

## INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

## CLOSING SUBMISSION ON BEHALF OF AN ENHANCED PARTICIPANT

**MRS FIONA HEPPER****Introduction**

- [1] This written submission on behalf of Mrs Fiona Hepper (hereinafter “FH”) aims to provide the Panel with a reminder of some of the key points of her evidence and to address some of the key issues arising in connection with her involvement in the RHI scheme.
- [2] FH provided the Inquiry with 3 written statements comprising 1,637 pages with exhibits, and gave oral testimony on 5 occasions over a total of some 28 hours giving rise to 675 pages of transcript. In that context and, given the entirely understandable limitation placed upon the length of this submission from an enhanced participant, it is not feasible nor appropriate to attempt a *line by line* analysis of FH’s evidence to the Inquiry, written and oral, much less to engage in same in respect of the evidence provided by other witnesses as relevant to FH’s involvement.
- [3] Accordingly, it is proposed to focus this submission on a number of key points, within the myriad of issues facing the Panel, of particular resonance to the Inquiry’s consideration of her role and involvement in the RHI scheme and to draw out some fundamental themes for comment.

**Background**

- [4] FH has been working within the Northern Ireland Civil Service (“NICS”) for over 30 years, having joined in 1986. By the time she joined Energy Division in June 2010, she had gained experience as a generalist within the Service. She did not have any background or technical expertise in energy. Nevertheless, as with all of her other posts, she approached this new challenge with drive, determination and diligence.
- [5] FH transferred to the post of Director of Energy Division (the “Division”) in June 2010, at the request of David Sterling, then Permanent Secretary of DETI. She held this post from June 2010 until November 2013. She was responsible for all elements of energy policy, including gas; electricity; and renewables. Sustainable Energy Branch had responsibility for, *inter alia*, the RHI scheme.
- [6] The Division was responsible for delivery of all aspects of energy policy across a diverse and complex portfolio. During the period in which FH and her team were working on renewable heat, work was also ongoing within the Division in relation to at least 12 other policy objectives, **WIT-15024 - WIT-15025**. FH contends the role of Director of Energy Division was “*recognised by the Department as a very heavily-loaded post.*” **WIT-16637** In her written evidence FH identifies some 18 discrete policy areas, *in addition to* renewable heat, for which she had oversight as Director of Energy Division. **WIT-15020**. This required her to work well in excess of normal hours for the duration of her time in post; in reality, long days, 4 evenings per week and one further day at the weekend.
- [7] This characterisation was echoed by FH’s successor, John Mills, who acknowledged the very long hours FH worked when in post as Director of Energy Division. **TRA-07073**

- [8] Chris Stewart, Deputy Secretary (2014-18) stated, in relation to the Energy Director post:

*“I was a Grade 5 for 14 years, held 7 posts ... during that time ... I’d never come across anything that had the combination of volume of work, complexity of work and very high level of political and stakeholder interest that you find in Energy Division.” TRA-11532*

- [9] When FH came into post, the decision had already been taken for Northern Ireland to design its own bespoke approach to renewable heat. In her written evidence, at **WIT-15022**, she sets out that her involvement spanned the period of the development of the scheme, including: the procurement of expert advice from CEPA/AEA; all stages of the scrutiny and approval process; the appointment of the Office of Gas and Electricity Markets (“OFGEM”) to administer the Scheme; the launch of the Scheme in November 2012; and, its operation (including the Phase 2 consultation) until she left post in November 2013.

### Genesis of the RHI Scheme

- [10] The genesis of the Scheme was the need for the UK to comply with the Renewable Energy Directive (2009/28/EC), which imposed legally binding obligations in relation to increasing the amounts of energy consumption from renewable sources. The mandatory target for the UK was to increase the share of renewable energy consumption to 15% by 2020. Each of the devolved administrations agreed a target taking account of the renewable energy consumption levels within each area and the potential for change. Within Northern Ireland the NI Executive included a target within its Programme for Government (“PfG”) of 4% of heat from renewable sources by 2015, rising to 10% by 2020. The target of 10% was included within the Strategic Energy Framework (“SEF”) approved by the Executive and published in September 2010.
- [11] Prior to FH’s arrival into post in Energy Division in June 2010 decisions had been made not to take legislative powers for Northern Ireland as part of the UK Energy Bill, and to engage AECOM-Pöyry to conduct an examination of the renewable heat market in Northern Ireland. The work on the SEF and the trailing of the 10% renewable heat target had been undertaken by FH’s predecessor, with the SEF having been subject to full public consultation. A final report was provided to DETI in July 2010 by AECOM-Pöyry, which indicated the potential for a heat market to be established in Northern Ireland, with government intervention. As the AECOM-Pöyry work was nearing completion, DECC launched a policy consultation (February 2010) covering details of the RHI and how it may operate in GB.
- [12] On foot of the AECOM-Pöyry research, in September 2010 the Minister, in publishing the SEF, set a 10% target for renewable heat by 2020 and stated that work should commence on developing a mechanism to support this. This was followed in October 2010 by Her Majesty’s Treasury (“HMT”) notifying the Northern Ireland Executive that it would make available £25m in support of renewable heat. In recognition of the work that would be required to establish and progress a new renewable heat policy, and the fact that this could not be achieved with the existing Energy Division staff complement, FH made the case for additional resources. This resulted in the establishment of the Renewable Heat Branch in May 2011 to lead this work and focus on pushing it forward to the next stage. FH also ensured that,

*“... from within the Department, there would be access to an appropriately skilled economist to work alongside the project team, engage with the consultants in due course and provide the required element of professional challenge.” WIT-15035*

- [13] Nevertheless, it was explicitly recognised within DETI that there was not sufficient in-house resource to conduct the complex and specialist work required to deliver the PfG target. For that reason it was deemed necessary to undertake a procurement exercise to bring in experts with energy experience who could take forward the required appraisal. After a competitive tender process, CEPA-AEA were identified as having the necessary combined economic and energy expertise to undertake the work. At this point a submission was duly sent to Minister Foster on 30<sup>th</sup> December 2010, seeking her approval to appoint CEPA-AEA to carry out the appraisal. The purpose of the appraisal was to produce a report with a recommendation on the most appropriate means of incentivising the maximum amount of renewable heat in Northern Ireland, within the £25 million budget set by HMT.
- [14] The resultant report from CEPA-AEA (hereinafter “CEPA”) identified two broad categories of option: (i) upfront capital grants; and, (ii) continuous payment schemes. FH, in her evidence, stated that she had no preference for which type of scheme should be chosen, **TRA-01821**. David Thomson confirmed this in his oral evidence to the Inquiry at **TRA-05718**.
- [15] Following receipt of the first draft of the report, DETI and CEPA engaged in correspondence regarding the proposed schemes, including discussion regarding scheme risks. On 28<sup>th</sup> June 2011 the final report was provided. In this report, the relative costs of the challenge fund and RHI options remained unchanged from the final *draft* report, which had been the subject of consideration at the Ministerial meeting of 14<sup>th</sup> June. As with the final draft report, the final report included detailed explanations on tariff design and concluded that tiering was not required for RHI rates in Northern Ireland. Following receipt of the final report, FH prepared a submission to the Minister regarding a consultation on the RHI scheme. This submission, alongside a copy of the final CEPA report, was sent to the Minister on 5<sup>th</sup> July 2011.
- [16] This was the catalyst for a consultation paper entitled ‘The Development of the Northern Ireland Renewable Heat Incentive’, which was approved by the Minister and issued for consultation on 20<sup>th</sup> July 2011. On consideration of the consultation responses, a number of complex issues regarding tiering and banding were identified which required expert input. Accordingly, CEPA, as energy and economic experts, were re-engaged to consider these matters in more detail. CEPA were asked,

*“To reconsider their assumptions in light of the new evidence presented” and “to revisit, and where appropriate, update existing cost assumptions and banding methodology and consider the resulting implications for both tariffs and overall costs.” WIT-08391 (emphasis added)*

- [17] This resulted in the production of an addendum to the 2011 report in February 2012 (“the addendum”). Thus, the complete body of advice from CEPA comprised the 2011 report and the February 2012 addendum.

