

**Independent Public Inquiry into the Non-Domestic Renewable Heat Incentive (RHI)**  
**Scheme**

**Submission on Behalf of Mr David Sterling**

**Introduction**

1. This written submission is advanced on behalf of Mr David Sterling (Head of the NI Civil Service), with his knowledge and approval.
2. Mr Sterling has provided evidence to this Inquiry in the following formats:
  - a. Witness statement No. 1, 10 May 2017, **WIT-04015 – WIT-04059**
  - b. Oral evidence, Tuesday 13 March 2018 (day 44): **TRA-06048 – TRA-06197**
  - c. Oral evidence, Tuesday 20 March 2018 (day 48): **TRA-06691 – TRA-06827**
  - d. Oral evidence, Thursday 22 March 2018 (day 50): **TRA-06987 – TRA-07068**
  - e. Witness statement No. 2, 22 October 2018, **WIT-05176 – WIT-05217**
  - f. Witness statement No. 3, 22 October 2018, **WIT-05224 – WIT-05234**
  - g. Oral evidence, Thursday 25 October 2018 (day 110): **TRA-16481 – TRA-16599**
3. This submission seeks to draw together the main strands of the evidence provided to the Inquiry by Mr Sterling and to shape it in a manner which might better assist the Inquiry to address, analyse and conclude upon the issues of concern which are to be found within its terms of reference.
4. The submission will refrain from commenting upon the actions of others save where, based on his experience of the operation of a system or a procedure, Mr Sterling would have expected certain steps to have been taken. The submission will not focus to any extent on the events which occurred during Phases 3 and 4 of the Inquiry's work when Mr Sterling's involvement was not of significance.
5. Having drawn attention to these caveats, it can be indicated that this submission shall address three key areas which will be of concern to the Inquiry:

- The importance of apology, as well as acceptance of corporate and personal responsibility.
- Mr Sterling's observations on the failings which occurred in RHI.
- The need for change and reform.

## **Apology**

6. The core importance of the work of this Inquiry is to help in the process of restoring public confidence in the workings of Government. The terms of reference which govern the business of the Inquiry were formulated with this objective in mind.<sup>1</sup>
7. As the Head of the Civil Service, Mr Sterling recognises the fundamental nature of this task and its significance for the community whom the Northern Ireland Civil Service ('NICS') is entrusted to serve.
8. Accordingly, Mr Sterling considers that it is both necessary and appropriate to commence this submission with a blunt admission that significant and costly mistakes have been made.<sup>2</sup>
9. He has acknowledged that those mistakes have been multiple, and that they have not been isolated to one Department or agency. They have involved failings by individual civil servants and of procedures, and they have occurred notwithstanding the operation of systems of internal control which were regarded as intelligent and robust. Those failings have meant that, in its management of the RHI scheme, the NICS has failed to live up to its obligations to act as a responsible steward of the public purse.
10. It is also necessary to tender a straightforward and direct apology. The Inquiry will be aware that this is not the first occasion on which Mr Sterling has taken this approach in the context of RHI. He has not sought and does not seek to avoid the implications of the failure of public administration which RHI represents, in part. Nor does he seek to try to defend the indefensible. His demeanour in addressing and co-

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<sup>1</sup> Terms of Reference for the Independent Public Inquiry into the Non-Domestic Renewable Heat Incentive (RHI) Scheme, DoF (27 January 2017)

<sup>2</sup> Mr Sterling has previously put forward similar views in his evidence to the Inquiry at **WIT-05208**

operating with this Inquiry has been one characterised by candour and openness, coupled with a resolution to address the mistakes which have been made.

11. It is convenient to recite the apology which was delivered by Mr Sterling when he most recently gave evidence before the Inquiry on the 25 October 2018:

I think that the first thing I'd want to say as head of the Northern Ireland Civil Service is that I have to acknowledge that multiple failings, multiple mistakes were made and that we should've done better. As permanent secretary in Department of Finance — or when I attended the Public Accounts Committee two years ago, I offered an apology on behalf of my time at Department for Enterprise, Trade and Investment. But I think it's only right, as head of the service, I should recognise that the extent of the failings have been such that I should offer again, without any hesitation, a profound and unequivocal apology for the mistakes that have been made.

And I want to take this opportunity to make a promise on behalf of the NICS Board that we will do everything possible to make sure that nothing like this ever happens again. And I want to give an assurance as well that any action recommended by the Inquiry will be implemented quickly and fairly.<sup>3</sup>

### **A Broader Perspective**

12. The importance which obviously attaches to Mr Sterling's apology, is not diminished by his corresponding determination to emphasise that the vast majority of civil servants are entirely blameless in connection with the development and implementation of the RHI.
13. In his evidence Mr Sterling has properly taken steps to remind observers that a dedicated workforce of public servants has been caught up in the maelstrom which has characterised some of the external commentary upon the Inquiry. Their work should continue to command our respect, despite the adverse attention focussed upon those who promoted RHI.<sup>4</sup>

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<sup>3</sup> Mr Sterling's oral evidence to the Inquiry on Day 110, **TRA-16571**, lines 3-15

<sup>4</sup> At **WIT-05209**, Mr Sterling has commented: "...every day the NICS delivers a great variety of quality services to the people of Northern Ireland. It would be unjust to infer from the RHI scheme that all government policy-making, the administration of public funds and the delivery of public services in Northern Ireland is beset with the kinds of problems and issues which have arisen in the case of RHI..."

