RENEWABLE HEAT INCENTIVE INQUIRY

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By email to: mary.o'neill@finance-ni.gov.uk

8 November 2018

Dear Madam

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 that you are already very familiar with the work of the Inquiry and its Terms of Reference from your previous involvement with the Inquiry.

The Inquiry is grateful for the detailed evidence, both oral and written, already provided by you. That evidence has, along with evidence from other persons and organisations, been considered by the Inquiry and there are a number of further

matters arising therefrom in respect of which the Inquiry wishes to ask you questions. The Inquiry also wishes to afford you a further opportunity, at this stage, to address any issues arising from the evidence of other witnesses provided since 23 February 2018 (the last day of your oral evidence to the Inquiry) which you consider it necessary to address. This opportunity is provided notwithstanding that, in common with other witnesses and participants, the facility to provide a supplementary witness statement has been open to you at all material times; but is also provided on the understanding that it will be taken up where your further input requires an evidential response, rather than something which can be addressed in the forthcoming submissions to be made on your behalf.

In the circumstances, please 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. As the text of the Section 21 Notice explains, you are required by law to comply with it.

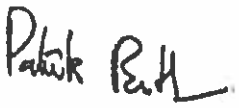
I remind you again of the restriction orders made by the Chairman of the RHI Inquiry, which affect how you may deal with this correspondence and its enclosures (which are also provided to you under a duty of confidentiality to the RHI Inquiry). You may, of course, share the correspondence and the enclosed 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.

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

Yours faithfully



Patrick Butler
Solicitor to the RHI Inquiry
0289040892

SCHEDULE

[No 205 of 2018]

Communications with CEPA

1. The questions below arise out of your oral evidence on 7 and 19 December 2017 and relate to certain differences between CEPA's draft final report of 31 May 2011 and CEPA's final report of 28 June 2011, the timing of the CEPA model runs or other work which were the source of those differences, and the communications (if any) with DETI officials about those differences prior to 28 June 2011. The most relevant parts of your oral evidence in this regard can be summarised as follows:

    a. *On 7 December 2017*:

        i. In the context of a written submission provided to Minister Foster on 8 June 2011 (on foot of the draft final CEPA report of 31 May 2011) and a subsequent briefing with the Minister on or about 14 June 2011, you suggested that the briefing was informed by contact that had taken place with CEPA after 31 May 2011 (but before the briefing on 14 June) as a result of which DETI officials became aware of the changes that were going to be made in the final CEPA report (see, in this particular regard, **TRA-01864** at lines 16 to 18);

        ii. You further suggested that the relevant contact with CEPA may have occurred prior to the finalisation of the written submission to the Minister on 8 June (see, in particular, **TRA-01865** at lines 21 to 23) and that you thought that the contact was between Peter Hutchinson of DETI and Iain Morrow of CEPA (**TRA-01866** at lines 12 to 15);

iii. You were unclear as to precisely the detail that was provided during the relevant contact with CEPA (see, in this particular regard, **TRA-01882** and **TRA-01883** from line 12 on the former to line 5 on the latter; see also **TRA-01894** to **TRA-01896**);

b. *On 19 December 2017*: When asked about Peter Hutchinson's evidence that, in terms, engagement with CEPA occurred on or after 15 June 2011[1], you maintained that DETI had received some form of communication or reassurance from CEPA prior to 8 June 2011 that the balance as between the RHI and Challenge Fund options was not going to change as between draft final report and final report (see, in this particular regard, **TRA-02224** and **TRA-02230 to TRA-02234**).

c. *On 22 February 2018*: You again said that, when you briefed the Minister on 14 June 2011 you "*had the more up-to-date information from the… CEPA final report*" (see **TRA-05181**).

It is clear that there are a number of significant differences between the 31 May 2011 draft final report and the 28 June 2011 final report including the following:

I. the projected level of renewable heat delivered by each of the challenge fund and NI RHI Alt (no solar thermal) in the funding 2 scenario rose from below 10% (**DFE-187760**, Table 3) to above 10% (**WIT-00600**, Table 1);

II. the lifetime subsidy spend for a challenge fund (funding 2 scenario) changed from £311 million (**DFE-187828**, Table 7.13) to £161 million (**WIT-00673**, Table 7.13);

III. the lifetime subsidy spend for a NI RHI Alt (no solar thermal) (funding 2 scenario) changed from £227 million (**DFE-187828**, Table 7.13) to £334 million (**WIT-00673**, Table 7.13);

[1] See TRA-01997 to TRA-01999.

IV. the lifetime cost of a challenge fund (funding 2 scenario) changed from £351 million (**DFE-187844**, Table 10.2) to £212 million (**WIT-00688**, Table 10.2);

V. the lifetime cost of a NI RHI Alt (no solar thermal) (funding 2 scenario) changed from £257 million (**DFE-187844**, Table 10.2) to £405 million (**WIT-00688**, Table 10.2);

VI. the net present value of a challenge fund (funding 2 scenario) changed from -£114 million (**DFE-187844**, Table 10.3) to -£24 million (**WIT-00688**, Table 10.3);

VII. the net present value of a NI RHI Alt (no solar thermal) (funding 2 scenario) changed from -£140 million (**DFE-187844**, Table 10.3) to -£242 million (**WIT-00688**, Table 10.3); and

VIII. the net present value of a challenge fund (funding 3 scenario) changed from a negative figure (-£23 million) to a positive figure (£50 million).

Against this backdrop, CEPA was asked to provide further written evidence as to the communications which occurred between it and DETI in respect of the final report and its contents between 31 May 2011 and 28 June 2011. That additional evidence is provided in Mr Cockburn's statement of 22 February 2018[2] at **WIT-108108 to WIT-108119** to the effect, *inter alia*, that CEPA is not aware of communicating anything to DETI on or before 14 June 2011 that the balance of the RHI and Challenge Fund options would not change or would not change significantly; and that CEPA considers it "*highly unlikely*" that it would have advised that the balance between options would not change without having first having taken steps (including the completion of model runs) that would not have been possible until after 20 June 2011 (see **WIT-108111/2**).

[2] It was indicated during the course of your oral evidence that you would be given an opportunity to respond to this statement in writing in due course: see TRA-05186 line 14â to TRA-05187 line 12; and TRA-05249 lines 7-9.

