reason for doing so had been offered.

27. What comments do you have to make on Timothy Cairns' written evidence to the effect that "*it is clear that in the summer of 2015 senior civil servants had*

private concerns with Mr Bell's competence that they later shared with [him]" (**WIT-20205/6**)?

It will come as no surprise to the Inquiry that officials can form clear views on the competence of Ministers, and that these are not always positive. (No doubt the converse is equally true). I am not in a position to comment authoritatively on his reference to 'senior civil servants' generally. However, Mr Cairns correctly refers to my having shared with him privately my concerns about the handling of a particular meeting (which was unrelated to the RHI), both at the time and in subsequent conversations.

Warnings re abuse of the RHI Scheme

28. In his written evidence to the Inquiry (at **WIT-20078 to WIT-20080**), Timothy Cairns stated that he had raised with you and Dr McCormick concerns regarding potential fraud in the RHI scheme. You responded to this contention in your written evidence at **WIT-27536 to WIT-27538** and in your oral evidence at **TRA-11722 to TRA-11726.** Timothy Cairns has made subsequent remarks relevant to this issue in his oral evidence (at **TRA-12819 to TRA-12820** and **TRA-12842 to TRA-12845**) and in a further written statement (at **WIT-20215 to WIT-20220**), including that he raised "*all issues in Dr Crawford's email*" of 31 July 2015 with you (see the email at **IND-27552/3**). Please provide a response to this further evidence from Timothy Cairns. Without prejudice to the foregoing:

i. Do you accept that Mr Cairns raised with you the suggestion that "*the current problem is that it pays producers to heat houses when their houses are empty…*"?

No. I recall being surprised to see such a stark reference in the email when it was disclosed to me by the Inquiry. It appears to show an informed appreciation of the flaws and vulnerabilities in the scheme (which I did not fully appreciate at that time). It might, for example, be taken to refer to the underlying risk of being able to generate heat purely

for the purposes of obtaining RHI payments; or it may even imply knowledge of the perverse incentive stemming from the tariff error. Perhaps only the author of the email – Dr Crawford – can clarify the actual level of knowledge reflected in it.

*I have no recollection of such a stark warning being passed to me. If it had been I believe I would have remembered it. I therefore do not believe that he passed this information to me, notwithstanding his assertion that he did so. I would also respectfully point out that Mr Cairns makes the point himself (**TRA 12820**) that he does not have a clear recollection of our conversation. If it was his intention to convey a stark warning, I wonder why he did not simply forward the email from Dr Crawford, or write in similar terms himself. I also find it difficult to reconcile the inherent tension in Mr Cairns' evidence. He contends that I was being warned about vulnerabilities in the scheme. However, this was done in the context of his party seeking to hold back controls that (however unwittingly) would have helped to address those matters. I respectfully contend that a more likely explanation is that a desire to preserve the benefits of the scheme might have caused any such warnings (if communicated at all) to be muted, at best.*

ii. If so, please provide as full details as possible of what was passed on to you (and when) and what, if anything, you did on foot of it?

Please see the answer to 28i. above.

iii. If not, can you think of any conversation(s) or exchange(s) with Mr Cairns which might lead him to believe or recall that he raised these matters with you?

No.

iv. Please provide any comments you may have on whether (i) the reference to "*suggestions of heating empty sheds*" in John Mills email to you of 11

August 2015 (**WIT-11708**), and/or (ii) the evidence the Inquiry has heard generally as to Mr Cairns' tendency to be more open with officials than might usually be expected of Special Advisers, might be thought to be corroborative of his evidence that he passed on to you the content of Andrew Crawford's email to him of 31 July 2015.

I believe Mr Cairns was as open as he felt he could be with officials, and certainly more open than other advisers in my experience. On this matter, the openness did not extend to sharing the emails from Andrew Crawford, or identifying him as the source of the views therein.

*In order for the suggestion at iv. above to be correct, it would surely have to be the case that I passed on to Energy Division the warning that Mr Cairns suggests he gave to me. My email to Stuart Wightman of 23 July 2015 (**TRA 12820**) does not contain such a warning, and I can think of no reason why I would have passed on some of Mr Cairns advice in an email, and the remainder by some other means. I consider that Mr Mills' evidence does not support the suggestion either. He has stated that the reference to 'heating empty sheds' was illustrative, and stemmed from empirical consideration of the heating requirements of poultry production, bearing in mind the fact that sheds would be empty for a period during the production cycle. This was the basis of our rejection of the proposal for a tiering threshold of 3000 hours.*

There is a thread running throughout Mr Cairns' evidence that officials were aware of the incidence of abuse of the scheme (having been repeatedly warned), but were reluctant to do anything about it. The prosaic truth is that we were aware of the risk, but naively misinformed as to the actual incidence, with the anecdotal evidence passed on by Mr Cairns being countered and to some extent undermined by the assurance from OFGEM.