- [18] The DETI Renewable Heat team and internal economist considered the tariff increase proposed by CEPA in the addendum. FH recalls,

*“... one of the things I do recall is we did go back quite a number of times to CEPA, in an iterative process, to try and work out how they were calculating the tariff on this new basis, and we did work it through on the basis of the — I think it was 4.39 pence for the fuel. That’s the heat — or the payments would be made out on heat combusted, you know, so you had to take in the efficiency of the boiler. So, at 85% efficiency, you work that through and you come to 5.2 pence. And then, what had to be added in on top of that was the elements of the tariff that cover capex, opex, hassle costs, financing and the rate of return etc. ... we tried to work that through*

*on our own spreadsheets to see what we could get to, and we got to a figure lower than that. And when Peter pushed back with Iain on that, he came back and said, "Oh, you haven't added in the x amount for the hassle cost factors", and when that was added in, it brought us back up to the 5.9p." TRA-01918*

- [19] It is established, at this addendum stage, that CEPA recommended tiering of the tariff for ground source heat pumps (GSHPs), **WIT-08564**. This, naturally, prompted FH to enquire whether tiering was required for other technologies;

*"Now, they did recommend tiering for a ground source heat pump. I did ask the question - and I do recall asking the question - "is there anything else that needs tiered?", and CEPA stuck with their advice, that the answer was no." TRA-01919*

- [20] The Inquiry has heard that CEPA produced a revised model in 2012. This model was not shared with DETI, as confirmed in evidence by Mark Cockburn at **TRA-01353**. The said model identified that the tiering trigger had been activated in respect of the so-called 'small biomass' tariff. Despite this being a CEPA-produced model, Mark Cockburn (CEPA) conceded in evidence that CEPA had, in fact, failed to identify that tiering was required for this tariff, **TRA-01356**. Consequently, DETI were not advised that tiering was required. Mark Cockburn accepted this in his evidence before the Public Accounts Committee on 23rd November 2016

*"In the addendum we should definitely have raised the need for tiering of the small scale commercial biomass band where subsidy exceeded the marginal fuel costs. This has negatively impacted on the value for money of the scheme ... What we did not notice when we re-calculated the tariff, which as I said we regret, was that the tariff was above what was likely to be the cost of production. So we missed it." WIT-16393/WIT-16394.*

- [21] Ultimately, on foot of the addendum and related assurances given by CEPA, DETI duly accepted this advice, leading to an increase in a number of tariff levels and changes to banding. Had tiering been recommended by the consultants, it is inconceivable that it would not have been implemented in the Scheme at this stage.

### Challenge Fund vs RHI

- [22] One of the issues the Inquiry has considered relates to the relative advantages and disadvantages of an RHI-type scheme versus a proposed 'Challenge Fund' type scheme. A related issue is whether those in Energy Division had a preference for an RHI over a challenge fund and whether the Minister was permitted to make a free choice between those two types of scheme.

- [23] Energy Division had asked CEPA to look at both types of scheme so that they could properly be compared. FH notes that the balance of advantage between the two proposed schemes varied throughout the various iterations of the final CEPA report;

*"So, all the way through, those two things [i.e. RHI versus Challenge Fund] had equal measure. At times, it was showing that an RHI gave more heat, at times the challenge fund gave more. You know, it bounced around as different assumptions were made" TRA-01821*

- [24] This accords with David Thomson's recollection that the difference between the schemes was "moving around" throughout that time **TRA-05708**. It is also reflected in the 8<sup>th</sup> June 2011

submission itself, which informs the Minister that “[t]here are a number of issues that need to be addressed before the report can be finalised” **TRA-01867**.

- [25] Although the CEPA reports ultimately show that the challenge fund provided a more attractive net present value, this fact does not, of itself, inexorably lead to the conclusion that it was a better policy choice. David Thomson considered that a challenge fund would be cheaper by definition than a long-term incentive scheme, but took comfort from the fact that an RHI scheme had been chosen by DECC in Great Britain, **TRA-05709**. He also emphasised in his oral evidence that there were valid policy reasons to prefer an RHI over a challenge fund, **TRA-05715**.
- [26] This fact was also part of FH’s oral evidence, wherein she considered that some of the advantages the RHI possessed over a challenge fund were that it gave a long-term signal to the market; it was the approach DECC had taken in Great Britain; and grant schemes did not always serve the market well **TRA-05183**. DECC had made the case to HMT that long-term, continuous support was required to assist in developing the market, **TRA-02300-01**. Thus, a challenge fund, by virtue of being a stop-start grant was not favoured by DECC; an approach which was endorsed by HMT.
- [27] An additional consideration relates to the administrative resources which would have been required to operate a challenge fund type scheme. With regard to this specific context, Shane Murphy averred that the necessary staff were simply not available within the Department. This was compounded by required efficiency savings and a moratorium on recruitment. **WIT-19636**
- [28] As addressed at paragraph 3.1 of FH’s statement of 20<sup>th</sup> November 2018, it is accepted that the submission of 8<sup>th</sup> June 2011 was not formulated from the final report, which was not available at that stage. However, the Minister and her SPAD were told in the meeting that the report was being finalised and that there were likely to be some changes. The final report was sent to the Minister and the SPAD on 5th July 2011; it would appear that they did not have any concerns arising therefrom, as they did not raise anything with FH or her team on receipt of the final report. FH acknowledges that it is unfortunate that specific changes between the two reports were not specifically highlighted.
- [29] However, it is of note that, at a later stage, the DETI SPAD, Andrew Crawford, clearly saw an advantage in getting “*more than our fair share of the UK pot*” **TRA-13096**, rather than being concerned with value for money, particularly with regard to the challenge fund. That the Minister and her SPAD would not have given determinative weight to the value for money of the Scheme is clear from the evidence of David Sterling, who confirms that his recollection was that whatever the cost (and, even if the Minister and her SPAD had read the CEPA report), his expectation was that an NI RHI would have been chosen;

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

See also paragraphs 1.8 and 1.9 of FH’s third statement, dated 20<sup>th</sup> November 2018 **WIT-16738**, relating to the political/economic outlook of the SPAD in respect of the maximisation of financial benefit which could be brought into Northern Ireland’s economy.

- [30] In respect of any suggestion that Energy Division had a preference for an RHI scheme rather than a challenge fund type scheme, both FH and David Thomson are clear that both options were presented to the Minister. David Thomson gave the following evidence:

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

[31] FH is equally clear in her recollection:

*“So all the way through, right up to this particular report, the two things were being looked at and considered” TRA-01821*

[32] The suggestion has been made that CEPA assumed the Division had a preference for an RHI type scheme. It is respectfully suggested that there was no proper basis upon which such assumptions could have been made. CEPA were engaged to provide an independent, expert report. As FH stated in her oral evidence to the Inquiry, *“it was not for them (CEPA) to make an assumption”*, TRA-01822. Indeed, FH has clearly relayed that she did not have any personal preference for one type of scheme over another, nor was she ever asked by the Minister to express any such opinion, TRA-01872.

[33] FH’s evidence regarding the 14<sup>th</sup> June 2011 meeting, at which the 8<sup>th</sup> June submission was discussed with Arlene Foster and Andrew Crawford, is that she clearly recalls discussing both the RHI and Challenge Fund options, TRA-01872, in some detail. Dr Crawford in his oral evidence states that he could not recall the meeting itself, although it is of note that, nevertheless, there are some aspects about which he is able to give positive evidence. In her written evidence, Minister Foster states that she does not recall the meeting with FH, WIT-20566. She reiterated this in her oral evidence, TRA-07740. When asked by Senior Counsel to the Inquiry whether FH’s evidence is *“incredible”*, Mrs Foster declines to affirm that it is TRA-07784. It is unfortunate that no minute of the meeting was produced, however the lack of minutes has been recognised as a systemic issue within NICS and FH accepts that *“it was the working practices of the time that prevailed”*, TRA-05210.

### **Cost Controls**

[34] A further issue for the Inquiry is the implementation of cost controls and the timing of same. From an early stage, DETI officials were aware of the need for a cost control methodology. The business case for the NI Scheme had been completed and approved in March 2012, approximately 6 months before DECC started its consultation on degression in Autumn 2012. The concept of degression was, nevertheless, covered in the business case, which highlighted DETI’s intention to implement cost controls in the future, WIT-15790.

[35] Cost controls were then specifically dealt with in the 2013 Consultation Paper. Chapter 4 specified that DETI was proposing to introduce cost control measures, namely interim administrative triggers and, later, degression, which would ensure that budgetary levels would not be breached. It also outlined that DECC were in the process of introducing a system of degression in GB, whereby tariffs would automatically reduce when deployment levels reached set trigger points, and that DETI expected to introduce a similar measure in future but, in the interim, were proposing a more straightforward system of administrative triggers reflective of GB’s interim suspension mechanism. This interim measure would essentially act as a ‘brake’ on the Scheme, pending completion on the work on degression, WIT-15055.

