

INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME
CLOSING SUBMISSION ON BEHALF OF AN ENHANCED PARTICIPANT

MR DAVID THOMSON

Introduction

- 1) This submission on behalf of Mr David Thomson aims to address the contextual background against which the RHI was developed, before moving to more specific issues the panel have engaged with during the course of the hearings. This submission is made in accordance with the Directions issued by the Inquiry and consequently this submission will not seek to mention every issue dealt with in oral or written evidence. It will deal with the some of the main themes or issues identified in the course of the Inquiry, as relevant to Mr Thomson. Where an issue or evidence is not expressly addressed it is not to be assumed that this amounts to any concession.
- 2) The Northern Ireland Civil Service, "NICS", has traditionally been modelled on the Whitehall approach to governance.
- 3) In 2010/11 devolution in terms of the St Andrew's agreement was in relative infancy within Northern Ireland, having only resumed in 2007. This is a factor relevant both to the ability and experience of politicians running government departments and their interface with civil servants. There is no evidence that there was any consideration given to the orthodoxy of maintaining a Whitehall style civil service, in circumstances where there was pressure for Northern Ireland to not merely follow policy formulated in Whitehall, but to design and develop bespoke Northern Ireland policies. Whilst the "Whitehall model" was used during the lengthy periods of Direct Rule, devolution added different dimensions, which made operating the system much more complex.
- 4) There was clear pressure coming from ministers and special advisers to be seen to taking action - to be "out there" making a difference and showing that devolution was working. However, in devolution, there was a much greater focus on constituency and local issues, from both Ministers and MLAs, often diverting attention from main priorities. There were also unique aspects to be managed, for example the complexities of North / South bodies



and the Policy Group within the Department of Enterprise, Trade and Investment (DETI) had responsibility for two of these bodies - namely Tourism Ireland and InterTrade Ireland, which, in themselves, took up a lot of Mr Thomson's time.

- 5) Much attention has been focused on the stark dichotomy between the seventy-seven civil servants dealing with RHI policy within Department of Energy and Climate Change, "DECC", compared with the one full time and one part time civil servant in Northern Ireland. However it is equally relevant to note that the Scottish and Welsh Assemblies did not have energy responsibilities devolved to them in the same way as occurred in Northern Ireland and in Whitehall there is an entire Department devoted to Energy (albeit it also is responsible for nuclear energy issues). Energy was one of the Divisions within DETI. These observations are important in setting the context against which the actions of David Thomson and those within Energy Division should be considered. This resourcing constraint was not just felt at operational branch level, but also at the top management, where DETI had a top management team of three senior civil servants looking after the department and a wide variety of complex issues.
- 6) The Inquiry will wish to consider whether the NICS was in fact equipped with sufficient resources and experience to undertake the devolution project. Timothy Johnston recognised this issue in his evidence suggesting,

"I think one of the questions at the end of this process and before re-establishment, whenever that might be, I think we've got to ask ourselves across a huge range of tasks: have we the capacity to do it?" TRA-14137

- 7) David Thomson suggested to the Panel that,

"Devolution is a very hard difficult process to manage...all those things that the large Whitehall Departments did...we were replicating here." TRA-05659.

- 8) David Sterling said in evidence at TRA-~~06730~~ that,

"Again, this comes back to the quandary we faced in a devolved Administration, where we are required to develop a policy and where you could argue that it maybe takes as much investment to develop policy for 1.8 million people as it does for 50 million people-plus, but, again, that's something we wrestle with on a day-to-day basis.



I think, by and large, given the difficulties we face, we do tend to develop good policy in Northern Ireland, we develop a lot of policy which is attuned to the particular circumstances of this place and that that policy has worked well, but I think this scheme now — I think I said before — was really just a project too far for us.”

Background

- 9) David Thomson was one of two Deputy Secretaries in DETI, although at times the other G3 post was either vacant or filled with someone acting into the post. The organogram at **DFE-399516** sets out the extent of his responsibilities, being responsible for 4 significant divisions within the Department, as well as having departmental corporate responsibilities. One of these four divisions was dealing with energy issues and one of the myriad of issues for Energy Division was the RHI.
- 10) David Thomson came into post in 2010 at a difficult time for the economy, with Northern Ireland entering a recession and the Irish banking crisis unfolding, which had a major impact on local business. The then Executive was very keen to make a local impact with a new Programme for Government (PfG) which was very ambitious. Twelve of the thirteen Programme for Government targets for DETI were within his policy group. This Grade 3 post was one of the most challenging in the NICS. Dr McCormick suggesting at **TRA-12086**,

“...I think there probably are posts in the Civil Service that are comparable in terms of weight, but there's no doubt that it's in the very top group in terms of demands. And so, definitely we should have, with hindsight, we definitely should've fixed it sooner.”