29. In the course of his oral evidence on Day 102 of the Inquiry's hearings, Andrew McCormick was asked about concerns of potential abuse of the Scheme which

were raised with Ofgem (as a result of concerns which Timothy Cairns had raised with you, although possibly also as a result of concerns which Andrew Crawford had raised with Dr McCormick which he had passed on to you): see **TRA-15267 to TRA-15280**. In the course of that evidence Dr McCormick was referred to Stuart Wightman's letter of 19 October 2015[7] to Ofgem referring to "*anecdotal evidence of 'gaming'*" (**DFE-408261/2**); and Stuart Wightman's email to Trevor Cooper of 17 November 2015 referring to checking that an installation "*isn't simply heating an empty building*" or "*isn't being run excessively to claim increased RHI payments*" and other means by which the Department could "*help minimise the risk of boilers being run just to generate RHI income*" (**DFE-286119 to DFE-286120**). As to this:

a. Please outline the extent to which you were aware of these documents and/or the issues of substance being discussed in them.

I think it unlikely that I was aware of the actual documents (neither of them was copied to me). I was aware from the summer of 2015 of the risk of gaming, but not of the detail of the OFGEM accreditation and inspection regime.

b. Is there anything else you wish to say about the apparent awareness, within DETI, at this stage about the possibility of "*boilers being run just to generate RHI income*" and/or concerns about heating empty buildings? If so, please provide the details in response to this Notice.

The level of understanding within Energy Division (and on my part) and our prevailing belief are captured well in Stuart Wightman's email to Trevor Cooper of 17 November 2015, and could be summarised as:

- *there was an awareness of the risk;*
- *assurances had been sought from OFGEM as to how that risk was managed and mitigated; and*

[7] Erroneously dated 19 October 2014.

- *the proposals for tiering and a cap were thought to be a significant and useful further mitigation measure.*

To that I would add that the assurances provided by OFGEM as to the actual incidence of abuse provided a false comfort.

That state of belief was subsequently shown to be wrong and misinformed by the subsequent findings of the programme of inspections known as 'Project Heat, and in the reports from the Department's Internal Auditors, and the NIAO'.

c. In light of the matters identified above, and the further evidence in the recent statement of Claire Hughes (**WIT-18168 to WIT-18188**)[8] as to the state of knowledge of (at least) rumours of abuse which were being discussed within the Department in and around November 2015:

i. Why, in your view, did the Department not initiate an Internal Audit Service investigation or review at that point (as occurred later, in response to the anonymous whistle-blower allegations passed on by the First Minister in January 2016)?

In my view the contributing factors were:

- *the non-specific and unattributable nature of the rumours, which made follow up difficult;*
- *the prevailing underestimation of the magnitude of the inherent risk;*

[8] In which she indicates that she believes that information gleaned from her installer would have been passed on at the DETI Board meeting of 17 November 2015 (by which time there were "*widespread rumours of abuse*" that were being discussed and "*news already in the public domain of allegations of fraud*", (to which you have been referred above)

- *the lack of awareness of the tariff error (which compounded the risk);*
- *an overreliance on OFGEM assurances (compounded by weak oversight of OFGEM); and*
- *a belief that the incoming tiering regime would effectively mitigate the risk.*

It must be acknowledged that this was a missed opportunity. A systems audit would have been likely to have identified the governance weaknesses within DETI and OFGEM, and might also have uncovered some of the other flaws in the scheme.

ii. Why (if indeed this was the case) was no other step taken at this stage to enquire more deeply into the level of compensation available under the tariffs applicable before the November 2015 amendments to the Scheme and/or the Scheme's vulnerability to exploitation or abuse?

The factors outlined above applied equally in terms of any further step in relation to fraud or abuse.

In relation to the systemic flaw that provides scope for overcompensation through (legitimate) high load factors, this would have a required a specific tariff review, or an overall review of the scheme, leading to corrective action. I was not personally aware of that particular risk at that time. It was also the case that the limited resources of Energy Division were focussed on the introduction of tiering.