14. Recognising the damage inflicted upon the reputation of the NICS, Mr Sterling has been concerned to ensure that those colleagues are reminded that they are valued for the work which they do in difficult circumstances, and he has considered it appropriate to extend an apology to them also:

[A]s someone who was involved in the scheme, you know, just to offer an apology to the rest of the Civil Service, who, no doubt, are having to deal with the fact that the credibility of the organisation as a whole has been called into question, unfairly in my view.<sup>5</sup>

15. Elsewhere in these submissions, we will describe the steps which have been taken, with urgency, to begin the process of recovering the damage which has been done to public confidence and to the credibility of the Civil Service.
16. It is appropriate to note at this juncture, however, that Mr Sterling fully appreciates that this is an important moment in the history of the organisation which he leads, and that the public are entitled to receive, through the work of this Inquiry, a full and honest appraisal of what went wrong, as well as clear assurances that appropriate change and improvement will be forthcoming.

### **Personal Responsibility**

17. The Inquiry will be aware that Mr Sterling has spent the entirety of his career within the NICS. He has a formidable record of public service.<sup>6</sup> He has spoken with passion about the pride which he feels to be a civil servant,<sup>7</sup> and he considers it a privilege to be engaged in that role.
18. Mr Sterling has told the Inquiry that he sees the goal of the NICS in straightforward terms - "to make people's lives better and to do so in a way that delivers value for money for citizens."<sup>8</sup> He expects those retained in the NICS to use their best endeavours to promote best practice and to deliver solid achievements for the betterment of the people of Northern Ireland and its economy; he expects no less of himself.

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<sup>5</sup> Mr Sterling's oral evidence to the Inquiry on Day 110, **TRA-16584**, lines 19-25

<sup>6</sup> Mr Sterling's service in the NICS has spanned 40 years. He joined the Senior Civil Service in 1996. For detail see his first witness statement at **WIT-04015 – WIT-04016**

<sup>7</sup> See, for example, Mr Sterling's oral evidence at **TRA-16581**

<sup>8</sup> **WIT-05209**

19. The Inquiry will have detected, from his appearance before it, a profound sense of dismay that these aspirations were so carelessly failed in the case of RHI. He has felt this, perhaps more than most, because the flawed RHI scheme was delivered by the Department ('DETI') for which he was at one time responsible.
20. The Inquiry will be aware that Mr Sterling's expressions of apology have not been restricted to a reflection upon the acts and omissions of DETI, or of the NICS more generally. Rather, as the Accounting Officer for DETI when RHI was conceived and implemented, he has acknowledged that he must take responsibility for the inadequate application of controls which permitted a flawed policy to gain implementation.
21. The principle of 'personal responsibility' is to be found within the description of the duties associated with the role of Accounting Officer set out in Section 3 of 'Managing Public Money NI' (MPMNI).<sup>9</sup>
22. Mr Sterling has explained his understanding of his obligations at that time in terms of ensuring that DETI:
  - has a governance structure which transmits, delegates, implements and enforces decisions
  - has trustworthy internal controls to safeguard, channel and record resources as intended
  - operates with propriety and regularity in all its transactions, and
  - uses its resources efficiently, economically and effectively, avoiding waste and extravagance.<sup>10</sup>

(emphasis added)

23. In the context of RHI, considerable attention has been directed towards the internal control mechanisms which Mr Sterling expected to police the development and implementation of policy and the expenditure of public money. In his evidence to the

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<sup>9</sup> DOF-59347

<sup>10</sup> WIT-04049

PAC, Mr Sterling sketched out aspects of the “control system” which was in place, and on which he had placed reliance:

At the time, I felt that I had fulfilled my obligations to put a sound, internal control and governance system in place for this. Again, the key factors — the key controls, if you like — were that we were adopting a scheme that had been operating in GB, albeit with adaptations that I will come to. We engaged Cambridge Economic Policy Associates (CEPA), who are internationally respected consultants with a strong track record in this type of work, to advise us on the design of the scheme. They were here last week giving evidence. We consulted twice on the scheme proposals before setting an incentive package. We put in place a casework committee, which is a very strong governance mechanism, and I would certainly have had confidence in those who were on that casework committee to scrutinise the business case rigorously and thoroughly. The business case was subsequently approved by DFP, and we engaged Ofgem to manage and monitor the operation of the scheme. I regarded that control framework as sound.<sup>11</sup>