[36] Degression was only introduced in the GB Scheme in April 2013, some 18 months after commencement. Prior to this, in summer 2012 (the GB scheme having been launched in November 2011) DECC had introduced an interim cost control measure based on monitoring, analysis of trends and forecasting. From the beginning of the NI Scheme, DETI had been undertaking similar monitoring of the number of applications and accreditations, tracking same against predicted levels of uptake, monitoring overall progress against budget and, further, the impact of each accreditation on the budget. At this stage the uptake of the scheme was low, to the extent that a significant portion of the budget was unspent. In the meantime, DETI officials monitored the GB approach. When DECC brought in their interim suspension mechanism, this

was used by DETI to develop the approach to cost controls in the 2013 Consultation, namely, the inclusion of administrative triggers as a precursor to degression.

- [37] Given the relative abundance of resource available to DECC, the approach taken by DETI towards developing cost controls was, understandably, intended to mirror the approach taken by DECC in relation to the GB scheme, where possible. In respect of cost controls, DECC had adopted a phased and iterative approach which DETI sought to emulate. In that regard, FH states that,

*“We wanted to see what they did, how they designed it, bearing in mind ... that they had the staff/bodies to work on this, and we wanted to capitalise on that learning. And we built that into our overall approach of a phased approach to bring in degression.”* **TRA-01938**

- [38] FH specifically recalls highlighting the issue of cost controls in her handover to her successor in November 2013:

*“I do remember talking about cost control because this term, ‘degression’, came up and it was obviously a novel term, and I remember ... spelling that for him because it’s an odd spelling of the word. And, I could only’ve been doing that - I have a clear recollection of that - if I’d been talking about cost controls.”* **TRA-01975**

- [39] In the context of phase 2, no decision to ‘decouple’ cost controls from the introduction of the domestic scheme was taken by FH, or indeed by anyone else, during her time in post. In evidence, FH recalled addressing this in her handover meeting with John Mills and reflected her understanding of how the work on cost controls was to be progressed in phase 2;

*“I’d specifically mentioned the ... phase 2 consultation in the handover meeting and cost controls specifically ... regardless of what time frame and in what order the domestic or non-domestic scheme was going to be worked through in 2014, the cost control – the interim measure – would’ve been needed for both of those schemes, because, when you look at the mechanism, one of the first actions that’s taken is to close one of the schemes ahead of the other, so it was going to have to be brought in regardless of how you phased the bringing in of either the domestic or the other non-domestic technologies. So, I don’t think, from that point of view, there could’ve been anything in anybody’s mind other than, “This has to be done.”* **TRA-05376-77**

- [40] Further, Minister Foster was aware of DETI’s adopted approach from the submission of 26th June 2013, **WIT-16369**. This approach was consistent with that of DECC. It is of note that there is no evidence to suggest that either the Minister, or her SPAD, when signing off the 2013 consultation, or indeed at any time thereafter, raised any queries as to how the Department had proceeded without pausing to implement cost controls. This, as FH asserts, is because of the agreed plan to introduce cost controls after the launch of the Scheme, which had been discussed with, and agreed by, the Minister in June 2012, **TRA-02686**. David Thomson had also been party to this decision. By June 2013, the Scheme had been operational for some 9 months; a reading of any of the key documentation would have indicated the position in relation to cost controls. Furthermore, the Minister would have been aware of DECC’s approach to cost controls, including via correspondence from Greg Barker MP on 29<sup>th</sup> November 2013, **WIT-08077**.

- [41] In November 2011, OFGEM produced a ‘legal review’ document which raised concerns about the Scheme Regulations, as enacted by DECC, and the risks inherent therein. At this stage,

OFGEM's Catherine MacArthur outlined two possible courses of action for DETI in finalising the Scheme Regulations. Firstly, DETI could

*“Delay the changes to the regulations until DECC reviews their own Regs. This has the advantage of keeping the two Schemes aligned, but the disadvantage of having to be reactionary and change your regulations based on DECC's changes, and potentially when the Scheme has not been operational for long.” DFE-314497*

Or, in the alternative, DETI could

*“Be proactive in addressing the issues raised in DETI's first set of regulations for the Scheme, with DECC addressing the issue at a later point... The disadvantage might be that DECC may take different decisions in addressing some of these issues when they do amend their regulations, which will set the 2 schemes further apart.” DFE-314497 (emphasis added)*

[42] DETI opted for the former approach. Addressing this in evidence, FH states that

*“They (DECC) had teams of people working on very specific aspects of the scheme and were devoting time and research and effort to parting out some of these issues. We didn't have that in terms of the number of people we had working on the scheme, so I think it was right and proper that we learnt from the experience that they had and the work they were doing and that we kept in line.” TRA-02660*

### Ministerial Input

[43] In respect of the decision to proceed with a renewable heat incentive scheme in Northern Ireland, David Thomson stated in his written evidence that,

*“There were discussions which I do recall in 2010 when the strategic energy framework, which had been consulted on, because it had been consulted on before I joined the Department. I do recall coming in, and we had discussions - discussions with the Minister - about would we proceed with what was in the strategic energy framework. And the strategic energy framework included the RHI, it included the percentages for renewable electricity, it included other things, and the Minister agreed that we should proceed with the targets that were in the strategic energy framework.” TRA-05641*

[44] David Thomson conceded in evidence that this decision was taken in circumstances where both the upper tier of the Civil Service (i.e. himself and the Permanent Secretary) and the Minister knew the Department was badly under-resourced, **TRA-05641**.

[45] The decision in June 2012 to proceed with the Northern Ireland scheme and not to wait for cost controls is a matter that was discussed by FH and David Thomson. David Thomson recalls FH discussing with him that there were two options, the first being to halt progress and delay the launch of the scheme, with the intention of bringing in the DECC cost controls or to proceed, as DECC had done, and bring in the cost controls at a later stage. He advised FH that the decision needed to be taken to the Minister, **TRA-05745**.

[46] FH duly brought this issue to the Minister for her decision, as she was advised to do by her line manager. Recalling the Minister's decision, FH states,

*“The Minister wished the Scheme to be launched as soon as possible given that the Department was running at this stage nearly 1 year behind GB and had missed the April 2012 date that it had hoped to open the Scheme. The budget for 2011-12 had also been unspent and that for 2012-13 was going to be largely unspent if the Scheme did not launch. The requirement to keep up the pace and launch the Scheme as soon as possible was communicated by the Minister to officials verbally as I can recall.” WIT-16713*

[47] In terms of the delay that would have been caused by a decision to wait, FH indicated that,

*“... a change of this nature would’ve required consultation. So we would’ve had to draw up a consultation document, put it out – get all that approved internally, put it out to consultation for 12 weeks and then analyse it, redo the regulations, resubmit them to the Committee, who had just that very week got the SLI and the tariffs, and to launch the scheme, probably at the earliest February or March 2013...” TRA-02686*

[48] Any decision to halt progress to allow for consultation and implementation of cost controls would, inevitably, have significantly delayed the launch of the Scheme. This clearly would not have been acceptable to Minister Foster, given that she was keen to access the funds being made available by London to the NI economy; any decision to delay and risk returning money to HMT, therefore, would not have been politically expedient and would have frustrated the delivery of Ministerial priorities.

[49] It is unfortunate that no minute was produced from the engagement with Minister Foster, however the lack of minutes had become, as the Inquiry has heard, an institutional convention. As FH stated,

*“It was a form of working we had, you know, to keep things moving, and the Minister was comfortable with that and with discussions so that’s how work was done, and, when needed, things were put on paper”, TRA02685.*

[50] Indeed, the practice of going and speaking to the Minister directly was one which was actively encouraged by Arlene Foster, who suggested that,

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

[51] This is perhaps indicative of an emergent culture, wherein officials’ access to Ministers was becoming less formalised and, to an extent, less regulated. In evidence, FH suggested that,

*“...it was not an unusual way of working with the Minister to have discussions with her to keep things moving. It was something that we were all comfortable with on the officials’ side and the Minister was comfortable with. Had she not been, she would have specifically asked us to put it on paper or to write something up for her to consider further.” TRA-02694*

[52] FH indicates that, although the Minister did not request a written submission in this case, she had felt the need to do so in other cases, **TRA-02694**. It is a matter of regret to FH that there is no documentary record of this particular meeting and the decision flowing therefrom.