4 February 2016 submission

30. Can you confirm that the version of the February 2016 submission at **DFE-289353** (i.e. the version which does *not* include tracked changes of the changes requested by Timothy Cairns) is the one which was sent to the Minister (as opposed to one with tracked changes on it, as Timothy Cairns believed to have been the case).

*That is correct. Neither of the submissions that I sent included tracked changes. I was surprised that Mr Cairns was unaware of this, as the standard procedure within the Department was that all submissions received in the Private Office were considered first by the Special Adviser, and thereafter by the Minister. This is reflected in the addressing of the submissions, which were marked ' 1. Timothy Cairns 2. Jonathan Bell'. The Department's Private Office may be able to ascertain why Mr Cairns apparently did not see the second submission. I also note that the covering email from my secretary (Mrs Linda McIlwrath) was sent direct to Timothy Cairns as well as to the Private Office (**DFE 289353**).*

31. Please provide any further comments you may have in relation to Timothy Cairns', or Jonathan Bell's, evidence as to the meeting at which the changes to the 4 February 2016 submission were discussed (see **TRA-12952 to TRA-12955** and **TRA-12543 to TRA-12554** respectively). (In the course of your answer, if you consider that Minister Bell received a copy of the submission *without* tracked changes, please also explain how, to your knowledge or belief, the Minister was aware of the alteration to the submission in order to raise questions about it).

I think it highly unlikely that Jonathan Bell received a version of the submission with tracked changes. I certainly did not send one, and Timothy Cairns would have had no reason to do so (particularly if he thought that I had done so).

I surmise that the Minister received both submissions, and queried the reason for the second submission. I further surmise that he either noticed the differences himself, or that they were pointed out by the Private Office. He then sought an explanation.

RIA in relation to Scheme suspension

32. On 24 February 2016, Minister Bell was provided with a submission and accompanying Regulatory Impact Assessment (RIA) in relation to the timing of suspension of the Scheme (*after* it had been determined to suspend the Scheme and, following the expedition of Scheme suspension, a further decision to permit potential applicants a further two-week delay within which to make applications for accreditation, which had been given effect to by the Department by the issue of a notice under the recently approved 2016 Regulations): see

DFE-226738 to DFE-226746 (with the version bearing the Minister's signature of that same day at **DFE-226747/8**). The submission makes clear that an earlier RIA had now been **"***revised to take into account the postponement of the suspension until the 29th February*" (paragraph 2). It also states (paragraph 3) that: "*All four options show that the RHI has a positive impact on the NI economy (i.e. the benefits outweigh the costs). The largest net benefit lies in keeping the scheme open*." The RIA itself also suggested that each of the four options, ranging from immediate Scheme closure to keeping the Scheme open to new entrants until 2020, had a positive impact on the economy (*i.e.* Scheme benefits outweighed Scheme costs), with the largest net benefit being in keeping the Scheme open to 2020. In due course, the RHI was published with the 2016 Regulations (see **LEG-00109 to LEG-00114**). In his oral evidence to the Inquiry on 12 September 2018, Timothy Cairns stated that he was "*uncomfortable*" with the picture painted in these documents and that it "*jarred*" with him; that it was "*bizarre*"; that neither he nor the Minister believed it; and he agreed that it was false (see **TRA-12960** to **TRA-12962**). In respect of the said documents, please address the following matters:

a. Explain your involvement (if any) in their creation.

I had no involvement in the creation of the documents. I do not think that I cleared them, but I was a copy recipient.

b. Set out your knowledge of the reasons why these documents present such a picture of the RHI Scheme's benefits.

Viewed today, an informed reader would find it difficult to comprehend some of the language used to describe the RHI in Departmental documents. However, at that time, the deficiencies of the scheme that have been so comprehensively revealed by the Inquiry were (within the Department) either not known at all, not fully appreciated or poorly understood (or some combination of these states of knowledge amongst officials). It was against that uninformed background that the Department's economists would have carried out the assessment of the scheme's costs and benefits.

c. Explain the action (if any) you took to challenge or question what was stated in these documents;

I took no action, as I relied on the input and oversight of the Department's professional economists.

d. Set out your view of the accuracy of what was stated in these documents and, in particular, whether you agree with Mr Cairns' recent evidence that they presented a false picture.

