



David Gordon

Personal information redacted by RHI Inquiry

By post and email to: dgordon@rhiinquiry.org

Personal information redacted by the RHI Inquiry

16 April 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 you will already be familiar with the work of the Inquiry and its Terms of Reference from my previous correspondence with you.

The Inquiry is grateful for the documents you provided to it pursuant to the Chairman's Notice No 123 of 2017. The Inquiry has considered those documents and there are a number of matters arising therefrom which the Inquiry would like you to address by way of witness statement at this stage.

Therefore, 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 written statement addressing the matters identified in the Schedule to the Section 21 Notice.

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

It is vital that the 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.

I also refer you to Restriction Order No 2 made by the Chairman of the RHI Inquiry on 22 June 2017, a copy of which is enclosed for your convenience. This restriction order prohibits you from publishing any documentation received from the RHI Inquiry (save that you may show it to your legal representative) unless you first obtain the consent in writing of the Inquiry Chairman.

In addition to the restriction orders made by the Chairman of the RHI Inquiry (which you will find published on the Inquiry website) receipt of this correspondence and its enclosures also places you under a duty of confidentiality to the RHI Inquiry in respect of them. You may share the correspondence and the enclosed Notice and documents with your legal representative(s), but neither you nor they may show, communicate the contents of, nor provide this correspondence or the Notice or documents to any other person or organisation without the express permission of the RHI Inquiry. Any breach of this duty of confidentiality is actionable at the suit of the Inquiry Chairman.

You will also find attached to the Section 21 Notice a Guidance Note explaining the nature of a Section 21 Notice and the procedures that the RHI Inquiry has adopted in relation to such a notice. In particular, you are asked to provide your evidence in the form of the template witness statement which is also enclosed with this 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.

I should also indicate that merely because the Inquiry has asked you to provide a witness statement it does not follow that the Inquiry will also ask or require you to attend to give oral evidence. Should the Inquiry wish to hear further from you it will be in further contact in due course. Clearly, however, the more full the evidence you provide at this stage, the less likely it may be that the Inquiry will have to revert to you for further clarification, whether by way of further written statement or by means of the giving of oral evidence.

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 25 of 2018]

Email of 28 December 2016

From documents provided to the Inquiry, it appears that on 28 December 2016 at 11.47 you sent an email (bearing Inquiry reference IND-60534, a copy of which is provided herewith) to Richard Bullick, who was then a special advisor to the First Minister. The email is entitled "*Re: Quick questions*". You appear to be discussing how to deal with the BBC's potential release of the "*Bell/McCormick tapes*". The email, amongst other things, includes the following passage:

"... An Andrew McC statement and even interview before then could pre-empt some of this – although it does mean dealing with the real story of how cost controls were delayed in 2015 and the political input into that – AC etc.

In an ideal world you would get the AC story out and dealt with this week and spike the BBC and Bell guns ..."

As to this communication:

1. At the time you wrote the email of 28 December 2016:
 - a. What role were you performing for the Northern Ireland Executive and/or the Office of First Minister and Deputy First Minister?
 - b. When did you take up the role?
 - c. What did the role involve?
 - d. To whom were you accountable in the role?

2. Please explain:
 - a. The context of the email of 28 December 2016;
 - b. What led you to be sending it to Richard Bullick; and
 - c. Who else, if anyone, was involved in similar discussions with you at that time in relation to the subject matter of the email (including, without prejudice to the generality of the foregoing, whether the deputy First Minister or any of his advisers were aware of, or involved in, any such communications).

3. When you wrote, *"An Andrew McC statement and even interview before then could pre-empt some of this – although it does mean dealing with the real story of how cost controls were delayed in 2015 and the political input into that – AC etc."*:
 - a. What did you mean when you referred to *"the real story of how cost controls were delayed in 2015 and the political input into that – AC etc."*?
 - b. What was *"the real story"*, as you understood it?
 - c. Upon what was your understanding of the *"real story"* based?
 - d. Was there an alternative story to the *"real story"* regarding *"how cost controls were delayed in 2015"*?
 - e. If so, please outline the alternative story (including what it was based on; and whether, and if so how, it came to be promulgated).
 - f. To your knowledge or belief, had there been any attempt to suppress *"the real story"* in any way and/or by any person? If your answer is 'yes' then please explain the basis of that answer.
 - g. How were you proposing to deal with *"the real story"*?