24. He has provided a similar account of the control system in his evidence to the Inquiry.<sup>12</sup> There was also a system in place within the Department for the appraisal and management of risk. However, RHI was not referred to the Corporate Risk Register by the Energy Division, nor did RHI feature in the six-monthly assurance statements which were provided to Mr Sterling by the Group Head of Policy (Mr Thomson). These statements, sensibly, were intended to be used to flag any significant governance concern.<sup>13</sup>
25. Mr Sterling relied upon those controls and the officials as well as the external experts who were engaged in the development of the policy, and those who were tasked with the responsibility of scrutinising the viability of that policy in value for money terms both pre and post implementation.
26. However, reflecting upon the operation of the control system in his evidence to the PAC, Mr Sterling acknowledged that there were obvious shortcomings:

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<sup>11</sup> DFE-02160 to DFE-02161

<sup>12</sup> WIT-04050

<sup>13</sup> WIT-04051

When I was talking earlier about my responsibility, as I said, I was trying to describe how I felt at the time about the control system that had been put in place. What I did not properly explain is that it is now clear that the control system may have looked good but the application of the control system was deficient. Otherwise, how would you explain what has happened? I take responsibility for that.<sup>14</sup>

27. While Mr Sterling has properly accepted personal responsibility as Accounting Officer for the failings in the application of the control system, it is necessary to say something further about his responsibility, having regard to the limitations of his involvement in RHI and the responsibilities of others.
28. Mr Sterling should not be criticised for the fact that the business of DETI at that time caused him to operate at some remove from the formulation and implementation of RHI. His direct involvement with RHI was necessarily and appropriately limited.<sup>15</sup> He was not required by the Minister to take a 'hands on' approach to the development of that scheme.
29. It might be suggested that, as Permanent Secretary of DETI, he ought to have enjoyed intimate knowledge of every significant policy development which was occurring within that Department at the time, but it is submitted that this is not a fair or realistic characterisation of the role of the Accounting Officer in public administration in the twenty-first century.
30. The fact is that Mr Sterling ran a busy department which was at the vanguard of economic development in Northern Ireland. It had a significant and complex workload. He did not cut himself off from difficult issues, and indeed immersed himself in some significant pieces of work connected with the Energy Division.<sup>16</sup> It is clear that, if his input in RHI was regarded as important for any particular reason, it could have been sought by his Grade 3 (Mr Thomson), the Head of Division (Ms Hepper) or the Minister.

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<sup>14</sup> **DFE-02165 to DFE-02166**

<sup>15</sup> Mr Sterling's direct engagement with RHI during his time as Permanent Secretary of DETI is described at **WIT-04027 – WIT-04032**

<sup>16</sup> **WIT-04033 - WIT-04034**

31. Mr Sterling was not informed of any difficulties with the development or implementation of RHI during his time in DETI.<sup>17</sup> It is accepted that this assertion, while undoubtedly true, reflects the failure on the part of those who were operating the systems of control to uncover the problems and/or to trigger meaningful remedial steps. Nevertheless, it is respectfully suggested that it is only with the benefit of hindsight that it could be contended that Mr Sterling ought to have taken a greater involvement with RHI than he did, before he departed to a new role in Department of Finance in July 2014.
32. Mr Sterling's primary responsibility as Accounting Officer was to ensure that there existed sensible systems and procedures which, if operated effectively, would (as was their purpose) root out flaws in policy which had the potential to undermine value for money considerations. There can be no doubt that such systems were in existence, and have been described above.
33. These systems reflected the kinds of arrangements which were commonplace throughout the NICS and other comparable organisations. There has been no suggestion that Mr Sterling ought to have had in place a different calibre of control measure or other systems of governance, or that he has ignored something obvious or conventional.
34. In the circumstances it is submitted that Mr Sterling had reason to expect that, as the RHI policy was developed by officials in Energy Division, any weaknesses within the policy would have been shaken out and exposed by those employed in that Division or by the Group Head of Policy, by applying these internal control mechanisms. Having regard to his knowledge of past performance and experience within Energy Division, Mr Sterling could not reasonably have anticipated that apparently foreseeable risks to the public purse would not be addressed by officials when warnings were so widely available both before and after the implementation of the RHI scheme.
35. Mr Sterling does not dispute that there are things that he might have done differently in the context of RHI. We refer to examples of this in these submissions. However, it is submitted that it is difficult to conceive of any additional significant step which he could have taken to prevent what occurred, unless it is to be suggested that he was

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<sup>17</sup> WIT-04033

bound to have become personally directly involved in developing the policy or in the operation of the control processes which, for the reasons set out above, would have been unrealistic.