Arising out of this:

A. Please provide whatever response you wish to make to the evidence in Mr Cockburn's statement of 22 February 2018.

B. Without prejudice to the generality of the above, please clarify whether you still consider that DETI was provided with information in relation to the proposed, or likely, changes between the CEPA draft and final reports (i) on or before 8 June 2011; and/or (ii) on or before 14 June 2011, in each case giving as much detail as you can about what DETI was told and the date on which this was communicated.

C. Set out (giving reasons) whether you consider that Energy Division was in a position to give full and accurate advice to the Minister as to the respective merits of the options under consideration (i) in the written submission of 8 June 2011 and (ii) at the oral briefing on 14 June 2011 in light of the matters referred to above.

2. During your oral evidence on 7 December 2017 (**TRA-01919** line 25 to **TRA-01922** line 22) and during the oral evidence of Peter Hutchinson on 18 December 2017 (**TRA-02089** to **TRA-02091** inclusive) it was suggested that, following receipt of the CEPA addendum report of 16 February 2012, DETI reverted to CEPA to check that tiering was not required for any tariff (tiering having been raised in the said addendum report as appropriate for the domestic GSHP tariff in the absence of deeming – see **DFE-00579**, row 8, footnote 6, in this regard).

CEPA was asked to address this issue (namely, whether DETI did in fact revert to CEPA in respect of the addendum report at any time to check whether tiering

was required in respect of any tariff other than the domestic GSHP) in further written evidence, which can again be found in Mr Cockburn's statement of 22 February 2018, in particular at **WIT-108119**. Please set out anything else that you wish to say on this issue, given the apparent contradiction between your evidence and that of CEPA[3].

Peter Hutchinson's further statement

3. Peter Hutchinson gave a further written statement to the Inquiry, after the conclusion of his oral evidence, dated 30 August 2018 (**WIT-09303 to WIT-09345**). As to this, please set out whether there is anything material in his further evidence with which you take issue; or anything additional which is significant, and within your knowledge, which you wish to add to his further evidence (recognising that much of his further statement relates to the period *after* you had left Energy Division).

8 June 2011 submission

4. In your oral evidence on 7 December 2017 and 22 February 2018 you were asked a number of questions about a submission to the DETI Minister dated 8 June 2011 (see, for example, **TRA-01887 to TRA-01893** and **TRA-05181 to TRA-05185** in this regard) and about whether it was ambiguous (and, accordingly, potentially apt to mislead) insofar as it described the NI RHI option as the one offering "*the highest potential renewable heat output at the best value*" (**WIT-00744** at paragraph 24). In his oral evidence on this submission on 16 April 2018 at **TRA-07971 to TRA-07972**, Andrew Crawford suggested that officials may have been deliberately misleading the Minister (**TRA-07971** lines 5 and 6). Please set out anything else that you wish to say on this issue, in light of the evidence of Andrew Crawford.

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[3] You may also wish to consider the further evidence of Peter Hutchinson on this point, in his witness statement of 30 August 2018, at WIT-09304.

Oral evidence of Andrew Crawford and Arlene Foster

5. The DETI Minister and her Special Adviser with whom you dealt in your time as Director of Energy Division, Arlene Foster and Andrew Crawford, have given oral evidence in public to the Inquiry in relation to Phases 1 and 2 of the Inquiry's work since you completed your oral evidence on 23 February 2018. You, through your solicitor and/or counsel, have witnessed the said persons give their oral evidence and/or have had access to the relevant transcripts. To the extent that you consider that the evidence of either of those persons is incorrect in respect of any significant issue or is materially incomplete in respect of any significant issue and/or to the extent that the interests of fairness require it, you should take this opportunity to provide further written evidence, but only insofar as (a) the said evidence has not already been provided by you either orally or in writing and (b) 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.

Janette O'Hagan

It was indicated in the course of your oral evidence (see **TRA-05426**) that you had dealt with your interactions with Ms Janette O'Hagan in your written evidence but that the Inquiry would likely follow up on some further issues as to that in writing. As to that, please address the following matters.

6. It appears that Ms O'Hagan sent two emails on 26 August 2013, one to the DETI general email account (see **WIT-264844**, which you have indicated was the only one passed to officials by Private Office: see paragraph 372 of your first witness statement) and the other directly to the Minister (see **WIT-264845**, which was then forwarded on to the Minister' Private Office). Your recommendation to the Minister was that she not meet Ms O'Hagan (see DFE-

183302), although no reasons appear to be given for this recommendation. As to this:

a. Why did you not recommend that the Minister meet Ms O'Hagan?

b. Once you had heard what Ms O'Hagan had to say at the meeting with officials, did you re-evaluate the question of whether or not the Minister should meet her? If not, why not?

c. Do you believe your advice, or actions, would have been any different if you had seen the email Ms O'Hagan sent to the Minister on 3 September 2013 (see **WIT-264846**, containing the observation that "*in fact [the RHI scheme] pays [Ms O'Hagan's potential customers] to use as much [heat] as they can – in fact the incentive to use more is leading to misuse in some cases*")?

7. In the event, you did meet with Ms O'Hagan (along with Peter Hutchinson and Joanne McCutcheon) in October 2013. What Ms O'Hagan recalled about the meeting is recorded at **WIT-264856**, including that she indicated that "*there was no incentive at all to be efficient and it was more likely that the heating would be kept on in buildings all year round, with the windows open everywhere*" but that the DETI team indicated that they "*did not believe that this was the case*" as they did not think that people would do this. Ms O'Hagan has also given oral evidence about the conduct of, and discussion at, this meeting: see generally **TRA-04699 to TRA-04731**. As to this:

a. Did you or your team say there was an assumption that people would use the RHI Scheme after exhausting other energy efficiency strategies? If so, on what basis was this assumption made?

b. Ms O'Hagan also told the Inquiry she said that she was '*Surprised [scheme participants were] not mounting the radiators on the outside of the building!*' (see **TRA-04687** and **TRA-04704**). Do you recall a comment to this effect being made? If so, please explain, insofar as you

can, any enquiry which was made in relation to this and any response given to it.

c. Ms O'Hagan could not be sure but, on balance, appeared to think that the issue of a review of the Scheme had not been mentioned (see TRA-04715; and compare paragraph 363 of your first witness statement) as she would have gone away feeling that the issue would be looked at. Please provide any further evidence you can offer as to whether or not the issue of a proposed review of the Scheme was raised at the meeting.

8. Please give as full an explanation as possible as to why DETI not keep any minutes or formal written record of the meeting with Ms O'Hagan.