- h. What did you mean when you referred to "*the political input into that – AC etc.*"?
 - i. What did you mean by "*political input*"?
 - j. Who is AC?
 - k. Whomever AC is, what was the basis of your knowledge as to their involvement in "*the real story of how cost controls were delayed in 2015*"?
 - l. What was AC's political input into the delay to the cost controls in 2015?
 - m. When and how did you come to know about AC's political input?
 - n. With whom had you discussed this issue?
 - o. What did you mean by "*etc*"? (Without prejudice to the generality of the foregoing, were there other individuals who had political input into the real story of how cost controls were delayed in 2015? If so, who were these individuals?)
4. When you wrote "*In an ideal world – you would get the AC story out and dealt with this week and spike the BBC and Bell guns*":
- a. What did you mean when you referred to "*the AC story*"?
 - b. Why would it have been ideal to "*get the AC story out and dealt with this week*" [*i.e.* the last week of December 2016]?
5. It further appears to the Inquiry from information received by it that Richard Bullick replied to your email at 14.38 on 28 December 2016 saying: "*We need to see Amc statement asap to make an informed judgment.*" As to that:
- a. Which Andrew McCormick statement was being referred to in the email exchange?

- b. Why was Andrew McCormick's statement linked to "*the real story of how cost controls were delayed in 2015*"?
- c. Did Andrew McCormick have information or evidence pertaining to the real story? If so, please explain how you came to know this.
- d. Are you aware of any pressure being brought to bear on Andrew McCormick in relation to whether and/or how he shared his knowledge, if any, of the real story?

Email of 23 December 2016

6. On a similar theme, it appears to the Inquiry from information received by it that, on 23 December 2016, in an email chain entitled '*BBC and the Bell tapes*', you wrote to Richard Bullick including in the following terms:

"I think we can safely assume the BBC has a recording of Andrew McCormick telling JB that he believes OFMDFM spads including Tim pushed for cost controls to be delayed in 2015.

Broadcasting that will be a big boost to Bell, irrespective of any facts. "Top civil servant backs Bell RHI claim." You have some pre-emptive strike options yourself next week e.g. disclosing who actually did get involved in the 2015 decisions. But I recognise that's a big call by itself.

In the meantime Tim (or his lawyer) could at least give the BBC some pause for thought with a letter along these lines."

The email also notes that, "*Andrew was working on his statement today*". See the email exchange bearing the Inquiry reference IND-31096 to IND-31099 (a copy of which is attached).

As to this:

- a. Why did you feel that it was safe to assume that the recording would include Andrew McCormick saying that *"he believes OFMDFM spads including Tim pushed for cost controls to be delayed in 2015"*?
- b. What, if anything, had Andrew McCormick told you about this conversation or this information?
- c. To your knowledge, who else had discussed Andrew McCormick's conversation with Jonathan Bell?
- d. To your knowledge, was any influence exerted on Andrew McCormick to produce a statement to counter any comments which might emerge from the recordings? (If your answer to this question is 'yes', please explain the basis for your answer, including whom you believe may have exerted any such influence).
- e. Who do you believe asked Andrew McCormick, a civil servant in the Department of the Economy subject to an obligation of political neutrality, to produce a statement?
- f. Do you believe such a request within their remit? Please give reasons for your answer.
- g. When you wrote *"e.g. disclosing who actually did get involved in the 2015 decisions"*, to whom were you referring and to what involvement were you referring?
- h. How did you know who was involved in the 2015 decisions?
- i. To the best of your knowledge and belief, what did Richard Bullick know about who was involved in the 2015 decisions?

