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28 November 2018

Dear Sir

**Re: The Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme**  
**Provision of a Section 21 Notice requiring the provision of evidence in the form of a written statement**

I am writing to you in my capacity as Solicitor to the Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme (known as 'the RHI Inquiry') which has been set up under the Inquiries Act 2005 ('the Act').

I know you will by now be very familiar with the work of the Inquiry and its Terms of Reference from your previous engagement with the Inquiry. The Inquiry is grateful for the witness statements you have already provided to it.

However, as you will be aware, the Inquiry is now in the process of seeking some further written evidence from witnesses and participants, particularly where issues have arisen in evidence recently provided in respect of which it is necessary, or appropriate, to provide an opportunity for further response. The Inquiry Chairman also retains the right to require witnesses to attend to provide further oral evidence, and consideration will be given to whether that is necessary in light of additional written evidence which is received.

Further to my previous communication I am now reverting to you at the Inquiry's request seeking a further written statement dealing with a number of different matters of interest to the Inquiry Panel.

Please therefore find enclosed with this letter a further Section 21 Notice requiring you to provide evidence to the RHI Inquiry Panel in the form of a further written statement addressing the matters identified in the Schedule to the Section 21 Notice.

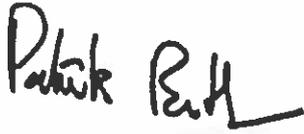
I remind you again of the restriction orders made by the Chairman of the RHI Inquiry, which affect how you may deal with this correspondence and its enclosures (which are also provided to you under a duty of confidentiality to the RHI Inquiry). You may, of course, share the correspondence and the enclosed Notice and documents with your legal representative(s), under the same conditions as I set out in my previous correspondence.

Given the tight time-frame within which the RHI Inquiry must operate, the Chairman of the Inquiry would be grateful if you would comply with the requirements of the Section 21 Notice as soon as possible and, in any event, by the date set out for compliance in the Notice itself.

Finally, I would be grateful if you could acknowledge receipt of this correspondence and the enclosed notice by email to [Patrick.Butler@rhiinquiry.org](mailto:Patrick.Butler@rhiinquiry.org).

Please do not hesitate to contact me to discuss any matter arising.

Yours faithfully

A handwritten signature in black ink that reads "Patrick Butler". The signature is written in a cursive style with a long horizontal stroke at the end.

**Patrick Butler**

Solicitor to the RHI Inquiry

02890408928

**SCHEDULE**  
**[No 238 of 2018]**

*The role of Senior Finance Director and interaction with the Finance Director*

1. In summary, Trevor Cooper's evidence to the Inquiry appears to be to the effect that he would have kept you fully apprised of developments which occurred in respect of the RHI Scheme during regular catch-up meetings that you and he would have had. This would appear to accord with what you had to say to the Inquiry in your first witness statement (at **WIT-24436 to WIT-24438**). Is this an accurate description of the position, or were there matters you consider you were not told about? Please explain your answer.

*3 June 2015 meeting*

Evidence provided to the Inquiry establishes that there was a meeting on 3 June 2015 in relation to emerging issues with the RHI Scheme. The meeting involved the DETI Permanent Secretary (Andrew McCormick), you (as the Senior Finance Director), the Finance Director (Trevor Cooper), the Head of Energy Division (John Mills) and Stuart Wightman as Head of Energy Efficiency Branch. You are referred to the following documents which appear relevant, or potentially relevant, to this meeting:

- **DFE-348536**: your diary entry of 3 June 2015 as 'meeting organizer';
- **WIT-10588**: Andrew McCormick's 3 June 2015 iPad notes of the meeting;
- **DFE-146513/4**: Stuart Wightman's 4 June 2015 narrative for DETI Finance Division to provide to DFP Supply;
- **DFE-146558 to DFE-146564**: Stuart Wightman's 11 June 2015 briefing paper/first draft addendum business case entitled "*Renewable Heat Incentive – Business Case Addendum*" for the 12 June 2015 DETI Finance meeting with DFP Supply; and
- Trevor Cooper's oral evidence to the Inquiry on 18 October 2015 (at **TRA-15864 to TRA-15868**).

2. Please give as full an account as you can of the matters which were discussed and decided at that meeting.
  
3. Trevor Cooper has said to the Inquiry (see **TRA-15864 to TRA-15868**) that it was at this 3 June 2015 meeting that the idea was put forward of describing the 2013 RHI Phase 2 consultation process as a “*review*”, which would then mitigate the fact that the 2014 scheme review (as previously committed to by the Department at the inception of the Scheme) had not been carried out. Trevor Cooper described this as a “*fig leaf*” put forward by Stuart Wightman at the 3 June 2015 meeting. As to this:
  - a. Do you recall the idea of describing the Phase 2 development of RHI as a “*review*” being put forward in the meeting on 3 June 2015?
  
  - b. Do you recall any discussion about this within the Department either at that meeting or otherwise? If so, please give details. (Andrew McCormick indicated in his oral evidence – see **TRA-15390/1** – that he did not feel the Department could “*stand over*” the later reference in the addendum business case to the “*first review*” of the RHI Scheme being undertaken in 2013.)
  
  - c. Were you party to any plan or strategy to seek to portray the Phase 2 consultation as a ‘review’ required by, for instance, the original DFP approval of the RHI Scheme?
  
4. Dr McCormick gave evidence in relation to the treatment of the RHI issue at the meeting of 3 June 2015, *inter alia*, during his oral evidence on Day 84 of the Inquiry’s oral hearings (see **TRA-12174 to TRA-12186**). In the course of that evidence he indicated that DETI did not take “*the opportunity to step back and do a more fundamental review*” at that stage (which he said was “*a very, very good challenge*”) (**TRA-12177**); that DETI was “*not focussed on the potential risks to value for money*” (**TRA-12180**); that he regrets that he “*didn’t ask more fundamental questions about the scheme at this meeting*” (**TRA-12181**); and

that, "*in point of fact, we didn't look backwards enough*" (TRA-12186). As to this:

- a. Is there any material respect in which you disagree with Dr McCormick's evidence as to what DETI ought to have done at this point?
- b. What more fundamental steps, if any, do you consider ought to have been taken at or about this point by the senior team in DETI (having regard to the failure to conduct a review of the Scheme, failure to secure DFP re-approval for the Scheme, and predicted budgetary difficulties with the Scheme which had by then been identified)? Please address this issue *without* reference to the benefit of hindsight (whether or not you also wish to make observations *with* the benefit of hindsight).
- c. As the Senior Finance Director, and the next most senior official to Dr McCormick within DETI at that point (alongside Chris Stewart who had direct oversight for Energy Division), what responsibility (if any) do you consider that you bear for any failure to 'step back' and take a broader or deeper look at what had gone wrong (or what was going wrong) with the RHI Scheme at or about this point?

*Consideration of the issue of over-compensation during summer/autumn 2015*

5. Trevor Cooper in an email to Shane Murphy of 12 June 2015 [DFE-146565] observed that (in respect of an 11 June 2015 briefing paper entitled "*Renewable Heat Incentive – Business Case Addendum*" which Stuart Wightman prepared, and which was also intended to be a first draft of what became the 2015 Addendum Business Case – see DFE-146558 to DFE-146564), "*the VFM position is a statement... with no real factual position around why it could be considered vfm*"<sup>1</sup>; and that there was "*a fair bit of [naivety] around the issues*",

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<sup>1</sup> Assuming the 'not' within that sentence (which has been removed in the above quotation) is a typographical error, which it appears to be in the context of the rest of the email (as to which, please indicate if you disagree).

including the possibility of overcompensation. As to this, specify whether, and if so how and the extent to which, you were aware of Trevor Cooper's (and/or Shane Murphy's) concerns about these matters in June 2015 (and, if not, when and in what circumstances, if at all, you became aware of them).

6. Set out in as full detail as possible any discussion or communication you had with any other officials in the summer/autumn 2015 period in relation to the issues of (a) the value for money of the RHI Scheme, (b) the possibility that the Scheme was over-compensating claimants, and the effect that might have been having on scheme uptake, and (c) the question of whether or not the Scheme offered a perverse incentive<sup>2</sup>.
7. Insofar as not fully addressed above, please address the following issue. On 14 August 2015, you were sent an update on a variety of issues (see **DFE-150178 to DFE-150181**) by Trevor Cooper, including some further detail on the work which was being undertaken on the RHI addendum business case (see **DFE-150180**) which referred to "*the relevant period in which there was overcompensation...*". As to this:
  - a. Did you pick up on the reference to 'overcompensation'? If not, why not?
  - b. If you did pick up on the reference to 'overcompensation', was it a surprise to you? Please give reasons for your answer.
  - c. What did you understand by the reference to 'overcompensation'?
  - d. What steps, if any, did you take (or cause to be taken) in order to further investigate what overcompensation had occurred through the Scheme and/or to remedy this issue?

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<sup>2</sup> In this regard, your attention is also drawn to a draft of what became the 2015 Addendum Business Case (see **DFE-147524 to DFE-147549**), which (at paragraph 5.13) refers to "*the risk of "gaming" and installations being operated over and above the required kilowatt hours just to generate RHI income*"; this draft being produced on 27 July 2015.

8. Please also address your view of Trevor Cooper's averment (at paragraph 7 of his witness statement of 4 September 2018: **WIT-19054**) that John Mills did not "*take on board the advice from the head of finance or the head of analytical services unit around potential overcompensation*", insofar as you are able to offer evidence on this point.
9. Insofar as not fully addressed above, set out your understanding of the issue of actual or potential over-compensation in the RHI Scheme (including potential breach of the European Commission's state aid approval) in early June 2015 and, if different, later that summer; including what steps, if any, you took to deal with this or escalate it.