9. Ms O'Hagan appears to accept that, at the meeting, she was asked to provide evidence of the phenomena she was discussing, although she did not feel there was a place for this in the Phase 2 consultation; or that it would add anything. As to this:

a. Do you consider that more should have been done by DETI to investigate the concerns Ms O'Hagan was raising? If not, why not? If so, please detail what steps might have been taken?

b. Did the DETI team raise the issues Ms O'Hagan had discussed with Ofgem? (In this regard, you appear to have indicated in your interview with PWC, at **PWC-04538**, that you cannot recall there being a discussion with Ofgem). If the issue was not raised with Ofgem, please explain why not.

c. You also appear to have indicated in your PWC interview (see **PWC-04537/8**) that the information was 'logged or banked'. Please explain how this was done.

d. With reference to **DFE-342799**, in relation to where the email correspondence with Ms O'Hagan was stored on TRIM, please set out

whether you consider this correspondence was sufficiently accessible to other officials subsequently coming to deal with the issue.

DfE corporate statements

10. The Department for the Economy has provided a number of corporate statements which touch upon your involvement with the RHI Scheme and/or your evidence to the Inquiry. These include DfE Corporate Statement No 5 of 24 November 2017 (**WIT-03272 to WIT-03296**), provided in advance of the conclusion of your oral evidence, and DfE Corporate Statement No 10 of 25 May 2018 (**WIT-03526 to WIT-03531**). To the extent that you consider that the evidence of the Department is incorrect in respect of any significant issue or is materially incomplete in respect of any significant issue and/or to the extent that the interests of fairness require it, you should take this opportunity to provide further written evidence, but only insofar as (a) the said evidence has not already been provided by you either orally or in writing and (b) the further material you wish to provide constitutes evidence of fact as opposed to mere commentary on the evidence of the Department which would be more appropriate for submissions.

General

11. To the extent that you consider the evidence of any other witness or participant, not mentioned above, 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.

12. 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.

RENEWABLE HEAT INCENTIVE INQUIRY

INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 205 of 2018

DATE: 20th November 2018

Witness Statement of: Fiona Hepper

I, Fiona Hepper, will say as follows: -

Communications with CEPA

1. The questions below arise out of your oral evidence on 7 and 19 December 2017 and relate to certain differences between CEPA's draft final report of 31 May 2011 and CEPA's final report of 28 June 2011, the timing of the CEPA model runs or other work which were the source of those differences, and the communications (if any) with DETI officials about those differences prior to 28 June 2011. The most relevant parts of your oral evidence in this regard can be summarised as follows:

a. *On 7 December 2017*:

i. In the context of a written submission provided to Minister Foster on 8 June 2011 (on foot of the draft final CEPA report of 31 May 2011) and a subsequent briefing with the Minister on or about 14 June 2011, you suggested that the briefing was informed by contact that had taken place with CEPA after 31 May 2011 (but before the briefing on 14 June) as a result of which DETI officials became aware of the changes that were going to be made in the final CEPA report (see, in this particular regard, TRA-01864 at lines 16 to 18);

ii. You further suggested that the relevant contact with CEPA may have occurred prior to the finalisation of the written submission to the Minister on 8 June (see, in particular, TRA-01865 at lines 21 to 23) and that you thought that the contact was between Peter Hutchinson of DETI and Iain Morrow of CEPA (TRA-01866 at lines 12 to 15);

iii. You were unclear as to precisely the detail that was provided during the relevant contact with CEPA (see, in this particular regard, TRA-01882 and TRA-01883 from line 12 on the former to line 5 on the latter; see also TRA-01894 to TRA-01896);

b. *On 19 December 2017*: When asked about Peter Hutchinson's evidence that, in terms, engagement with CEPA occurred on or after 15 June 2011[1], you maintained that DETI had received some form of communication or reassurance from CEPA prior to 8 June 2011 that the balance as between the RHI and Challenge Fund options was not going to change as between draft final report and final report (see, in this particular regard, TRA-02224 and TRA-02230 to TRA-02234).

c. *On 22 February 2018*: You again said that, when you briefed the Minister on 14 June 2011 you "*had the more up-to-date information from the… CEPA final report*" (see TRA-05181).

It is clear that there are a number of significant differences between the 31 May 2011 draft final report and the 28 June 2011 final report including the following:

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II. the lifetime subsidy spend for a challenge fund (funding 2 scenario) changed from £311 million (DFE-187828, Table 7.13) to £161 million (WIT-00673, Table 7.13);

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[1] See TRA-01997 to TRA-01999.

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VIII. the net present value of a challenge fund (funding 3 scenario) changed from a negative figure (-£23 million) to a positive figure (£50 million).

Against this backdrop, CEPA was asked to provide further written evidence as to the communications which occurred between it and DETI in respect of the final report and its contents between 31 May 2011 and 28 June 2011. That additional evidence is provided in Mr Cockburn's statement of 22 February 2018[2] at WIT-108108 to WIT-108119 to the effect, *inter alia*, that CEPA is not aware of communicating anything to DETI on or before 14 June 2011 that the balance of the RHI and Challenge Fund options would not change or would not change significantly; and that CEPA considers it "*highly unlikely*" that it would have advised that the balance between options would not change without having first having taken steps (including the completion of model runs) that would not have been possible until after 20 June 2011 (see WIT-108111/2).

Arising out of this:

A. Please provide whatever response you wish to make to the evidence in Mr Cockburn's statement of 22 February 2018.

B. Without prejudice to the generality of the above, please clarify whether you still consider that DETI was provided with information in relation to the proposed, or likely, changes between the CEPA draft and final reports (i) on or before 8 June 2011; and/or (ii) on or before 14 June 2011, in each case giving as much detail as you can

[2] It was indicated during the course of your oral evidence that you would be given an opportunity to respond to this statement in writing in due course: see TRA-05186 line 14å to TRA-05187 line 12; and TRA-05249 lines 7-9.

about what DETI was told and the date on which this was communicated.