- j. Please give details of any other discussions you had about this issue (including with whom you had discussed it, when, and in what terms).
- k. Why would disclosing who actually was involved in the 2015 decisions be a “*big call by itself*”?
- l. Why did you feel the need to draft a summary of a denial of these allegations for Timothy Johnston/his lawyer?

Further relevant information

- 7. Considering the Inquiry’s Terms of Reference please set out any further information that you have of which you consider the Inquiry should be aware.

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.

GUIDANCE NOTES FOR THE SECTION 21 NOTICE

1. The Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme ('the RHI Inquiry') was set up under the Inquiries Act 2005 ('the Act').
2. These Guidance Notes are not part of the Chairman's Notice served under Section 21 of the Act, but are designed to assist those who receive such a Notice.
3. It is very important that a Notice served under Section 21 of the Act is complied with in full. Failure to comply has potentially very serious consequences. Failure to comply may result in you being prosecuted and convicted of a criminal offence that may result in you being fined and/or imprisoned; or being certified to the High Court where you may face contempt of court proceedings.
4. You should consult your solicitor, or your organisation's legal advisor, about the Notice as soon as possible. They will be able to assist you as to how to deal with it.
5. If you feel the content of the Notice is somehow unclear, and you wish something to be clarified, you may contact Patrick Butler, Solicitor to the RHI Inquiry, by email at Patrick.Butler@rhiinquiry.org, who will endeavour to assist with your query and will discuss it with the Chairman of the RHI Inquiry, as necessary.
6. Compliance with the Notice requires you, in the case of producing documents, to have the documents with the RHI Inquiry by the date and time set out in the Notice. Where the Notice requires you to produce a witness statement, the statement should be produced to the RHI Inquiry by the date and time set out in the Notice.
7. "Document" is defined in section 43 of the Act as information recorded in any form.
8. There is no restriction in the Act on the number of times a Section 21 Notice may be served upon a person or organisation. The RHI Inquiry reserves the right to

issue further such notices in future to any recipient, as appropriate in the judgment of the Chairman.

9. The RHI Inquiry prefers that documents, including statements, are received by it in electronic form – preferably as a PDF document – and would be grateful if you could furnish, wherever possible, the documents required of you in that form. The documents should be sent to Patrick.Butler@rhiinquiry.org.
10. Where it is not possible for you to send documents in electronic form you should engage with the Solicitor to the RHI Inquiry to find a suitable solution for provision of the documents to the RHI Inquiry. The RHI Inquiry is keen to ensure that documents are received by it in a manner which is as conducive as possible to the effective and efficient conduct of the RHI Inquiry's work. Where documents can be provided in chronological order, this is particularly helpful.
11. Where it is necessary to send hard copy documents, these should be sent to the RHI Inquiry by post or courier to **RHI Inquiry, 1st Floor, Waterfront Plaza, 8 Laganbank Road, Belfast, BT1 3LR**. If there is a need to hand deliver the documents then contact should be made with the Solicitor to the RHI Inquiry to make suitable arrangements.
12. It may be that you consider that some of the documents you are providing to the RHI Inquiry should be redacted in some way for some reason, bearing mind that the RHI Inquiry may decide to publish the documents in due course. If you do feel documents you are providing should be redacted in some way, then you should provide the documents to the RHI Inquiry in provisionally redacted form (using a grey redaction if possible) so that the proposed redacted material can be read by the Inquiry team. You should also set out in writing the reasons why you consider the redactions should be made by the Inquiry. The RHI Inquiry will then deal with the material in accordance with its Procedural Protocol.
13. If, for some reason, you wish to make a claim to the Chairman of the RHI Inquiry, under Section 21(4) of the Act, to the effect that you are unable to comply with the requirements of the Notice, or that it is not reasonable to require you to comply with the Notice, then that claim should be made in writing and addressed

to the **Chairman of the RHI Inquiry, RHI Inquiry, 1st Floor, Waterfront Plaza, 8 Laganbank Road, Belfast, BT1 3LR.**