36. In his evidence to the Inquiry Mr Sterling has expressed his dissatisfaction that the controls did not identify the problems and force a rethink at any stage. He has said he is unable to explain why the systems did not work as they ought to have worked.<sup>18</sup> With justification, Mr Sterling has claimed that “if any one of those had operated absolutely as it should do, then this may well have been caught on much earlier.”<sup>19</sup>
37. This is reflected in the five questions which Mr Sterling posed within his primary witness statement.<sup>20</sup> Here, he referred to the failure to grasp that there was a fundamental flaw in the tariff which had been set, which went unrecognised within DETI for too long; that there was a failure to mitigate the risks identified in the Business Case and at Casework; that the concerns expressed by Ms O’Hagan or by OFGEM did not prompt a reaction; that OFGEM did not push their concerns more forcibly; that there was a failure to conduct an effective and timely review of the scheme (notwithstanding that this had been a condition of the Business Case approval) or to take forward the proposals for cost control which were canvassed in the 2013 consultation.
38. The questions which Mr Sterling has raised are at the heart of the investigations which the Inquiry is charged with addressing. It is beyond the scope of this submission to provide answers to them, but it is appropriate for Mr Sterling to comment upon some of the more significant failings which the Inquiry’s work has helped to expose.

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<sup>18</sup> **TRA-16584**, line 15

<sup>19</sup> **TRA-16584**, lines 12-13

<sup>20</sup> **WIT-04047**

**The Failings and Concerns****Casework Committee**

39. Critical observations have been made in the course of the Inquiry about the effectiveness of the Casework Committee process.
40. Mr Sterling has explained that it was “custom and practice for the DETI Permanent Secretary to rely on its Casework Committee to scrutinise, test and challenge business cases which required DFP approval.”<sup>21</sup> It was his experience that Casework had proven itself to be “a useful final challenge on business cases” which had the capacity to “identify issues which, when resolved, strengthened individual projects.”<sup>22</sup>
41. At the time, the process provided an important layer of assurance for Mr Sterling in fulfilment of his obligations as the Accounting Officer, and had not let him down. It was a process which had been developed in DETI and introduced prior to Mr Sterling assuming the role of Permanent Secretary in that Department. In his evidence he reported that during the period 2008 - 2015 the Casework procedure was deployed in 138 cases, and in only one other case (apart from RHI) did a significant governance issue arise.<sup>23</sup>
42. Set against that, however, Mr Sterling recognises that legitimate questions have been asked about aspects of the Casework process. The Inquiry has pointed to issues around the competence and capacity of those selected to sit on Casework Committees.
43. Additionally, particular concerns have been raised concerning the adequacy of Casework as a vehicle to interrogate key policy choices, particularly where there are significant expenditure implications, such as the choice of an incentive-based scheme over a challenge fund. Mr Sterling also accepts that it is appropriate to ask whether a process of this nature should have closed in on identifying the flawed calculation of tariff, and whether it should have come closer to insisting on the implementation of tiering / cost controls prior to the start of the scheme. It is accepted that the implications of the specialised funding (the ‘capped AME’) which

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<sup>21</sup> **WIT-04029**

<sup>22</sup> **WIT-05185**

<sup>23</sup> **TRA-16572**, line 2

had been designated for the scheme, should have been discussed in detail because of the absence of up-front cost controls and the overall risk to the Northern Ireland block.

44. However, in defence of the Casework approach, the experience of RHI demonstrates that those who sat on the Committee (Mr Murphy, Mr Cooper and Mr Angus) were acutely aware of the need for the RHI scheme to be subject to regular review, not least because of the risk that assumptions around tariff would prove to be inaccurate or would require adjustment to reflect market conditions. There is evidence before the Inquiry that the Committee made its views known to the officials in Energy Division, and that it sought and obtained appropriate assurances.<sup>24</sup> It appears to Mr Sterling that it may have been failings within that Division, not within the Casework process itself, which led to those assurances falling away.
45. Nevertheless, Mr Sterling's consideration of the evidence received by the Inquiry has caused him to reflect upon the role, purpose and effectiveness of the Casework Committee process. Accordingly, steps have been taken within the Department for the Economy (DfE) to review the Casework model. Mr Sterling has reported the following developments:

[DfE] intend to retain Casework Committees as a control mechanism, although they recognise that the role of the Committees needs to be clarified. They are also considering how to ensure the Committees can be constituted effectively, particularly when they are being asked to consider complex issues and/or where external advisors or other specialists have supported project promoters. I expect that this work will be concluded shortly and we will apply any lessons more widely as appropriate.<sup>25</sup>

46. It is submitted that this is an appropriate and timely response to the concerns which have been expressed at the Inquiry hearings. The Casework Committee has in the past contributed to providing improvements in governance. There is no reason why,

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<sup>24</sup> **WIT-18534** (per Mr Cooper) Additionally, in his statement at **WIT-19560**, Mr Murphy explained that, "Assurances were provided around close monitoring, regular reports from OFGEM and in-built tariff reviews, and there was also an assurance provided that the scheme could be closed down to new applicants mid-year if applications were higher than expected and budgets risked being overspent."

