

## INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

### Supplementary Corporate Statement

- Chris Stewart (WIT-11501 to WIT-12395)
- John Mills (WIT-14501 to WIT-14997 and WIT-26001 to WIT-26009)
- Stuart Wightman (WIT-17001 to WIT-17716)
- Seamus Hughes (WIT-14001 to WIT-14100)

The Statement also draws on:

- Andrew McCormick (WIT-10501 to WIT-11429)
- Eugene Rooney (WIT-24401 to WIT-24456)
- Trevor Cooper (WIT-18501 to WIT-19050)

**DATE: 26 October 2018**

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### Witness Statement of: Brendan McCann

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I, Brendan McCann, will say as follows:

1. This witness statement by the Department for the Economy seeks to supplement Stephen McMurray's previous corporate statement dated 19 May 2017. The statement deals with matters in relation to which I have no direct knowledge and, therefore, it has been produced with input from a range of colleagues across the Department and reflects the corporate view of the Department.
2. The Department has considered the witness statements provided by Chris Stewart, John Mills, Stuart Wightman and Seamus Hughes, and the related oral evidence heard by the Inquiry to date. The statement also draws on the witness statements and evidence provided by Andrew McCormick, Eugene Rooney, Shane Murphy and Trevor Cooper.

3. The purpose of this statement is to seek to assist the Inquiry in clarifying issues which the Department perceives arise from the witness statements mentioned above, relating to management and control of the Scheme from mid 2014.
4. In providing this supplementary statement the Department does not seek to apportion blame or suggest any final conclusions, and the Department remains fully committed to providing evidence in a fair and balanced manner. However, the Department considers it is necessary to respond to particular comments made by individual witnesses where they disagree with our corporate evidence.
5. In providing this supplementary statement the Department will briefly identify areas of dispute. As some of this ground has been covered in the Opening Statements by Counsel for the Inquiry, we have endeavoured to only add additional explanatory material where necessary.
6. It is important to note that this statement references sections of material from the evidence bundles which are marked for redaction by the Inquiry. The Department has not carried out any redactions of quotes or references to that material, therefore the Inquiry will want to consider this matter before publishing this statement.

### **Knowledge of Energy Efficiency Branch work and relevant policies**

7. The Department has already accepted the criticisms arising in the NIAO Report (**CAG-01680 to CAG-01697**) which highlighted the failings in the oversight and management of the Non-Domestic RHI Scheme. Specifically the report found that the Department had not properly monitored and controlled the Scheme, but rather had relied overly on the work being done by Ofgem (**CAG-01694**).
8. Officials joining Energy Efficiency (EE) Branch (previously Renewable Heat Branch) in June 2014, have asserted that senior management had identified the domestic RHI Scheme as the priority for action. Nevertheless, officials were aware that they also held responsibility for, “management of the Non-Domestic

RHI Scheme”, as this is included in the Branch Plan from as early as July 2014 (**DFE-419612**).

9. However, not all of the actions in the Branch Plan for 2014/15 were progressed and John Mills noted in Stuart Wightman’s 2014/15 performance appraisal that Phase II of the Non-Domestic Scheme (which would have introduced cost controls) had “had to take second place” to other priorities (**DFE-430507**). In the Department’s view, the decision to defer the Phase II work was taken without a full consideration of the risks, and without the rationale for the decision being formally documented and agreed with senior management (Grade 3 and above).
10. During oral evidence it was confirmed that officials in EE Branch accessed documents and regulations relevant to the Branch’s policy responsibilities on an occasional basis in response to work on specific issues but that they did not “sit down and read the regulations from start to finish” (**TRA-05833**, **TRA-09183** and **TRA-09571**). EE Branch held responsibility for both Schemes and it is reasonable to expect that incoming staff should have been fully informed of: the working basis (including any statutory duties for the Department as set out in the legislation); the policy intent; the nature of approvals; and the parameters under which the Schemes were operating. The Department would suggest that unfamiliarity with any new role should encourage the post holder to actively investigate the scope of their work and new responsibilities.
11. The Department has identified this as a point of learning, and will seek to be more explicit in future around the need for new staff to read and understand the legislation which underpins their new role. This is especially important in a situation where there is no continuity of staff at management level, and where consideration is being given to deferring actions in the work area, due to the limited staff resource being required to focus efforts elsewhere. The Department acknowledges that the unusually high level of staff change in this case contributed to the loss of corporate knowledge, and had a negative impact on the management of the Scheme. In this regard, the Department recognises and appreciates the need for continuity of staff who have knowledge and experience

to be available to support incoming staff and where there is change, especially at management level, there should be robust “handover” processes.