- [53] David Thomson recalled the Ministerial decision on the issue being relayed to him and had no doubt that the scheme was being launched, **TRA-05747**. A number of significant events were taking place that same week and, consequently, David Thomson had spent a lot of time with Minister Foster, **TRA-05740**.
- [54] It is not realistic to suggest that FH, having raised the issue with David Thomson and being directed to address this with the Minister, did not then do so. FH would have been fully aware that David Thomson not only had weekly meetings with the Minister but that, given the significant events of that particular week, he would be spending considerable time with the Minister. Further the decision would have to be relayed to him (as it was, **TRA-05747**) and it was one which it might reasonably be expected would have been discussed between David Thomson and the Minister, either formally or informally, during the weekly issues meetings. These issues meetings were not restricted to the formal agenda. As David Thomson stated,
- “we used those meetings to discuss all sorts of things”* **TRA-05730**
- [55] The decision of the Minister was, therefore, clear. DETI were to follow the DECC approach and launch the scheme, bringing in cost controls in the next phase. It is submitted that the manner in which these events occurred, whilst in retrospect imperfect, were an outworking of the lack of resources in the NICS in general and within Energy Division in particular. The evidence of FH is illustrative of the ‘just get on with it’ attitude that prevailed within the Civil Service, wherein some staff (and in particular FH) were consistently working late at night and over weekends and, given the lack of resources, did not want to be a bottleneck for the significant volume of work which was required to be done, **TRA-05342**. She states that the issue of lack of resources was brought to the Permanent Secretary, and whilst some additional resources were made available,
- “he did know that we were working under, you know, a fair amount of pressure and that there was work coming at us all the time. I think the approach we took was, “Get on with it.”* **TRA-05341**
- [56] Indeed, David Sterling himself recognises the prevailing departmental culture, wherein officials were expressly told not to say ‘no’ to Ministers, notwithstanding the known scarcity of resource:
- “I would always advise staff, “You don’t say no to a Minister” ... the Minister would have pressed me hard, “Can we not do it quicker?”. We couldn’t, but we didn’t say no... we would normally have tried to find a way of ensuring the Minister got the outcome she was looking for.”* (**TRA-06088 – TRA-06089**).

### Funding Mechanism

- [57] Notification of funding for a Northern Ireland renewable heat incentive scheme was communicated in a letter from the Chief Secretary to the Treasury to the First Minister, dated 20th October 2010, **DFE-28820**. This letter communicated the outcome of the 2010 Spending Review, covering the financial years 2011/12 to 2014/15. The First Minister was specifically told that if the Northern Ireland Executive (“NIE”) chose to introduce a NI RHI scheme, then AME funding of £2m, £4m, £7m and £12m would be provided over the four financial years, respectively, **DFE-28824**.
- [58] The funding position was dealt with in a submission from FH to the Minister in June 2011, wherein it is stated that

*“Discussions with DECC regarding funding post 2015 have revealed the following: DECC see no difficulties re funding going forward as both DECC and HMT regard RHI as a priority, flag-ship policy; plus, HMT fully recognise that the scheme will be open to 2020 and that significant funding post 2015 will be required.” WIT-00740*

[59] It is acknowledged therein that *“CEPA made two recommendations which are dependent on the funding profile” WIT-00746*. Accordingly, the submission goes on to advise that, if there was no funding guaranteed post-2015, then a grant-funding scheme should be implemented in the form of a competitively awarded challenge fund, but that, if there was confidence that additional funding can be provided by DECC or HMT post-2015, then a Northern Ireland renewable heat incentive should be introduced, based on tariff levels set out in the table in the CEPA report.

[60] In response to an email from Alison Clydesdale of Energy Division, Jon Parker (HMT), in an email of 15th April 2011, at **DFE-05415**, indicates there was some discretion as to the precise use of the money available *“as long as the cost of NIE spending is constrained to the AME consequential.”* He goes on to state that,

*“The other key point it is necessary to let you know about is that the DECC RHI spending is not being treated as standard AME, where the Exchequer takes on all risks of overspend. Instead, there is a risk-sharing arrangement whereby should RHI spending in one year exceed the SR then DECC would need to repay this in future years. They can do this through announcing changes to the SR that will bring cost savings relative to the SR profile in future years. However, a small proportion of any required future savings (still to be determined, but likely to be in the order of 5%) will have to be funded through contributions from DECC’s DEL. Again, these rules would be applied in equivalent fashion to NI.”*

[61] Thus, it was clear that the funding mechanism for the scheme was not AME in the usual sense but, rather, was AME funding with a potential DEL consequence. In her written evidence, FH is clear that both she, and the civil servants who worked with her, were aware of the nature of the funding;

*“I made sure that all staff working on the Scheme were aware of this and, indeed, Energy Officials were in direct contact with HMT and DECC in relation to these matters as early as April 2011. Each year had a set budget (a ‘cap’) and at all times my team worked within that annual cap and closely monitored the budget ... It was also the case that when working with CEPA-AEA it was made clear to them that we had a set budget and their model had to maximise the amount of heat produced within that set limit.” WIT-15044 (emphasis added)*

[62] Mark Cockburn of CEPA acknowledged this in his evidence to the Public Accounts Committee on 23 November 2016,

*“This was already a complex model. It worked within a budgetary cap; we assumed there would be a budgetary cap... We conducted our analysis with a budgetary cap.” WIT-16399 (emphasis added)*

[63] It is also the case that the Finance Division was fully aware of the nature of the funding as they had been in receipt of the April 2011 emails from Jon Parker. Indeed, Alison Clydesdale also copied her exchanges with Mr Parker to DFP at the time, **WIT-12773**.

Scheme Review

[64] The Business Case for the non-domestic RHI Scheme stated that,

*“It is currently proposed that the first review will begin in January 2014 with any required changes implemented by 1 April 2015. This timescale ensures issues can be rectified but does not disturb confidence in the market.”* **WIT-02327**

[65] In evidence, FH stated that,

*“The review was to start in 2014 and, to my mind, that meant the drawing up of the terms of reference, the drawing together of the information that would be needed and the ... the starting of that in January 2014. And that’s why we had left, in the process that we were going to do, that the out-workings of the review to be in place by April 2015 and that’s what, to me, makes it clear that we were to start the work in January 2014.”* **TRA-01793**

*“... we would have had the ongoing monitoring of the scheme and all of the spreadsheet information, the profiling, the monitoring, the projection that Peter would’ve been doing, and that, to me, was a corpus of information for the review.”* **TRA-02381**

[66] FH was clear that the formal review of the Scheme would take place in 2014, with work to commence in January of that year. This remained her understanding until she left the Division in November 2013.

[67] It is significant that, in February 2014, when John Mills was in post, the DETI Minister responded, as follows, to a Question for Written Answer (“AQW”) from Daithí McKay MLA, which concerned the percentage of energy generated from renewable resources:

*“In the twelve month period to end January 2014, approximately 18% of electricity consumption was from renewable resources. The Programme for Government target is 20%. It is estimated that we are on track to achieve the Programme for Government target of 4% renewable heat by 2015. However, to verify progress, DETI will carry out analysis as part of a future review of the Renewable Heat Incentive.”* **INQ-15203 (emphasis added)**

[68] This AQW response was worked up by Departmental officials at the time and emphatically refers to a review of the Scheme. Procedure required that John Mills, as Director of Energy Division, would have had to sign off on this response. It is therefore clear that the issue of Scheme review should have been and, in fact, was ‘on his radar’ in February 2014.

Scrutiny Processes

[69] The NI Scheme, once designed, was subject to challenge and scrutiny at several stages:

- a) The internal economist approved the Scheme on 1st March 2012 **WIT-08397**;
- b) The Deputy Secretary approved the Scheme on 2nd March 2012 **WIT-08398**;
- c) The DETI Casework Committee approved the Scheme on 9 March 2012 **WIT-08687**
- d) DFP approved the Scheme on 27th April 2012 **WIT- 08400**;
- e) The Minister approved the Scheme on 13th April 2012 **WIT-08849**;

- f) The Scheme also secured State Aid approval from the European Commission;
- g) The Enterprise, Trade and Investment (“ETI”) Committee appraised, and ultimately supported the Scheme; and,
- h) The Scheme was approved, following debate, by the Northern Ireland Assembly, on 22nd October 2012.

[70] All of the required material was prepared and submitted in good time, all requests for supplementary information were complied with and the relevant approvals were obtained at *each* of these stages. It is clear that *none* of these processes, which seemed robust at the time and which are designed to exercise a challenge and scrutiny function, achieved the protection and assurance that they were so designed and intended to.