1.1 In relation to A and B above, having read the 22 February 2018 statement from Mr Cockburn, it is clear that there was a sustained level of communication between DETI and CEPA during late May-June 2011 in relation to finalising the appraisal. In this context, a communication between Peter Hutchinson (the main DETI contact) and CEPA, either as a standalone conversation or as part of a wider conversation in relation to the potential for significant changes to the final draft report, was highly likely and this would have included the passing of information to DETI that the relative balance of positioning of the Challenge Fund versus the RHI would not change. I note the comment in the question that CEPA considers it 'highly unlikely' that it would have advised of changes, but they do not definitively state that they did not. At WIT 108111 it is stated that '*CEPA is not aware of our communicating anything to DETI on or before 14 June 2011, that the balance between RHI and challenge fund would not change, or would not change significantly, as between the draft final report of 31 May 2011 and the final report*.' Again, this is not a definitive statement that a communication did not actually take place. My recollection remains as per the evidence already given. That is, that with each iteration of the work, figures were changing (both increasing and decreasing at various points). The Minister was briefed on the basis of the 31st May final draft report and, prior to the briefing meeting (on 14th June), contact had been made with CEPA and during this contact it was indicated that refinements were being made but that the overall relative standings of the two main options would not materially change. So, at the point that the Minister received the submission and the meeting took place, the economic appraisal was being finalised by CEPA. The Minister and the SpAd were made aware of this at the meeting, specifically that there may be some further changes, but that, on the advice of CEPA and at this late stage in the process, it was not anticipated that either the scale of change would be significant or the relevant 'balance' of positioning between the Challenge Fund and an RHI would alter.

1.2 A number of times throughout the statement, Mr Cockburn makes the comment that '*with the passage of time, we have no recollection of having specifically communicated the change [……..] to DETI ….*'. Given the sustained interaction that DETI had with CEPA, e-mails and telephone calls, and the passage of time, this is understandable. However, at this particular point in the process, the only engagements/discussions that would have been occurring would have been around the completion of the work and any final changes and refinements that needed to be made and the impact these would have on the overall value for money of the options. Given this context it would not be surprising if comment were made on the likely outcome of this work, in fact it would be more surprising if it had not been.

C. Set out (giving reasons) whether you consider that Energy Division was in a position to give full and accurate advice to the Minister as to the respective merits of the options under consideration (i) in the written submission of 8 June 2011 and (ii) at the oral briefing on 14 June 2011 in light of the matters referred to above.

1.3 The information provided was accurate in so far as the relative positioning between the Challenge Fund and the RHI did not change. I accept that what was presented was the final draft. However, during the meeting of 14th June 2011, both the Minister and the SpAD were specifically made aware that the report was still being finalised and there would likely be some changes and refinements to the figure work (see para 1.2 above). The final report was sent to the Minister (and SpAD) in early July 2011. I expected that, at the very least, the SpAD would have read the document and, if there were any issues arising, they would have been raised with either myself or the team. It would have been my experience that the SpAD did read submissions and reports and also that either the Minister read the material herself or received a comprehensive briefing from the SpAD. Nevertheless, it is difficult not to accept, with hindsight, that it would have been preferable, from my position now, to have more clearly highlighted the specific changes between the two reports which may have focused their attention more in reading the report.

1.4 On the basis of the information available, it remains my view that, via the written and oral briefings, the Minister received an overview of the position and the options available to her ahead of making a decision to consult on the way forward for incentivising a renewable heat market in NI. With hindsight, and in an ideal world, I would have waited for the final report to be presented. However, we were working, under a level of pressure and to a timeframe, to keep up the pace of the work and release a consultation as early in the summer as possible. Hence, the decision to proceed with briefing on the final draft and in the expectation that the information from CEPA would not change substantively.

1.5 The final figures, as I covered in my evidence, did not change the fact that the Challenge Fund was the cheaper of the options. Nor did they change the fact that any final decision made by the Minister would not be solely based on cost. In assessing the way forward there were wider policy considerations to be taken into account. Not least of these being the case made by DECC to HMT (and which I referred to in my oral evidence) that, in terms of renewable energy, capital grant schemes (which the Challenge Fund was an example of) had not served the UK well over recent years. Further, the emerging consensus was that the market required much longer-term signals and longer-term incentive based schemes rather than the stop-start nature of grants, to help it become established and that there was international evidence to support this.

1.6 It is also the case that the decision in 2011 was to consult on a particular option (i.e. a NI Renewable Heat Incentive). The final decision to proceed with a long term incentive (i.e. a NI RHI) was not made until 2012, after the consultation was competed and when the final business case was prepared, using the information contained in the final CEPA report, and scrutinised (including by casework committee, DFP and State Aid). I believe that the Minister did have all of the relevant information to make the decision to proceed to consultation, having received written and oral briefing on the proposal and also the final draft report and, subsequently, the final report. Both she and the SpAD had ample opportunity, both before, during and after the 14th June 2011 meeting, to ask any number of questions about the options being presented for a decision and

about the contents of the draft and final reports. If either the Minister or the SpAD had been concerned about the difference in the figures between the final draft and the final report, I would have expected them to have raised this.

1.7 I do not believe that an oral briefing on the basis of the final report would have changed the decision made. I base this conclusion on the discussions I had with the Minister and the SpAD at the time and the fact that, on receipt of the final report, as I note above, there was the opportunity to ask further questions, seek explanations or even change tack if they felt it appropriate. They did not do so.

1.8 Also, given the evidence that the Inquiry has heard regarding the mindset with respect to the funding, I do not believe that the decision would have changed. To support this assertion, I refer to the 26th October 2018 oral evidence of Dr McCormick (TRA 16672), in which he states that in a conversation with Dr Crawford about the funding of the scheme, Dr Crawford said:

'*I thought it was AME, and we could fill our boots*'

This certainly was not my view. Whether the funding was DEL or AME, I was conscious that it was public money and had to be treated as such. However, against this political mindset, a Challenge Fund would not have maximised the return to NI. However, a 20 year commitment to the market, reflecting how the GB market was being incentivised, would have been seen as the better alternative. It is unlikely that anyone holding this political view would have considered the change in costs between the final draft and the final report, spread over 20 years, as unacceptable.

1.9 I also note the evidence of Mr Sterling (13th March 2018, pages 123-128, TRA 06172 to TRA 06177) which is illuminative of the political mindset in respect of issues around both budget and value for money. In particular, Mr Sterling makes the following points:

TRA 06172 to TRA 06173 (pages 123-124): '…*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 extent we can – or, sorry, the maximum amount we can because we will get an economic impact from that'*.