The Inquiry has shown very clearly that the assessment of the scheme in documents such as the RIA and the BCA was fundamentally flawed, and no reliance could be placed on their accuracy. Mr Cairns is correct to say that they paint a false picture if by the use of 'false' he means 'wholly wrong'. However, if he means 'intentionally misleading' then I strongly disagree with him, and have seen no evidence to support such a conclusion.

e. The RIA specifically notes that "*four suspension dates have been considered*". Please explain, insofar as you can, in light of the way in

which decisions had been taken as to the timing of suspension of the Scheme, how it could be said that these four options had been considered.

The four dates were not policy options, in that the Minister had not been invited to choose one of them as the date for closure. Rather, they are hypothetical options, used for illustrative purposes, and only for the context of the RIA itself. This is a standard practice (and probably a requirement) when completing an RIA. In is analogous to the inclusion in an economic appraisal of a 'do nothing' option for comparative purposes, even though the Department has no intention of 'doing nothing'

f. The RIA also specifically states that, "*another large spike is not anticipated under option 2*" (the option which was selected). Please set out your understanding of the assessment undertaken as to the level of spike which might be anticipated under option 2 (the provision of a further two weeks before Scheme suspension) and any analysis underpinning that assessment.

I do not recall the detail of the analysis. Given the prevailing pressure at the time, and the pace of events, it is likely to have been rudimentary at best, perhaps reflecting a belief that the catastrophic spike of autumn 2015 had largely accounted for latent demand.

g. The RHI also states that, "*The RHI Schemes have been very successful*". Please explain, insofar as you can, the basis on which this was said. In the course of your answer you may also wish to address the recent oral evidence of witnesses such as Simon Hamilton to the effect that he was concerned that, even after urgent Scheme closure had been required and concerns about gaming or fraud within the Scheme had become known, Energy Division still appeared to consider the Non Domestic RHI Scheme to have been a success.

The use of such language was understandable (but wrong) before the RHI catastrophe had fully unfolded. Its continued use probably reflected the fact that the RHI had exceeded the target for the production of renewable heat in the Programme For Government. However, the continued use of such language, long after serious difficulties had emerged, is a matter of regret.

Michael Woods' evidence

33. In the course of the evidence of Michael Woods, given on 19 October 2018, he appeared to make a number of express or implied criticisms of Messrs Wightman and Hughes and/or other officials within Energy Division's conduct in relation to, *inter alia*, an asserted failure to bring relevant matters in relation to the attention of Internal Audit (and/or the DETI Audit Committee) during 2015 and 2016, including a potential failure to provide full information to Internal Audit in the course of its investigation into the RHI Scheme or to the Department in its preparation for the PAC investigation into the Scheme. As to that:

a. Have you any comments you wish to make in relation to Mr Woods' evidence?

In my comments I wish to draw a clear distinction between Mr Woods' evidence about his audit findings, and the criticisms that he made of Energy Division staff.

The audit exercise was rigorous and comprehensive and, to the best of my knowledge, was carried out with typical diligence, professionalism and courtesy by Mr Woods and his team. The audit findings, whilst stark and deeply troubling for Energy Division and senior management, were entirely justified. I recognised them as being very helpful to the Department in understanding the reasons for the failure of RHI, and the steps to be taken to prevent a similar crisis from occurring.

Against that background, I was profoundly surprised and dismayed by the belated suggestion of non-co-operation on the part of Energy Division staff. I was astonished by the assertion that they had acted in a manner contrary to the Nolan principles, particularly in relation to the allegation that documents (such the 'handover note') had been deliberately concealed or withheld.

My legal adviser has, with the Inquiry's agreement, given me access to statements of evidence from Stuart Wightman and Seamus Hughes in relation to this matter. I fully concur with their evidence. Like them, I am struck by the contrast between aspects of Mr Woods' evidence, and the acknowledgement in the audit report of the co-operation received from the Division. It is a matter of some concern if the audit report submitted to senior management did not, in fact, accurately reflect the views of the Head of Internal Audit.

It is worth emphasising that audit is no mere desk exercise. It is an interactive, iterative, inquisitorial process. Differences of view and interpretation between the audit team and the policy team can, and do, occur. Constructive challenge (in either direction) is common. That is a normal part of the audit process, and ought not to be viewed as, or described as, non-cooperation. To illustrate; the Comptroller and Auditor General, expressly thanked the Department for its co-operation with his team. The report that he produced went through a number of iterations, with the Department exercising a constructive challenge function on a range of matters of fact and interpretation. In my view this strengthens the audit process, because the Department (or Division), having had an opportunity to comment on a draft, is then expected to agree and endorse the final report (however critical).