14. Any such claim should be made as soon as possible after receiving the Notice, and no later than the deadline for making a claim set out in the Notice.
15. The claim should set out the grounds on which it is made, and the reasons why it is said that you cannot, or it is not reasonable for you to, comply. The claim should be as comprehensive and detailed as possible.
16. If you are making a claim for a variation of the Notice in order to give you further time to comply, then you should set out why you need more time and indicate a date by which you say you will be able to comply, and why you say that date will be sufficient. If you can provide some of the information required within time but contend that you cannot provide all of the required information in time, this should be clearly stated and, again, detailed reasons for your contention should be put forward.
17. The Chairman will determine whether to revoke or vary any Notice. In considering your claim he will take into account, amongst other things, the public interest in the information in question being obtained by the RHI Inquiry, having regard to the likely importance of the information. His decision will be communicated to the person making the claim as soon as is reasonably practicable.
18. A Section 21 Notice, by reason of the matters set out in section 22 of the Act, cannot require you to give, produce, or provide any evidence or document to the RHI Inquiry if you could not be required to provide them in civil proceedings in Northern Ireland, or the requirement is incompatible with an EU obligation, or the documents are covered by public interest immunity. If you are withholding evidence or documents from the RHI Inquiry for one of these reasons then you should notify the Solicitor to the RHI Inquiry in writing, immediately the decision to withhold is taken, of what the material is that you are withholding and why you

are claiming that that material is not required to be provided by the Section 21 Notice.

19. Section 40 of the Act provides the Chairman with power to make awards for expenses, including for legal representation, incurred in complying with requirements imposed by the RHI Inquiry. In determining whether an award should be made, the Chairman will have regard to the financial resources of the applicant and whether making any award is in the public interest. The Chairman does not expect to receive requests for funding from Northern Ireland Government Departments or other public bodies. If you are affected by the issue you can discuss it with the Solicitor to the RHI Inquiry.

From: David [dgordon](#) Personal information redacted by the RHI Inquiry
Subject: Re: BBC and the Bell tapes
Date: 23 December 2016 at 15:46
To: Richard Bullick [richardbullick](#) Personal information redacted by the RHI Inquiry



The most likely scenario is BBC using tapes right after the Christmas break.

Something could spook it into going earlier, of course.

Andrew was working on his statement today.

I've forwarded you predictable BBC's response to request for Bell records.

They are clearly still holding out some hope of an Andrew interview.

From: Richard Bullick [richardbullick](#) Personal information redacted by the RHI Inquiry
Sent: 23 December 2016 15:36
To: David
Cc: Simon Hamilton
Subject: Re: BBC and the Bell tapes

D

I don't want to disturb tj at the moment but what's your best guess re timing of tapes and do you know when Amc statement will be ready?

R

Sent from my iPhone

On 23 Dec 2016, at 15:25, David [dgordon](#) Personal information redacted by the RHI Inquiry wrote:

I think we can very safely assume the BBC has a recording of Andrew McCormick telling JB that he believes OFMDFM spads including Tim pushed for RHI cost controls to be delayed in 2015.

Broadcasting that will be a big boost to Bell, irrespective of any facts. "Top civil servant backs Bell RHI claim"

Andrew is preparing a rebuttal statement and could still do a pre-emptive interview next week, but that obviously has to be decided upon and is not without risk.

You have some pre-emptive strike options yourself next week eg disclosing who actually did not involved in the 2015 decision. But I recognize that's a big

who actually did get involved in the 2015 decision. But I recognise that's a big call by itself.

In the meantime, Tim (or his lawyer) could at least give the BBC some pause for thought with a letter along these lines.

* I understand the BBC may be preparing to again publish allegations that OFMDFM spads including myself pushed for RHI cost controls to be delayed in 2015.

* I reiterate that these allegations are totally rejected by me

* I understand that your grounds for publication may be a recording or other record of discussions between former DETI Minister Jonathan Bell and senior civil servant Andrew McCormick. It would be advisable to check with both men if they have any direct first-hand evidence of my alleged involvement or whether they were simply recycling speculation between each other. I am confident no such first hand evidence exists because I was not involved. It is surely the job of responsible journalists to ascertain the truth, rather than relying on hearsay. Any story alleging my involvement in RHI cost control decision making in 2015 would not be double sourced. It would be zero sourced.

