



INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

DATE: 25 May 2018

Witness Statement of: **Brendan McCann**

I, Brendan McCann, will say as follows:-

1. This supplementary Witness Statement by the Department for the Economy (DfE) seeks to assist the Inquiry by clarifying or expanding on points arising from the oral evidence given by Fiona Hepper on 19 December 2017 and by Arlene Foster on 13 April 2018.
2. On 16 March 2012 Fiona Hepper sent a Ministerial Submission to the Private Office (DFE-31746 to DFE-31772) seeking *“approval to proceed with the introduction of a Northern Ireland Renewable Heat Incentive (NI RHI) and the associated Renewable Heat Premium Payments (RHPPs).”* During the RHI Inquiry hearing on 19 December 2017, it was noted that the business case was not attached to this submission. In response to this line of questioning Fiona Hepper stated at **TRA-02360**:

“I’m pretty sure there would’ve had to have been a submission which sent the formal business case to the permanent secretary and the Minister, and it may have been separate from this.”

3. On 10 April 2018 the RHI Inquiry asked DfE to confirm whether a separate submission, as referred to by Fiona Hepper during the 19 December 2017 hearing, existed (DFE-423435 to DFE-423436). On 12 April 2018, DfE confirmed that it had been unable to locate a submission seeking Ministerial approval for the 2012 business case (DFE-423441).



4. During the hearing on 13 April 2018 Arlene Foster confirmed at TRA-07854: *"I didn't receive the business case."*

Business Case definition

5. The Department would like to provide some clarity on the use of the term "business case" when referring to the documents to be submitted to DFP and the Minister for approval. Business case development process guidance available on the DoF website states:

"A business case should contain an economic appraisal and other information including the proposed arrangements for financing, management, marketing, procurement, monitoring and evaluation of the relevant policy, programme or project." and

"Documentation of the business case is required at various stages to inform key decisions. Prior to each key decision point, the business case document should be treated as a living document, to be revisited and updated regularly as information and assumptions are developed and refined. It is not just to be prepared for purposes of obtaining approval and then shelved."

6. The minutes of the casework committee meeting held on 9 March 2012 include the following action point at DFE-407325 and DFE-407330:

"The business case to DFP (and the Minister) should explicitly address the reasons why the RHI is favoured over the Challenge Fund option."

Following the casework committee meeting Energy Division produced a new document entitled "RHI – Business Case for DFP" (DFE-82633 to DFE-82741). As well as including a summary of the suite of papers submitted to the casework committee, this new document included a section explaining the rationale behind why the RHI was favoured over the Challenge Fund option, as had been requested by the casework committee.



7. Compliance with the action point arising from the casework committee did not necessarily require the preparation of the new summary document. Energy Division could alternatively have prepared a new separate addendum document addressing only the RHI vs Challenge fund option and added this to the suite of papers that had already been considered by the casework committee.
8. The fact that Energy Division prepared a new document with the words “business case” in the title following the casework committee meeting should not take away from the fact that what was considered to constitute ‘the business case’, as at the date of the casework committee on 9 March 2012 was the full suite of papers prepared for that meeting. Following the casework committee the business case became the full suite of papers prepared for that meeting, together with the new summary document entitled “RHI – Business Case for DFP”.

DFP & Ministerial Submissions – General DETI Process 2012

9. As part of the response to the query from the Inquiry on 10 April 2018, as referred to in paragraph 3 above, DfE provided the Inquiry with a copy of the DETI Operating and Financial Procedures Manual which was in place during 2012. The Manual included the following guidance in relation to Ministerial approval of business cases at **DFE-423488**:

“All projects over £1m require Ministerial approval after DFP approval has been obtained. The Casework Committee minutes, casework papers and appraisal documents should be sent to Private Office along with the Ministerial Submission. It is the responsibility of the Operating Division to prepare the Ministerial Submission.”

10. The process in place in DETI in 2012 was that once casework committee approval had been obtained, Accountability and Casework Branch (ACB) would submit the business case (which would comprise the suite of papers prepared for casework and any documents prepared following the casework committee meeting) and the casework minutes to DFP for consideration. If DFP had any



comments or queries on the business case they would forward these to ACB, ACB would then pass the comments or queries on to the Operating Division for response. The Operating Division is the Division responsible for the case, on this occasion Energy Division. Once DFP was content with the business case they would issue a DFP Approval Letter, which could include a number of conditions of approval, to ACB. ACB would then forward the DFP Approval to the Operating Division and advise that they could now seek Ministerial approval.

11. In most cases Ministerial approval was sought by the Operating Division after DFP approval had been obtained. The Minister would receive a covering Ministerial Submission prepared by the Operating Division along with the business case (being the suite of papers prepared for casework and any documents prepared following the casework committee meeting) and the casework minutes. The covering Ministerial Submission would normally be no more than five pages long, in line with the DETI Operating and Financial Procedures Manual which provides guidance on the structure and headings which were to be included (DFE-423488 to DFE-423490).

DFP & Ministerial Submissions – Non-Domestic RHI Scheme Process 2012

12. The minutes of the casework committee meeting held on 9 March 2012 include the following action point at DFE-407330:

“Energy Division to send submissions concurrently to DFP and Minister seeking approval for the RHI Scheme.”

13. It should be noted that in some instances DFP approval and Ministerial approval could be sought in parallel if, for example, timescales were particularly tight (this did happen on occasion). However, in such an instance, it would be usual and appropriate to clearly flag up this fact to the Minister and to DFP as a courtesy, so that they would be aware of the parallel processing.
14. The sequence of submissions in this case (Ministerial on 16 March 2012 and DFP on 22 March 2012) was therefore not in line with paragraph 6.5 of the DETI



Operating and Financial Procedures Manual; however, a parallel process had been approved by the casework committee in this instance.

15. When a case was to be processed in parallel, the same papers should have been presented to DFP and to the Minister.
16. The 16 March 2012 Ministerial Submission (**DFE-31746 to DFE-31772**) had the SL1 and Regulatory Impact Assessment attached as Annexes but the business case (namely the full suite of papers prepared for the casework committee meeting, together with any new documents following the meeting) was not attached by Energy Division.
17. Fiona Hepper stated during the RHI Inquiry hearing on 19 December 2017 (**TRA-02360**) that there would have had to have been a submission which sent the business case to the Minister. However, based on the Department's exhaustive electronic searches to date, there is no evidence to support her assertion that the business case was sent to the Minister separately to the 16 March 2012 submission. The business case (including any papers addressing the action points from the casework committee) should have been attached to the 16 March 2012 Ministerial submission. This did not happen.
18. The DFP Submission was sent by ACB on 22 March 2012 (**DFE-82632 to DFE-83339**). This submission included the suite of casework papers as well as the new summary document entitled RHI – Business Case for DFP (**DFE-82633 to DFE-82741**). The casework committee minutes were not attached as they were not completed by the time the submission was made, and although the final signed minutes should have been sent to DFP as soon as they became available, this does not appear to have happened in this case.
19. In summary:
 - The Department has been unable to locate a submission to Minister Foster with the 2012 business case attached;



- The Operating Division, in this case Energy Division, was responsible for the Ministerial submission;
- In most cases Ministerial approval was sought by the Operating Division after DFP approval had been obtained, but on occasion, for example in cases of urgency, the process was done in parallel. The casework committee minutes record that parallel processing was to be undertaken in relation to the 2012 submissions;
- The business case should have been attached to the 16 March 2012 Ministerial submission by Energy Division. This did not happen.

Statement of Truth

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

Signed: Brendan McCann

Dated: 25 MAY 2018