- 11) As well as dealing with planned PfG issues, there were a number of major new opportunities which Ministers wanted to exploit and also events which had to be dealt with. During the period when the RHI was being developed there were a considerable number of such events which fell to DETI's Policy Group. For example, in late 2011, the opportunity to host the Irish Open Golf Tournament arose and Ministers were keen to bring that back to Northern Ireland, leading to an extensive period of work in early 2012. The UK Government announced that the G8 Summit would take place in Northern Ireland in 2013 and, whilst the summit itself was handled from Whitehall, the opportunities to exploit this with the media from across the world fell locally to DETI. Local politics also impacted



during the period, such as dealing with the flag protests in Belfast in early 2013 and the impact it had on business and tourism.

- 12) By the time David Thomson had come into DETI the die had been cast in respect of Northern Ireland designing its own bespoke approach to renewable heat, although the decision to opt for either a Challenge Fund or a long term initiative had not been taken. This approach was entirely consistent with the political desire that devolution be seen to work but little, if any, consideration appears to have been given to whether DETI was properly resourced to undertake this task.

Lack of notebooks

- 13) David Thomson had the practice of taking notes during all meetings he attended and also of calls which he received. There was also the practice of sending key messages around by email. In advance of the weekly stocktake with the Minister, an agenda was agreed with his heads of division, by email, and any key points after the meeting were sent to staff. Whilst these were not formal records of meetings, they did provide an informal note and could be referred back to, if necessary. David Thomson kept his personal notebooks for about a year after he retired, but as nothing arose which required him to consult these, it seemed natural to destroy them. This was before he was alerted to difficulties with the RHI and, had he known at the time, he would have kept them. His email records were also deleted by the Department. He regrets that more formal notes were not kept and filed and stresses he did not give any instructions to his staff not to keep such notes, either for Freedom of Information or other reasons.

- 14) David Thomson has therefore had to operate under somewhat of a disadvantage in giving his evidence and he has not had the same opportunity as other witnesses to use contemporaneous documentation to assist or prompt his recall of events. This is particularly relevant, for example, in respect of the need to review the non-domestic RHI in 2014. David Thomson's evidence was clear that he knew about the need to review the scheme TRA-05980. Had his notebook been retained it would have assisted in respect of much of his evidence, at TRA-05989 he recalls that



“No, and I’m quite sure — I would love to be able to prove it — that, when I— I sat down with Fiona before she left, and we had a, you know, the hand—. I would have written down key points — “Fiona, tell me what the key points are” — and that would have included review of RHI. I did ask Fiona to ensure that she gave a thorough briefing to John, when he came in, but I also met John. Now, I cannot believe that, when I met John, I didn’t refer back to my notebook with the key points that Fiona had told me, but I can’t prove it. But I am sure that I sat down and went through those with John.”

The Devolution Project and Resources

15) Looking back at the resources available within Energy Division it is clear that there was a significant lack of resources. This was obvious to the permanent secretary David Sterling who acknowledged that DETI had 13 of the 82 PfG targets with a net resource of just over £200 million out of a total budget for the Executive resource DEL budget of around £10 billion. The permanent secretary noted that DETI staff were being,

“asked to punch well above our weight in terms of the contribution we were making.” TRA-06064.

16) The Department for Economy recognise that,

“With the benefit of hindsight it is now clear that the level of resources devoted to the RHI Scheme from 2011 to 2016 was inadequate and created vulnerabilities...” WIT-03283

17) The minister recognised an issue with resources at WIT-20585 being aware that “*Energy Division was a small team with limited resources*”. Such was her concern that she flagged this issue up with the permanent secretary and the Head of the Civil Service. She believed that Energy Division was,

“under acute pressure to keep on top of their workload (despite working very hard) because of the large number of initiatives that its significantly larger GB counterpart, DECC, was able to produce simultaneously. I observed that this had the effect of Energy Division having to constantly ‘fire-fight’...” WIT-20596

“I do think that the officials worked long hours, probably longer hours than some of their colleagues in other parts of the Civil Service... You just can’t



expect officials to keep working long hours all the time or there will be a consequence to that." TRA-08523 (emphasis added)

18) Against a background of corporate acceptance of the devolution project and the limited resource, the permanent secretary, David Sterling, considered that the response of the civil servants was to reflect a,

" 'can do' attitude and a willingness to take on new tasks and challenges"
WIT-04024

19) The 'can do' attitude and willingness to accept challenges was exemplified in David Thomson's attention being directed towards the twelve PfG targets, some of which were time limited; Titanic Belfast having to be open for the centenary is an example. Given the significant issues in the period 2010 to 2014, when he retired, including the economic recession, it was necessary for David Thomson to prioritise and make professional judgements as to how to allocate his time. In considering this, he would regularly discuss issues with the minister, Mrs Foster, and permanent secretary, David Sterling. It is of note that given the scale of the issues facing David Thomson, RHI was not at that stage discussed as something which was likely to require his close attention; TRA-05633. Part of the reason for that was due to the decision to use external advice to help design and manage the scheme on behalf of DETI. Rather he concentrated on key priorities, requiring greater personal input from him, and relied on the normal checks and balances, reporting mechanisms and his ongoing engagement with Fiona Hepper to alert him to any potential difficulties or problems with the RHI.