* It would also be advisable to check with Mr McCormick on his current thinking. His position as relayed to his Minister and reported to the Assembly on 19/12/16 by the First Minister does not support Mr Bell's allegation of OFMDFM Spad involvement.

* You will note the documentary evidence already produced to undermine claims by former Minister Bell - claims that were prominently reported by the BBC. One of your BBC colleagues Michael Cairns has described this documentary evidence as an "Exocet to hole Mr Bell's claims below the water line" (Twitter post, 18/12/16). Inexplicably, this "Exocet" has received minimal coverage from the BBC to date.

From: David [gordon] Personal information redacted by the RHI Inquiry
Subject: Fw: Dr McCormick
Date: 23 December 2016 at 15:45 Personal information redacted by the RHI Inquiry
To: Richard Bullick [richardbullick] Personal information redacted by the RHI Inquiry



From: Gordon, David <David.Gordon@executiveoffice-ni.gov.uk>
Sent: 23 December 2016 15:42
To: [gordon] Personal information redacted by the RHI Inquiry
Subject: FW: Dr McCormick

Sent from my iPad managed by BlackBerry Enterprise Service

— Original Message —

From: Kathleen Carragher Personal information redacted by RHI Inquiry
Date: 23 December 2016, 14:17 GMT
To: Gordon, David <David.Gordon@executiveoffice-ni.gov.uk>
Subject: Dr McCormick
Dear David,

I understand there is a possibility, that Dr Andrew McCormick may be willing to give BBC NI an interview about his role in the RHI controversy and in particular, answer some of the claims made by the former Enterprise Minister, Jonathan Bell, in his television interview with Stephen Nolan on Thursday December 15th 2016.

I further understand that your office has requested any records that we have of conversations between Dr McCormick and Mr. Bell, and confirmation that they are complete and unaltered.

As you will understand, we are unable to meet this request.

The bid for a BBC NI television interview with the Permanent Secretary, Dr Andrew McCormick, stands and we will be happy to make all the necessary recording arrangements at short notice.

I look forward to hearing from you,

Best wishes,

Kathleen

**Kathleen Carragher
Head of News
BBC NI**

Mob tel no:

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RHI Inquiry

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<http://www.bbc.co.uk>

This e-mail (and any attachments) is confidential and may contain personal views which are not the views of the BBC unless specifically stated.

If you have received it in error, please delete it from your system.

Do not use, copy or disclose the information in any way nor act in reliance on it and notify the sender immediately.

Please note that the BBC monitors e-mails sent or received.

Further communication will signify your consent to this.

From: [David Gordon](#)
To: [General](#)
Subject: Fw: Quick questions
Date: 05 May 2017 23:51:31

From: Richard Bullick
Sent: 28 December 2016 14:38
To: David
Subject: Re: Quick questions

We need to see Amc statement asap to make an informed judgment.

Sent from my iPhone

On 28 Dec 2016, at 11:47, David [<dgordon@...>](#) Personal information redacted by the RHI Inquiry wrote:

I think Beeb will want to hold story until next Tuesday.

I haven't heard anything from Andrew McC since Christmas Eve. Have dropped him an email today.

There's a bit of a dance going on all round - everyone pretending to know less than they do about the Bell/McCormick tapes.

BBC position will be that it does not disclose sources and also doesn't need to give Andrew right to reply on his own comments.

If you do nothing and wait for Beeb to do its worst, it could be very bad - headlines about Bell vindicated, Spads in the dock etc. The fact it isn't actually true will be incidental.

Attempts to cool the wider situation and limit damage on Executive could be jeopardised.

An Andrew McC statement and even interview before then could pre-empt some of this - although it does mean dealing with the real story of how cost controls were delayed in 2015 and the political input into that - AC etc.

In an ideal world - you would get the AC story out and dealt with this week and spike the BBC and Bell guns.

Easier said than done, I know.



INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 25 of 2018

DATE:

Witness Statement of: David Gordon

I, David Gordon, will say as follows: -

Email of 28 December 2016

From documents provided to the Inquiry, it appears that on 28 December 2016 at 11.47 you sent an email (bearing Inquiry reference IND-60534, a copy of which is provided herewith) to Richard Bullick, who was then a special advisor to the First Minister. The email is entitled “*Re: Quick questions*”. You appear to be discussing how to deal with the BBC’s potential release of the “*Bell/McCormick tapes*”. The email, amongst other things, includes the following passage:

“... An Andrew McC statement and even interview before then could pre-empt some of this – although it does mean dealing with the real story of how cost controls were delayed in 2015 and the political input into that – AC etc.

In an ideal world you would get the AC story out and dealt with this week and spike the BBC and Bell guns ...”

As to this communication:

1. At the time you wrote the email of 28 December 2016:
 - a. I was employed as NI Executive Press Secretary.

- b. I took up this role in October 2016

- c. The job involved providing specialist support. My job specification defined the role as providing “trusted and well informed media advice to the First Minister, deputy First Minister and the Executive”. Main duties included the provision of “strategic advice to the First Minister, deputy First Minister, Executive Ministers and senior officials on all aspects of communications and presentational issues” and “ensuring that all communications activities enhance the profile and reputation of the Executive”. This involved providing advice to Ministers individually and collectively, as well as working closely with civil servants, special advisers and Departmental press officers.

- d. The First Minister and deputy First Minister were the appointing authority. The terms and conditions of the post stated: “Your performance will be subject to regular appraisal and review, with an opportunity to discuss that performance with the Appointing Authority.” It also stated: “The responsibility for management and conduct of the postholder, including discipline, rests with the First Minister and deputy First Minister.”

2. Please explain:

- a. The overall context was ongoing and intense public controversy surrounding the RHI story. Over the Christmas period, there was an expectation within Government that the BBC was planning to run a story based on a record former Minister Jonathan Bell was believed to have made of a recent conversation with Department of Economy Permanent Secretary Dr Andrew McCormick. I was providing advice to the Executive Office and the Department of Economy on this matter and other RHI-related issues.

- b. This was part of a series of emails relating to RHI matters at this time. From



memory, I was off work for the Christmas break but seeking to keep myself informed of latest developments amid the developing political crisis threatening the Executive's future. One of my emails of 28 Dec refers to "attempts to cool the wider situation and limit damage on Executive".

- c. There were a number of emails and some face-to-face discussions over the Christmas period in relation to the potential BBC story. From memory, individuals involved in these exchanges and discussions included Richard Bullick, Dr Andrew McCormick, the Head of the Civil Service Sir Malcolm McKibbin, the Attorney General John Larkin, and Department for the Economy official Chris Stewart. I think others may have been involved but I cannot recall names. There were also discussions and communications around this time in relation to other RHI-related matters touched on in the email in question. I can recall a brief discussion with Nigel Dodds MP after bumping into him in Stormont Castle and a brief discussion with Timothy Johnston, Executive Office special adviser. I have no knowledge or information regarding any involvement by the deputy First Minister or his advisers in these discussions or communications, or any awareness of such.

3. When you wrote, *"An Andrew McC statement and even interview before then could pre-empt some of this – although it does mean dealing with the real story of how cost controls were delayed in 2015 and the political input into that – AC etc."*:

- a. This referred to the suspicions of political input into the decision to delay introducing RHI cost controls in the autumn of 2015. The First Minister had referred to this matter in the Assembly on 19/12/16, saying: "I understand from Minister Hamilton that the permanent secretary recalls being told at the time that some in the party wanted the scheme to be kept open." Dr McCormick's understanding as expressed to me by the time of the 28 December email – and subsequently to the Public Accounts Committee –



was that special adviser Andrew Crawford was the source of this political influence. The “AC” in my email was a reference to Andrew Crawford.