<sup>25</sup> **WIT-05186**

with appropriate adjustments of the kind which have been mooted, the Casework process cannot contribute to providing robust assurance for the future.

### **Disregard for Approval Conditions**

47. Mr Sterling has indicated that it was unacceptable that DETI should have disregarded the two principal approval conditions, the need to review the operation of the RHI scheme by 2014, and the need to seek re-approval of the scheme by presenting a new business plan by 31 March 2015.
48. For his own part, Mr Sterling has admitted that “he was not alert to the significance of the review which was needed” and that “with hindsight, [he] should have been more sensitised to that...”<sup>26</sup>
49. However, the significance attaching to the performance of a review should have been obvious to the Division which owned the policy, not least because it was an approval condition. When the availability of information tending (at the very least) to show that RHI was vulnerable to abuse is taken into consideration, then it is obvious that the need to plan for and conduct the review ought to have been afforded priority within that Division, and placed in the work stream. There ought to have been no need for intervention from elsewhere to ensure that this was done.
50. Mr Sterling accepts that, in particular, the failure to conduct a review represented a significant missed opportunity to get to grips with the shortcomings of the scheme. If a review had been conducted effectively and properly it could not have failed to address fundamental questions about the appropriate tariff, of excessive reward, the potential for ‘gaming’, as well as the need for remedial action and controls.
51. Mr Sterling has indicated his dismay that the Energy Division failed to regard the approval conditions with sufficient seriousness or urgency. If action was impeded by a resource issue this should have been identified and raised. He has recognised that it is not acceptable for officials responsible for operating these critical systems of governance and control to risk the possibility that a significant approval condition will not be implemented. This cannot be allowed to happen again.

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<sup>26</sup> DFE-02167

52. Mr Sterling has explained that important reform has now taken place. Of particular relevance in this context (having regard to the evidence which the Inquiry received about the turnover of staff in Energy Division at the time when a review should have been conducted) is the now mandatory requirement for formal handover to take place, including the preparation of handover plans.<sup>27</sup> There is also a requirement going forward for Permanent Secretaries to formally review all significant projects and programmes within their Departments on a regular basis,<sup>28</sup> and expenditure approval and business case processes are being reviewed by a cross-departmental team led by Department of Finance ('DoF').
53. With regard to future schemes which require re-approval after a period of operation, Mr Sterling has reached the view that the administrative burden of instigating the process can be shared with DoF:

I now consider that internal control would be usefully strengthened if DoF was to keep a central record of all approvals which require re-approval and for DoF to alert departments to the need for re-approval at an appropriate point before the original approval expires. DoF has started work on adding this functionality to its information management system going forward which should strengthen control and reduce the risk that a re-approval would be missed.<sup>29</sup>

## **Resources**

54. Mr Sterling regrets that additional resources were not allocated to the development of RHI policy. He has admitted that, "knowing what we know now, we were, I think, taking a risk by relying on such a small number of staff to do such a complex project" and in that regard he stated that he has accepted personal responsibility.<sup>30</sup>
55. In reality, of course, the NICS of that time was facing into the challenge of doing more with less resources. DETI was no exception. There was little in the way of spare capacity, and Mr Sterling has explained that conscious of the complex challenges which Energy Division was facing in its work, he took steps to protect it

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<sup>27</sup> WIT-05212

<sup>28</sup> WIT-05211

<sup>29</sup> WIT-05184

<sup>30</sup> TRA-06751 lines 6-14

from the resource pressures and did in fact secure additional resources for the Division.<sup>31</sup>

56. It is of course legitimate to ask whether sufficient resources were directed to RHI overall, or whether it was prudent to push on with developing RHI policy against a background of contracting resources. Mr Sterling has reflected that a “can do” approach is no longer satisfactory of itself, and that in the future more attention will have to be given to assessing what policy areas can be pursued within the limits of available resources and expertise.
57. Overall, however, the Inquiry might respectfully consider whether the problems which were to become associated with the RHI scheme would necessarily have been avoided with additional human resources. The DECC sponsored scheme which operated in Great Britain has not avoided criticisms about value for money, despite a relative surfeit of resources.<sup>32</sup>

### Project Management

58. The Inquiry will no doubt consider whether the use of a project management tool such as PRINCE would have assisted those responsible for developing RHI policy in avoiding the kinds of pitfalls which have been identified.
59. Mr Sterling’s views on this matter are clear. He told the PAC that staff within NICS in general, or DETI in particular, were not mandated at that time to use applications such as PRINCE when developing projects or programmes.<sup>33</sup> It is submitted that this is perfectly understandable because each process of policy development will be confronted by an infinite variety of challenges, and a “one size fits all” approach is unlikely to be appropriate.
60. It is further submitted that a practice whereby senior civil servants were entrusted to assess the issues, to apply judgement and to determine for themselves how a project should be managed, is also defensible. After all, officials working at this level

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<sup>31</sup> WIT-04024 - WIT-04025

<sup>32</sup> The National Audit Office report commented upon the GB (DECC) incentive scheme, at INQ-26014: “The Department has not achieved value for money. It does not have a reliable estimate of the amount it has overpaid to participants that have not complied with the regulations, nor the impact of participants gaming them, which could accumulate to reduce the scheme’s value significantly.”