20) It is clear that rather than remaining static the pressure on DETI was constantly increasing, at TRA-05638 David Thomson suggests that,

"There were regular discussions with the Minister. But, I mean, I found, in my time, it was: you kept getting things added, and new initiatives came on stream or other priorities popped up. It was very difficult to stop things. And when you try to stop things there was, generally, difficulties — opposition — not opposition, but people saying, "No, we can't do that".

21) During his time in post David Thomson considered that there were resourcing issues at both senior management and branch level. The considerable effort he was putting into work was being replicated by Peter Hutchinson and Fiona Hepper who were working "evenings



and weekends” TRA-05646. Such was the pressure within Energy Division, that he considered it *“could always use more resources”* TRA-05660. There was clearly a constant pressure on resource. David Sterling relates that he would have been conscious that Energy Division was under pressure, and that the Resources Group, which included David Thomson, worked hard to find ways to identify and obtain additional resources in response to requests from the team; TRA-06072. However this pressure on resources was a NICS-wide picture at the time.

- 22) David Thomson was aware of the problems with resourcing and constraints on budgets, especially in relation to administration costs. He could not create extra resources and neither was it in his gift, or indeed DETI’s, to create a new G5 senior civil servant post and split Energy Division. This was not feasible at the time under the NICS management arrangements and the resource constraints agreed by the Executive.
- 23) It is clear that there were insufficient resources, with significant financial and resource pressure across the whole of the NICS. The perception amongst civil servants was that they had to get on with it, and the clear desire within the political classes was that the full devolution project must be progressed and the NICS had to be seen to be making it work. This was particularly attuned in this case, with an initiative which was being given extra financial resources for the programme, but not the associated staff costs.

Management Style

- 24) David Thomson did not consider DETI to be a grade conscious department. DETI was a small department. He would walk across to his Divisions, to include Energy Division frequently. During conversations with differing grades of official within the Divisions he would *“sense check”* the assurance statements being given to him, TRA-05663, and he recalls being at Energy Division branch meetings to sit and listen, TRA-05660.
- 25) As one of the busiest Grade 3s in the NICS, with priorities agreed with the Minister, he relied on a number of factors within the NICS system to manage the range of programmes in his group, including, the internal assurance and reporting systems, the casework committee system, the interrelationship between departmental economists and civil



servants developing policy, the external scrutiny and approval by DFP and, most importantly, on the expert external consultants.

26) It is of note that during his tenure from 2010 to 2014, there were some significant resource issues at senior management level. This was particularly acute during 2013. The other Deputy Director of DETI transferred to the then Department of Finance and Personnel, leaving a vacancy in the Top Management Team. In and around this time the Grade 5 Finance Director suffered a period of prolonged sickness. There was therefore a significant gap at the top of the Department and no senior civil servant in the finance area. This was discussed with the Permanent Secretary and David Thomson was directed to take responsibility for oversight of the Finance Division, **WIT-13553**. To facilitate this additional workload, Mrs Hepper was directed to report directly to the permanent secretary, who would take over oversight of Energy Division. Notwithstanding this reduced interaction with Energy Division David Thomson kept in touch with the key issues going on within Energy Division, was copied into Ministerial submissions and met Mrs Hepper informally to discuss issues, **WIT-13554**.

27) When David Thomson gave the Department notice of his intention to retire (autumn 2013) in the summer of 2014 he was tasked by the Minister and Permanent Secretary to concentrate on those issues in which he had a personal involvement so that they could be completed before he retired. Notwithstanding that decision there remained considerable additional calls on his time and top management resource. He was presented with a significant piece of work in respect of a review of tourism in which the Minister wanted an action plan and he was given responsibility for a major project being taken forward jointly with a GB body involving a significant Heritage Lottery Grant. This meant that there was a constant reprioritisation of his time, **TRA-05975**.

Challenge Fund v RHI

28) David Thomson was aware from his consideration of the documents and discussions with Fiona Hepper that there were two options, a challenge fund or an NI RHI type scheme. He was aware that the monetised difference between them was significant and “*moving around*” within the reports, **TRA-05708**. He considered that whilst a long term incentive would be more expensive than a Challenge fund, there were sound reasons to consider the



long term incentive as, inter alia, it was consistent with the move to long term support of the market (this being consistent with the approach to incentivisation of renewable heat by DECC) . Whilst acknowledging there was a different counterfactual in Northern Ireland David Thomson took some comfort from the DECC decision, given the much larger resources of the Whitehall Department in the context of the policy formulation.