#### Communication & ‘Handovers’

[71] Prior to leaving post as Director of Energy Division, and of her own volition, FH prepared a comprehensive briefing folder for her successor, John Mills. She further arranged a meeting with John Mills, wherein they went through the content of the briefing folder face-to-face. In addition, all papers, submissions, approvals, etc., were appropriately filed and were readily available to her successor via the TRIM system, which is the established formal method for storage of, and access to, documents in the NICS.

[72] Michael Woods, Head of Internal Audit, stated in evidence that,

*“My recollection at the time was that, once people started to look for things on TRIM, they weren’t that difficult to find... once you know the TRIM reference, they’re relatively easy to find.” TRA-16083*

[73] John Mills was aware that Peter Hutchinson was preparing handover documentation for his successor, **TRA-05159**. As the Inquiry will be aware, this handover documentation contained TRIM references for identified ‘key documents’ pertaining to the Scheme and, as such, these key documents were readily available to those succeeding not only FH, but also those succeeding the rest of Team 1.

[74] In respect of her handover to John Mills, FH states that,

*“My successor would not be arriving in post until early January 2014 so had time to consider the folder ahead of arrival and ask any further questions/seek clarification. All of the key staff remained in post and were available for the very detailed face to face engagements which occur when a new Head of Division arrives. I had asked that each Head of Branch make themselves available, with their teams, to take my successor through the detail of the work when he arrived.” WIT-15084*

[75] Further, FH indicates that she,

*“ offered to attend further meetings (on any single issue or on the generality of energy matters) if that would be helpful, at any time, before or after his January arrival. No further meeting was requested. I also indicated I would be available on the telephone at any time in the future. I did receive a telephone call at a later date which related to a personnel matter.” WIT-15084 (emphasis added)*

[76] FH was not approached with any further queries related to the Scheme. This was clearly a wasted opportunity on the part of her successor. It is submitted that, in the absence of any NICS-

prescribed handover process, FH did all that could reasonably be expected to ensure her successor was appropriately briefed on the RHI and all other aspects of the extensive energy portfolio. John Mills was an experienced Grade 5 and it was incumbent on him, upon taking up a new post, to ensure that he was sufficiently across the detail of his new role by reviewing all relevant documentation and speaking to his team immediately. It is certainly not unreasonable to expect that any experienced senior civil servant entering a new role would adopt this approach.

## Emerging Themes

### *Devolution Project, NICS & Resources*

[77] The Northern Ireland Civil Service, “NICS”, has traditionally been modelled on the Whitehall approach to governance.

[78] In 2010/11 devolution, in terms of the St Andrew’s Agreement, was in its infancy in Northern Ireland, having only resumed in 2007. This is a factor relevant both to the ability and experience of politicians running government departments and their interface with civil servants. There is no evidence that there was any consideration given to the viability of maintaining a Whitehall-style civil service, in circumstances where there was pressure for Northern Ireland to not merely follow policy formulated in Whitehall, but to design and develop *bespoke* Northern Ireland policies.

[79] Much attention has been focused on the stark dichotomy between the seventy-seven civil servants dealing with RHI policy within the Department of Energy and Climate Change, “DECC”, compared with the one full time and one part time civil servant in Northern Ireland working on the scheme in FH’s time. Additionally, in Whitehall there is an entire Department devoted to Energy (albeit it also is responsible for nuclear energy issues). Energy was but one of the Divisions within DETI. These observations are important in setting the context against which the actions of those within Energy Division should be considered.

[80] The Inquiry is asked to consider whether the NICS was in fact equipped with sufficient resources and experience to undertake the devolution project as it existed. Timothy Johnston recognised this issue in his evidence suggesting,

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

[81] David Thomson suggested to the Panel that,

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

[82] David Sterling suggested in evidence that,

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

*I think, by and large, given the difficulties we face, we do tend to develop good policy in Northern Ireland, we develop a lot of policy which is attuned to the particular circumstances of this place and that that policy has worked well, but I think this scheme now — I think I said before — was really just a project too far for us.”* **TRA-06730**

- [83] Reflecting on the resources available to Energy Division it is clear that there was a significant lack of resources. This was obvious to the Permanent Secretary, David Sterling, who acknowledged that DETI had 13 of the 82 PfG targets with a net resource of just over £200 million out of a total budget for the Executive resource DEL budget of around £10 billion. The Permanent Secretary noted that DETI staff were being,

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

- [84] The Department for Economy recognise that,

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

- [85] The Minister recognised the resources issue during FH’s time, at **WIT-20585**, being aware that “Energy Division was a small team with limited resources”. Such was her concern that she flagged this issue up with the Permanent Secretary and the Head of the Civil Service (“HOCS”). She believed that Energy Division was,

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

*“I do think that the officials worked long hours, probably longer hours than some of their colleagues in other parts of the Civil Service...You just can’t expect officials to keep working long hours all the time or there will be a consequence to that.”* **TRA-08523 (emphasis added)**

- [86] Against a background of corporate acceptance of the devolution project and the limited resource, the Permanent Secretary, David Sterling, considered the response of the civil servants was to reflect a,

*“‘can do’ attitude and a willingness to take on new tasks and challenges”* **WIT-04024.**

- [87] Recognising that there were insufficient resources in the Division, FH consistently made the case for, and successfully obtained, additional staff for Energy Division. Indeed, this translated into a 30% increase in resource in Energy Division at a time of a 5% overall reduction in staff across DETI. Notwithstanding that FH was successful in making the case for additional resources, it is also the case that the workload in the energy portfolio continuously increased during the period, with new Whitehall, European and all-island issues having to be dealt with within the single, small division.

- [88] FH was industriously and conscientiously working long hours, “*evenings and weekends*”, **TRA-05646**. Such was the sustained pressure within Energy Division, that David Thompson

considered it “*could always use more resources*” **TRA-05660**. There was clearly a constant pressure on resource. David Sterling recognised that he would have been conscious that Energy Division was under pressure and that the Resources Group worked hard to find ways to identify and obtain additional resources in response to requests from the team, **TRA-06072**. However, this pressure on resources was present across the board in the NICS at the time.

[89] David Sterling encapsulated this point in evidence, stating that,

*“Since 2014, the overall size of the Northern Ireland Civil Service has reduced by 18%. We haven’t been able to stop doing anything of great significance; we are still being required to deliver to the same degree as a Civil Service. We’re not alone or unique in that regard, but we do face particular challenges here, and I cannot, today, give a guarantee that we are going to be able to meet all our obligations and expectations, given the resource pressures and new demands that we currently face.”* **TRA-07016**

[90] It is a reflection of the work-rate and diligence of those working within Energy Division that Chris Stewart appreciated that the extent of work required of the Grade 5 post was not sustainable for a single person, **TRA-11534**. Consequently, in May 2016, the post previously held by FH was restructured, with the workload now being split between a Grade 3, 2 Grade 5s and a new Grade 6 role, **TRA-11533**.

[91] The evidence of FH is illuminative of the ‘just get on with it’ attitude that prevailed within the Civil Service, where, she in particular, was working late at nights and over weekends and, given the lack of resources, did not want to be a bottleneck for the significant volume of work which was required to be done, **TRA-05342**. She suggests that the issue of lack of resources was brought to the Permanent Secretary and, whilst some additional resources were made available,

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

[92] With hindsight, it is clear that there were insufficient resources and that FH had identified this to her senior managers. Additionally, both the Minister and HOCS were also aware of this. It is submitted that the fact this was not fully addressed by top management at the time is a reflection of the significant financial and resource pressure the Northern Ireland Civil Service was experiencing in general, the perception amongst civil servants that they had to get on with it, and the clear desire within the political classes, that the full devolution project must be progressed and, crucially, that the NICS had to be seen to be making it work. Importantly, whilst the chronic lack of resources and weight of the Department’s workload was acknowledged by those occupying the upper echelons, this was not reflected in any efforts by them to scale back political ambition or the scope of the work to be done.

### **Reliance on experts**

[93] The absence of sufficient resource was not just financial but also in terms of ‘in house’ expertise. This was explicitly recognised within Energy Division who were required to outsource to obtain this technical expertise.

[94] FH, and DETI, were entitled to rely upon the experts engaged, namely, CEPA, OFGEM and Arthur Cox, to provide a proper service, including identifying all of the relevant issues and informing the Department of same. It is now clear that this reliance was largely misplaced.