<sup>33</sup> DFE-02160

are generally appointed to their posts because of a proven ability to develop, manage and implement policy.

61. Officials within DETI were familiar with the application of PRINCE to major projects; its use was well-established and visible. Mr Sterling has made it clear that, from his standpoint, the PRINCE methodology was a tool which could have brought benefits to the development and implementation of RHI, and should have been applied; it would have reduced risk.<sup>34</sup>
62. In providing this analysis, Mr Sterling has also accepted that effective project management requires sufficient resource. He has expressed regret that he was not more “inquisitive” about the programme of activities which flowed from the Strategic Energy Framework (‘SEF’). He accepts, with hindsight, that external assistance (for example, from the Strategic Investment Board) could have been sought to support the delivery of the suite of projects contained in the SEF.<sup>35</sup>
63. In the concluding section of these submissions, Mr Sterling addresses the need to change certain aspects of the culture within the NICS. Viewed through the lens of the multi-dimensional evidence which the Inquiry has procured, Mr Sterling recognises that the approach adopted by Energy Division when promoting a RHI scheme without introducing cost controls and/or an effective braking mechanism to prevent over-compensation and/or exploitation of the scheme, represented an unacceptably high risk when dealing with the public purse.
64. Mr Sterling recognises that there may be many mitigations available to officials to explain why this was the practical outcome of their policy development, including the relatively scant resources for all that needed to be done in Energy.
65. From an organisational perspective, Mr Sterling accepts that formal project management and Gateway arrangements should have been in place for projects of this scale, complexity and risk. Steps have been taken in recent years to embed a strong project management culture across the NICS and this will be reinforced in phase 2 of our response (see below).

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<sup>34</sup> DFE-02161

<sup>35</sup> TRA-06066, lines 7 to 24

**Poor Communication - 'Silo Mentality'**

66. Mr Sterling has acknowledged that a silo mentality may have been operating across government departments.<sup>36</sup> He accepts that this may have been operating to the extent that there was a failure to effectively exchange information which had the potential to address the shortcomings of RHI before crisis point was reached.
67. He has described this failure of communication as one of the “most surprising” aspects of the whole Inquiry for him. He has explained that it “gives rise to questions about the effectiveness of communication within and across government and its agencies.”<sup>37</sup>
68. The failure of communication between some DETI and Department of Agriculture and Rural Development (DARD) officials was not the sole example of this failing, but it may well have been one of the most significant. It is a source of particular regret that officials within DARD did not consider it appropriate to check with their colleagues in DETI whether the rewards which were being promised to applicants to the RHI scheme could be correct.
69. Mr Sterling has also recalled with regret the evidence which demonstrates that Invest NI had received advice from consultants that the RHI scheme was both not energy efficient and highly lucrative, and yet this was not communicated to DETI's Energy Division.<sup>38</sup>
70. It is acknowledged that officials should not discount concerns simply because they are prompted by what might appear to be the deliberate outworking of an apparently well-informed government policy. The articulation of such concerns could have provided the impetus necessary to address the flaws in the RHI scheme. This worrying absence of information exchange points up the importance of the need to effect changes to the culture of the public service so that even potential concerns are questioned thoroughly, and routinely shared within and across Departments.
71. Therefore, the NICS has taken steps to identify how communication and collaboration can be improved on a cross Departmental and cross-Agency basis. Mr Sterling has sought to assure the Inquiry that as part of the reform work of the NICS,

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<sup>36</sup> TRA-16579, line 6

<sup>37</sup> WIT-05208

<sup>38</sup> TRA-16580, lines 5-12

which is discussed below, a focus has been placed upon the need to eradicate traditional boundaries associated with the way in which Departments work. He has spoken of the need to “break down barriers between Departments and to break down barriers between the Civil Service and the wider public sector and, indeed, society in general.”<sup>39</sup>