29) Whilst the absence of his notebooks prevents him referring to a note, David Thomson had a clear recollection in respect of the options being presented to the Minister,

“We weren't intending to give the minister a firm recommendation as to which one to go for, and I do recall that we were keeping the two options- the two options challenge fund versus an RHI- we were keeping those open”
TRA-05718

30) It is of note that David Sterling confirms that his recollection at the time was that even if specific details of the final position in terms of the costs of the RHI option against the Challenge Fund option had been specifically highlighted to the Minister's attention that his expectation was,

“that the realpolitik may have been such that the Minister would've said, “Let's go with that option”, in any event.” **TRA-06175**

Reliance on experts

31) The absence of sufficient resource was not just financial but also in terms of 'in house' expertise. The NICS consisted of a broad range of generalists and DETI was a relatively small policy department. It was clear to David Thomson and his colleagues that, despite the political pressure to introduce the RHI, they did not have the resources to do this themselves. Consequently, external advice had to be retained to help design the scheme.

32) David Thomson, and DETI, were entitled to rely upon the experts engaged; CEPA, OFGEM and Arthur Cox, to provide a proper service, including identifying all of the relevant issues and informing the Department and then administering the scheme on its behalf. It is now clear that this reliance was largely misplaced.

33) In respect of CEPA it is clear that it failed in its responsibility to the Department and that reliance upon its expertise, was misplaced: -

- a) CEPA in its first report identified and considered the requirement for tiering for the NI RHI rates using the DECC approach but opined that it was not required in respect of biomass.
- b) Following public consultation CEPA were asked to *“reconsider their assumptions in light of the new evidence presented”* and to *“consider the resulting implications for tariffs and overall costs”*. It appears from the evidence available to the Inquiry that CEPA’s model had, in fact, disclosed the need for tiering of the small scale biomass tariff **TRA-01350**. Notwithstanding, CEPA appear not to have realised this and/or failed to communicate that necessity to DETI.
- c) CEPA did not fully or clearly set out or communicate to DETI the risks associated with their key assumptions, for example the assumption of a 17% load factor in the absence of tiering.
- d) CEPA appear not to have properly understood their role as independent experts, requested to and required to provide an independent report.

34) In respect of OFGEM it is clear that it failed in its duty to the Department and that reliance upon their expertise, was misplaced: -

- a) OFGEM had considerably more experience of RHI type schemes given its role in administering the DECC scheme; it was entirely reasonable that the DETI would rely upon and take comfort from OFGEM’s engagement in the NI RHI scheme. OFGEM were aware that DETI were placing reliance on this, see **OFG-01734** and encouraged it, see **OFG-162032**.
- b) OFGEM envisaged a role for itself in the oversight and development of the NI RHI Scheme inter alia in the suggestion within the feasibility study that there be a joint administration board. Despite OFGEM having authored the feasibility study and inserted this suggestion, it later considered and expressly decided not to proceed with the creation of this administration board.



- c) Rather than fully utilise the experience, knowledge and resources available to OFGEM, it became entangled in bureaucratic arrangements and failed to impart its learning from administering the DECC scheme, or sufficient information (names and addresses where there were multiple boilers) to allow DETI to identify timeously matters which might have led to the identification of gaming earlier. Whilst it would be possible to outline a catalogue of instances in which OFGEM failed to pass information to DETI, one particularly troubling example can be seen in February 2014, when the NI Scheme was still in its infancy (72 accreditations). At this time, OFGEM's Jacqueline Balian sent an email communicating the following industry feedback:

"Many of those present mentioned it, one saying, 'I know quite a few people in our local farming community who say that they are giving up sheep and just raking in the money from the RHI.' ... Others asking how long they have before the loophole is closed." OFG-260635 (emphasis added)

Despite being aware of gaming within the GB Scheme, by way of under-sizing and installing multiple boilers (OFG-260159), OFGEM failed to pass this information on to DETI. Dermot Nolan, CEO of OFGEM, properly conceded, *"I think we told DECC more than we told DETI. That was a failure – a significant failure"*, TRA-16429.

- d) Whilst the memorandum of 4th November 2011 raised a number of issues in respect of its review of the draft regulations. These same issues had been raised with DECC and DECC had decided not to address them, rather it decided to proceed and address ongoing issues in due course. It is respectfully submitted OFGEM acquiesced in the DETI decision to proceed in a similar fashion to DECC, in the full awareness that if DETI took a different course to DECC there was the real risk of divergence of the schemes with the consequence of a loss of the economies of scale presented by OFGEM. Had there been a strong objection to the DETI stance this would have been escalated up to more senior management. Further, the evidence of Keith Avis suggests OFGEM approval of the decision, WIT-102323, suggesting,



"The DETI proposals concerning the NI RHI Scheme were reviewed by OFGEM, including its legal team, and deemed appropriate to enable operational processes to be framed to reflect the detail."