I also believe that one should make a distinction between deliberately refusing or failing to co-operate, and co-operation which is constrained by limited knowledge of officials in respect of certain matters. An official

who does not know the answer to a particular question or who does not recall a particular document or does not fully understand a particular issue is not "failing to co-operate" if they indicate as much to the auditor, or if they fail to reveal that which they have not recalled. Indeed, provision of such candid responses may, in fact, assist the auditor in trying to understand the state of knowledge of officials.

Allegations of non-cooperation, and failure to follow the Nolan principles are grave matters. They ought not to be made lightly, or without a clear evidential basis for doing so. For my part, I have seen no such evidence to justify this aspect of Mr Woods' evidence.

b. Without prejudice to the generality of the foregoing, please indicate whether Mr Woods ever raised with you, directly or indirectly, concerns about the cooperation he was receiving or had received in the course of any such investigations or enquiries (cf., for instance, the evidence of Mr Hughes at paragraph 3 of his witness statement of 20 November 2018: see **WIT-14119 to WIT-14120**; and the evidence of Mr Mills at paragraph 12 of his witness statement of 14 November 2018: see **WIT-26087/8**).

I do not believe Mr Woods raised such concerns with me. To the best of my knowledge, he did not raise such concerns with Andrew McCormick, to whom he had a direct line of report as Head of Internal Audit. I do recall Mr Woods raising a concern with me about comments made by John Mills on a draft of the audit report, and asking whether I had cleared them (my recollection is that he found the tone somewhat sharp and uncompromising).

I explained that I was aware of the comments, but had not sought to clear them. I further explained that I regarded it as essential for the Head of Division to have an opportunity to make comments that were unfiltered

and unvarnished by me; and that I regarded it as equally essential for the Head of Internal Audit to have absolute editorial control over the report, with an inviolable right to accept or reject comments as he saw fit. Mr Woods appeared satisfied by that advice at the time.

Anonymous provision of emails to Dr McCormick

34. Evidence provided to the Inquiry establishes that a number of emails where provided (anonymously) to Dr McCormick, in January 2017, dating from the summer 2015 period and showing information about intended changes to the RHI Scheme being circulated within industry, having been disclosed by Departmental officials. The evidence suggests that these emails were also provided to a journalist who then wished to report on the issue, including by publication of the names of the officials involved. As to this:

a. Describe the concerns (if any) you had about the publication of the names of the officials involved and, in particular, any interaction you had with Minister Hamilton or his Special Adviser about this (and, if any, their response).

*I was profoundly concerned about the publication of the names of the officials, and its potential effect on their well-being. This was referred to briefly in my first witness statement (**WIT 11571**) and in my email of 25 January 2017 to Andrew McCormick (**WIT 12201**). It may assist the Inquiry if I now set out the context more fully.*

By December 2016, I was working more closely with Mr Wightman and Mr Hughes than had been the case in 2015[9]. I was acutely aware of the pressure that they had been under, and of their feelings of worry and

[9] Following a re-organisation in May 2016, Stuart Wightman was (from September 2016) reporting direct to me as the temporary Head of Renewable Division. In effect, Mr Wightman and Mr Hughes were both one step closer to me than in 2015.

disappointment. It was clear to me that both were under considerable stress and felt vulnerable at that time.

The leaking of the emails came as a profound shock. In my evidence I have stated my firm belief that the content of the emails themselves stemmed from an error of judgement, and not from any wrongdoing. Irrespective of any difference of view on that, Andrew McCormick and I had a clear, shared view of the action to be taken, which was:

- *to advise the Minister and the Public Accounts Committee (PAC);*
- *to investigate the matter and ensure the integrity of the process; and*
- *to ensure the well-being and fair treatment of Seamus Hughes and Stuart Wightman.*

In that context I was profoundly disturbed by the reporting of the matter in the media, as events very rapidly unfolded. On 18 January 2017, Andrew McCormick advised the PAC that he had received the emails, using measured and carefully chosen language that sought to protect due process, without downplaying the seriousness of the matter. Within a few hours of that, the story featured prominently in the media, with commentators – including elected representatives – using terms such as 'fraud' and 'insider trading'. Mr Wightman and Mr Hughes were understandably worried and dismayed.