- b. My understanding of the situation at that time was based on Dr McCormick’s understanding, as outlined directly above. I should add that I am now aware from media coverage of the RHI inquiry proceedings that Andrew Crawford denies exerting such influence.
- c. Dr McCormick’s understanding of the situation.
- d. There were a number of competing and alternative narratives and stories on the RHI story swirling around that that time.
- e. One of these was that OFMDFM was at the heart of political influence on the RHI cost controls delay in 2015. A BBC report had lent weight to this allegation. There was also a more general narrative - fed by social media - that RHI was a finely honed, carefully hatched five-year conspiracy to enrich RHI claimants. It was my view at the time that Jonathan Bell’s BBC interview had fuelled this general narrative, by conflating 2015 decision-making processes on RHI cost controls with separate 2016 deliberations on closing RHI down to new entrants. This involved claims of attempts being made to “cleanse the records” within OFMDFM.
- f. No, not to my knowledge.
- g. As can be seen from the email exchange, discussions were of a general nature. It is a tenet of good communications practice that if someone has bad or negative news to impart, they should be the ones to do so. In the jargon of the industry, this is about “owning the narrative”. Leaving others to gradually discover negative news and tell it bit by bit is not good practice. My view at this time was that a frank disclosure on any political input into the delayed RHI costs controls was the best way forward. This could have helped clear the way for an inquiry into RHI. I had been advocating an inquiry – which as I saw as the best way get to the full facts, learn vital



lessons and help avert a full blown political crisis. My advocacy of frank disclosure was consistent – as can be seen from my email on 18/01/17 to Dr McCormick and others, ahead of his appearance at the Public Accounts Committee. This email advocated “full and frank evidence” and stated: “My advice for today's PAC session is that A McC should just tell the full story, including the name of the SPAD he believes made representations on RHI cost controls.”

- h. As explained at answer 3c above, my understanding on the political input into the 2015 decision to delay RHI costs controls was based on Dr McCormick’s view.
- i. This would have referred to alleged party political influence on the timing of RHI cost controls in 2015. As the First Minister had stated in the Assembly on 19/12/16: “I understand from Minister Hamilton that the permanent secretary recalls being told at the time that some in the party wanted the scheme to be kept open.”
- j. Andrew Crawford – as stated at 3a above. I am now aware from media coverage of the RHI inquiry proceedings that Andrew Crawford denies exerting such influence.
- k. My understanding was based on the assessment of Dr McCormick, as shared with me and subsequently outlined to the Public Accounts Committee.
- l. I have no direct knowledge on this matter.
- m. I cannot recall a date when this understanding was shared with me. It is likely to have been mid/late December or thereabouts. I should re-emphasise that I had no direct information or knowledge regarding the alleged political input.
- n. My advice regarding disclosure on the political input concerns would have been shared with a number of individuals. My email of 18/01/17 quoted above regarding Dr McCormick’s PAC appearance was sent to Economy Minister Simon Hamilton, Dr McCormick himself and special



advisers Timothy Johnston, Richard Bullick and John Robinson. That list tallies with my memory of the individuals I would or could have spoken to regarding this matter. As stated at answer 2c above, I also recall a brief conversation with Nigel Dodds MP at Stormont Castle which would have included the political input issue.

- o. I believe this 'etc' was just a figure of speech. I have no direct evidence of my own on any of these matters.

4. When you wrote "*In an ideal world – you would get the AC story out and dealt with this week and spike the BBC and Bell guns*":

- a. The "AC story" was shorthand for the issue of the source of alleged political input into the delayed RHI cost controls.
- b. As stated in answer 3g, the best way forward in my view was for prompt disclosure. This was also in the context of an expected BBC report based on former Minister's Bell account/record of discussions with Dr McCormick.

5. It further appears to the Inquiry from information received by it that Richard Bullick replied to your email at 14.38 on 28 December 2016 saying: "*We need to see Amc statement asap to make an informed judgment.*" As to that:

- a. I believe Dr McCormick was at this stage preparing a detailed statement setting out his account of the RHI saga from his time at the Department, including the key decisions regarding the 2015 introduction of cost controls.
- b. See 5a above – the issue of alleged political input into this decision was clearly of importance as Dr McCormick's subsequent appearance before the Public Accounts Committee illustrated.