- e) Significantly OFGEM did not clearly alert DETI in the initial stages of the RHI that they would be treating hydraulically separate heating systems within the same building as separate, or of the potential implications of this decision in respect of gaming opportunities, **TRA-09030**.
- f) OFGEM failed to provide evidence from which DETI officials might have identified the potential for gaming of the scheme earlier. The information within the email of Alastair Nicol to Edmund Ward dated 15th August 2013 which provided three case studies in respect of boilers not hydraulically linked, see **OFG-164265**, was not imparted to DETI. Further, the November 2013 Ricardo-AEA presentation information was not imparted. This is despite it being clear to OFGEM employees that DETI regarded them as the experts in the interpretation of the Regulations, regularly referring queries to them for advice and assistance. The OFGEM response to DETI appeared to be reactive rather than proactive.
- g) It is submitted that the OFGEM suggestion in June 2012 that DETI had the option to stall the implementation of scheme pending the DECC changes to the GB scheme was not put with the clear preference for waiting which is now asserted. David Sterling considers that if OFGEM felt as strongly about their June 2012 warning as alleged, then they ought to have,

"picked up the phone to, you know, top management in the relevant organisation and said, "I just think you should know about this." TRA-06708

35) In respect of Arthur Cox, the Department had provided the OFGEM memorandum of 4th November 2011 to Arthur Cox to address and assess the risks associated with those issues in its review of the draft NI regulations. No proper assessment of these risks was presented.

36) It is respectfully submitted that the acts and omissions of the experts upon whom the Department relied for advice cannot be divorced from the limited resources available to the Department to perform a detailed review of expert advice. It should not be taken from this



that there was no such scrutiny, rather it stands to reason that further and more adequate resources would have strengthened the process.

37) David Thomson, and those in Energy Division, were relying on Departmental scrutiny to assist. This scrutiny included the internal economists, the casework committee and the Department of Finance. It is of great regret that this scrutiny did not identify and address deficiencies in the scheme, however it is implicit in the nature of such failures that they should be seen as systemic problems.

Project Management

38) Whilst it is perhaps easy with the benefit of hindsight to see that formal project management could have played a potentially important role in the subsequent management of the RHI scheme, a number of factors appear to have led to this not being in place.

- a) Firstly, this was a policy project rather than a capital project. Whilst the guidance is not prescriptive, a significant thrust of the examples within the NIGFAF was in respect of procurement, construction or capital projects.
- b) The absence of project management did not cause any contemporaneous concern within the NICS during the development or implementation of the RHI scheme. The processes in place to interrogate and ensure a robust project, namely peer scrutiny, the casework committee, ministerial scrutiny, other department scrutiny and even external engagement with OFGEM, did not identify this as a failure at the time.
- c) Further, those who succeeded David Thomson, and the other members of Energy Division, failed to contemporaneously identify the absence of project management as an issue, notwithstanding any evidence the Inquiry may have heard with the benefit of hindsight. If the requirement for project management had been properly ingrained within the Departmental or NICS culture, it is inconceivable that those who reviewed the scheme in casework or finance, and/or those who succeeded Peter Hutchinson, Joanne McCutcheon, Fiona Hepper and David Thomson, would not have raised this as an immediate and significant issue.

- d) Given that the absence of formal project management did not cause alarm bells to ring within the Department or greater NICS, it is submitted that this was a systemic issue. It is strongly suggestive that corporately the NICS was not as comfortable, or experienced in, applying project management techniques to policy development. Peter Hutchinson noted the different culture in respect of project management in 2010 suggesting,

"I think the position back in 2010, in my mind certainly, is different from where we are now in terms of project management within the Civil Service, and it's almost like a prerequisite for everything" TRA-01482

- e) Up to 2014 expenditure and take up on the RHI scheme was considered to be low, TRA-05688. OFGEM in November 2013 considered that

"As the scheme is fairly new, the number of applications received to date doesn't form a strong basis for detailed and accurate conclusions for the scheme's future. Statistics are however consistent, when adjusted for NI's population, with the results of the scheme in other regions for their corresponding periods." WIT-08439

39) It is against this background of a lack of resource that the absence of formal project management should be judged, rather than with the clarity of hindsight. David Thomson stressed in evidence that PRINCE was not a one-size-fits-all methodology, it has to be applied proportionately, to be adapted to the circumstances of a particular project, TRA-05676.

40) Dealing with the period to 2014, the Inquiry is aware of the very small number of staff working on the RHI, who were working long hours, evenings and weekends. Against this background it respectfully suggested that it is only with the clarity of hindsight that criticism can be made of the consideration that it would not be proportionate to implement formal project management given the small team of working on RHI, namely one full time Deputy Principal, one part time Grade 7 and a Grade 5 with a portfolio of other issues. The permanent secretary confirmed that he did not see them as,

"...people that I would have characterised as being excessive risk-takers or, indeed, to any great extent risk-takers at all, so I would have had confidence in their ability to examine a risk, make a judgment and proceed in a way that was basically sound." TRA-06797



41) The manner in which the small number of staff involved in RHI were operating was akin to a project management system. Peter Hutchinson considered that,

"I think the position we were in was that the principles of project management in terms of who are the key members of staff, what are the roles and responsibilities, you know, were there. We were reporting regularly to Fiona, you know, in terms of weekly or monthly meetings. The risk register would have been considered on a – probably on a quarterly basis with Fiona and Joanne. So, there were principles of it I think, but as you say, it was probably more of an informal PRINCE, you know, process ...