12. The Department has acknowledged that omitting to implement robust project management principles was a key failing (**WIT-03281** to **WIT-03282**). Arguably, EE Branch may not have been in a position to remedy this in late 2014, with resources being largely occupied with the launch of the domestic RHI Scheme. Despite the lack of a robust project management structure, it would have been beneficial for the key background information, referred to above, to have been reviewed and understood by the new team at the outset. As officials had not reviewed the key background information (**TRA-05833**, **TRA-09183**), they were not sufficiently informed to recognise that the Scheme was not operating as had been intended.

13. The Assurance Statement submitted to Chris Stewart in May 2015 confirmed, with regard to Energy Division, that:

- a. Necessary DFP approvals for expenditure had been obtained;
- b. Programmes and projects were managed in accordance with good practice including, where appropriate, Gateway Reviews, Prince II Methodology and guidance that issues from Central Procurement Directorate;
- c. Authority, responsibility and accountability within the Group are clearly defined so that decisions were made and actions taken by appropriate people; and
- d. Staff within the Group were made fully aware of their job responsibilities (**DFE-387439** to **DFE-387510**).

These assurances do not appear to have been provided as a result of due diligence in relation to RHI. The Department will ensure that its Corporate Governance Division will remind staff at middle and senior management level of the steps that should be taken in relation to the completion of assurance statements, providing additional training as necessary. Corporate Governance Division will also advise senior management (Grades 3 and 5) of the importance of testing the answers given to them by their management teams.

**Handover note - understanding of priorities**

14. The Department is unaware of any evidence of active consideration of the degree of priority merited by each of the actions on the “Immediate actions (by end August 2014)” list from the Handover Note (**DFE-383318**). In the Department’s view, where work cannot proceed to address actions that have been identified as requiring immediate attention, there should be an informed consideration of the inherent risks – particularly in this case where the risk was identified as a financial one i.e. “to prevent excessive payments” (**DFE-419612**).
15. The “Immediate actions” list part of the Handover Note (**DFE-383318**) indicated that urgent consideration should be given to reviewing existing tariffs, highlighting biomass under 100kW as requiring urgent attention, and suggesting tiering as a potential “solution” (**DFE-383322**). The Department is not aware of any evidence to suggest that advice and support was sought from the Analytical Support Unit (ASU) in the Department, which could have assisted with a review, given the previous experience of the ASU economists at the time when the tariffs were originally set. Neither is there evidence that Energy Division considered using its own dedicated economist, who was embedded permanently within Energy Division, and whose work programme was set by Energy Division, to progress this work. It would have been advantageous if the reference in the Handover Note to potential overcompensation had prompted urgent attention from officials in EE Branch.
16. The Addendum Business Case submitted by EE Branch in October 2015 (**DFE-285372** to **DFE-285399**) seeking DFP approval for the continuation of the RHI Scheme stated that:
- “Ministers prioritised introduction of the domestic RHI including deferring other measures which would have slowed down its introduction.”*
- (DFE-285374)**
- The “other measures” referred to include consideration of a cost control mechanism for management of the overall RHI Scheme budget. The failure to recognise that this was an issue which was separate from the need for review of

existing tariffs (and the potential introduction of tiering), meant that the exercise to determine value for money was mistakenly deferred. The Department is not aware of any evidence which supports the assertion that prioritisation of the Domestic RHI Scheme was determined at Ministerial level.