#### *The 17 June 2015 meeting*

Evidence provided to the Inquiry establishes that there was a further meeting of DETI officials on 17 June 2015 in relation to the issues with the RHI Scheme. You are referred to the following documents which appear relevant, or potentially relevant, to this meeting:

- **DFE-146513 to DFE-146514:** Stuart Wightman's 4 June 2015 narrative for DETI Finance Division to give to DFP Supply;
- **DFE-146515 to DFE-146523:** Stuart Wightman's email of 4 June 2015 circulating the 2011 Parker email and DECC 2014 AME forecast for GB RHI (re-sent to Trevor Cooper by Bernie Brankin on 17 June 2015: **DFE-146694 to DFE-146702**);
- **DFE-146538:** Trevor Cooper's 10 June 2015 email to Shane Murphy which states that "*we are unable to change tariffs without legislating and earliest we can do this would be October I believe*";
- **DFE-278171 to DFE-278177:** Stuart Wightman's 15 June 2015 email with draft Ministerial submission suggesting the introduction of tiering, annual tariff reductions, and that DETI engage with DECC's Secretary of State about funding beyond a population-based share;
- **DFE-349919 to DFE-349922:** 12 and 17 June 2015 communications between DETI and the Departmental Solicitor's Office (DSO);

- **DFE-146777 to DFE-146811:** Stuart Wightman's 17 June 2015 email circulating the December 2013 / January 2014 engagement between DECC and DETI over RHI funding;
  - **WIT-10599:** Andrew McCormick's 17 June 2015 iPad notes of the meeting; and
  - **DFE-146865 to DFE-146867:** your 18 June 2015 email circulating action points arising from the 17 June 2015 meeting.
10. Please provide any further evidence you can about the Senior Team Meeting on 17 June 2015 to discuss the difficulties which had arisen in relation to the RHI Scheme<sup>3</sup>. Insofar as you can, your response should include, but not be limited to, what was said and by whom in relation to:
- a. The Scheme's budget, any limitations on it and the ability, or potential ability, to exceed the scheme budget, including the reason(s) why the RHI Scheme was exceeding, or likely to exceed, its budget;
  - b. Possible solutions or proposals for preventing or mitigating the Scheme exceeding its budget, including what the purpose was of introducing the tiered tariff for medium sized biomass boilers and what other possible amendments could be made to the Scheme and the reasons for any such amendment (or, as the case may be, the reasons against pursuing any such amendment);
  - c. What inherent, systemic or design problems existed within the RHI Scheme;

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<sup>3</sup> For your assistance, Andrew McCormick gives evidence in relation to this meeting at **WIT-26230 to WIT-26233** and at **TRA-12186 to TRA-12199** and **TRA-15147 to TRA-15179** in his oral evidence; you refer to the meeting at **WIT-24436** of your written evidence; Trevor Cooper gives evidence of the meeting at **WIT-19058 to WIT-19059** and at **TRA -15788 to TRA-15794**, **TRA-15826 to TRA-15832**, **TRA-15846 to TRA-15847**, **TRA-15857**, and **TRA-15938 to TRA-15948**; John Mills gives his account of the meeting at **WIT-14557** and **TRA-11091 to TRA-11099** and **TRA-11116**; Shane Murphy gives evidence of the meeting in his written statement at **WIT-19648 to WIT-19655**; and Stuart Wightman gives his account at **TRA-10684 to TRA-10690**.

- d. The issue of returns under the Scheme, including whether the issue of State Aid was raised together with the context and reasons for it being raised; whether the question of over-compensating recipients or providing a rate of return greater than intended by Energy Division was discussed; and whether it was considered that the existing Scheme did, or had the potential to, create a 'perverse incentive' to generate heat;
  - e. The value for money, or otherwise, of the existing Scheme;
  - f. The content of any available legal advice; and
  - g. The possibility of immediate suspension of the Scheme and, if this was discussed, the context in which such a course of action was proposed and the reasons why such a course of action was rejected.
11. Without prejudice to the generality of the foregoing enquiries, and insofar as not already addressed comprehensively above, arising out of paragraphs 17-20 of Trevor Cooper's witness statement of 4 September 2018 (at **WIT-19058/9**):
- a. specify whether you agree that Trevor Cooper "*formally escalated [his] concerns around the potential overcompensation issue*" in the manner suggested by him at paragraph 17;
  - b. specify whether you agree that Shane Murphy suggested that "*an urgent focussed review of the Scheme be undertaken that would include a review of tariffs across each technology*" in the manner suggested by Mr Cooper at paragraph 18; and
  - c. specify whether you agree that Mr Murphy advised Energy Division "*to discontinue promotion of the Scheme so that demand was not further increased*" in the manner suggested by Mr Cooper at paragraph 20;

in each instance also describing any response to these suggestions elicited from any other attendee(s) at the meeting and, insofar as you are aware, the reasons for not accepting any suggested or recommended course of action.

- d. If these matters were discussed, and, for whatever reason, rejected or not pursued, please explain why there is no reference to their consideration in your note following the meeting (**DFE-146865 to DFE-146867**).
12. What discussion (if any) was there about introducing the suspension trigger mechanism of cost control set out in the 2013 Phase 2 consultation document?
13. What discussion (if any) was there about the risk of putting forward tiering as the solution when it was something that had not been consulted on? Please explain your answer.
14. Please also set out your comments on whether you (and, in your view, others) fully understood and appreciated the severity of the issues and problems relating to the Scheme as they were being discussed in the meeting; whether at the time you felt the outcomes of the meeting sufficiently dealt with the issues and problems relating to the Scheme and why; and whether you take issue with any of the evidence of the other persons present at the meeting.
15. Unless already comprehensively addressed in your response to the above, set out as clearly as you can what specific responsibility or tasks *you* assumed as a result of the 3 and 17 June meetings to take forward work on resolving the issues with the RHI Scheme.

*Trevor Cooper's evidence in relation to the perverse incentive*

16. You are referred to the witness statements of Trevor Cooper (**WIT-18544 and WIT-19046**) and Shane Murphy (**WIT-19650**), and the oral evidence of Trevor Cooper on 17 and 18 October 2018 (**TRA-15634 to TRA-15974**, in particular at **TRA-15789 to TRA-15794 and TRA-15886 to TRA-15890**). A summary of the

evidence appears to be that there is a suggestion that Trevor Cooper asked Stuart Wightman (in or around June 2015) whether it was possible for a scheme applicant to make money just from running their boiler(s). Stuart Wightman is said to have assured him that this was not possible, based on the price of oil (although the subject of oil prices would appear irrelevant to whether someone who had a biomass boiler could make money from running it). As to this:

- a. Was this ever discussed with you?
- b. If so, please set out as full details as you can about the conversation (including when this conversation occurred, what you recall being said, what answer was given, and why it was given).
- c. Please set out any further comments you have in relation to the evidence of Trevor Cooper and Shane Murphy identified above.

*Information about the potential abuse of the scheme and the addendum business case casework committee of October 2015*

You are referred to the following documents:

- **DFE-408261/2**: Stuart Wightman's letter of 19 October 2015 (erroneously dated 19 October 2014) to Ofgem;
- **DFE-286119 to DFE-286120**: Stuart Wightman's email to Trevor Cooper of the 17 November 2015;
- **TRA-11722 to TRA-11727**: Chris Stewart's oral evidence to the Inquiry;
- **TRA-12780 to TRA-12782, TRA-12819 to TRA-12823, and TRA-12842 to TRA-12844**: Timothy Cairns' oral evidence to the Inquiry;
- **TRA-13205 to TRA-13215**: Andrew Crawford's oral evidence to the Inquiry
- **TRA-15283 to TRA-15288**: Andrew McCormick's oral evidence to the Inquiry;
- and
- **DFE-10005 to DFE-10007**: John Mills' 11 August 2015 email referring to the *"suggestions of heating empty sheds"*.

17. Senior DETI officials (Dr Andrew McCormick and Chris Stewart) have informed the Inquiry that, having received information about potential abuse of the scheme, information was passed on to Stuart Wightman in Energy Division to deal with. As to this:
- a. What information about potential abuse of the scheme, if any, are you aware of being provided to or coming to the attention of Dr Andrew McCormick? If any, please give details (as to when it was provided, by whom, what was to be done with it and how you came to be aware of it).
  - b. What information about potential abuse of the scheme, if any, are you aware of being provided to or coming to the attention of Chris Stewart? If any, please give details (as to when it was provided, by whom, what was to be done with it and how you came to be aware of it).
  - c. What information about potential abuse of the scheme, if any, are you aware of being provided to or coming to the attention of any other official? Again, please provide details of each such instance (if any).
  - d. In relation to any information received by you, or of which you became aware, what of the information about potential abuse of the RHI scheme was new to you?
  - e. What can you say to the Inquiry as to how John Mills, by 11 August 2015, came to send an email referring to the RHI Scheme and referring to *"suggestions of heating empty sheds"* (DFE-10005 to DFE-10007)?
  - f. What did you do (or are aware of being done) with any information provided about potential scheme abuse? Please provide details of when any steps were taken and what the outcome was.
18. The DETI Casework Committee met on 21 October 2015 to consider the 2015 Addendum Business Case. DFP officials were present at the meeting. The

Addendum Business Case before the Casework Committee (DFE-284293, at DFE-248311) referred to guarding against the risk of gaming. In July 2015 DETI had received a letter referring to the RHI Scheme being exploited by unscrupulous beneficiaries (DFE-107130 to DFE-107132). In August 2015 John Mills had sent an email referring to “*suggestions of empty sheds*” being heated by installations on the RHI Scheme (DFE-10005 to DFE-10007). Stuart Wightman had (on 19 October 2015) written to Ofgem referring to “*anecdotal evidence of gaming*” (DFE-408261/2: the letter being erroneously dated 19 October 2014). As to this:

- a. What of the above information, about the potential exploitation of the RHI Scheme, was known to the three members of the Casework Committee at the time the Casework Committee met on 21 October 2015? Please explain the reasons for your answer.
- b. If it is the case that the three members of the Casework Committee were not told about the various pieces of known information that suggested the exploitation of the RHI Scheme, do you consider they should have been so told?
- c. If the three members of the Casework Committee had been told about the various pieces of known information which suggested that there was or may be exploitation of the RHI Scheme, then (as far as possible leaving hindsight out of account) would the Casework Committee have taken any different approach from that which it did take? Please explain the reasons for your answer.
- d. What did you make of the reference at paragraph 4.16 of the Addendum Business Case (DFE-04768) that: “*The introduction of the tiered tariff will also reduce the risk of ‘gaming’ and installations being operated over and above the required kilowatt hours just to generate RHI income.*” In particular:
  - a. Did this cause any issues of concern for you?