Further he touches upon the clarity of the 8 June 2011 submission, that is, in relation to the updated cost estimates:

TRA 06175 (page 126); *Mr Scoffield QC : 'I think the picture that seems to be emerging from what you are saying, Mr Sterling, is that, even if that clarity had been provided and the Minister had been told on the face of the submission that the renewable heat incentive option would cost more than the challenge fund in the order of the figures that we've been talking about, your expectation is that the realpolitik may have been such that the Minister would've said 'Let's go with that option', in any event.*

Mr Sterling : '… That is my recollection at that time ..'

It is also of note that Mr Sterling, as Accounting Officer, stated (TRA 06176, page 127) that, when presented with two options, '*both of which offered the potential to deliver value for money, you're not obliged to choose the cheapest option on all occasions. There are other factors that need to be taken into account*..' This is a reflection of the point I make at para 1.5 above, that as well as cost/value for money, wider policy considerations would be factored into the final decision. Also, that this is not unique to RHI, but rather an issue relevant to Ministerial decision making per se.

2. During your oral evidence on 7 December 2017 (TRA-01919 line 25 to TRA-01922 line 22) and during the oral evidence of Peter Hutchinson on 18 December 2017 (TRA-02089 to TRA-02091 inclusive) it was suggested that, following receipt of the CEPA addendum report of 16 February 2012, DETI reverted to CEPA to check that tiering was not required for any tariff (tiering having been raised in the said addendum report as appropriate

for the domestic GSHP tariff in the absence of deeming – see DFE-00579, row 8, footnote 6, in this regard).

CEPA was asked to address this issue (namely, whether DETI did in fact revert to CEPA in respect of the addendum report at any time to check whether tiering was required in respect of any tariff other than the domestic GSHP) in further written evidence, which can again be found in Mr Cockburn's statement of 22 February 2018, in particular at WIT-108119. Please set out anything else that you wish to say on this issue, given the apparent contradiction between your evidence and that of CEPA[3].

2.1 In relation to the finalisation of the addendum report and specifically the issue of tiering, I have a clear recollection that on reading the addendum I noted that CEPA had recommended tiering for a specific tariff and I asked my team to confirm, with CEPA, that tiering was not required for the tariffs being proposed for any other technologies. My recollection in preparing my written statements, and as covered in my oral evidence, was that Peter Hutchinson reverted to CEPA (as per the ongoing engagement and detailed discussions that he would have had with CEPA throughout the time that they were engaged by DETI) for a further check on this and reported back to me.

2.2 As per the footnote to the question from the Inquiry, I have considered the further evidence of Peter Hutchinson (WIT 09304) and note that he concurs with my recollection and evidence; specifically, he states at para 1.1:

'*I maintain that, on conclusion of the CEPA Addendum Report (February 2012) that I would have engaged with CEPA (Iain Morrow) on a range of issues linked to the report to ask questions or seek clarifications. One of these issues was whether or not tiering was required for any other technology or band, other than the Ground Source Heat Pump tariff raised by CEPA.*'

[3] You may also wish to consider the further evidence of Peter Hutchinson on this point, in his witness statement of 30 August 2018, at WIT-09304.

RENEWABLE HEAT INCENTIVE INQUIRY

Peter Hutchinson's further statement

3. **Peter Hutchinson gave a further written statement to the Inquiry, after the conclusion of his oral evidence, dated 30 August 2018 (WIT-09303 to WIT-09345). As to this, please set out whether there is anything material in his further evidence with which you take issue; or anything additional which is significant, and within your knowledge, which you wish to add to his further evidence (recognising that much of his further statement relates to the period *after* you had left Energy Division).**

3.1 In relation to the elements of Mr Hutchinson's statement that relate to the period up to 28 November 2013 (when I left the Department), there is nothing material in this to which I take issue. Nor is there anything that I wish to add.

8 June 2011 submission

4. **In your oral evidence on 7 December 2017 and 22 February 2018 you were asked a number of questions about a submission to the DETI Minister dated 8 June 2011 (see, for example, TRA-01887 to TRA-01893 and TRA-05181 to TRA-05185 in this regard) and about whether it was ambiguous (and, accordingly, potentially apt to mislead) insofar as it described the NI RHI option as the one offering "*the highest potential renewable heat output at the best value*" (WIT-00744 at paragraph 24). In his oral evidence on this submission on 16 April 2018 at TRA-07971 to TRA-07972, Andrew Crawford suggested that officials may have been deliberately misleading the Minister (TRA-07971 lines 5 and 6). Please set out anything else that you wish to say on this issue, in light of the evidence of Andrew Crawford.**

4.1 There was absolutely no intention to mislead the Minister or Special Advisor as suggested by Dr Crawford. There was no reason to do so, nor any benefit to officials, myself included, to induce such a course of action. The points I make above in answer to question 1 in relation to Ministerial decision making taking into account issues wider than cost/value for money (i.e. the wider policy issues) are also relevant.

4.2 In using the phrase '*the highest potential renewable heat output at the best value*', I concur with Peter Hutchinson's comments at WIT 09305, specifically that the phrase was used to compare '*a bespoke NI RHI Scheme with the GB scheme, as designed. In terms of incentivising the market, it was perceived*

that DETI had the option of a short term scheme or a long term scheme – a short term scheme would be grant based and the longer term scheme would be a RHI method. The phrase used in the submission would have been referring to the two long term methods.'

4.3 In my oral evidence, I did set the context within which this statement in the submission should be read. Considering the matter now, I accept that the written submission could have been clearer.

4.4 The 8 June 2011 submission did not have a specific recommendation as to which option should be chosen. It left it entirely for the Minister and the SpAD to consider and make the decision. Officials were neither asked for, nor offered, a preference at any stage. Given the level of detail in the submission and the complexity of the issues, a meeting with officials was offered (and accepted) at which all relevant matters could be discussed and any questions raised by the Minister or SpAD addressed. At this meeting I covered all of the issues in relation to the options presented, including the costs and value of each. I suggest that, at the meeting (of 14th June 2011) and at any point before or after the meeting, the opportunity was there for the Minister or the SpAD to ask any number of questions and seek whatever clarification they needed to enable the Minister to make her decision.

Oral evidence of Andrew Crawford and Arlene Foster

5. The DETI Minister and her Special Adviser with whom you dealt in your time as Director of Energy Division, Arlene Foster and Andrew Crawford, have given oral evidence in public to the Inquiry in relation to Phases 1 and 2 of the Inquiry's work since you completed your oral evidence on 23 February 2018. You, through your solicitor and/or counsel, have witnessed the said persons give their oral evidence and/or have had access to the relevant transcripts. To the extent that you consider that the evidence of either of those persons is incorrect in respect of any significant issue or is materially incomplete in respect of any significant issue and/or to the extent that the interests of fairness require it, you should take this opportunity to provide further written evidence, but only insofar as (a) the said evidence has not already been provided by you either orally or in writing and (b) 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.