[95] In respect of CEPA it is clear that it failed in its duty to the Department and that reliance upon their expertise, was misplaced: -

- a. CEPA, in its first report, identified and considered the requirement for tiering for the NI RHI rates using the DECC approach but opined that it was not required in respect of biomass.
- b. Following public consultation CEPA were asked to “reconsider their assumptions in light of the new evidence presented” and to “consider the resulting implications for tariffs and overall costs”. It appears from the evidence available to the Inquiry that CEPA’s model had, in fact, disclosed the need for tiering of the small scale biomass tariff (see also para 20 above), **TRA-01350**. Notwithstanding, CEPA appear not to have realised this and/or failed to communicate that necessity to DETI.
- c. CEPA did not fully or clearly set out or communicate to DETI the risks associated with their key assumptions, for example the assumption of a 17% load factor in the absence of tiering.
- d. CEPA do not appear to have properly understood their role as independent experts, requested to and required to provide an independent report. DETI were relying on their expertise. For instance, had they suggested the inclusion of tiering for any of the tariffs, it is inconceivable that this would not have been adopted. CEPA were clearly alive to the risk of overcompensation at all relevant times and were aware of the fixed overall (and annual) budget. **TRA-01253**
- e. In the specific context of the 2012 addendum, the work CEPA ultimately provided to DETI was, clearly, sub-par. For instance, Mark Cockburn conceded that the tariff calculations contained in the addendum were incorrect, **WIT-107781**. Indeed, quite apart from the tariff calculation, the 2012 addendum report was littered with other mistakes and inconsistencies, (**WIT-107775; WIT-107779-80**). This is perhaps explained, in part, during Mark Cockburn’s oral evidence to the Inquiry, wherein he conceded that CEPA were strictly limiting everything they did because they felt they were not being paid enough, **TRA-01260**. Indeed, it is interesting to note that even CEPA’s November 2017 report prepared for the specific purpose of this Inquiry, was not immune to error. **TRA-16384**

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

- a. OFGEM had considerably more experience of RHI-type schemes, given its role in administering the DECC scheme; it was entirely reasonable that DETI would rely upon and take comfort from OFGEM’s engagement in the NI RHI scheme. OFGEM were aware that DETI were placing reliance on this, see **OFG-01734** and encouraged it, see **OFG-162032**.
- b. OFGEM envisaged a role for itself in the oversight and development of the NI RHI Scheme, inter alia, in the suggestion within the feasibility study that there be a joint administration board. Despite OFGEM having authored the feasibility study and inserted this suggestion, it later considered and expressly decided not to proceed with the creation of this administration board.
- c. Rather than fully utilise the experience, knowledge and resources available to OFGEM, it became entangled in bureaucratic arrangements and failed to impart its learning from administering the DECC scheme, or sufficient information (names

and addresses where there were multiple boilers) to allow DETI to identify timeously matters which might have led to the identification of gaming earlier. Whilst it would be possible to outline a catalogue of instances in which OFGEM failed to pass information to DETI, one particularly troubling example can be seen in February 2014, when the NI Scheme was still in its infancy (72 accreditations). At this time, OFGEM's Jacqueline Balian sent an email communicating the following industry feedback:

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

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

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

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

- e. OFGEM did not clearly alert DETI in the initial stages of the RHI that they would be treating hydraulically separate heating systems within the same building as separate, or of the potential implications of this decision in respect of gaming opportunities, **TRA-09011**.
- f. OFGEM failed to provide evidence from which DETI officials might have identified the potential for gaming of the scheme earlier. The information within the email of Alastair Nicol to Edmund Ward dated 15<sup>th</sup> August 2013 which provided three case studies in respect of boilers not hydraulically linked, see **OFG-164265**, was not imparted to DETI. Further, the November 2013 Ricardo-AEA presentation information was not imparted. This is despite it being clear to OFGEM employees that DETI regarded them as the experts in the interpretation of the Regulations, regularly referring queries to them for advice and assistance. The OFGEM response to DETI appeared to be reactive rather than proactive.
- g. It is submitted that the OFGEM suggestion in June 2012 that DETI had the option to stall implementation of the scheme pending the DECC changes to the GB scheme was not put with the clear preference for waiting which is now asserted.

David Sterling considers that if OFGEM felt as strongly about their June 2012 warning as alleged, then they ought to have,

*“picked up the phone to, you know, top management in the relevant organisation and said, “I just think you should know about this.”*

**TRA-06708**

- [97] It is respectfully submitted that the acts and omissions of the experts upon whom the Department relied for advice cannot be entirely divorced from the limited nature of the resources available within the Department to apply to renewable heat in terms of detailed review of the expert advice and internal ‘expert’ consideration of that advice. It is not to be taken from this that there was no such scrutiny of expert input, however it stands to reason that further and more adequate resources would have strengthened this process.
- [98] Of course FH, and those in Energy Division, were relying on Departmental scrutiny to assist. This scrutiny included the internal economists, the casework committee and the Department of Finance. It is of great regret that this scrutiny did not identify and address deficiencies in the Scheme. However, to the extent that these might be identified as individualised errors, it is implicit in the nature of such failings that they are perhaps to be more fairly construed as fundamental corporate, systemic, problems.

### ***Project Management***

- [99] Whilst it is perhaps easy with the benefit of hindsight to see that formal project management could have played a potentially important role in the subsequent management of the RHI scheme, a number of factors appear to have led to this not being in place
- a. Firstly, this was a policy project rather than a capital project. Whilst the guidance is not prescriptive, a significant thrust of the examples within the NIGEAE was in respect of procurement, construction or capital projects.
  - b. The absence of project management did not cause any contemporaneous concern within the NICS during the development or implementation of the RHI scheme. The processes in place to interrogate and ensure a robust project, namely peer scrutiny, the casework committee, ministerial scrutiny, other department scrutiny and even external engagement with OFGEM, did not identify this as a failure at the time.
  - c. Further, those who succeeded Team 1 failed to contemporaneously identify the absence of project management as an issue, notwithstanding any evidence the Inquiry may have heard with the benefit of hindsight. If the requirement for project management had been deemed necessary within the Departmental or NICS culture, it is inconceivable that those who reviewed the scheme in casework or finance, the Permanent Secretary and/or those who succeeded Team 1 would not have raised this as an immediate and significant issue.
  - d. Given that the absence of formal project management did not cause alarm bells to ring within the Department or greater NICS, it is submitted that this was a systemic issue. It is strongly suggestive that, corporately, the NICS was not as comfortable, or experienced in, applying project management techniques to policy development. Peter Hutchinson noted the different culture in respect of project management in 2010 suggesting,

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

- e. Up to late 2013, when FH left DETI, expenditure on, and uptake of, the RHI scheme was considered to be very low, **TRA-05688**. OFGEM in November 2013 considered that,

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

[100] It is against a background of a lack of resource that the absence of formal project management should be judged, rather than with the clarity of hindsight. At the time the Scheme commenced, there was no formal decision taken by the Department around formal project management arrangements. Indeed, corporately, the Department for the Economy has conceded that, *“With the benefit of hindsight, it is now very clear that the level of resources devoted to the RHI from 2011 to 2016 was inadequate...”* and recognised that formal project management methodology *“would have been difficult to administer given the limited staff resources committed to this project.”*, **WIT-03283**. Notwithstanding the dearth of resource available within the Division, efforts were made to implement the principles of project management, albeit out-with a formal framework. As David Thomson stressed in his evidence, PRINCE was not a one-size-fits-all methodology, it must be applied proportionately and must be adapted to the circumstances of a particular project, **TRA-05676**.

[101] It is respectfully submitted that consideration of the impact of formal project management is, at this juncture, entirely hypothetical and that, as such, it would be unfair to make speculative judgments with regards to the prospective efficacy of any such approach. When set against the context of a scrutiny process in which some eight other stages failed, it is impossible to suggest with any degree of certainty that, for example, an additional layer of management in the form of a project board would have made any material difference; it may well have been the case that reapproval was missed in any event. Indeed, this is particularly so when one considers that those who would have constituted the project board following Team 1’s departure appear not to have read the documentation which was left for them, nor to have taken any steps towards implementing the project management they now purport to recognise as having been essential.