- b. Did you consider this to be a reference to a perverse incentive?
  - c. Did you make any enquiry as to how the RHI Scheme was being gamed and/or whether installations were being operated above required hours just to generate income? If not, why not?
  - d. Did you make any enquiry, or cause any enquiry to be made, so as to assure yourself or the Department that the RHI Scheme was not being gamed in this way? If not, why not?
  - e. What discussion was there about the reference to the risk of “gaming” in paragraph 4.16 of the draft of the Addendum Business Case before the Casework Committee?
  - f. If there was no discussion about the reference to the risk of “gaming” in paragraph 4.16 of the draft of the Addendum Business Case before the Casework Committee, then (in light of the other scheme problems disclosed in the Addendum Business Case – such as overcompensation, rates of return far in excess of the intended 12%, and the scheme being over budget) ought this issue not to have been identified and explored by the members of the Casework Committee?
  - g. Was DFP informed about the suggestions of the RHI Scheme being exploited by unscrupulous beneficiaries, facilitating the heating of empty sheds, and the anecdotal evidence of gaming? If the answer is ‘yes’, please set out what DFP was told at the Casework Committee meeting. If the answer is ‘no’, then please set out why DFP was not so informed.
19. The final Addendum Business Case was ultimately submitted to DFP on 27 October 2015 (see DFE-149790 to DFE-149822, excluding annexes). Please describe any role you had in relation to the preparation, drafting, checking or presentation of that addendum. (In the course of your answer, please address the nature of the input suggested in your email of the 21 October 2015 where

you reference ASU and Finance Division involvement "*in the development of the approach in the papers*" – see **DFE-149575**).

20. Did Trevor Cooper raise with you a concern about the pace of progress in the production of the addendum business case (as suggested by Shane Murphy at **WIT-19657**). If so, please provide as full details as you can in relation to this, including what steps (if any) you took on foot of any such concern (you are referred to **TRA-11711/2** and **WIT-18789**). If it is the case that you discovered there was delay, then what reasons were you given for this?
  
21. Generally, what was the basis for the statement in the addendum business case that the scheme (in advance of the amendments to be made in the 2015 Regulations) was providing 'continuous and continuing' value for money? In the course of your answer please address the following issues:
  - a. How was this said to be so when the addendum business case itself outlined how significant users would or could be receiving 33% rates of return?
  
  - b. Do you consider that DETI collectively, or any particular official or officials, felt in any way pressured into a position of having to show value for money, even if this could not be said with conviction, in order to achieve DFP approval? If so, how did this come about? (In the course of your answer, please address what, in your view, is to be taken from Trevor Cooper's summary of the ongoing work on 14 August 2015 at **DFE-150178** and **DFE-150180**).
  
  - c. Do you recognise and, if so, how do you understand and apply the distinction between 'value for money' and 'best value for money' in public expenditure terms (as identified, for instance, in paragraph 6 of Trevor Cooper's fourth statement – **WIT-19053/4**).
  
  - d. Explain:

- a. Whether you take the view that the conclusion that the Scheme was providing 'continuous and continuing' value for money could be stood over at the time;
  - b. Whether you take any different view on that matter now;
  - c. Whether you consider that time was spent trying to make the Scheme appear to be good value for money when it might have been better spent evaluating the proposed changes; and
  - d. Whether seeking to establish that the Scheme was good value for money may have prevented, or deflected from, examining the alternative of suspending the Scheme.
22. Do you consider that it was appropriate for you (and/or Trevor Cooper and/or Shane Murphy) to sit as members of the Casework Committee which considered the RHI Scheme in autumn 2015 in light of any involvement you may have had in the formulation or proofing of the addendum business case? Please explain your answer.
23. In relation to your email to Trevor Cooper of 21 October 2015 (DFE-149575):
- a. Why did you suggest that it might be appropriate to have a "*different approach*" to the Casework Committee on this occasion, in terms of the discussion with DFP, given "*the involvement of FD and ASU in the development of the approach in the papers*"?
  - b. In the event, was the approach taken at the Casework Committee different from normal, in the manner suggested or otherwise? Please give reasons for any answer.
  - c. Was any role which Finance Division or Analytical Services Unit had played in the development of the casework papers made clear to DFP? If so, how and by whom; and what reaction, if any, was there from DFP?

If it was not made clear then why was this?

- d. Was it made clear to DFP that the “*full ten steps*” set out in NIGEAE were not followed in this case (as indicated in Mr Murphy’s email of 7 October 2015 at **DFE-281272**)? If it was not made clear then why was this?
24. In your consideration of the addendum business case, what did you make of the reference at paragraph 2.10 [**DFE-04754**] that: “... *the Department undertook its first review of the RHI in 2013 to improve scheme performance*”? In particular:
- a. Did you consider this to purport to be a reference to the review required by the DFP approval for the RHI Scheme? Please give reasons for your answer.
  - b. If so, did you consider this to be accurate? Again, please give reasons for your answer.
  - c. If you did not consider the claim to have undertaken a review to be accurate, what, if anything, did you do to question or correct it?
  - d. In the course of your responses, please also provide details of any discussion of the question of planned reviews of the Scheme which preceded or followed from Michelle Scott’s email of 20 October 2015 to Trevor Cooper raising this as a concern (which Trevor Cooper forwarded to you and Shane Murphy later that day in advance of a meeting that morning: see **DFE-149575**).
25. Do you consider that a tariff review should have been conducted in advance of adjusting the tariffs in the 2015 Regulations? Please give reasons for your answer. If so, please outline why (in your view) a tariff review was not conducted at that time.
26. There is now evidence to suggest that the November 2015 introduction of tiering

and re-banding did not, as it has transpired, make a significant difference to (1) the attractiveness of the tariff, (2) the issue of over-compensation, or (3) the value for money of the RHI Scheme. Further significant changes were required after the RHI Schemes closed. What consideration was given, in 2015, as to whether there was a need for professional evaluation of the proposed measures, in order to assess whether they were fit for purpose? If no consideration was given, what do you consider were the reasons for that?

*2 December 2015 Departmental Audit Committee*

You are referred to the following documents:

- **DFE-149917:** Stuart Wightman's email of 13 November 2015 (shortly before the 2015 RHI Regulations were passed) to, amongst others, Andrew McCormick, Chris Stewart and you, saying, amongst other things, that, in light of the surge in applications over the previous 6 weeks he felt *"regardless of what impact the amendment regulations might bring there is no choice now but to move to close both RHI schemes from 31 March 2016"*;
- The Energy Division Non Domestic RHI Update paper for the Departmental Audit Committee of the 2 December 2015 (see **DFE-394901 to DFE-394905**); and
- The minutes of the 2 December 2015 Departmental Audit Committee meeting (see **DFE-394959 to DFE-394969**).

27. As to this:

- a. The Energy Division paper to the Departmental Audit Committee represented (**DFE-394901 and DFE-394903**) that there had been a *"Phase 2 Review of the RHI"* completed in 2013. Did you not know this claim was inaccurate? What steps did you take to challenge it? If you did not take any steps then please explain why not?
- b. Given the content of the email you received from Stuart Wightman on 13 November 2015, were you not surprised to find that the Energy Division

paper to the Departmental Audit Committee indicated (DFE-394901) that, in response to increased demand, more funding would be sought, rather than reflecting Stuart Wightman's clear statement already made to senior DETI officials (including you) that, in light of the unprecedented recent surge in demand, there was no choice but to close the RHI Schemes? What steps did you take to challenge the statement? If you did not take any steps, then please explain why not?

- c. In light of what was known about the surge in demand, the level of the then available RHI budget, and Stuart Wightman's expressed view about the need to close the RHI Schemes, did you not challenge the statement made by Energy Division to the Departmental Audit Committee that it was hoped that the November 2015 changes would bring RHI expenditure back within budget? If you did not take any steps, then please explain why not?

28. Further:

- a. If you knew, during the summer of 2015, about the issue of RHI scheme members being overcompensated then why was the Departmental Audit Committee not told, on or before the 2 December 2015, about the risk that scheme members had been over-compensated?
- b. Should the Departmental Audit Committee not have been informed, on or before the 2 December 2015, about the issue of over-compensation? If the answer is yes, who should have informed the DAC, and when?
- c. Why (given, for example, the Solmatix 10 July 2015 letter, the reference to the risk of gaming in the 2015 Addendum Business Case, and the references to the heating of empty sheds) was the Departmental Audit Committee, on or before the 2 December 2015, not told about the risk the RHI Scheme was being abused?

- d. Should the Departmental Audit Committee, on or before the 2 December 2015, not have been informed about the risk the RHI Scheme was being abused? If the answer is yes, who should have informed the DAC, and when?

*General*

29. To the extent that you consider the evidence of any other witness or participant contradicts your evidence on a significant issue, or is materially incomplete in respect of any significant issue, you should take this opportunity to address those issues by way of further written evidence, but only to the extent (a) that the said issues have not already been addressed in your existing oral and written evidence and (b) that the further material you wish to provide constitutes evidence of fact as opposed to mere commentary on the evidence of another witness or participant which would be more appropriate for submissions.
30. Please set out any further significant evidence you have or of which you are aware, having regard to the Inquiry's Terms of Reference, which has not been adequately addressed in your previous written or oral evidence.

**NOTE:**

It is important for the efficiency of the RHI Inquiry that the issues identified above are addressed as fully as possible and by reference, where available, to the dates and locations of specific incidents to which reference is made. The statement should be broken down into paragraphs, which should be numbered sequentially from '1' to the end. The use of appropriate section headings or sub-headings is also encouraged. A template witness statement is provided with this Notice for your assistance and should be used as the format for your response.



**INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME**

**RHI REF: Notice 238 of 2018**

**DATE: 7 December 2018**

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**Witness Statement of:**

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I, Eugene Rooney, will say as follows: -

*The role of Senior Finance Director and interaction with the Finance Director*

1. In summary, Trevor Cooper's evidence to the Inquiry appears to be to the effect that he would have kept you fully apprised of developments which occurred in respect of the RHI Scheme during regular catch-up meetings that you and he would have had. This would appear to accord with what you had to say to the Inquiry in your first witness statement (at **WIT-24436 to WIT-24438**). Is this an accurate description of the position, or were there matters you consider you were not told about? Please explain your answer.

*I had regular meetings with Trevor Cooper to get updates on the main issues that he and his Divisional staff were currently working on. I expected that Trevor Cooper would have raised all of his current main issues at these stocktakes. The meetings generally did not get into the details of specific issues, nor were they intended to be exhaustive of everything that he or his staff were doing across their remit. I am not aware of there being matters that he failed to tell me about, though of course I cannot be certain that all relevant matters were raised at the meetings.*

*3 June 2015 meeting*

Evidence provided to the Inquiry establishes that there was a meeting on 3 June 2015 in relation to emerging issues with the RHI Scheme. The meeting involved the DETI Permanent Secretary (Andrew McCormick), you (as the Senior Finance Director), the



Finance Director (Trevor Cooper), the Head of Energy Division (John Mills) and Stuart Wightman as Head of Energy Efficiency Branch. You are referred to the following documents which appear relevant, or potentially relevant, to this meeting:

- **DFE-348536**: your diary entry of 3 June 2015 as 'meeting organizer';
  - **WIT-10588**: Andrew McCormick's 3 June 2015 iPad notes of the meeting;
  - **DFE-146513/4**: Stuart Wightman's 4 June 2015 narrative for DETI Finance Division to provide to DFP Supply;
  
  - **DFE-146558 to DFE-146564**: Stuart Wightman's 11 June 2015 briefing paper/first draft addendum business case entitled "*Renewable Heat Incentive – Business Case Addendum*" for the 12 June 2015 DETI Finance meeting with DFP Supply; and
  - Trevor Cooper's oral evidence to the Inquiry on 18 October 2015 (at **TRA-15864 to TRA-15868**).
2. Please give as full an account as you can of the matters which were discussed and decided at that meeting.

*This was an initial meeting to try to understand the problems emerging with the RHI scheme. It was called so that Energy Division could explain the situation with the scheme, and for a discussion on the options available. At that point projected expenditure was known to be higher than the previously forecast requirement for 2015/16 and that the DFP approval for expenditure on the scheme had ended in March 2015, thereby raising the issue of irregularity of expenditure. I recall that Energy Division outlined the main differences between the NI and the GB schemes. Dr McCormick's notes of the meeting (WIT-10588) accord with my recollection of the matters raised.*

3. Trevor Cooper has said to the Inquiry (see **TRA-15864 to TRA-15868**) that it was at this 3 June 2015 meeting that the idea was put forward of describing the



2013 RHI Phase 2 consultation process as a “review”, which would then mitigate the fact that the 2014 scheme review (as previously committed to by the Department at the inception of the Scheme) had not been carried out. Trevor Cooper described this as a “fig leaf” put forward by Stuart Wightman at the 3 June 2015 meeting. As to this:

- a. Do you recall the idea of describing the Phase 2 development of RHI as a “review” being put forward in the meeting on 3 June 2015?

*I do not recall a discussion of treating the Phase 2 consultation process as a “review”, and that it would in some way fulfil a scheme review that was to have been carried out in 2014. At that point, at the 3 June 2015 meeting, only Energy Division staff were aware of what processes had or had not been followed previously in regard to the scheme. Dr McCormick’s record notes that a review should have been undertaken in 2014/15.*

- b. Do you recall any discussion about this within the Department either at that meeting or otherwise? If so, please give details. (Andrew McCormick indicated in his oral evidence – see **TRA-15390/1** – that he did not feel the Department could “stand over” the later reference in the addendum business case to the “first review” of the RHI Scheme being undertaken in 2013.)

*I do not recall a discussion that the Phase 2 consultation process constituted a review, or why it would or could be described as such. I note that Stuart Wightman’s email of 4 June 2015 states that a Phase 2 review on Non Domestic RHI was commenced in 2013 but completion was deferred to 2015. I also notice now from reading of the documents provided that his reference to the consultation as a “review” is repeated in the attachment to his email of 11 June 2015, and again in the business case addendum, though this was not apparent to me at the time. The focus at that point (at the meeting of 3 June 2015) was on trying to identify how to address the current problems with the scheme as it stood,*



*rather than at what point it should have been reviewed. It was clear that the review that was due in 2014 had not taken place and I believe I would have recalled any discussion to misrepresent the 2013 Phase 2 exercise as that review. I believe that if the 2013 exercise had been presented as the expected review it would have been identified quickly as not being the case.*

- c. Were you party to any plan or strategy to seek to portray the Phase 2 consultation as a 'review' required by, for instance, the original DFP approval of the RHI Scheme?

*I was not involved in any plan, strategy or discussion in seeking to portray a 2013 consultation process as a review. As noted at 3b above there is a reference to a Phase2 "review" being commenced in 2013 but I cannot see that the process to produce the consultation document fulfilled the requirements of scheduled reviews in terms of the scheme being "monitored, assessed and if necessary changes implemented", or why the word "review" was being used for the 2013 exercise.*

4. Dr McCormick gave evidence in relation to the treatment of the RHI issue at the meeting of 3 June 2015, *inter alia*, during his oral evidence on Day 84 of the Inquiry's oral hearings (see **TRA-12174 to TRA-12186**). In the course of that evidence he indicated that DETI did not take "*the opportunity to step back and do a more fundamental review*" at that stage (which he said was "*a very, very good challenge*") (**TRA-12177**); that DETI was "*not focussed on the potential risks to value for money*" (**TRA-12180**); that he regrets that he "*didn't ask more fundamental questions about the scheme at this meeting*" (**TRA-12181**); and that, "*in point of fact, we didn't look backwards enough*" (**TRA-12186**). As to this:

- a. Is there any material respect in which you disagree with Dr McCormick's evidence as to what DETI ought to have done at this point?



*I would agree with Dr McCormick's assessment as presented at the Oral Hearings. At that point the details of the scheme were not known in the rest of the Department, outside of Energy Division. There was a reliance on Energy Division colleagues to explain: the position with the scheme; their analysis of the reasons for the problems; and their views on available options for addressing those problems. I do not recall that there was a suggestion made to seek a more fundamental review at that stage. The focus was on dealing with the problems that had arisen.*

What more fundamental steps, if any, do you consider ought to have been taken at or about this point by the senior team in DETI (having regard to the failure to conduct a review of the Scheme, failure to secure DFP re-approval for the Scheme, and predicted budgetary difficulties with the Scheme which had by then been identified)? Please address this issue *without* reference to the benefit of hindsight (whether or not you also wish to make observations *with* the benefit of hindsight).

*Based on the information that I believe was known to the DETI senior team at the time, the potential significant risks associated with the operation of this scheme were not understood. The problems had only recently emerged and the nature of the meeting was one of needing to find out more about the scheme's operation and to identify appropriate actions that needed to be taken. Few in the Department appeared to know how the scheme was managed. At that time the DETI senior team sought more information on what had happened, and that information was to be obtained in follow-up actions. On the basis of the level of knowledge of the scheme and its problems at 3 June 2015, and without the benefit of hindsight, I had felt that the work that had been identified as necessary at that time by the senior team was appropriate and proportionate to address the issues.*

- b. As the Senior Finance Director, and the next most senior official to Dr McCormick within DETI at that point (alongside Chris Stewart who had direct oversight for Energy Division), what responsibility (if any) do you



consider that you bear for any failure to 'step back' and take a broader or deeper look at what had gone wrong (or what was going wrong) with the RHI Scheme at or about this point?

*In June 2015 my focus was on understanding the problems that had emerged in May 2015 and identifying steps to address them. The scheme had run out of approval and projected spend was above the budget allocation. It was known that there were differences introduced in GB that had not been followed here. There was a similar scheme in GB that had commenced earlier, and whose experiences could be drawn upon. But there was little indication at that point from the information presented that it required a much more fundamental look. I believe that was why I had not sought an in-depth review, but focused with colleagues on trying to fix the problems that had emerged based on the information that we had. Information emerged subsequently on potential abuse and perverse incentives which, had they been known at that time, would undoubtedly have prompted a more in-depth approach.*

#### *Consideration of the issue of over-compensation during summer/autumn 2015*

5. Trevor Cooper in an email to Shane Murphy of 12 June 2015 [**DFE-146565**] observed that (in respect of an 11 June 2015 briefing paper entitled "*Renewable Heat Incentive – Business Case Addendum*" which Stuart Wightman prepared, and which was also intended to be a first draft of what became the 2015 Addendum Business Case – see **DFE-146558 to DFE-146564**), "*the VFM position is a statement... with no real factual position around why it could be considered vfm*"<sup>1</sup>; and that there was "*a fair bit of [naivety] around the issues*", including the possibility of overcompensation. As to this, specify whether, and if so how and the extent to which, you were aware of Trevor Cooper's (and/or

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<sup>1</sup> Assuming the 'not' within that sentence (which has been removed in the above quotation) is a typographical error, which it appears to be in the context of the rest of the email (as to which, please indicate if you disagree).



Shane Murphy's) concerns about these matters in June 2015 (and, if not, when and in what circumstances, if at all, you became aware of them).

*I was not aware of the specific concerns expressed by Trevor Cooper and/or Shane Murphy on the document entitled "business case addendum". I was aware that both colleagues were in contact with Energy Division given the situation of the RHI scheme, and that there were meetings with Energy Division to comment on and challenge, as appropriate, the drafting of the business case so that a value for money case could be presented. The final addendum is more substantial than the initial document, and I believe that reflected the challenge being provided by Finance and ASU.*

6. Set out in as full detail as possible any discussion or communication you had with any other officials in the summer/autumn 2015 period in relation to the issues of (a) the value for money of the RHI Scheme, (b) the possibility that the Scheme was over-compensating claimants, and the effect that might have been having on scheme uptake, and (c) the question of whether or not the Scheme offered a perverse incentive<sup>2</sup>.