5.1 I have a number of points to make in addressing the questions as follows:

Dr Andrew Crawford

5.2 In the oral evidence session of 30th May 2018 with Dr Crawford, (including at TRA 09786 (Page 27) and TRA 09797 (Page 38)), Inquiry Counsel, in framing questions to Dr Crawford, makes reference to the target not being attainable and that the Minister was not informed that the RHI/Challenge Fund wouldn't meet the 10% target. Dr Crawford concurred.

5.3 This requires contextualisation. NI had an overall target of 10% renewable heat to be achieved by 2020. The RHI would contribute to the achievement of this 10% target. The RHI contribution would be in addition to the pre-existing 1.7% renewable heat already achieved (and noted in the Aecom study) and the activities of others (including other NI government departments).

5.4 In order to provide clarification and correction of the response made by Dr Crawford, I refer to my submission of 8 June 2011 to the Minister, paragraph 10 (Annex 32 of my Witness Statement, WIT 16479) which states that neither the RHI nor the Challenge Fund options alone would deliver the target, as follows:

'It should be noted that preliminary modelling, within the economic appraisal, would suggest that none of the options above, in themselves, will deliver the target of 10% renewable heat by 2020. (This is also true of the GB RHI, which DECC expect will deliver 10% as against a 12% target). There will therefore be a need for supporting policies that will assist in increasing the uptake of incentive measures and ensuring that levels of renewable heat are maximised. These include:

i) Maximising indigenous biomass supply;

ii) Communications and education;
iii) Increased energy efficiency;
iv) Building standards for new builds;
v) Renewable heat within public sector;
vi) Increasing skills; and
vii) Planning issues.'

5.5 In the 16th April 2018 oral evidence session, TRA 07971 (page 68), Dr Crawford refers to officials misleading the Minister and postulates that the reason for this may have been that *'they had done a significant amount of work and it was a direction of travel they didn't want to turn away from'*. This also links in to other comments around a pre-disposition towards RHI (e.g. Mrs Foster's evidence of 12th April 2018, TRA 07671).

I hope it is evident to the Inquiry that neither I nor my team shied away from hard work and I do not accept that this allegation is well founded. The Minister received a detailed submission (8th June 2011, WIT 16477) followed by a meeting to go through the specifics of the issues. The submission laid out the options and included, at paragraphs 34 & 35 (WIT 16485-16486), the following:

'34. I would welcome your initial thoughts on the proposed approach, specifically:

(i) Should Energy Division develop proposals for a Challenge Fund Scheme or a NI RHI?
(ii) How should the heavy industrial sector be treated under any incentive scheme?
(iii) Should any specific eligibility requirements be included in an incentive scheme to protect the gas market?
(iv) Should Energy Division develop proposals to utilise the funding for this year (£2m) in a grant scheme for the domestic sector?
(v) Are you content for a call for evidence on the costs and barriers to deep geothermal energy be included in any future consultation?

35. Following your consideration of this submission, I will finalise the proposed consultation document ….'

5.6 It is clear from the above that the Minister was being asked for a decision. She, in association with the SpAD, considered the information presented in the submission, had a meeting focussing on the submission and made her decision to move forward with an RHI tailored for NI. There was no preference for either an RHI or a Challenge Fund aired, in writing or orally, by any official. In fact, had there been a preference we would not have gone back to CEPA and asked them to explain more fully statements made in their draft report. I was neither asked for, nor offered, an opinion or a preference and, as I have noted above, there was ample opportunity for the Minister and SpAD to ask questions and seek clarification before making a decision. It is therefore entirely wrong for Dr Crawford (12th April 2018 evidence session) to refer to officials in the context of having '*a direction of travel they didn't want to turn away from'* or that officials were *'driving through NI RHI'.* Regardless of the position DECC had taken, or the work that DETI officials had done up to that point in time, once the Minister stated her position, the Department would have focused on delivering her chosen option.

5.7 At the 30th May 2018 evidence session, page 8 onwards (TRA 09767 onwards), there appears to be some confusion in the discussion around the 2013 consultation and the Barker letter of 29 November 2013 (and Joanne McCutcheon's subsequent submission). Inquiry Counsel states that:

'*The consultation document in July 2013 had a simpler than degression trigger mechanism that was to apply to both schemes. That fact does not seem to have been brought to you and the Minister in this consultation document*'

Dr Crawford responds: '*Yes. There's no reference to the trigger mechanisms in this consultation document*.'

I had left DETI on 28th November 2013 and therefore was not in post when the Barker letter (dated 29th November 2013) arrived in Private Office, so did not have sight of it or knowledge as how it was handled by officials. However, I am clear that both the Minister and the SpAD knew about cost controls, both the

interim administrative trigger mechanism (with its suspension clause) and degression. They knew about these having agreed how to handle the introduction of cost controls prior to the launch of the Scheme and both of them having read and signed off the July 2013 consultation document. The consultation document included references to cost controls (in Chapter 4 of the document entitled 'Setting Standards, Improving Performance and Cost Control' and specifically paragraphs 4.12 through to 4.16, WIT 16355), the importance of managing a finite budget especially in the context of potentially adding new and bigger technologies into the non-domestic scheme, the detail of the administrative triggers and the flagging of degression.

5.8 I would also point out, that there was no choice to be made between the administrative triggers (as an interim measure) and degression. In short, both measures were to be implemented, the administrative triggers as the first step, as an interim cost control, followed by the more detailed work on degression. And, when degression was implemented the trigger mechanism would no longer be required. So, while I am not in a position to comment on whether the Minister and SpAD had degression/cost control drawn to their attention in the handling of the Barker letter, it is wrong to imply that they were not fully aware of and informed about cost controls, per se.

5.9 There is a reference to 'de-coupling' during Dr Crawford's evidence session, however, I will comment on de-coupling in my response to Question 11 below.