[102] Dealing with the period up to late 2013, when FH left, the Inquiry is aware of the very small number of staff working on the RHI, who were working long hours, evenings and weekends. Against this background it is respectfully suggested that it is only with the clarity of hindsight that criticism can be made of the consideration that it would not be proportionate to implement formal project management given the small team working on RHI, namely one full time Deputy Principal, one part time Grade 7 and a Grade 5 with an extensive portfolio of other issues. The Permanent Secretary confirmed that he did not see them as

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

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

*“I think the position we were in was that the principles of project management in terms of who are the key members of staff, what are the roles and responsibilities, you know, were there. We were reporting regularly to Fiona, you know, in terms of weekly or monthly meetings..... So, there were principles of it I think, but as you say, it was probably more of an informal PRINCE, you know, process ...*

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

- [104] FH kept her line manager, David Thomson, informed with regard to the management of the Scheme. David Thomson, in evidence, recalls that FH was meeting/engaging with OFGEM, and that he considered this was “*effectively a project board*”, **TRA-05684**.

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

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

- [106] More specifically in respect of the RHI he suggests there was little resource within Energy Division for project management,

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

- [107] The OFGEM administration board was discussed the DETI-OFGEM teleconference of 9<sup>th</sup> August 2012. Peter Hutchinson and Joanne McCutcheon were present on behalf of DETI. The minutes reflect that,

*“DETI pointed out that in the FS [OFGEM feasibility study] (para 6.4) it states that there will be Project Board meetings between OFGEM and DETI directors to drive progress on the project. PaH (Paul Heigl) to investigate what is planned for this project board and to report back to DETI.” WIT-104543*

- [108] As the Inquiry is aware, this administration board was not set up. Bob Hull’s statement is somewhat instructive in terms of why this did not occur. At **WIT-103733** he refers to the fact that there were alternative arrangements in place which allowed for frequent and flexible communication between DETI and OFGEM “*which would not have been possible through an infrequent formal board arrangement.*” He makes the important point that authority approval would have to be obtained from the Gas and Electric Markets Authority (“GEMA”) in respect of the setting up of the administration board and that, to his recollection, the matter was never taken to the GEMA board for consideration. **WIT-103732**

- [109] FH was effectively the SRO of the project and David Thomson was her line manager. David Thomson reflecting on any project management failings suggested that any failing was a

corporate failing, **TRA-05691**. Whilst a trite point might be made that corporations are made up of people, the absence of any contemporaneous identification of the necessity for project management in the RHI scheme by anyone within the peer review process, or anyone who succeeded those initially in post in Energy Division, must ultimately render the failing a corporate, rather than an individual one. The absence of formal project management was not hidden from others within the Department.

### *Cost controls*

- [110] In relation to the decision in June 2012 to proceed with the Northern Ireland scheme and not to wait for cost controls, FH's evidence is that this was discussed with Minister Foster **TRA-01868 et seq.** It was at this meeting that the Minister made the decision that DETI should follow the DECC approach and launch the Scheme, bringing in cost controls in the next phase.
- [111] The need for cost controls was clearly identified to the Minister in 2012. Furthermore, Minister Barker had written to Minister Foster to update her with regard to DECC's interim cost control measures. The phase 2 consultation identified three areas of work being moved forward, (i) a domestic RHI, (ii) cost controls and (iii) changes to the non-domestic RHI.
- [112] FH, during her handover to John Mills, recalls highlighting the consultation that was finishing and mentioning cost control, **TRA-01795**. John Mills does not dispute FH's account that this was one of the three elements of the consultation, **TRA-07087**. He accepts that there was no reason that it would not have affected both the domestic and non-domestic schemes, **TRA-07093**. It is, thus, reasonable to expect that, following handover from FH, John Mills was aware of the necessity for cost controls.
- [113] The evidence of John Mills to PWC is illuminating. He was asked whether cost control was consciously deferred and replied,

*"It was consciously deferred, that is, or rather all the other elements of phase 2, as it was called were consciously deferred to get the domestic scheme in." PWC-04570;*  
*see also paragraphs 11.9 to 11.11 of FH's third statement, dated 20<sup>th</sup> November 2018.*

- [114] The impact of this alleged conscious decision should not be under-estimated. Had the cost controls consulted upon in 2013 been implemented, then it is likely that, at the very least, the suspension mechanism, if not also degression, would have been in place as a defence to deal with any 'spike' of applications, thereby significantly dampening the impact of same.

### *Review*

- [115] At different stages in the course of the Inquiry the need to review the scheme may have been confused with the Phase 2 consultation in respect of further non-domestic technologies, cost controls and the domestic scheme. These were entirely separate issues. Similar to the issue of cost controls, FH was conscious of the need for review of the scheme which had been indicated to the casework committee and had been made a condition of DFP approval (the DFP approval letter having been placed on TRIM).
- [116] David Thomson recalls this being a live and ongoing issue at the end of 2013;

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

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

[118] FH is clear that, in her handover to John Mills, she covered the need for review, **TRA-01795**. Indeed, David Thomson does not find it conceivable that he would not have raised the issue of review with John Mills given it was discussed as a ‘key point’ between him and FH, **TRA-06028**.

[119] It appears clear that John Mills was provided with information and ought to have been aware of the need to review and when it was due to commence. This is particularly so in the context of a Division wherein, in his own words, reviews were a key function;

*“Energy Division has had a lot of reviews and reviews were a constant point... .. you’re in a world where everything is nearly subject to review.” TRA-07142*

[120] In his statement of 14<sup>th</sup> November 2018, at paragraph 71, John Mills characterises the requirement for reviews and monitoring as *“nothing more than good intentions.”* This interpretation, certainly, could not have been derived from anything FH said to Mr Mills or, significantly, from a reading of any of the key documents underpinning the Scheme. The need for Scheme review was contained in the Business Case, the DFP approval and the State Aid approval; it was plainly a requirement. All of the key documents pertaining to the Scheme were filed on TRIM. It is inconceivable that anyone, having read these documents, would not be aware of the necessity for review.

### ***Handover process***

[121] There was no formal guidance in respect of handovers in the NICS at the relevant time. It is respectfully submitted that, in the absence of any formal handover protocol, new incumbents bear a significant responsibility to proactively engage with their new area of responsibility and to familiarise themselves with all relevant documentation and issues.

[122] In oral evidence FH recalled that the handover from her predecessor, Jenny Pyper, consisted of,

*“... maybe a couple of hours across 2 afternoons.” TRA-01767*

[123] On arrival into the post, FH requested that a portfolio of documentation be provided to her, by way of ‘first day brief’. This documentation was prepared by Paul Dolaghan of Coordination Branch and, notably, only at FH’s request.

[124] In evidence, FH described her handover to her successor, John Mills;

*“I had a handover – a half-day handover session with my successor and I pulled together what I describe as a ‘first day brief’, quite like what you would do for ... a Minister. I thought that would be an appropriate way to gather all of the information together for him, and I talked him through the key issues.” TRA-01794.*

[125] Chris Stewart confirmed the absence of a formal handover process was standard practice across the NICS, *“There was no systematic approach to that, so it was ad hoc” TRA-11507*. Mr

Stewart referred to Peter Hutchinson's handover note and suggested that whilst there might be many examples of written handover notes,

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

- [126] This absence of a NICS-prescribed handover system, particularly in circumstances where civil servants come from a generalist background is, in hindsight, inappropriate and something the Inquiry might consider making recommendations upon. Indeed, in an organisation with what appears to be a significant level of staff turnover, it is particularly undesirable.

### ***Other issues***

#### ***Knowledge Transfer & TRIM***

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

- [128] Whilst there has been some discussion around the difficulties with or limitations of the TRIM system, it must be recognised that this document management system was not antiquated. It had been brought in between 2005 and 2010, **TRA-05637**, as part of a major Civil Service reform programme and all staff were properly trained in its use, **TRA-11512**. TRIM was the official archive for all documents and civil servants were expected to use it to access the information they required to fulfil their roles. Indeed, in his evidence to the Inquiry, Michael Woods, Head of Internal Audit, stated:

*"My recollection at the time was that, once people started to look for things on TRIM, they weren't that difficult to find, I think there is, obviously a fundamental difficulty with finding things on TRIM, but, once you know the TRIM reference, they're relatively easy to find." TRA-16083.*

- [129] It is now clear that those who succeeded Joanne McCutcheon and Peter Hutchinson had complete copies of Peter Hutchinson's handover note, albeit at no stage was a copy volunteered to more senior management until Alison Clydesdale was alerted to its existence by FH just before the PAC hearing in September 2016. Albeit there was no formal handover guidance, the fact that such a document had been constructed, contained text such as "immediate actions", **DFE-05399**, "emerging issues" **DFE-05404** and lists of useful reading with the TRIM document numbers, must have clearly conveyed the nature and importance of the document. Whilst an important document, it is not particularly long, running to 14 pages. It not only identified relevant issues but classified some as 'urgent' and suggested solutions. The Peter Hutchinson handover note should have been immediately recognised as a key document. It is submitted that it is hard to understand why that document would not have been read in its entirety by the recipients.