*I recall my communications on (a) the value for money of the scheme were in relation to the final business case addendum and the Casework Committee meeting that took place on 21 October 2015, which I chaired. Tiered tariffs had been identified by Energy Division as the only short-term option to reduce potential costs of the scheme and this was in line with changes that had applied in GB. The changes required a change to legislation and to be supported by a business case addendum demonstrating value for money. My communication on the business case addendum took place with Trevor Cooper and Shane Murphy and at the Casework meeting. I do not recall having a discussion on value for money with other officials. (b) The proposed changes were to reduce the payments that would be available under the scheme for heat generated per*

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<sup>2</sup> In this regard, your attention is also drawn to a draft of what became the 2015 Addendum Business Case (see **DFE-147524 to DFE-147549**), which (at paragraph 5.13) refers to "the risk of "gaming" and installations being operated over and above the required kilowatt hours just to generate RHI income"; this draft being produced on 27 July 2015.



*installation, so they were to give a lower potential level of compensation to recipients. I was not involved in discussions on the level of over-compensation other than related to the introduction of tiered tariffs which were to reduce the potential costs of the scheme. Whilst Energy Division were indicating that the numbers of applicants were increasing generally, it was in October 2015 that this had become a substantial increase. (c) I did not learn that the scheme had a perverse incentive from the outset until the anonymous whistleblowing correspondence was received in 2016 and the NI Audit Office had completed their report.*

7. Insofar as not fully addressed above, please address the following issue. On 14 August 2015, you were sent an update on a variety of issues (see **DFE-150178 to DFE-150181**) by Trevor Cooper, including some further detail on the work which was being undertaken on the RHI addendum business case (see

**DFE-150180**) which referred to “*the relevant period in which there was overcompensation...*”. As to this:

- a. Did you pick up on the reference to ‘overcompensation’? If not, why not?

*The word “overcompensation” was used in the context of the work to introduce proposed tariff tiering, so I had understood this to be a reference to the differences between the existing position and the position that would apply once tariff tiering was introduced, which would reduce the overall payments that would be possible from an installation. Accordingly, I did not attribute the meaning or significance to the term of “overcompensation” ( in terms of recipients getting more subsidy than was in accordance with the spirit of the scheme) in line with what Trevor Cooper has recently asserted that the term was intended to imply at the time.*



- b. If you did pick up on the reference to ‘overcompensation’, was it a surprise to you? Please give reasons for your answer.

*I did not pick up on the term overcompensation in the meaning that has been given to it by Trevor Cooper. Energy Division were to make proposals for reducing the payments through the introduction of tiering of tariffs as in GB so the effect of these changes, as I understood it, would be to reduce the potential level of payments to recipients. So the changes being brought forward were to reduce the level of compensation available under the scheme. The reference to “overcompensation” is made by Trevor Cooper in relation to these proposed changes, and it was in that context, of the reduction in funding by dint of the tiering, that I understood that the term was deployed at that time.*

- c. What did you understand by the reference to ‘overcompensation’?

*See responses to 7a and 7b above. I understood this to be a reference to the need to introduce tiered tariffs, which were to reduce the costs in comparison to the operation of the scheme without tiering.*

- d. What steps, if any, did you take (or cause to be taken) in order to further investigate what overcompensation had occurred through the Scheme and/or to remedy this issue?

*As noted above, I understood this to be a reference to the effects of the proposed changes that were being made, and which would be set out in the business case addendum. Trevor Cooper’s note explains that the work was being developed following a discussion with DFP officials, and involving both the economists and finance teams, to estimate the effects of the current tariffs and proposed tiering.*

8. Please also address your view of Trevor Cooper’s averment (at paragraph 7 of his witness statement of 4 September 2018: **WIT-19054**) that John Mills did not “take on board the advice from the head of finance or the head of analytical



*services unit around potential overcompensation”, insofar as you are able to offer evidence on this point.*

*I am not aware of the particular advice that the Head of Finance and the Head of Analytical Services provided to John Mills or (if so provided) why he did not take it on board. Energy Division were to prepare the draft business case and they were to involve Finance and Economist colleagues on the approach. My expectation was that Energy Division should be taking on advice for the business case.*

9. Insofar as not fully addressed above, set out your understanding of the issue of actual or potential over-compensation in the RHI Scheme (including potential breach of the European Commission’s state aid approval) in early June 2015 and, if different, later that summer; including what steps, if any, you took to deal with this or escalate it.

*In early June 2015, I was not aware of actual or potential over-compensation or the breach of State Aid approval other than the fact that the GB scheme had tiered tariffs and degression controls and the NI scheme did not, which meant there was a mechanism to control costs in GB that was absent in NI. In not having tiering, the NI scheme did not have the same measures in place that operated in the GB scheme. Hence, to get approvals for future spending on the scheme, the scheme needed to be changed. In that sense the NI scheme was “overcompensating” recipients in comparison with the GB scheme because it did not have tiered tariffs. The advice from Energy Division was that tariff tiering was what could be done quickly and that further changes could be examined for the longer period. Energy Division had recommended this course to the Minister in July 2015 having ruled out other options, and the addendum to the business case was to support the change. On the basis that the Department needed to make changes to the scheme, and tariff tiering was assessed as the only feasible short-term option at that time, I had no different understanding from that which had already been presented in the 8 July 2015 submission and the subsequent business case addendum.*

*The 17 June 2015 meeting*

Evidence provided to the Inquiry establishes that there was a further meeting of DETI officials on 17 June 2015 in relation to the issues with the RHI Scheme. You are referred to the following documents which appear relevant, or potentially relevant, to this meeting:

- **DFE-146513 to DFE-146514:** Stuart Wightman's 4 June 2015 narrative for DETI Finance Division to give to DFP Supply;
  - **DFE-146515 to DFE-146523:** Stuart Wightman's email of 4 June 2015 circulating the 2011 Parker email and DECC 2014 AME forecast for GB RHI (re-sent to Trevor Cooper by Bernie Brankin on 17 June 2015: **DFE-146694 to DFE-146702**);
  - **DFE-146538:** Trevor Cooper's 10 June 2015 email to Shane Murphy which states that *"we are unable to change tariffs without legislating and earliest we can do this would be October I believe"*;
  - **DFE-278171 to DFE-278177:** Stuart Wightman's 15 June 2015 email with draft Ministerial submission suggesting the introduction of tiering, annual tariff reductions, and that DETI engage with DECC's Secretary of State about funding beyond a population-based share;
  - **DFE-349919 to DFE-349922:** 12 and 17 June 2015 communications between DETI and the Departmental Solicitor's Office (DSO);
  - **DFE-146777 to DFE-146811:** Stuart Wightman's 17 June 2015 email circulating the December 2013 / January 2014 engagement between DECC and DETI over RHI funding;
  - **WIT-10599:** Andrew McCormick's 17 June 2015 iPad notes of the meeting; and
  - **DFE-146865 to DFE-146867:** your 18 June 2015 email circulating action points arising from the 17 June 2015 meeting.
10. Please provide any further evidence you can about the Senior Team Meeting on 17 June 2015 to discuss the difficulties which had arisen in relation to the



RHI Scheme<sup>3</sup>. Insofar as you can, your response should include, but not be limited to, what was said and by whom in relation to:

- a. The Scheme's budget, any limitations on it and the ability, or potential ability, to exceed the scheme budget, including the reason(s) why the RHI Scheme was exceeding, or likely to exceed, its budget;

*My note of 18 June 2015 on the action points notes that the details of how the Annually Managed Expenditure budgets were set and re-profiled was to be clarified at that point with DECC and DFP. Energy Division had forecast a requirement for 2015/16 in November 2014 which was much lower than the levels required to meet the numbers of applications being received.*

- b. Possible solutions or proposals for preventing or mitigating the Scheme exceeding its budget, including what the purpose was of introducing the tiered tariff for medium sized biomass boilers and what other possible amendments could be made to the Scheme and the reasons for any such amendment (or, as the case may be, the reasons against pursuing any such amendment);

*I have no further information than that which is presented in the documents listed above. Energy Division explained the limits on what could be done in the short term because of the way the scheme was set up in legislation, which is why there was a focus on tariff tiering. I do not recall that a tiered tariff for medium sized biomass boilers was discussed at the meeting.*

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<sup>3</sup> For your assistance, Andrew McCormick gives evidence in relation to this meeting at **WIT-26230 to WIT-26233** and at **TRA-12186 to TRA-12199** and **TRA-15147 to TRA-15179** in his oral evidence; you refer to the meeting at **WIT-24436** of your written evidence; Trevor Cooper gives evidence of the meeting at **WIT-19058 to WIT-19059** and at **TRA -15788 to TRA-15794**, **TRA-15826 to TRA-15832**, **TRA-15846 to TRA-15847**, **TRA-15857**, and **TRA-15938 to TRA-15948**; John Mills gives his account of the meeting at **WIT-14557** and **TRA-11091 to TRA-11099** and **TRA-11116**; Shane Murphy gives evidence of the meeting in his written statement at **WIT-19648 to WIT-19655**; and Stuart Wightman gives his account at **TRA-10684 to TRA-10690**.



- c. What inherent, systemic or design problems existed within the RHI Scheme;

*Energy Division did comment that the scheme had controls in GB (namely, tiering and degression) but they were not in place in NI, so it was clear there were levers to control expenditure in the GB scheme.*

- d. The issue of returns under the Scheme, including whether the issue of State Aid was raised together with the context and reasons for it being raised; whether the question of over-compensating recipients or providing a rate of return greater than intended by Energy Division was discussed; and whether it was considered that the existing Scheme did, or had the potential to, create a 'perverse incentive' to generate heat;

*I do not recall State Aid being specifically mentioned at the meeting. Energy Division did explain that the scheme operated differently in GB and had cost controls. I do not recall anyone raising a concern that a "perverse incentive" existed in the scheme. I am sure notice would have been taken if that had been raised. I only became aware of that in the following year.*

- e. The value for money, or otherwise, of the existing Scheme;

*It was recognised that to get approvals for future spending on the scheme, changes would need to be made to demonstrate value for money in a business case. Energy Division proposed what those changes could be in the short term, namely the introduction of tiered tariffs.*

- f. The content of any available legal advice; and

*I had understood at that time Energy Division was consulting with the Department's legal advisers on what could be done in the short term to help address the problems. Legal advice was not itself circulated at the meeting, but it was on the basis of Energy Division's assessment, having*



*taken legal advice, the options were considered to be limited in the short term.*

- g. The possibility of immediate suspension of the Scheme and, if this was discussed, the context in which such a course of action was proposed and the reasons why such a course of action was rejected.