### **Monitoring of Scheme applications and usage and comparing these with assumptions underpinning the Scheme**

17. It was submitted in oral evidence that EE Branch monitored application numbers and payment levels under the Scheme for budgeting purposes (**TRA-06978** to **TRA-06981**). However, no comparisons were carried out between the typical boiler size applying for accreditation and the usage profile, with the underlying assumptions of the Scheme upon which the business case was based (**PWC-04676**). This meant that it was not recognised that average boiler capacity and load factors were well above those projected in the CEPA work. The need to carry out regular reviews to check that the CEPA assumptions were accurate was articulated in the Regulatory Impact Assessment for the Scheme (**DFE-143870**).
18. The tariff level, based on the CEPA work, was made up of a number of component parts, of which, expected annual usage and capital costs were vitally important. As capital costs are heavily dependent on market conditions, ongoing monitoring of the level of such costs was crucial to ensure that the tariff level remained appropriate – this was promised in the original Business Case (**DFE-81038, DFE-81047**), the Regulatory Impact Assessment (**DFE-143870**) and the CEPA Reports (**DFE-400320** to **DFE-400321, DFE-317093, DFE-317098**). Capital costs and expected usage levels of the installations were noted by applicants on their application forms for the Scheme. Ofgem sent regular reports to the Department detailing the total number of applications, the installation capacity, efficiency and average hours of operation per week (as recorded on the application forms). Energy Division officials did not actively monitoring costs (**TRA-05849, TRA-06975**). The Department acknowledges there was overreliance on Ofgem for the management and administration of the Scheme,

however, it considers that the monitoring of usage should have been carried out by the Department.

19. This failure to monitor key component parts was a continuing failure. Assumptions made in the Addendum Business Case, submitted in October 2015 (**DFE-285372** to **DFE-285399**), show that Energy Division officials used incorrect and outdated assumptions of boiler capital costs which worked to overstate the assessment of the value for money of the tariff payments. This can be seen for a 199kW boiler in respect of which the Addendum Business Case estimates a rate of return of 12.8% based on a Tier 1 payment (capital return) of £11,531 divided by an original capital investment of £90,000 (**DFE-285389**). It is unclear why this capital investment figure was used, as Energy Division officials had received information in July 2015 from a local supplier indicating that biomass boiler capital costs in Northern Ireland were significantly lower, including £52,000-£53,000 for a 199kW boiler (**DFE-107153**). If this lower figure had been used, instead then the rate of return, using the methodology in the Addendum Business Case, would have been 22%, a return above the State aid approved level.
20. There were also other errors in the Addendum Business Case which included: no counterfactual capital cost; an erroneous application of the fuel efficiency factor; and an approach to calculating the rate of return that was inconsistent with the original tariff calculation. Correcting for these errors increased the estimated rate of return further to 39%<sup>1</sup>.
21. The Department has already commented on the fact that documentation suggests that Energy Division officials in early 2015 were considering reductions to the single tier tariff level, to be introduced from April 2017 (**WIT-00106**). Ultimately, however, the starting Tier 1 level of tariff under the tiered tariff structure, introduced later in 2015 was based on the previous single tier tariff. Although there appears to have been awareness that this was too high (on the

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<sup>1</sup> Removing the fuel efficiency factor increases the Tier 1 payment to £12,813. Applying the cost per kW of £97 from Table A.25 of the 2012 CEPA report implies that an 199kW oil boiler would cost approximately £19,300 so that the additional investment on the biomass boiler is £33,200.

basis that officials were proposing to reduce it), it was still recommended to DFP as part of the Addendum Business Case, as representing value for money.

22. The Department further notes that Energy Division officials were aware that there was the potential for Scheme recipients to receive excessive payments from as early as 11 August 2015. This shows that in considering the proposed change there was a risk of the payments being too generous and outside of EU approval levels. John Mills sent an email to Chris Stewart on 11 August 2015 (**DFE-293161** to **DFE-293162**) in response to a request from Timothy Cairns that the Department give consideration to the introduction of a tiered tariff to engage at 3000 hours as opposed to 1314 hours. John Mills' response stated that a tiered tariff engaging at 3000 hours would provide a rate of return of 38.46% which would be well outside of State aid approval limits. This e-mail indicates that Energy Division did know that returns had the potential to be higher than intended.
23. The Department notes that, throughout the period when changes to the Scheme were being discussed, there is no evidence of ongoing dialogue with GB officials in DECC while policy options were being developed. In view of DECC's experience of the impact of policy changes on operation and practice under the GB RHI Scheme, such engagement could have usefully informed Energy Division officials' deliberations. This again is a key learning point for the Department.