72. Mr Sterling has also accepted that all officials, no matter how senior, have something to learn about the critical importance of information exchange. In his evidence he acknowledged that in his role, for example, he could have taken steps to document and disseminate across his Department what he knew about the intricacies and the potential implications of the unusual funding arrangements for RHI.<sup>40</sup>
73. Accordingly, it is abundantly clear that lessons must be learned from the Inquiry’s work in order to better promote the principles of “joined up government.” As in the DARD and Invest NI examples, it is important that learning or information, once received, is exchanged and shared appropriately and that it is used to revise policy where this is required.
74. In a similar vein, work is also being undertaken to ensure that, going forward, civil servants are primed to respond effectively to concerns which might be raised about the practical effects of Government schemes by concerned members of the public / ‘whistleblowers’.
75. The NICS Group Internal Audit Service are currently carrying out a wide-ranging assessment of whistleblowing policies and procedures, and this work will form the basis of a report to the NICS Board so that the steps necessary to improve the practical operation of whistleblowing arrangements can be considered at the highest level.
76. It is appreciated that there have been serious errors of judgement in the responses which were provided to the valuable information conveyed to officials by the public about the operation of RHI. Despite the laudable perseverance of Ms O’Hagan, for example, officials did not adopt an appropriate listening mode, or were insufficiently attuned to the commercial realities contained in the information which she brought

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<sup>39</sup> TRA-16578, lines 7-15

<sup>40</sup> TRA-16490, lines 1-3

forward. Therefore, it is acknowledged that the NICS must improve its culture and outlook in this important respect.

77. The evidence to the Inquiry has highlighted that a lack of sensitivity to the messages conveyed by concerned members of the public and a failure to follow-up and investigate, coupled with the absence of collaboration between government Departments and agencies, represented significant missed opportunities to arrest and correct the worst excesses of the RHI scheme.

### **Record-keeping**

78. Mr Sterling has expressed concern regarding the failure of record-keeping within DETI. He has accepted that there is a need to revisit how record-keeping is approached within the NICS. But more importantly, he has acknowledged that there is clear evidence of failures to adequately document some of the critical exchanges which took place between officials in the Energy Division and the Minister around RHI.
79. Mr Sterling has said that there is no excuse for the failure to keep a clear record of all major decisions or actions, as well as the rationale and factors behind them.<sup>41</sup> He has demonstrated a determination to address this and met with the Information Commissioner on 20 September 2018, after which she met with Permanent Secretaries.<sup>42</sup> These meetings have triggered a process of further engagement in which the Commissioner has informed the NICS of a series of principles which she believes should inform the operations of the NICS. The Permanent Secretary of DoF is now examining those principles and taking steps to ensure that they are enshrined in the practices of officials across the NICS.
80. Included amongst the phase two reforms referred to briefly below, and which will be the subject of more detailed explanation in separate correspondence to the Inquiry, will be a series of proposals which will touch upon the interface between officials, Ministers and special advisers, and the role of the private office.
81. It is obvious that much urgent work is required in this area, including the recalibration of relationships. This work stretches far beyond the concerns of

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<sup>41</sup> TRA-16590, line 5-6

<sup>42</sup> TRA-16573, line 18-24

adequate record-keeping, and goes to the heart of many of the issues which have concerned the Inquiry. The Inquiry will appreciate that in this area the NICS must work collaboratively and in due course reach workable agreements with those who lead the political parties, before change can be implemented.

## **Reform Agenda**

82. Mr Sterling is acutely aware that there is a confidence and credibility issue to be addressed by the NICS. In this respect he has remarked upon the fact that questions have been raised “about the competence and capacity of the NI Civil Service to develop and deliver complex policy,” and as has been discussed above, he has also acknowledged that there are concerns about the “effectiveness of communication within and across government and its agencies.” Additionally, he has accepted that legitimate concerns have arisen with regard to the “propriety and effectiveness” of the relationships between ministers, special advisers and officials.<sup>43</sup>
83. As the Inquiry is aware, the NICS Board is anxious to address the sources of these confidence and credibility difficulties and avoid a repetition of the mistakes which have characterised the RHI project. Under Mr Sterling’s leadership, the NICS is engaged in a range of initiatives which will ensure that substantial and meaningful changes will be made to how the Service conducts its work.
84. There is a real and vibrant reform agenda in place which is pursuing meaningful change within the NICS.
85. In his second witness statement Mr Sterling has endeavoured to summarise the key issues which have been pursued as part of this reform agenda.<sup>44</sup> He has described the three phases of the NICS response to RHI. Firstly, there has been the ‘Lessons Learned Action Plan’ which has flowed from the work of PWC, and which is overseen by the NICS Board. The Action Plan has focussed on seven principal areas - risk management, project oversight and monitoring, commercial awareness, behaviour/competences, affordability, retaining corporate knowledge and whistle-

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<sup>43</sup> WIT-05208

<sup>44</sup> WIT-05208 - WIT-05217

blowing.<sup>45</sup> The final update on the Action Plan was provided to the Inquiry on 3 December 2018, with a covering letter from Bill Pauley of DoF.