*The possibility of suspension of the scheme was raised to stop new applicants to the scheme but I do not recall by whom. I recall that Energy Division's assessment of what was feasible to change in legislation, was that a suspension could not be introduced in the short term.*

11. Without prejudice to the generality of the foregoing enquiries, and insofar as not already addressed comprehensively above, arising out of paragraphs 17-20 of Trevor Cooper's witness statement of 4 September 2018 (at **WIT-19058/9**):

- a. specify whether you agree that Trevor Cooper "*formally escalated [his] concerns around the potential overcompensation issue*" in the manner suggested by him at paragraph 17;

*I do not recall overcompensation being highlighted or discussed at the meeting or what Trevor Cooper means by "formal escalation". The meeting was a discussion of the issues facing the scheme and the actions necessary. I do not recall levels of compensation being raised, though I understood that the purpose of tiered tariffs was to try to introduce some controls on the level of payments that would be potentially available under the scheme.*

- b. specify whether you agree that Shane Murphy suggested that "*an urgent focussed review of the Scheme be undertaken that would include a review of tariffs across each technology*" in the manner suggested by Mr Cooper at paragraph 18; and



*I do not recall that point being raised though as noted at 11a the meeting was to discuss the options to address the problems with the scheme, and what steps could be addressed quickly.*

- c. specify whether you agree that Mr Murphy advised Energy Division “to *discontinue promotion of the Scheme so that demand was not further increased*” in the manner suggested by Mr Cooper at paragraph 20;

*In the circumstances at that stage a discontinuation of promotion would have been a sensible step to take. However, I do not recall Mr Murphy mentioning it.*

in each instance also describing any response to these suggestions elicited from any other attendee(s) at the meeting and, insofar as you are aware, the reasons for not accepting any suggested or recommended course of action.

- d. If these matters were discussed, and, for whatever reason, rejected or not pursued, please explain why there is no reference to their consideration in your note following the meeting (**DFE-146865 to DFE-146867**).

*The purpose of my note of the meeting was to summarise the actions that had been discussed and identify who would lead on the relevant action. It was not intended to be a record of all the matters raised at the meeting itself and, as noted above, I do not recollect that a particular focus was made on the comments raised above at 11a,b and c, or that there were additional associated actions to be pursued. I received no comments on my note to the effect that I had omitted any additional agreed actions.*

12. What discussion (if any) was there about introducing the suspension trigger mechanism of cost control set out in the 2013 Phase 2 consultation document? *I don't believe there was any discussion of the trigger points system as set out in the Phase 2 document. The 8 July 2015 submission to the Minister raises depression as a proposed longer term mechanism along the lines of the GB scheme.*



13. What discussion (if any) was there about the risk of putting forward tiering as the solution when it was something that had not been consulted on? Please explain your answer.

*I understood that Energy Division were liaising with their counterparts in the DECC/Ofgem, and so benefiting from their experience of the GB scheme which had tiering as part of it. In regard to the risk, I also understood Energy Division's approach had been informed by legal advice to them.*

14. Please also set out your comments on whether you (and, in your view, others) fully understood and appreciated the severity of the issues and problems relating to the Scheme as they were being discussed in the meeting; whether at the time you felt the outcomes of the meeting sufficiently dealt with the issues and problems relating to the Scheme and why; and whether you take issue with any of the evidence of the other persons present at the meeting.

*I do not believe that there was a full understanding of the operation of the scheme and the risks associated with it either by myself or my colleagues. At the time there was a focus on getting approvals in place, introducing changes that were possible in the short term under the legislation and were absent from the NI scheme, and clarifying how the Annually Managed Expenditure budget allocations were set and adjusted for RHI. The perverse incentive had not been raised, nor was a substantial rise in applications foreseen by those at the meeting.*

15. Unless already comprehensively addressed in your response to the above, set out as clearly as you can what specific responsibility or tasks you assumed as a result of the 3 and 17 June meetings to take forward work on resolving the issues with the RHI Scheme.

*As noted at 11d above, the actions discussed at the meeting each had assigned a lead responsibility. It was understood at the meeting that these were the*



*actions to focus on, and lead responsibility was agreed at the meeting. I did not assume a specific responsibility or task and at that stage the actions were allocated on the basis of what we considered the problems to be, and who was best placed to address them.*

*Trevor Cooper's evidence in relation to the perverse incentive*

16. You are referred to the witness statements of Trevor Cooper (**WIT-18544 and WIT-19046**) and Shane Murphy (**WIT-19650**), and the oral evidence of Trevor Cooper on 17 and 18 October 2018 (**TRA-15634 to TRA-15974**, in particular at **TRA-15789 to TRA-15794** and **TRA-15886 to TRA-15890**). A summary of the evidence appears to be that there is a suggestion that Trevor Cooper asked Stuart Wightman (in or around June 2015) whether it was possible for a scheme applicant to make money just from running their boiler(s). Stuart Wightman is said to have assured him that this was not possible, based on the price of oil (although the subject of oil prices would appear irrelevant to whether someone who had a biomass boiler could make money from running it). As to this:

a. Was this ever discussed with you?

*No in my recollection the issue of running a boiler simply to make money wasn't discussed with me, and there was no information presented to suggest this was occurring.*

b. If so, please set out as full details as you can about the conversation (including when this conversation occurred, what you recall being said, what answer was given, and why it was given).

*See 16a above.*

c. Please set out any further comments you have in relation to the evidence of Trevor Cooper and Shane Murphy identified above.

*I do not recall the issue of running a boiler to make money being raised or discussed. It is also unclear to me why Energy Division did not check*



*the position before providing assurances on whether it would be possible to make money from running a boiler.*

*Information about the potential abuse of the scheme and the addendum business case casework committee of October 2015*

You are referred to the following documents:

- **DFE-408261/2**: Stuart Wightman's letter of 19 October 2015 (erroneously dated 19 October 2014) to Ofgem;
- **DFE-286119 to DFE-286120**: Stuart Wightman's email to Trevor Cooper of the 17 November 2015;
- **TRA-11722 to TRA-11727**: Chris Stewart's oral evidence to the Inquiry;
- **TRA-12780 to TRA-12782, TRA-12819 to TRA-12823, and TRA-12842 to TRA-12844**: Timothy Cairns' oral evidence to the Inquiry;
- **TRA-13205 to TRA-13215**: Andrew Crawford's oral evidence to the Inquiry
- **TRA-15283 to TRA-15288**: Andrew McCormick's oral evidence to the Inquiry; and
- **DFE-10005 to DFE-10007**: John Mills' 11 August 2015 email referring to the "*suggestions of heating empty sheds*".

17. Senior DETI officials (Dr Andrew McCormick and Chris Stewart) have informed the Inquiry that, having received information about potential abuse of the scheme, information was passed on to Stuart Wightman in Energy Division to deal with. As to this:

- a. What information about potential abuse of the scheme, if any, are you aware of being provided to or coming to the attention of Dr Andrew McCormick? If any, please give details (as to when it was provided, by whom, what was to be done with it and how you came to be aware of it).

*I am not aware of any information being provided to or coming to the attention of Dr McCormick about potential abuse of the scheme.*



- b. What information about potential abuse of the scheme, if any, are you aware of being provided to or coming to the attention of Chris Stewart? If any, please give details (as to when it was provided, by whom, what was to be done with it and how you came to be aware of it).

*I am not aware of any information on the potential abuse of the scheme being provided to Mr Stewart.*

- c. What information about potential abuse of the scheme, if any, are you aware of being provided to or coming to the attention of any other official? Again, please provide details of each such instance (if any).

*I am not aware of information on the potential abuse of the scheme being provided to any other official.*

- d. In relation to any information received by you, or of which you became aware, what of the information about potential abuse of the RHI scheme was new to you?

*I did not receive information directly on potential abuse of the scheme.*

- e. What can you say to the Inquiry as to how John Mills, by 11 August 2015, came to send an email referring to the RHI Scheme and referring to “*suggestions of heating empty sheds*” (DFE-10005 to DFE-10007)?

*I am not aware of how John Mills became aware of this issue. The comments in his email seem to be based on knowledge of the way the poultry sector operates and uses heat, and that when a shed is empty it would not require any heat.*



- f. What did you do (or are aware of being done) with any information provided about potential scheme abuse? Please provide details of when any steps were taken and what the outcome was.

*I was not aware during this period in 2015 that there were allegations of potential abuse of the scheme being received in the Department, so it was in that context that I took no steps.*

18. The DETI Casework Committee met on 21 October 2015 to consider the 2015 Addendum Business Case. DFP officials were present at the meeting. The Addendum Business Case before the Casework Committee (**DFE-284293, at DFE-248311**) referred to guarding against the risk of gaming. In July 2015 DETI had received a letter referring to the RHI Scheme being exploited by unscrupulous beneficiaries (**DFE-107130 to DFE-107132**). In August 2015 John Mills had sent an email referring to “*suggestions of empty sheds*” being heated by installations on the RHI Scheme (**DFE-10005 to DFE-10007**). Stuart Wightman had (on 19 October 2015) written to Ofgem referring to “*anecdotal evidence of gaming*” (**DFE-408261/2**: the letter being erroneously dated 19 October 2014). As to this:

- a. What of the above information, about the potential exploitation of the RHI Scheme, was known to the three members of the Casework Committee at the time the Casework Committee met on 21 October 2015? Please explain the reasons for your answer.

*I do not believe any of the Casework Committee members were aware of potential exploitation as indicated above: it certainly was not raised in discussion between Committee members, or at the meeting itself.*

- b. If it is the case that the three members of the Casework Committee were not told about the various pieces of known information that suggested the exploitation of the RHI Scheme, do you consider they should have been so told?