### **Scheme performance, the need for cost controls and review of the Scheme**

24. As stated in oral evidence by Peter Hutchinson, there was an error in the draft business case for the Domestic RHI Scheme (prepared before Stuart Wightman and Seamus Hughes joined EE Branch), which referred to the first formal review of the Non-Domestic Scheme RHI commencing in 2015, with changes implemented in 2016 (**TRA-05145**). This is contrary to the previous commitments, on which DFP approval for the Scheme is based, and which was also repeated to the European Commission, i.e. that a review of the Scheme would commence in 2014. Stuart Wightman indicated that he understood from

this that the decision to defer the review had been taken prior to his arrival (**PWC-04664**).

25. Evidence presented by Energy Division officials involved in setting up the RHI Scheme (i.e. “Team 1”) indicates that it was intended that ongoing “monitoring and review” would achieve cost control of the Scheme. However, it is the Department’s view that the complete reliance on this activity as the sole mechanism intended to control costs would never have been adequate, in particular because the Scheme had no failsafe mechanism to allow urgent intervention if “monitoring and review” led to the identification of a problem. In addition, Team 1’s intended approach was not appropriately conveyed to staff joining later, and it was not recorded anywhere in Divisional Management documents which would have ensured that the importance of a review was understood by new staff. This meant that the staff who later joined Energy Division did not recognise the need for review as a priority.

26. Commenting in his witness statement on his view of the “usefulness” of any such review being carried out in 2014, John Mills states:

*“there would have been very limited data upon which to base any sensible analysis in 2014... Given the lack of data it is hard to see the benefit of a tariff review in early 2014 or that it constitutes a “missed opportunity”. If, on the other hand, what is meant by a tariff review is, “a complete re-assessment of the original economic basis” for Non-Domestic Scheme RHI, perhaps this might have made a difference. However, I did not have the resources to fundamentally review Non-Domestic Scheme RHI or any other policy areas, nor was it indicated to me that a substantial overhaul review was anticipated.” (WIT-14534)*

27. This view does not take into account that, as noted in the Department’s witness statement clarifying issues on design, setup and launch of the scheme (**WIT-03279**), divergence from the load factors and boiler sizes assumed by the consultants would have been apparent from as early as 2013. It is reasonable to expect that this analysis would have happened in a Branch with responsibility for

managing the Scheme. This is the action that was anticipated when the Regulatory Impact Assessment was drafted which refers to:

*“regular, planned, reviews of subsidy levels after a number of years of experience with the subsidy. This will provide an opportunity to amend tariffs if required and ensure they remain appropriate given potential changing market conditions”.* (DFE-143870)

28. As has been demonstrated in the Department’s Witness Statement of 24 November 2017 (WIT-03280), it would have been clear from the projected usage information, stated on the applicants’ application forms, that the projected usage differed from the assumed usage profile upon which the economics of the Scheme had been based. As indicated in the Department’s earlier statement, the projected usage information, as recorded on application forms for the Scheme, was sent to the Department on a weekly basis by Ofgem (WIT-03278 to WIT-03279). These weekly reports were used to monitor the number of new applications received, but were not used to carry out comparisons against the assumptions underpinning the Scheme. At this stage, in mid 2014, some 198 applications had been received, 63% of which were for a 99kW biomass installation, with an average load factor of 45% resulting in an average annual payment of £22,900 as opposed to CEPA’s assumed 50kW installation, 17% load factor and average annual payment of £4,500<sup>2</sup>.