86. The second phase has involved the NICS monitoring the evidence provided to the Inquiry at its public hearings, for the purposes of identifying any additional issues of concern which have not been included in the Action Plan. Mr Sterling shall shortly write to the Inquiry to provide a detailed update on the most recent developments associated with this second phase of the reform agenda which the NICS is pursuing.
87. The key issues which are being addressed include staffing, resourcing, training and development; the interface with Ministers and special advisers, and the role of the private office; public administration, record-keeping and governance; project delivery and management processes; financial management and control processes, encompassing procedures associated with the approval of business cases.<sup>46</sup>
88. Mr Sterling has explained that the Service has moved quickly to improve and resolve issues relating to policy and procedure as part of phases one and two. Many changes have taken effect already, and other proposals remain the subject of detailed consideration prior to implementation. These changes have been the subject of detailed discussion and scrutiny, and have been or will be implemented without prejudice to the findings of the Inquiry.
89. In his evidence Mr Sterling made it clear that the NICS does not have all of the answers. The third phase of the NICS response to RHI will be to implement the recommendations and advice which will be articulated in the Inquiry's final report. In his evidence Mr Sterling has explained that the aim is to respond quickly to the Inquiry's report and a team has been assembled within the DoF, under the leadership of the Permanent Secretary, to co-ordinate that work.<sup>47</sup>
90. It has been acknowledged that it is a relatively straightforward matter to identify the need to make changes and improvements to policies and procedures, and to disseminate the new product. Mr Sterling is conscious, however, that there are what

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<sup>45</sup> **WIT-05210 - WIT-05212**

<sup>46</sup> **WIT-05212 - WIT-05213**

<sup>47</sup> **TRA-16573**, lines 1-2

he has called “deeper issues” relating to the culture of the organisation which have to be addressed and resolved.<sup>48</sup>

91. This was a theme which was examined by a number of witnesses in their evidence including, significantly, Mr Kieran Donnelly (C&AG). Mr Donnelly has reflected upon the failings associated with BTI, Bytel and now RHI, and while he has referred to basic errors of project management and risk assessment associated with each of those schemes, he has been careful to emphasise the overriding importance of cultural change.<sup>49</sup>
92. The evidence provided to the Inquiry Mr Sterling indicates that he is sensitive to the need for cultural change, what it will involve and how it will be pursued. He has directly engaged with these issues:

Having the right systems, guidance and controls is important but, if these are not underpinned by the right culture, and behaviours, throughout the civil service that reflect our values and responsibilities as an organisation, they will only take us so far. For example, the Inquiry has noted that there have been other governance failings in the past and that when these have been examined the conclusion has been that it was not an absence of guidance which gave rise to the problem, rather it was a failure to apply the guidance sufficiently.

We will need to reassert good civil service disciplines and encourage best practice in a way that is fully fit for purpose in a modern government context. We need to test and challenge our assumptions in developing and implementing policies. We need to be clearer about what we are capable of doing with the resources available to us and whether we have the expertise we need. We will need to ensure ministers and senior officials have all the relevant facts to inform strategic decisions.

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<sup>48</sup> **WIT-05213**

<sup>49</sup> **TRA-16099**. In his evidence (**TRA-16574**, from line 25), Mr Sterling specifically addressed the issue raised by Mr Donnelly, and expressed his “fundamental agreement” with the criticism that the NICS has taken false comfort in the past (particularly in the wake of the critical assessment of BTI and BYTEL) from the existence of the right guidance, systems and controls. He has recognised that these formal governance arrangements must be underpinned by the right values.

93. Mr Sterling has acknowledged that cultural change represents the “biggest challenge” to the NICS in terms of delivering the necessary reforms.<sup>50</sup> He has expressed his confidence, however, that by improving the skills and awareness of key cadres of staff through the use of leadership programmes, in combination with an ‘outcomes based’ Programme for Government, the necessary traction will be gained to secure the kind of cultural change which will be necessary. He has recognised, however, that this needs to be pursued with “unrelenting commitment” by those in positions of leadership to drive the process forward.<sup>51</sup>

## **Conclusion**

94. It is a matter of deep regret that the events surrounding RHI occurred as they did, leaving the public purse to suffer loss, and confidence in public administration tarnished.
95. The evidence received by the Inquiry has identified many deficits of performance, and inappropriate cultural norms. There are many challenges ahead, but the NICS is not complacent about the need to face those challenges honestly and urgently.
96. Mr Sterling’s approach to the failings revealed at this Inquiry, as discussed in this submission, has been to tender a frank admission that much has gone wrong. He has also set out how the NICS will fulfil its key responsibilities, and proactively implement solutions to the issues identified by the Inquiry as they are developed. Many positive changes have been introduced already.
97. The RHI Inquiry has provided the NICS with a timely opportunity to rebuild public confidence. It has grasped that opportunity and, with the Inquiry’s guidance, it will continue taking the steps necessary steps to ensure that lessons are learned in order that administration and governance in Northern Ireland will be renewed and strengthened as a result.

**Martin Wolfe QC**

**David Reid BL**

**instructed by Eugene O’Loan,**

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<sup>50</sup> TRA-16587, line 24

<sup>51</sup> TRA-16589, lines 11-20

**Departmental Solicitors Office.**

**4 December 2018**