Mrs Arlene Foster

5.10 In relation to the evidence of Mrs Foster, on 12th April 2018, she states that she had no predisposition towards RHI, but believes having seen the documents that there was a predisposition within the Department TRA 07671, lines 5-9). As I have stated in evidence elsewhere, it is my strong recollection that no such predisposition existed. It is not clear which documents Mrs Foster is referring to. My submission to her of 8th June 2011 made it very clear that she is being asked to consider the options and to make a choice (see paragraph 5.5 above). No official, either myself, or those in my team, had any preference for either a Challenge Fund or an RHI. We were neither asked for nor offered an opinion

or a preference. We presented the information and the 8th June 2011 submission is quite clear that the Minister is being asked how she wishes to proceed. I am clear that whichever option the Minister chose, that is how we would have shaped the next stage of the work.

5.11 I am also clear that in presenting the options, that the Challenge Fund was 'better' in pure monetary terms, but that there were other non-monetary benefits to be factored in. Not only was the Minister clear on this, but so too was Rachael McAfee (the DFP economist who considered the business case). In her evidence of 29 November 2017, Ms McAfee made her position clear, i.e., that she was fully aware of the non-monetary factors and that the information was made available to her. For example:

At TRA 01176 (Page 101 of the transcript), Ms McAfee states:

'In quantitative terms, over the 40 years, up to 2020 plus, that is what that suggests to be saying, but it is in quantitative terms. It doesn't take account of any of the other qualitative factors in terms of non-monetary costs and benefits, and so on. So, yes, it does, yes.'

And, at page 104 (TRA 01179) of the same transcript in relation to having sight of all of the information she required, she stated:

'On reviewing the information in the business case, the qualitative information is very important, and it gives that balance, but it would've been probably helpful to have all of the figures in the business case, but, equally, it was provided in the annexes, but in the business case I would say that was probably a weakness there that the figure wasn't in there, but, as I said, I would've seen that in the annexes.'

RENEWABLE HEAT INCENTIVE INQUIRY

Janette O'Hagan

It was indicated in the course of your oral evidence (see TRA-05426) that you had dealt with your interactions with Ms Janette O'Hagan in your written evidence but that the Inquiry would likely follow up on some further issues as to that in writing. As to that, please address the following matters.

6. It appears that Ms O'Hagan sent two emails on 26 August 2013, one to the DETI general email account (see WIT-264844, which you have indicated was the only one passed to officials by Private Office: see paragraph 372 of your first witness statement) and the other directly to the Minister (see WIT-264845, which was then forwarded on to the Minister' Private Office). Your recommendation to the Minister was that she not meet Ms O'Hagan (see DFE-183302), although no reasons appear to be given for this recommendation. As to this:

a. Why did you not recommend that the Minister meet Ms O'Hagan?

6.1 Mrs O'Hagan's e-mail (of 26 August 2013, 11:18) was sent to Energy Division, by Private Office for consideration and advice. The e-mail contained some high level information about the nature of Mrs O'Hagan's company, a specific product that had been developed in relation to energy efficiency, the market that the company was targeting (care homes) and plans to expand into other sectors. The request was for a meeting with the Minister to inform her about the company and seek advice on how to align the product with the 'sustainability delivered by RHI'.

6.2 It would not have been unusual for an Invitation Case to issue from Private Office with an instruction that the response should be drafted to accept the request for a meeting. In this instance Private Office did not provide any indication that the Minister wished to take the meeting. And, given that there was nothing in the particular e-mail which Energy Division was sent by Private Office which would have caused officials to consider that a meeting at Ministerial level was required, in line with the practice of the time, the recommendation was made that a meeting with officials be offered. When the advice was submitted to Private Office and considered by the SpAD and the Minister, had they felt that a meeting was required they would have informed

Private Office to agree a date in the Minister's diary and Energy Division would have been asked to provide a submission with the required briefing material to aid the Minister in taking the meeting.

b. Once you had heard what Ms O'Hagan had to say at the meeting with officials, did you re-evaluate the question of whether or not the Minister should meet her? If not, why not?

6.3 As detailed in my first witness statement (6 June 2017, paras 357ff, WIT 15138), the meeting was conducted in line with an agenda submitted in advance by Mrs O'Hagan and covered a range of issues: her business, the product she was selling, energy efficiency and the RHI Scheme itself. This included the nature of the RHI Scheme and how it operated. The discussion also covered the fact that we were concluding a consultation process on Phase 2 of the Scheme (July to October 2013) and what this contained, to include the cost controls which would be implemented post consultation, administrative triggers and degression. These would mirror the controls that had been brought in to the GB scheme earlier in 2013. The forthcoming review of the Scheme was also covered. In particular we discussed that the consultation process would involve gathering a wide range of information in relation to the operation of the Scheme, re-look at the assumptions underpinning the Scheme in light of evidence as to how it was performing on the ground, examine the component parts of the tariff and noted that this would be the opportunity to look at the need to tier tariffs, if required.

6.4 Again, as I covered in my previous statement, during the course of the meeting my recollection is that Mrs O'Hagan advised that she had heard, anecdotally, that some suppliers discouraged energy efficiency products when selling renewable heat technologies. I recall that we specifically asked if she had any evidence of this and she was offered the opportunity to provide this, if she wished, through the consultation process. Or, alternatively, she could send it to us and we would feed it into the forthcoming review. After the meeting, Peter Hutchinson made contact with Mrs O'Hagan and provided a link to the consultation document. As a result of this contact she also had his e-mail

address which could have been used to send through the information if she did not wish to, or felt she had no way of doing so, via the consultation.

6.5 The issue raised by Mrs O'Hagan, at that particular time, was presented at a high level and without detail. She was asked to submit evidence to underpin this. We expected her to do so and she certainly gave no indication that she would not follow through on this. At that stage neither I nor colleagues would have considered that a further meeting with the Minister was required. This position would have been reviewed following the receipt of any information Mrs O'Hagan subsequently provided.

c. Do you believe your advice, or actions, would have been any different if you had seen the email Ms O'Hagan sent to the Minister on 3 September 2013 (see WIT-264846, containing the observation that "*in fact [the RHI scheme] pays [Ms O'Hagan's potential customers] to use as much [heat] as they can – in fact the incentive to use more is leading to misuse in some cases*")?

6.6 It is difficult to say precisely given the passage of time. However, even if we had seen this particular e-mail, we would still have been asking at the meeting for Mrs O'Hagan to provide us with the evidence. What actually occurred was that, at the meeting, when Mrs O'Hagan raised the issue, in what I still consider to be an anecdotal manner, she was asked to provide evidence to underpin/back up what she was saying. The expectation of officials was that she would do so. Furthermore, this matter would have been followed up in the forthcoming review.