29. While staff in Energy Division have made comment on the fact that the projected usage profile, as reported by applicants, was understood to be unreliable – it was perceived that some applicants would under/over estimate for purposes of making their application more favourable – the *actual* usage figures associated with the payment information was also made available to the Department on an ongoing basis.

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<sup>2</sup> 50kW \* 17% load factor \* 8,760 annual hours \* 6.1p/kWh tariff = £4,542

**Janette O'Hagan's email alleging abuse of the RHI Scheme**

30. Janette O'Hagan, sent a strongly worded email alleging widespread abuse of the RHI Scheme to the Department in May 2014. The issues raised in her email were recorded in the Handover Note, which referred to Janette O'Hagan by name, along with details of where the email was saved on TRIM. As Janette O'Hagan received no response, she wrote again a month later in the same terms. The Handover Note was passed to incoming staff joining EE Branch in June 2014, and the Department is not aware of any evidence that they took action in response to the issues raised by Janette O'Hagan.

31. When Janette O'Hagan wrote to the Department again in March 2015, the email chain contained the 2014 emails, which described widespread abuse of the Scheme, and the comments on the importance of tiering in that context. A response was issued stating that changes to the Scheme were being considered, but that tiering was not being proposed. Janette O'Hagan responded the same day, reiterating the importance of tiering in addressing the perverse incentive to waste heat and expressed disappointment that the Department had not taken her concerns seriously, and had not taken any action in response to her repeated approaches (**WIT-17381**). This email was not responded to and no action or further investigation was undertaken by EE Branch. In the Department's view, Janette O'Hagan's warnings warranted immediate attention and swift action.

**Policy Group Assurance Statement May and June 2015**

32. On 29 May 2015, Chris Stewart sent the routine six monthly assurance for Policy Group<sup>3</sup> statement to Andrew McCormick (**DFE-277238** to **DFE-277239**). This included an explanation of the position on the RHI Scheme under the heading "Significant Internal Control Problems". The explanation included the following:

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<sup>3</sup> ie his Grade 3 command within DETI

*“Despite repeated requests for information from Finance Division (and DFP) The (sic) Division has yet to receive any clarity around the maximum available RHI budget going forward.”*

33. The same day, at the fortnightly Senior Management Team meeting, there was a sharp exchange of views between Trevor Cooper, the Finance Director, and John Mills, the Energy Director. John Mills stated that Finance Division needed to secure additional budget in relation to the Scheme. Trevor Cooper pointed out that the Scheme was already over budget and that whilst the Scheme had overspent, clearly there were more control issues with the Scheme than securing additional budget cover. At this stage Trevor Cooper was unaware of the lapse in Scheme approval (**DFE-278081**), or of the content of the Energy Division assurance statement (**DFE-277236**), but was aware of the overspend, the absence of tiering, and had been working with Energy Division over the previous two weeks to assist Energy Division to calculate its expenditure, including accrued expenditure, given the very significant shift in the forecasts provided by Energy Division over a 4 month period, which had suggested reduced forward budgetary requirements in 2015/16 no later than November 2014 (**WIT-02992** to **WIT-02993**). Andrew McCormick closed down the discussion in that meeting and called a special urgent discussion to address the issues more fully.
34. That meeting took place on 3 June 2015 (see **WIT-10588**). In the period between the Senior Management Meeting and the meeting on 3 June 2015, Trevor Cooper reviewed some of the original casework documentation (including the minutes of the Casework Meeting, and the DFP approval letter from 2012). It was this action that resulted in the recognition that Energy Division had not secured approvals for the scheme post 31 March 2015 and that ongoing expenditure was therefore irregular. At the meeting of 3 June 2015 there was a discussion on the range of weaknesses in the management and control of the Scheme: the overspend against the budget; the failure to review the Scheme as originally planned; the absence of the tiering of tariffs in the Scheme from the outset; the absence of a mechanism to constrain or cease expenditure on the scheme from the outset, without the introduction of primary legislation; and the

very significant and ongoing growth in demand for the Scheme for which there was no budget cover.