*In my view the Committee should have been informed, particularly given that it was being asked to consider and agree changes to the scheme.*

- c. If the three members of the Casework Committee had been told about the various pieces of known information which suggested that there was or may be exploitation of the RHI Scheme, then (as far as possible leaving hindsight out of account) would the Casework Committee have taken any different approach from that which it did take? Please explain the reasons for your answer.

*In my view the Committee could not have taken a decision on the business case addendum for the scheme if it had been informed the Department had been made aware of allegations about the scheme as mentioned above. I expect the Committee members would have sought additional information on the nature of the allegations, and any implications for the proposed changes being presented in the business case addendum, before it would have been able to conclude on the addendum.*

- d. What did you make of the reference at paragraph 4.16 of the Addendum Business Case (**DFE-04768**) that: “*The introduction of the tiered tariff will also reduce the risk of ‘gaming’ and installations being operated over and above the required kilowatt hours just to generate RHI income.*” In particular:

- a. Did this cause any issues of concern for you?

*The sentence appears in the business case addendum but I do not recall it being raised, or commented on at all at the meeting. It was identifying a potential risk in the scheme, and does not suggest that this was something that might be occurring as I have mentioned at 18a above.*

- b. Did you consider this to be a reference to a perverse incentive?



*I did not consider this to be a reference to a perverse incentive. The tiered tariffs were being introduced to reduce costs of the scheme – a lower tariff was to apply after a threshold number of hours in operation. So I understood it, and believed it was taken to mean that the change would help control costs. There was no discussion during that time that there was a perverse incentive in the way the scheme had been designed.*

- c. Did you make any enquiry as to how the RHI Scheme was being gamed and/or whether installations were being operated above required hours just to generate income? If not, why not?

*I was not aware that there was any suggestion at that time that the RHI scheme was being gamed or operated just to generate income so this was not an issue that attracted my attention. There was no information provided to myself or others at the meeting that this was a real possibility.*

- d. Did you make any enquiry, or cause any enquiry to be made, so as to assure yourself or the Department that the RHI Scheme was not being gamed in this way? If not, why not?

*See 18 b and c above*

- e. What discussion was there about the reference to the risk of “gaming” in paragraph 4.16 of the draft of the Addendum Business Case before the Casework Committee?

*I am not aware of any discussions taking place on the risk of gaming before the Committee met, although I note that Energy Division were aware of risks from information in their possession.*

- f. If there was no discussion about the reference to the risk of “gaming” in paragraph 4.16 of the draft of the Addendum Business Case before the Casework Committee, then (in light of the other scheme problems disclosed in the Addendum Business Case – such as overcompensation,



rates of return far in excess of the intended 12%, and the scheme being over budget) ought this issue not to have been identified and explored by the members of the Casework Committee?

*As noted above, there was no discussion of the risk of gaming because there was no suggestion to the Committee that it was a real risk and may have been happening. The other scheme problems were understood to be a reflection of the design and operation of the scheme and its oversight, but significantly, were not attributed to possible gaming. The proposed changes were to help address those other problems.*

- g. Was DFP informed about the suggestions of the RHI Scheme being exploited by unscrupulous beneficiaries, facilitating the heating of empty sheds, and the anecdotal evidence of gaming? If the answer is 'yes', please set out what DFP was told at the Casework Committee meeting. If the answer is 'no', then please set out why DFP was not so informed.

*I am not aware that DFP was informed of exploitation of the scheme. I was not aware of this information at the time of the Casework meeting. As noted above, I do not believe my two colleagues on the Casework Committee were aware of it either. Hence, there was no information available to the Committee, as far as I am aware, to communicate to DFP on the potential gaming of the scheme.*

19. The final Addendum Business Case was ultimately submitted to DFP on 27 October 2015 (see **DFE-149790 to DFE-149822**, excluding annexes). Please describe any role you had in relation to the preparation, drafting, checking or presentation of that addendum. (In the course of your answer, please address the nature of the input suggested in your email of the 21 October 2015 where you reference ASU and Finance Division involvement "*in the development of the approach in the papers*" – see **DFE-149575**).

*I do not recall having a role in the preparation, drafting, checking or presentation of the addendum itself. My comment on the development of the approach was a reference to the fact that Energy Division had been expected to engage much*



*more closely with Finance and Analytical Services teams than would normally be the case in the development of a business case, given the urgency to address the known problems with an existing scheme.*

20. Did Trevor Cooper raise with you a concern about the pace of progress in the production of the addendum business case (as suggested by Shane Murphy at **WIT-19657**). If so, please provide as full details as you can in relation to this, including what steps (if any) you took on foot of any such concern (you are referred to **TRA-11711/2** and **WIT-18789**). If it is the case that you discovered there was delay, then what reasons were you given for this?

*Trevor Cooper did raise a concern with me, in respect of the pace at which progress was being made by Energy Division on the business case. I raised his concern with Chris Stewart in a discussion I had with him and I understood Mr Stewart raised it with Energy Division. I note from Chris Stewart's comments (TRA-11712) that I had also raised the pace of progress with Andrew McCormick. I had understood the reason for the delay in progress was that Energy Division was also focused on other priorities.*

21. Generally, what was the basis for the statement in the addendum business case that the scheme (in advance of the amendments to be made in the 2015 Regulations) was providing 'continuous and continuing' value for money? In the course of your answer please address the following issues:

- a. How was this said to be so when the addendum business case itself outlined how significant users would or could be receiving 33% rates of return?

*It was on the basis of the analysis presented in the business case addendum that there were value for money arguments to be made both for the existing scheme, and the proposed changes with tiering, though the rate of return would be reduced through the changes. It was recognised in the addendum though that the net benefits of the existing tariff were relatively small to support the value for money argument. The estimated rates of return that could be received from existing tariff based on an upper limit of the expected annual heat requirement were not*



*raised at Casework, as far as I can recall.*

- b. Do you consider that DETI collectively, or any particular official or officials, felt in any way pressured into a position of having to show value for money, even if this could not be said with conviction, in order to achieve DFP approval? If so, how did this come about? (In the course of your answer, please address what, in your view, is to be taken from Trevor Cooper's summary of the ongoing work on 14 August 2015 at **DFE-150178 and DFE-150180**).

*I was not aware that anyone felt pressured into a position of having to show value for money when this was not their genuine opinion of the business case proposal. I certainly do not recall any such concerns being raised that individuals felt that a case could not be made. It is certainly the case that there was an urgency on the Department in having in place a business case that could demonstrate as fully as possible that there was a value for money argument to support the proposed legislative change to introduce tiering, given that the scheme was continuing to operate.*

- c. Do you recognise and, if so, how do you understand and apply the distinction between 'value for money' and 'best value for money' in public expenditure terms (as identified, for instance, in paragraph 6 of Trevor Cooper's fourth statement – **WIT-19053/4**).

*The distinction that I understand was being made here is that through the changes it was possible to improve the value for money of the scheme in the short term, but that over a longer period it would be possible to introduce further changes that would achieve better results for a given level of public expenditure.*

- d. Explain:

- a. Whether you take the view that the conclusion that the Scheme was providing 'continuous and continuing' value for money could be stood over at the time;



*The position on value for money of the initial scheme and the proposed tiered tariffs was based on the analysis in the business case addendum which explained the approach that had been taken and the figures used. On the basis of the information available at the time I had no reason to disagree with the conclusion.*

- b. Whether you take any different view on that matter now;

*Yes with the evidence that emerged subsequently on the perverse incentive in the operation of the scheme, and the report from the NI Audit Office in 2016, I would conclude value for money was not achieved.*

- c. Whether you consider that time was spent trying to make the Scheme appear to be good value for money when it might have been better spent evaluating the proposed changes; and

*I had not understood that the assessment of value for money of the scheme took up time which instead could have been devoted to an evaluation of the proposed changes. I had assumed that the assessment would take into account the evidence for the proposed changes, including experience in GB. In hindsight much more time should have been spent on evaluating the proposed changes.*

- d. Whether seeking to establish that the Scheme was good value for money may have prevented, or deflected from, examining the alternative of suspending the Scheme.

*I do not recall that alternative options were ruled out because there was a preference for tariff tiering. An option of suspension had been raised but the views from Energy Division were that this could not be done quickly. Efforts*

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*were directed on changes that could be made in the short term given that applications were being received.*

22. Do you consider that it was appropriate for you (and/or Trevor Cooper and/or Shane Murphy) to sit as members of the Casework Committee which considered the RHI Scheme in autumn 2015 in light of any involvement you may have had in the formulation or proofing of the addendum business case? Please explain your answer.

*I do not believe that it was inappropriate to have the involvement of Trevor Cooper, Shane Murphy or myself on Casework Committee. Both of my colleagues were far more familiar with the scheme than others given their involvement since June 2015, and better placed therefore to assess whether the addendum covered the issues. They had also engaged directly with DFP officials. I do not believe my position on the Committee, or their role in working with Energy Division, would have prevented us raising comments or concerns on the addendum.*

23. In relation to your email to Trevor Cooper of 21 October 2015 (**DFE-149575**):
- a. Why did you suggest that it might be appropriate to have a “*different approach*” to the Casework Committee on this occasion, in terms of the discussion with DFP, given “*the involvement of FD and ASU in the development of the approach in the papers*”?

*I felt that given the significant difficulties with the RHI Scheme, with which DFP were well aware; the advice given to Energy Division on the development of the business case addendum; and the urgent timescales, I was suggesting that there should be greater scope provided for DFP to raise questions and make comments directly than would normally be the case when they attend Casework meetings in an observer capacity. DFP officials regularly attended DETI Casework meetings as observers for business cases that were to be subsequently forwarded to them for approval, for the purposes of learning more about the project and hearing about the main issues, to help inform their own*



*examination of the documents when they were formally submitted to them.*

- b. In the event, was the approach taken at the Casework Committee different from normal, in the manner suggested or otherwise? Please give reasons for any answer.