- c. That's clearly a question principally for Andrew McCormick. He did share his understanding of the source of the alleged political input with me – and with the Public Accounts Committee.

- d. No

Email of 23 December 2016

6.

“I think we can safely assume the BBC has a recording of Andrew McCormick telling JB that he believes OFMDFM spads including Tim pushed for cost controls to be delayed in 2015.

Broadcasting that will be a big boost to Bell, irrespective of any facts. “Top civil servant backs Bell RHI claim.” You have some pre-emptive strike options yourself next week e.g. disclosing who actually did get involved in the 2015 decisions. But I recognise that's a big call by itself.

In the meantime Tim (or his lawyer) could at least give the BBC some pause for thought with a letter along these lines.”

The email also notes that, “*Andrew was working on his statement today*”. See the email exchange bearing the Inquiry reference IND-31096 to IND-31099 (a copy of which is attached).

As to this:

- a. Dr McCormick is on record as having had suspicions that a conversation with former Minister Bell had been recorded. He told the PAC on 18/1/17: “I



have heard it reported, though no one said this to me directly in a way that I could describe as "evidence", that that meeting was recorded, obviously without my knowledge or consent." These suspicions were shared with me. They had led to a request from Stormont to the BBC for all its records of the conversation between Mr Bell and Dr McCormick. That request was (predictably) denied. I also recall being told around this time – I'm not sure by who – that Jonathan Bell regularly secretly recorded his conversations. I also used the phrase "safe to assume" from my journalistic experience – the BBC would not have reported Mr Bell's allegations without having had supporting evidence to back them up.

- b. He shared with me his belief/suspicion that he had been recorded referring to the alleged involvement of special advisers in the RHI cost control delay.
- c. The BBC had bid for an interview with Dr McCormick, an interview which would presumably have been informed by Mr Bell's record of their private conversation. The situation facing Dr McCormick – the BBC interview request and the suspicions regarding Mr Bell's record of a conversation – were discussed by at least one Stormont Castle meeting I attended. I believe this would have been just before Christmas 2016. From memory, those in attendance besides myself would have included Richard Bullick, Dr Andrew McCormick, the Head of the Civil Service Sir Malcolm McKibbin, and the Attorney General John Larkin (see answer 2c above)
- d. I have no knowledge of such influence being exerted. It was my understanding that Dr McCormick wanted to draft a statement setting out his own account in detail. Other possible options included giving an interview to the BBC and giving evidence to a sitting of the PAC.

- e. I have no knowledge of any such request. My belief at the time was that the planned statement was Dr McCormick's own initiative.
- f. I presume that would depend on the circumstances surrounding a request and who was making it.
- g. As stated at 3k above, my understanding was based on the assessment of Dr McCormick as shared with me and subsequently outlined to the Public Accounts Committee
- h. I did not have any direct knowledge or evidence of my own.
- i. I do not believe Richard Bullick shared any knowledge, evidence or belief with me on this issue.
- j. Please see my answer at 3n above, and the names listed there. They are the individuals I am most likely to have spoken to on this matter – I cannot be absolutely definitive that I had conversations with them all. My main discussions would have been with Richard Bullick and Dr Andrew McCormick and would have centred on my advice regarding disclosure.
- k. I believe that was a reference to the timing of any disclosure initiative and to the possibility that it would have fuelled the controversy rather than helped calm the political situation and create space for an inquiry to proceed.
- l. This was because of Timothy Johnston's firm denial to the BBC on alleged involvement in the delay to RHI cost controls. It was in line with my specified duties, which included providing media handling advice to officials. The draft was entirely my initiative.

Further relevant information

- 7. I have answered these questions to the best of my ability and recollection. I had no knowledge or involvement in RHI; the scheme having closed down well before I took on my short-lived Executive job. I sought at all times in the post to

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fulfil my duties to advise Ministers and officials. With regard to RHI, I acted on the basis of information and accounts provided to me by others who were involved in Government at the relevant times.

Statement of Truth

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

Signed: David Gordon

Dated: 29/04/2018