35. Prior to the meeting on 17 June 2015 there was an exchange of emails between Trevor Cooper and Shane Murphy in relation to their concerns about the Scheme (**DFE-146538, DFE-146546 to DFE-146557, DFE-146565 to DFE-146571**). At a subsequent meeting on 17 June 2015, attended by Andrew McCormick, Eugene Rooney, Trevor Cooper, John Mills, Shane Murphy and Stuart Wightman, Energy Division indicated that its legal advice was such that the only action that could be taken by the Department in the short term (estimated to take three months) was to introduce tiering on existing tariffs to dampen demand and improve VfM. The option to close the scheme was also discounted on the basis of Energy Division's representation of the legal position. They further advised in this meeting that the amendment of tariff levels and the introduction of budget/cost controls, which were absent from the Scheme, would each take between six months and a year from that date so there was no mechanism available in either the medium or short term to cease further additional commitment, or to reduce additional commitment other than the action to tier existing tariffs.
36. Trevor Cooper has stated in his witness statement that, at this meeting, he raised the issue of the Scheme being in breach of State aid rules and Shane Murphy suggested that an urgent focussed review of the Scheme be undertaken that would include a review of tariffs across each technology (**WIT-19058**).
37. It was on the basis of this legal advice from Energy Division (referred to in paragraph 35 above) that Andrew McCormick confirmed that urgent action should be taken immediately on the only short term option (as presented by Energy Division) being available to reduce the budget pressure from the Scheme, and improve its value for money as quickly as possible, with follow up action to be taken around the introduction of budget/cost controls and tariff review and amendments across the Scheme to follow on as soon as practicable (i.e. in six to twelve months).

38. Shane Murphy also advised Energy Division to discontinue promotion of the Scheme, so that demand was not further increased.

#### **Delay in resolving non-standard AME and DEL penalty**

39. The HM Treasury email of 2011 (**DFE-164136** to **DFE-164137**) was available to new staff in EE Branch from the outset, being referred to in the Handover Note. While the profile of the funding was unusual, the 2011 email from HM Treasury indicated that overspends would have to be recouped from the Department's future allocations and it referred separately, to a likely 5% DEL penalty which would also apply even if the balance could be recouped from future AME allocations.

40. The 2013 consultation document explicitly stated that the budget for the RHI Scheme was limited, and evidence shows that staff joining EE Branch in summer 2014 were aware of this, as they subsequently used this text to populate draft policy templates in early 2015, stating:

*“The RHI is different in nature to the NIRO in that there is a finite budget for new installations and these budget limits cannot be breached.”*

**(DFE-117627)**

41. It seems to be the case that in 2015 the staff in Energy Division did not understand the true nature of the funding profile as described in the HM Treasury email. The evidence shows that Energy Division staff were actively seeking clarity on this from 29 March 2015: which indicated that they were aware that the budget profile was in question. However, prior to that point (on 10 March 2015), Finance Division had formally confirmed the budget that Energy Division should work to and gave a clear signal that under no circumstances should commitments be entered into without budget cover (**DFE-195800** to **DFE-195804**, **DFE-195999**, **DFE-196000**).

42. At the meeting on 17 June 2015, Andrew McCormick instructed that the actions to regularise expenditure, reduce the rate of further budget commitment through the introduction of tiering, and seek further budget should all be given top priority.

However, Trevor Cooper has advised the Department that these actions were delayed because John Mills directed Stuart Wightman to prioritise work on the Energywise business case over the progression of work on the RHI addendum.

43. In spite of the fact that Bernie Brankin, in her email of 24 August 2015 (**WIT-02741**), again highlighted the potential for DEL penalties, Energy Division continued to incorrectly describe the nature of the funding, which was referenced again in a submission dated 6 November 2015, which sought the Minister's signature for the Motion for Approval for the draft 2015 Regulations (**DFE-123805**).
44. A slightly different understanding of the nature of the historic funding position was represented to the Minister in a submission from John Mills on 31 December 2015 (**DFE-122356** to **DFE-122361**) which referred to a "change in HMT policy" whereby the NI DEL budget would be liable for the full cost of the overspend, rather than only 5% of the overspend as had been (wrongly) understood, linking it to the Chancellor's Autumn Statement.