#### ***Accounting Officer's Responsibilities***

- [130] Managing Public Money Northern Ireland ("MPMNI") sets out the responsibilities of Accounting Officers. Per Section 3.3.3, there are several areas, in particular, where the Assembly expects Accounting Officers to take personal responsibility, **WIT-10576**.

- [131] In respect of the RHI Scheme, the Permanent Secretary at the time, David Sterling, was aware that the scheme was novel, however, in evidence he stated that,

*“whilst I would’ve recognised it was something novel, it wasn’t so novel that I thought, ‘I need to get personally involved in this.’”, TRA-06062.*

- [132] He was also fully cognisant of a pervasive organisational culture, wherein minutes of meetings were routinely not taken:

*“Yes, and, indeed, that would’ve been fairly common across all Departments ... I think it reflects, in some respects, just the challenges facing the Senior Civil Service working in this particular devolved administration.”, TRA- 06113.*

- [133] The Permanent Secretary further indicates that he took comfort from the engagement of external consultants, a departmental economist, the internal casework process, OFGEM’s involvement, DFP’s approval of the scheme and the risk assurance process within the Department, **TRA-06106 – TRA- 06108.**

- [134] In evidence, David Sterling conceded that,

*“in each of those areas ... I can now look back and say, “Well, yeah, there was a weakness there” ... various warning signals ... had occurred in different areas, I think that we should have drawn a link between those ... It didn’t happen.”, TRA-06109.*

- [135] It is submitted that robust systems and processes would have served to ensure that such links were, in fact, drawn. The systemic and operational failure of every level of the scrutiny process demonstrates a fundamental unfitness for purpose. FH, and the civil servants for whom she was responsible, had no choice but to work within the parameters of the systems and processes that were in place at the time and, significantly, with the resource available to them at that time. If it is to be accepted that the Permanent Secretary was entitled to rely on the aforementioned scrutiny processes for comfort, it is submitted that those at each grade below were similarly, if not to a greater extent, entitled to rely on same.

- [136] Whilst it cannot be expected that a Permanent Secretary will be across the minute detail of *every* project within their Department, it is clear that the *laissez-faire* approach taken towards management and leadership at the relevant time is fundamentally at odds with the Accounting Officer’s duty and personal responsibility to undertake their role diligently and proactively. This is particularly so in the case of a Scheme which was novel, demand-led and, additionally, was being developed against a backdrop of plainly insufficient resources.

### Political Considerations

- [137] Aside from NICS, it is quite clear from the evidence before the Inquiry that, from a political perspective, the system was not operating effectively. At *best*, it may be said that the relevant Ministers and their Special Advisers, like the civil servants who served them, were also over-committed on issues. At *worst*, it may be thought that they inaugurated a regime wherein ‘no’ was unacceptable and delivery was compulsory, irrespective of the resource available or the work-rate required.

- [138] The existence of a tangible ‘realpolitik’ whereby the aim was to increase the amount of money coming into Northern Ireland, irrespective of value for money, has been established in the course of the Inquiry.

- [139] Arlene Foster gave evidence to the effect that;

*“There was always – in any funding like that, the last thing a Northern Ireland Executive wants to do or DFP wants to do is to hand money back to the Treasury. So there would’ve been a pressure on us to how we are going to spend this money and, given that it started nearly immediately, the pressure would’ve been on to find a scheme to spend that money.” TRA-07726 (emphasis added)*

*“...if money is coming into Northern Ireland for a particular reason ... then we have to make sure that we find a way of spending it.” TRA-07727 (emphasis added)*

[140] This was echoed by David Sterling who stated that,

*“If I can put it this way, I’m not sure we were being incentivised necessarily to go for the cheapest scheme, the way in which the funding stream was being offered up.” TRA-06172*

*“... if there’s an opportunity to draw down money which will give an economic benefit in Northern Ireland, you know, there’s – the realpolitik here is we draw down the ... maximum amount we can...” TRA-06173 (emphasis added)*

[141] Quite apart from the obvious tension between such an approach and the Accounting Officer’s duty to safeguard public funds and ensure value for money, the detrimental implications of this so-called realpolitik are fully revealed when coupled with a misunderstanding of how the Scheme was funded. This is encapsulated in an email from Minister Foster’s Special Adviser, Andrew Crawford to fellow DUP Special Adviser, Timothy Cairns, wherein Andrew Crawford begins by indicating he is,

*“a little confused” about “what the problem is ... The scheme is being funded from ami [sic] and ... if we go over our 4% target all that will happen is that we will get more than our fair share of the UK pot. I would have thought that this is to Nis [sic] advantage bearing in mind we are likely to opt out of the cfd scheme in a couple of years and may not be able to incentivise renewable generation after this date.” IND-29585*

## Conclusion

[142] FH, like those who worked for her, were generalist civil servants. Despite the Department in which they worked being recognised as involving work of the most complex and challenging order, DETI had only a 2% share of the Executive budget, with which they were expected to deliver some 16% of the Executive’s PfG targets, TRA-06064. Notwithstanding the cumulative effect of these circumstances, coupled with the perpetual, looming shadow of resource deficiency, they were under pressure to spend the money which had been made available for a NI scheme (lest they should be required to return it to HMT) and, further, were under pressure to spend it quickly. An appreciation of this context is key to a fair and realistic insight into the role of DETI officials at the inception of the NI Scheme.

[143] Whilst any administrative process subject to normal human frailties may be open to criticism, it would be unfair to apply a *counsel of perfection*, with the benefit of hindsight to retrospectively identify complex and difficult issues as ‘obvious’. An example of where an issue might only be identified armed with the knowledge of CEPA mistakes and with the full information at hand might be found within the latest witness statement of Mr Shane Murphy, WIT-19640. Expanding on an issue he raised in his oral evidence, Mr Murphy contrasts a further issue he has identified with the fact that many people have used the benefit of information and hindsight gained from the work of NIAO to conclude the CEPA biomass error

was “obvious”. This illustrates the difficulty in setting aside what is now known to have occurred, and the danger in looking back with a focus on two already identified tables in a report seven years ago.

- [144] At this remove, it is clear that any issues with the Scheme were certainly not ‘obvious’ to officials. They, including FH had absolutely nothing to gain from *turning a blind eye*. Indeed, those who *were* aware of issues decided to say nothing. Aside from those in the industry, such as Action Renewables and the Ulster Farmer’s Union, who had appreciable commercial interests in the Scheme, a number of government Departments and Non-Departmental Public Bodies (namely, Invest NI) had either direct knowledge of, or sufficient knowledge to deduce, potential issues with the Scheme. Notwithstanding their knowledge, **none** of these entities imparted relevant information to DETI.
- [145] What is clear with hindsight, is that too much was being asked of this Department, Division and Branch, against a background of a *severe* restriction on resources and a lack of technical experience. It is submitted that this factor should weigh heavily in the balance, and tend towards a conclusion that in respect of FH and her team, individual acts or omissions were not as a result of a want of care but, rather, were caused or permitted by the systemic failures within the system.
- [146] It was against a background of a lack of resources and a political desire to drive the devolution project while replicating the Whitehall Civil Service in miniature in Northern Ireland - to include the design of bespoke energy policy - that FH, like the civil servants for whom she was responsible, undertook her task conscientiously, with the ethos of service and sense of public duty, that was common within the Northern Ireland Civil Service. Self-evidently, it was not in the interests of FH, or of anyone else in Team 1, to have ‘missed’ issues with the Scheme or, in the alternative, to have facilitated their continuance. Certainly, it cannot be said that members of Team 1 have derived any benefit or personal gain from the Scheme or the subsequently identified deficiencies in it.
- [147] It is a matter of profound personal and professional regret to FH that the shortcomings in the design of the RHI scheme were not identified and addressed at the outset, or at an earlier stage of its operation than actually transpired. It is submitted the matters highlighted in the foregoing illustrate the wider context in which FH and Team 1 had to operate, and that this should be of fundamental importance in the Inquiry’s consideration of how the *structural* difficulties with RHI arose in order that the necessary changes and reforms can be identified to the benefit of the future governance of Northern Ireland.

**Dated this 29th day of November 2018**

**Peter Coll QC**  
**Andrew McGuinness BL**  
**Leah Treanor BL**  
**Nick Compton BL**