... all the documents were there and they were logged and provided, certainly in the handover note ... what we were doing felt proportionate to what was being delivered." TRA-01484 (emphasis added)

42) David Thomson recalls that Fiona Hepper was meeting regularly with OFGEM, and that effectively he considered this was "effectively a project board", TRA-05684.

43) David Sterling's evidence in respect of project management and resource is illuminating. He accepts a general failure in DETI when he was the permanent secretary to find sufficient resources for project management, stating: -

"With hindsight now, I wish I had been, as I say, more inquisitive about the programme of activities that was flowing from the strategic energy framework and perhaps have suggested that, "Look, if we can't find sufficient resource to do proper programme and project management, then let's get it in from the SIB". I would accept that entirely now..." TRA- 06066

44) More specifically in respect of the RHI he suggests there was little resource within Energy Division for project management,

"I wish I'd had the foresight at the time to recognise the, the lack of resource for project and programme management in energy division." TRA-06070

45) David Thomson reflecting on any project management failings suggested that any failing was a corporate failing, TRA-05691. Whilst a trite point might be made that corporations are made up of people, the absence of any contemporaneous identification of the necessity for project management in the RHI scheme, by anyone within the peer review process, or who succeeded those initially in post in Energy Division, must ultimately identify the

failing as a corporate, rather than individual failing. The absence of formal project management was not hidden from others within the Department.

- 46) It is of note that the Department of Finance issued the guidance on project management, was the custodian of this guidance and did not raise any particular concerns about project management or governance of this scheme at the time.

Cost controls

- 47) The decision in June 2012 to proceed with the Northern Ireland scheme and not to delay the introduction by pausing and bringing in a DECC style cost control is another issue in which David Thomson is disadvantaged by the absence of his notebooks. He describes his habit of doing file notes of a meeting and recording it as "*old school*", TRA-05711. He recalls Fiona Hepper discussing the issue with him. He also recalls it being a particularly busy week with a lot of other things happening (TRA-05740) including a royal visit by HM the Queen and the start of the Irish Open golf championship. David Thomson recalls Fiona Hepper discussing with him that there were two options, to stop and delay the anticipated instigation of the RHI scheme with the intention and purpose of bringing in the DECC style cost controls at the start of the scheme or to proceed, as DECC had done, and bring in the cost controls at a later stage. He advised Fiona Hepper that the decision needed to be taken to the Minister TRA-05745.

- 48) It is unfortunate that no minute was produced from the meeting with Mrs Foster, however the lack of minutes was a systemic issue, Fiona Hepper accepts that,

"I think the hindsight point is that that would've been helpful as we sit here today, but it was the working practices of the time that prevailed." TRA-05201 (emphasis added)

- 49) This practice of going and speaking to the Minister was one which was encouraged by Arlene Foster who suggested

"My door was always open to officials, if they wanted to come and talk to me about issues...If there was an issue that needed brought to my attention, it should have been brought to my attention" TRA-07849



50) David Thomson recalled the ministerial decision on the issue being relayed to him and had no doubt that the scheme was being launched, TRA-05747. Given the significant events going on that week, to include the royal visit, he had spent a lot of time with the Minister. It is submitted that it is highly likely that he discussed this issue with the Minister. He suggests he,

“May have discussed it with the Minister at the time or in the days afterwards because I spent-because of what was happening, I spent a lot of time with the Minister in those few days.” TRA-05746

51) It would seem highly unlikely, Mrs Hepper having raised the issue with David Thomson, and having been directed by him to address this with the minister, that she would not have done so, either at all or comprehensively. Mrs Hepper would have been fully aware that David Thomson not only had weekly meetings with the Minister but that given the significant events of that particular week he would be spending considerable time with the Minister. Further the decision would have to be relayed to him (as it was, TRA-05747) and it was one which it might be expected would have been discussed between David Thomson and the minister either formally or informally during the weekly issues meetings. These issues meetings were not restricted to the formal agenda, David Thomson gave evidence that

“we used those meetings to discuss all sorts of things” TRA-05730

52) The decision of the Minister was therefore clear. That was to follow the DECC approach and launch the scheme, bringing in cost controls in the next phase. It is submitted that the manner in which these events occurred, whilst in retrospect imperfect, were an outworking of the lack of resources in the NICS in general and within Energy Division in particular. The evidence of Fiona Hepper is illustrative of the ‘just get on with it’ attitude that prevailed within the Civil Service, where staff were working late at nights and over weekends and, given the lack of resources, did not want to be a bottleneck for the significant volume of work which was required to be done, TRA-05342. She suggests that the issue of lack of resources was brought to the permanent secretary, and whilst some additional resources were made available,



"he did know that we were working under, you know, a fair amount of pressure and that there was work coming at us all the time. I think the approach we took was, "Get on with it." TRA-05341

Phase 2 cost controls

53) As can be seen from the above the need for cost controls had been clearly identified to the Minister. It was on the Departmental *radar* in 2013. Also Minister Barker from DECC had written to the DETI Minister to keep her updated on the interim cost control measures. The phase 2 consultation identified three areas of work being moved forward, a domestic RHI, cost controls and changes to the non-domestic RHI.