### **Engagement with RHI Recipients and the Renewables Industry**

45. Paragraphs 308 to 313 of the Department's corporate statement of 19 May 2017 (**WIT-00118**, **WIT-00119**) provide information in relation to stakeholder engagement and the premature disclosure of the 2015 tariff reductions.
46. The Department notes the views expressed by Stuart Wightman in his witness statement around balancing the risk of legal challenge and the need to include specific details to render the consultation meaningful (**WIT-17066**). The Department accepts that these are legitimate points, but it does not consider that the process followed in respect of engagement with industry was in line with the guidance on policy making in Northern Ireland. The Department's understanding of those parts of the guidance that deal with consultation is that the process should be driven by Government. In practice, what happened from July 2015 onwards was that officials provided information on tariff reductions following approaches from the Industry.

47. There appears to have been some awareness of the risks involved in informing industry stakeholders of proposed changes in the Scheme, as Stuart Wightman refers to it when discussing the response to Janette O'Hagan's March 2015 email:

*"in March we were already thinking we need to do tariff changes here at some stage but we wouldn't have written back to her and said 'we were doing tariff changes' because we don't want a spike, we don't want to let people know what we're necessarily doing"* (PWC-04673)

*"I think when we received that email we were pretty clear what we were going to do tiered tariff [sic], we would need to do tier tariffs but I wouldn't have said that to any individuals for obvious reasons."* (PWC-04683)

However in the draft policy template dealing with cost control proposals shared with Ofgem for comment by EE Branch on 25 March 2015, tiering is not mentioned (DFE-118586 to DFE-118587). A reference to tiered tariffs first appeared on 15 May 2015 in a document entitled "The Northern Ireland Non Domestic Renewable Heat Incentive: Response to consultation and final policy" (DFE-117124). The reference to tiered tariffs was then added to the draft of a policy template on 20 May 2015 (DFE-117621 to DFE-117622).

48. Stuart Wightman states that it was considered that a full public consultation in June 2015 would "*provide the industry with too much notice*" of the changes being proposed (WIT-17039). Evidence shows that EE Branch were sharing information with external third parties regarding the Non-Domestic RHI Phase II changes from as early as January 2015, with respect to the proposal to increase the biomass banding limit (DFE-106825), and again in February 2015 (DFE-106830, WIT-263925), and that industry representatives had understood from that early stage that a reduction in the profitability of tariff levels was likely:

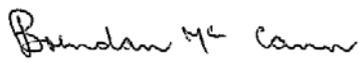
*"We have a time window until the start of October to complete this and have the system installed – after then the Renewable Heat Incentive (RHI) may reduce, making the investment less attractive."* (COM-126870)

49. In his witness statement John Mills also stated that a lengthy consultation was to be avoided as it was anticipated that this could drive a spike in applications; he noted that a period of 6 weeks had been agreed between “giving notice” and the changes being made (**WIT-14553**).
50. The Department would draw a distinction between stakeholder interactions where general views are sought on possible scenarios and policy options, and meetings targeted at selected interested parties (with a significant commercial interest) involving disclosure and discussion of final policy proposals, and consideration of the timescale for their introduction, as it appears occurred in this case.
51. The candour that characterised EE Branch discussions with some industry bodies during this period meant that many recipients of, and potential applicants to, the Scheme were effectively briefed on the detail of the final policy and cost control proposals, and the outcome considered likely by EE Branch officials, before the proposals had even been submitted to the Minister for consideration on the 8 July 2015 (**WIT-02764, WIT-02769, DFE-107108 to DFE-107110**). Indeed, the proposals, and the likely outcome, continued to be openly discussed pending the Ministerial decision confirmed on 3 September 2015 (**WIT-02766, DFE-107131 to DFE-107132, DFE-107137, DFE-107144 to DFE-107145, DFE-107161 to DFE-107162, COM-05156, COM-05173, WIT-195355 to WIT-195360**).

Statement of Truth

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

Signed:

  
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Dated: 26 October 2018