*In the event the Casework process was not that different from normal consideration of a business case. Four DFP officials attended which is greater than would usually attend as observers, and I recall DFP officials did raise a number of questions during the meeting itself.*

- c. Was any role which Finance Division or Analytical Services Unit had played in the development of the casework papers made clear to DFP? If so, how and by whom; and what reaction, if any, was there from DFP? If it was not made clear then why was this?

*In view of the meetings that had been held with DFP officials to discuss RHI and the email exchanges with DFP, I had thought DFP were well aware of the role of Finance Division and Analytical Services in providing advice on the development of the Casework papers. For this reason, there was no reason, in my opinion, to specifically alert DFP to the role that Finance Division and the Analytical Services Unit had played in the development of the Casework papers.*

- d. Was it made clear to DFP that the “full ten steps” set out in NIGEAE were not followed in this case (as indicated in Mr Murphy’s email of 7 October 2015 at **DFE-281272**)? If it was not made clear then why was this?

*I do not know if this point was discussed directly with DFP at any stage leading up to Casework. DFP had received the documentation which was described as an addendum to the business case, and in examining it themselves would have been able to make their own assessment as to whether it met all the requirements set out in the NIGEAE.*



24. In your consideration of the addendum business case, what did you make of the reference at paragraph 2.10 [DFE-04754] that: "... the Department undertook its first review of the RHI in 2013 to improve scheme performance"? In particular:

- a. Did you consider this to purport to be a reference to the review required by the DFP approval for the RHI Scheme? Please give reasons for your answer.

*I did not read it as such. The details in the Annex D to the addendum show that it is a consultation document. It does though contain a section headed "Setting standards, improving performance and cost control" though this doesn't appear to have been based on an actual monitoring and assessment of the operation of the scheme.*

- b. If so, did you consider this to be accurate? Again, please give reasons for your answer.

*I had understood the reference to "review" to mean the process to produce the consultation document and not the first review that was due to be conducted in 2014.*

- c. If you did not consider the claim to have undertaken a review to be accurate, what, if anything, did you do to question or correct it?

*I had believed that it had been recognised by colleagues and DFP officials that the "review" Energy Division was referring to was not the review of the operation of the scheme which was expected to be undertaken in 2014. The Phase 2 document was attached to the business case addendum and so, if the use of the term was designed to mislead DFP, as has been suggested, it would have been exposed as such.*

- d. In the course of your responses, please also provide details of any discussion of the question of planned reviews of the Scheme which



preceded or followed from Michelle Scott's email of 20 October 2015 to Trevor Cooper raising this as a concern (which Trevor Cooper forwarded to you and Shane Murphy later that day in advance of a meeting that morning: see **DFE-149575**).

*I do not recall a specific discussion on planned reviews. The addendum to the business case includes reference to a review of the scheme being planned following the introduction of the tariff tiering.*

25. Do you consider that a tariff review should have been conducted in advance of adjusting the tariffs in the 2015 Regulations? Please give reasons for your answer. If so, please outline why (in your view) a tariff review was not conducted at that time.

*I understood at the time that the reason that a tariff review was not done was because of the need to make changes quickly given that the scheme was live and was continuing to receive applications. The 8 July 2015 submission suggested that future tariff changes could take 6 months or more to complete. In hindsight, if it had been possible to do a tariff review in shorter time to inform the changes to the Regulations that were needed in 2015, then that should have been done.*

26. There is now evidence to suggest that the November 2015 introduction of tiering and re-banding did not, as it has transpired, make a significant difference to (1) the attractiveness of the tariff, (2) the issue of over-compensation, or (3) the value for money of the RHI Scheme. Further significant changes were required after the RHI Schemes closed. What consideration was given, in 2015, as to whether there was a need for professional evaluation of the proposed measures, in order to assess whether they were fit for purpose? If no consideration was given, what do you consider were the reasons for that?

*I understood at the time that Energy Division were in touch with counterparts in DECC/ Ofgem on experiences with the GB scheme and the proposals being made, which was introducing tiering which had already been in place in GB.*



*The degree of contact though was less than I would have expected on the changes. I do not know why that was the case. There was also a recognition that the changes were a short term measure, and that further work would be done for the scheme in the longer term.*

*2 December 2015 Departmental Audit Committee*

You are referred to the following documents:

- **DFE-149917:** Stuart Wightman's email of 13 November 2015 (shortly before the 2015 RHI Regulations were passed) to, amongst others, Andrew McCormick, Chris Stewart and you, saying, amongst other things, that, in light of the surge in applications over the previous 6 weeks he felt *"regardless of what impact the amendment regulations might bring there is no choice now but to move to close both RHI schemes from 31 March 2016"*;
- The Energy Division Non Domestic RHI Update paper for the Departmental Audit Committee of the 2 December 2015 (see **DFE-394901 to DFE-394905**); and
- The minutes of the 2 December 2015 Departmental Audit Committee meeting (see **DFE-394959 at DFE-394969**).

27. As to this:

- a. The Energy Division paper to the Departmental Audit Committee represented (**DFE-394901 and DFE-394903**) that there had been a *"Phase 2 Review of the RHI"* completed in 2013. Did you not know this claim was inaccurate? What steps did you take to challenge it? If you did not take any steps then please explain why not?

*The reference to a Phase 2 review did not attract attention and indeed Energy Division had been referring to the 2013 exercise as a "review" though I did not understand it to mean a review as specified in the DFP approval. In that sense, I did not therefore appreciate that the term "review" had been used inaccurately, and so I did not take steps to*



*challenge it. In regard to the Phase 2 exercise, Energy Division had also indicated whilst it had commenced in 2013 its completion had been deferred to 2015, so clearly the Phase 2 work had not been concluded.*

- b. Given the content of the email you received from Stuart Wightman on 13 November 2015, were you not surprised to find that the Energy Division paper to the Departmental Audit Committee indicated (**DFE-394901**) that, in response to increased demand, more funding would be sought, rather than reflecting Stuart Wightman's clear statement already made to senior DETI officials (including you) that, in light of the unprecedented recent surge in demand, there was no choice but to close the RHI Schemes? What steps did you take to challenge the statement? If you did not take any steps, then please explain why not?

*The Energy Division paper to the Audit Committee also commented that the Department was reviewing the implications of the Autumn Statement and that it was highly likely that both RHI schemes would have to close. Accordingly, in that context, I did not believe that I had to challenge the assertion in relation to seeking further funding. I believed at the time the Audit Committee was aware of the funding position for the scheme and that Northern Ireland could receive insufficient resources in future years to meet any new commitments, so it would have been obvious to the Committee that the scheme could close.*

- c. In light of what was known about the surge in demand, the level of the then available RHI budget, and Stuart Wightman's expressed view about the need to close the RHI Schemes, did you not challenge the statement made by Energy Division to the Departmental Audit Committee that it was hoped that the November 2015 changes would bring RHI expenditure back within budget? If you did not take any steps, then please explain why not?



*The minutes of the Departmental Audit Committee on 2 December 2015 record that the planned Internal Audit review of the scheme was being brought forward urgently, and this was communicated before the Energy Division presentation. The tariff changes had just been put in place and the HM Treasury position on the budget for future years was to be clarified shortly following the Autumn Statement. The Committee knew therefore that an audit was now to get underway and the budget position could mean closure, so the views of Energy Division on the changes bringing expenditure back within budget were going to be assessed very shortly in the context of those above actions.*

28. Further:

- a. If you knew, during the summer of 2015, about the issue of RHI scheme members being overcompensated then why was the Departmental Audit Committee not told, on or before the 2 December 2015, about the risk that scheme members had been over-compensated?

*To reiterate: I did not know, during the summer of 2015, that RHI scheme recipients being overcompensated, save insofar as they might be able to receive more funding than a GB comparator where tiering and degression were in place, and so I was not in a position to advise the Committee that there was an inappropriate overcompensation. The Committee had received an update on RHI at each meeting since June 2015. The Committee was advised of the proposal to introduce the tiered tariffs which would help to control costs and reduce the potential compensation available to recipients. I believed the Committee members had as much information as I had during this period on the levels of compensation provided by the scheme.*

- b. Should the Departmental Audit Committee not have been informed, on or before the 2 December 2015, about the issue of over-compensation? If the answer is yes, who should have informed the DAC, and when?



*I refer to my answer at 28a above in relation to the context that pertained at the time. I do however believe the Committee members should have been provided with as much information as was available to the Department on the operation of the scheme. Two of the Committee members also attended the Departmental Board. I do not believe there was a focus at the time on “overcompensation” beyond the fact that tiered tariffs were to reduce the level of compensation that would be potentially available from the operation of the scheme.*

- c. Why (given, for example, the Solmatix 10 July 2015 letter, the reference to the risk of gaming in the 2015 Addendum Business Case, and the references to the heating of empty sheds) was the Departmental Audit Committee, on or before the 2 December 2015, not told about the risk the RHI Scheme was being abused?

*I was not privy to the information set out above at that time and I do not know why, based on the information that had been received, the Committee had not been briefed on the risk of abuse of the scheme.*

- d. Should the Departmental Audit Committee, on or before the 2 December 2015, not have been informed about the risk the RHI Scheme was being abused? If the answer is yes, who should have informed the DAC, and when?

*In my view the Department’s Internal Audit and the Departmental Audit Committee should have been told as soon as there were allegations of abuse of the scheme. The DAC would normally be informed of such matters through Head of Internal Audit and/or Finance Division, dependent on who had the relevant information.*

### *General*

29. To the extent that you consider the evidence of any other witness or participant contradicts your evidence on a significant issue, or is materially incomplete in respect of any significant issue, you should take this opportunity to address



those issues by way of further written evidence, but only to the extent (a) that the said issues have not already been addressed in your existing oral and written evidence and (b) that the further material you wish to provide constitutes evidence of fact as opposed to mere commentary on the evidence of another witness or participant which would be more appropriate for submissions.

30. Please set out any further significant evidence you have or of which you are aware, having regard to the Inquiry's Terms of Reference, which has not been adequately addressed in your previous written or oral evidence.

Statement of Truth

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

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_ 7.12.2018 \_\_\_\_\_