Much worse was to come. The Department was contacted by a newspaper journalist, indicating his intention to name Mr Wightman and Mr Hughes in a story on the matter. This added considerably to the stress that they were experiencing, and raised the very real prospect of their being approached directly by journalists at home (as had happened to my colleagues Fiona Hepper and David Thompson).

At my request, the Department explored the potential to apply for an injunction, preventing the naming of Mr Wightman and Mr Hughes. Upon taking legal advice this option was not pursued. As events unfolded, there was little that I could do other than to support Mr Wightman and Mr Hughes through the episode, which was unprecedented in my experience. To their very considerable credit, both remained resilient and thoroughly professional throughout the matter, continuing to work diligently through an incredibly difficult period.

I should acknowledge that the newspaper story, when published, was fair and balanced, and concluded that the matters in the email stemmed from naivety rather than wrong doing.

b. Specify when (and how) you became aware of who sent these emails to Dr McCormick.

I became aware of this through the oral evidence of Simon Hamilton on 23 October 2018.

c. Assuming that you became aware of the identity of who sent the emails to Dr McCormick in the course of the Inquiry process (see, for instance, Simon Hamilton's evidence at TRA**-16217 to TRA-16224**), please provide any further evidence you may wish to provide in relation to that matter (and, relatedly, any comments you wish to make on the statement of John Robinson of 20 November 2018 dealing with this issue: see **WIT-22039 to WIT-22048**).

The assumption is correct. The explanation given by Simon Hamilton in his oral evidence, and by John Robinson in his witness statement simply does not withstand analysis. There is no rational basis for suggesting that Andrew McCormick would not have handled the matter properly, or that he would have handled it any differently had it not been for the leaking of the emails to the media. Mr Robinson stated that he was

concerned to protect the identity of his 'source'. Simple redaction of the emails, and a polite refusal to name the source would have achieved that. His further suggestion that Andrew McCormick may have already known about the content of the emails, or would refuse to act on them, is without foundation. Andrew McCormick came to see me almost immediately after receiving the emails, and I recall very clearly that he was shocked and dismayed by their content, and resolute in his determination to deal with the matter properly and fairly.

Andrew McCormick would not, of course, have agreed to the sending of the emails to the media, in order to ensure fairness and due process. The obvious conclusion is that the sending of the emails anonymously to Dr McCormick was merely to provide cover for simultaneously sending them to the media, thus giving the impression that both actions had been taken by some unknown third party. This was in my view a calculated and cynical strategy to maximise the media exposure of officials for political purposes. It showed a blatant and callous disregard for the wellbeing of the officials concerned, or for any form of due process.

General

35. To the extent that you consider the evidence of any other witness or participant contradicts your evidence on a significant issue, or is materially incomplete in respect of any significant issue, you should take this opportunity to address those issues by way of further written evidence, but only to the extent (a) that the said issues have not already been addressed in your existing oral and written evidence and (b) that the further material you wish to provide constitutes evidence of fact as opposed to mere commentary on the evidence of another witness or participant which would be more appropriate for submissions.

The oral evidence of Simon Hamilton on 23 October 2018 included criticism of a submission from Stuart Wightman of 28 October 2016, which proposed an option known as the 'buy-out option'. It is, of course, entirely in the gift of a Minister to accept or reject any policy proposal. However, the evidence appeared to overlook a salient point. The buy-out option, properly enacted and administered, would have comprehensively dealt with the risk of future overcompensation, by restricting the rate of return to the limit set in the state aid approval. By contrast, the Inquiry has established that the option chosen in preference to buy-out (and enacted in the 2017 Regulations) is ineffective in that regard, and did little to address the risk of overcompensation. It is unfortunate that Mr. Wightman's advice was not given fuller consideration.

Whatever his view on the content of the submission, Simon Hamilton's concentration of criticism on Stuart Wightman was unfair. He deserves credit for putting forward the option. However, this was not solely Mr Wightman's work. Mr. Wightman was, by then, reporting direct to me, and brought forward the submission under my direction and supervision. Andrew McCormick also provided input. Having done the work (and as acting Head of Division), Mr. Wightman signed the submission, in line with standard practice. Had I known that it would be the subject of unfair criticism, I would have offered to sign it myself.

36. Please set out any further significant evidence you have or of which you are aware, having regard to the Inquiry's Terms of Reference, which has not been addressed either adequately or at all in your previous written or oral evidence.

I have no further evidence to offer.

RENEWABLE HEAT INCENTIVE INQUIRY

Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed: 

Dated: 4 December 2018