54) Fiona Hepper recalls highlighting during her handover to John Mills that the consultation that was finishing and mentioning cost control;

"I do remember talking about cost control because this term, "degression", came up and it was obviously a novel term, and I remember, you know, spelling that for him because it's an odd spelling of the word." TRA-01795

55) John Mills does not dispute Mrs Hepper's account as this was one of the three elements of the consultation, TRA-07087. He accepts that there was no reason that it would not have affected both the domestic and non-domestic schemes, TRA-07093.

56) David Thomson's evidence was that he was aware that the priority in the early part of 2014 was to follow through on the 2013 consultation, not just the domestic scheme but "*the whole of the consultation*", TRA-05992. He relied upon the handover between Fiona Hepper and John Mills, and it is clear this reliance was not, at this stage, misplaced as following this handover John Mills was aware of the necessity for cost controls.

57) The evidence of John Mills to PWC is illuminating. He was asked whether cost control was consciously deferred and replied

"It was consciously deferred, that is, or rather all the other elements of phase 2, as it was called were consciously deferred to get the domestic scheme in." PWC-04570



58) Contemporaneous documentation from 2015 identifies the position adopted by Mr Mills to the Casework committee in 2015 (see WIT-02435) namely that

“On joining DETI, the priority for the new Heat Team was to take forward development and implementation of the Domestic RHI Scheme which was the Minister’s priority.” WIT-18760 (emphasis added)

59) It is of note that this alleged conscious decision was not brought to the attention of David Thomson. Had the cost controls work proceeded as planned, then it is likely that the suspension mechanism would have been in place as a first line of defence to deal with any ‘spike’ in applications.

Review

60) At different times during the course of the Inquiry the need to review the scheme may have been confused with the Phase 2 consultation in respect of further non-domestic technologies. These were entirely separate issues. Similarly to the issue of cost controls, David Thomson was aware of the need for the review of scheme which had been indicated to the casework committee and had been made a condition of DFP approval (the DFP approval letter having been placed on TRIM). He considered it as a “central” to the scheme, TRA-05980. He recalls this being a live and ongoing issue at the end of 2013.

“I met with Fiona towards the end of 2013, when she was moving on. We did sit down and talk about what was happening right across her division, including RHI. The review was very much a critical part of that.” TRA-05985

61) The need for review was also clear from the both the TRIMed contemporaneous documents setting up the scheme and within the Strategic Energy Framework, ‘Progress to 30 September 2013’ document, DFE-399083.

62) As noted at paragraph 11 above, David Thomson does not find it conceivable that he would not have raised the issue of review with John Mills given it was discussed as a ‘key point’ between he and Fiona Hepper. The Minister’s answer to the Assembly question in February 2014 clearly states that “*DETI will carry out analysis as part of a future review of the Renewable Heat Incentive*” INQ-15203. It appears clear that whilst John Mills ought to



have been aware of, and acted upon, the need to review and when it was due to commence, no authority was sought from David Thomson, or anyone else, to delay the review.

Handover process

63) There was no formal guidance in respect of handovers in the NICS at the relevant time. David Thomson did not prepare a formal document for handover to his successor at grade 3, albeit there was a system of first day briefs which were kept in case of change of Minister. The key documents which would be considered were the PFG, the DETI business plan and reports against them; these were available. That was a normal and expected at that level, TRA-06029. It is of note that his successor Chris Stewart was not appointed until after he retired, TRA-11506. David Thomson went on to take up a role as temporary Chief Executive of the Tourism Northern Ireland. Whilst it was not addressed with Mr Thomson in evidence, it is clear from Mr Stewart's evidence that he met David Thomson in his new role fairly regularly over the next six to nine months and that

"David was very generous with his time for me and I got a lot of useful advice and insight from him on the running of policy group." TRA-11506

64) Even if there had been a more formal handover process, no significant problems associated with the RHI had been flagged to David Thomson by John Mills. Chris Stewart confirmed the absence of a formal handover process was standard practice across the NICS, *"There was no systematic approach to that, so it was ad hoc"* TRA-11507. Mr Stewart referred to Peter Hutchinson's handover note and suggested that whilst there might be many examples of written handover notes

"there would be just as many, if not more examples of people-...-relying on learning on the job", TRA-11507.

65) This absence of a formal handover system, in particular in circumstances where civil servants come from a generalist background is in hindsight inappropriate and something the Inquiry might consider making recommendations upon. However it is of note that despite the ad hoc nature of handovers, the handover note of Peter Hutchinson was clear and comprehensive. It set out the immediate issues, suggested solutions and directed the reader's attention to the relevant documentation on TRIM, ameliorating any perceived



difficulties with using TRIM to identify documents. Whilst this handover note did not come to David Thomson's attention, it remained within Energy Branch and could be furnished by its recipients when ultimately it was requested immediately before the PAC hearing in 2016.

Turnover of key staff

66) Given the small number of personnel working within the very technically complex area of RHI, it was inappropriate to allow Peter Hutchinson and Joanne McCutcheon to leave at what was effectively the same time. David Thomson suggests that had he known that this was going to occur he would not have agreed to it. It is of note that Joanne McCutcheon confirmed to PWC that she advised John Mills that Peter Hutchinson was very important and should not be permitted to transfer, offering an alternative that he be allowed to act up into her post, PWC-04551. John Mills confirms that he rejected the latter suggestion at TRA-09534.

67) Both Peter Hutchinson and Joanne McCutcheon were permitted to leave the branch before their successors came into post.

Other issues

68) All of the relevant information that was available to those who designed and implemented the non-domestic RHI was available to their successors. Chris Stewart accepted in evidence the suggestion that important information or documents were placed where they should have been in TRIM and were therefore readily able to be found by succeeding civil servants, TRA-11510.

69) Whilst there has been some discussion around the difficulties with or limitations of the TRIM system, however this document management system was not antiquated. It had been brought in between 2005 and 2010 (TRA-05637) as part of a major Civil Service reform programme and all staff were properly trained in its use, TRA-11512.

70) It is now clear that those who succeeded Joanne McCutcheon and Peter Hutchinson had complete copies of Peter Hutchinson's handover note, albeit at no stage was a copy



volunteered to more senior management until Alison Clydesdale was alerted to its existence by Mrs Hepper just before the PAC hearing. Further Mr Mills was contemporaneously aware of its existence, yet did not call up a copy to himself notwithstanding the turnover of staff. Albeit there was no formal handover guidance, the fact that such a document had been constructed, contained text such as “*immediate actions*” (DFE-05399) “*emerging issues*” (DFE-05404) and lists of useful reading with the TRIM document numbers, must have clearly conveyed the nature and importance of the document. Whilst an important document, it is not particularly long, running to 14 pages. It not only identified relevant issues but classified some as ‘urgent’ and suggested solutions.

- 71) It is inconceivable that the Peter Hutchinson handover document would not have been read in its entirety by a reasonably diligent recipient. It should have been immediately recognised as a key document.
- 72) Peter Hutchinson clearly considered that the timeframe for the immediate actions was realistic. Even if the difficulties of coming into a new, heavily-laden post, where resources were limited, meant that it was felt that Peter Hutchinson’s timeframes were optimistic, no steps appear to have been taken to bring this to the attention of senior management.

Conclusion

- 73) Whilst any administrative process subject to normal human frailties may be open to criticism, it would be unfair to apply a counsel of perfection with the benefit of hindsight to retrospectively identify complex and difficult issues as ‘obvious’.
- 74) In a department where there were many pressures, it was not possible for members of the top management team to be aware of every detail of each programme and project. It was necessary therefore to delegate and rely on feedback and internal reporting. RHI was a complex programme. To mitigate the risks, having taken the decision to proceed with a NI version of the GB scheme, the NI scheme followed behind and on a similar course to DECC practice and approach. Additionally, DETI recognised it had to retain experts to help design and then manage the NI scheme on its behalf.

- 75) What is clear with hindsight, is that too much was being asked of this Department, Division and Branch. It is submitted that this factor will weigh heavily in the balance, and would tend towards a conclusion that individual acts or omissions were not as a result of a want of care in respect of those who worked with David Thomson on the design and implementation of the RHI scheme.
- 76) Against a background of a lack of resources and a political desire drive the devolution project and to replicate the Whitehall Civil Service in miniature in Northern Ireland, to include the design of bespoke energy policy, David Thomson, like the civil servants for whom he was responsible, undertook his task conscientiously, with the ethos of service and sense of public duty, that was common within the Northern Ireland Civil Service.
- 77) It is a matter of profound personal and professional regret to David Thomson that the shortcomings in the design of the RHI scheme were not identified and addressed at the outset, or at an earlier stage of its operation than actually transpired. It is submitted the matters highlighted in the foregoing illustrate the wider context in which Team 1 had to operate, and that this should be of fundamental importance in the Inquiry's consideration of how the *structural* difficulties with RHI arose in order that the necessary changes and reforms can be identified to the benefit of the future governance of Northern Ireland.

Dated this 29th day of November 2018.

Peter Coll QC

Andrew McGuinness BL

Leah Treanor BL

Nicholas Compton BL