7. **In the event, you did meet with Ms O'Hagan (along with Peter Hutchinson and Joanne McCutcheon) in October 2013. What Ms O'Hagan recalled about the meeting is recorded at WIT-264856, including that she indicated that "*there was no incentive at all to be efficient and it was more likely that the heating would be kept on in buildings all year round, with the windows open everywhere*" but that the DETI team indicated that they "*did not believe that this was the case*" as they did not think that people would do this. Ms O'Hagan has also given oral evidence about the conduct of, and discussion at, this meeting: see generally TRA-04699 to TRA-04731. As to this:**

a. Did you or your team say there was an assumption that people would use the RHI Scheme after exhausting other energy efficiency strategies? If so, on what basis was this assumption made?

7.1 I believe that we would have stated that an assumption was that people would have considered energy efficiency first prior to installing renewable heat technologies. Given the high capital costs of installing renewable technologies (whether for heat or electricity), the underlying assumption is that consumers would go down this route first (e.g., double glazing, insulation, etc). Also, particularly in relation to heat, the technologies were new and unknown to most consumers and other energy efficiency installations would not only be cheaper but more familiar. This would particularly be the case in the domestic sector. I recall that the team spoke to AEA about energy efficiency issues and also believe they spoke to DECC and their views would have been similar – that energy efficiency was the first port of call prior to installing renewable technology. I also have a recollection that as the GB (and NI) schemes rolled forward consideration would have been given in future phases to tightening up criteria to demonstrate energy efficiency. It is also the case that in NI, in order to qualify for the domestic premium payments, there had to be evidence provided of energy efficiency measures being utilised, e.g., double glazing.

b. Ms O'Hagan also told the Inquiry she said that she was '*Surprised [scheme participants were] not mounting the radiators on the outside of the building!*' (see TRA-04687 and TRA-04704). Do you recall a comment to this effect being made? If so, please explain, insofar as you can, any enquiry which was made in relation to this and any response given to it.

7.2 I recall at the meeting that issues surrounding energy efficiency were covered but do not have a memory of that specific comment being made. I have seen it referred to a number of times during the course of the Inquiry.

c. Ms O'Hagan could not be sure but, on balance, appeared to think that the issue of a review of the Scheme had not been mentioned (see TRA-04715; and compare paragraph 363 of your first witness statement) as she would have gone away feeling that the issue would be looked at. Please provide any further evidence you can

offer as to whether or not the issue of a proposed review of the Scheme was raised at the meeting.

7.3 I have considered paragraph 363 of my first statement (WIT 15139) and my evidence is unchanged, that is, that the forthcoming review of the Scheme was covered at the meeting. It would have been in this context that she would have been informed that this would be the opportunity to review the tariff levels and the need for tiering on the basis of how the Scheme had performed since its launch in November 2012.

8. Please give as full an explanation as possible as to why DETI did not keep any minutes or formal written record of the meeting with Ms O'Hagan.

8.1 It would have been normal practice, at that time and given the number of meetings that would have been occurring, for officials to take informal notes in their notebooks and record action points. These action points would have been followed up after the meeting. In this case, the main action point was to make contact with Mrs O'Hagan after the meeting and send her a link to the consultation document (which we had covered in the meeting and in which she had showed an interest). The action point was completed when Peter Hutchinson made e-mail contact with her a few hours after the meeting.

9. **Ms O'Hagan appears to accept that, at the meeting, she was asked to provide evidence of the phenomena she was discussing, although she did not feel there was a place for this in the Phase 2 consultation; or that it would add anything. As to this:**

a. Do you consider that more should have been done by DETI to investigate the concerns Ms O'Hagan was raising? If not, why not? If so, please detail what steps might have been taken?

9.1 At the time of the meeting in October 2013, records show that there were 59 applications to the scheme. The number of actual accreditations would have been less than 30 and of these approximately 5 had had their first payment and would be on the cusp of a second payment. So, at that stage DETI and Ofgem would have had very little quantitative information to show what was happening on the ground and certainly no evidence of a trend in the data. (This was

confirmed by Ofgem in their first report on the NI Scheme which they prepared towards the end of November 2013). It was in this context that, at the meeting, Mrs O'Hagan was asked to provide the evidence to underpin what she was saying. She was encouraged to do so via the consultation, but also could have sent it through separately as, following the meeting Peter Hutchinson e-mailed her the consultation link, so she had his e-mail address and could have sent the information directly to him if she felt there was no route to do so via the consultation itself. Given we had low uptake at that time and little data directly from the Scheme, we would have been keen to garner any additional (and potentially different) evidence that she could provide. The opportunity was there and, while Mrs O'Hagan did not provide this in the time before I left DETI in November 2013, I understand from following the Inquiry that she did so, to a degree, in an email to Peter Hutchinson in May 2014 and may have added further to this in subsequent e-mails to Team 2 officials thereafter.

9.2 I believe that, in October 2013, appropriate action was taken on the basis of what was said at the meeting and in the context of the low uptake and small amount of information we had on those accredited at that time. It would have been very helpful to have the information that underpinned Mrs O'Hagan's concerns at an earlier stage. Especially as, when more information flowed in from Ofgem in 2014, I note from the Inquiry evidence, that Peter Hutchinson was starting to make the links to what Mrs O'Hagan had alluded to at the meeting and especially so at the time of his May 2014 Handover document and the subsequent e-mail from Mrs O'Hagan.

b. Did the DETI team raise the issues Ms O'Hagan had discussed with Ofgem? (In this regard, you appear to have indicated in your interview with PWC, at PWC-04538, that you cannot recall there being a discussion with Ofgem). If the issue was not raised with Ofgem, please explain why not.

9.3 I do not recall the issue being discussed with Ofgem in the period immediately after the meeting or in the following few weeks before I left DETI. That is not to say that, in the course of the ongoing contact with Ofgem colleagues, Peter Hutchinson or Joanne McCutcheon would not have mentioned it. However, I

expect that having asked Mrs O'Hagan for evidence to underpin what she had said, that the most appropriate time to raise the specific issue with Ofgem would have been when we had the information from her, or, if we started to see issues emerging from the data Ofgem was sending through to the Department. Again, from following the Inquiry, I note that when Peter Hutchinson started to see indications in the data in the first half of 2014, and the e-mail from Mrs O'Hagan in May 2014, he did raise the matter with Ofgem and also documented it in his Handover document. I would also expect that Ofgem, in undertaking their scrutiny of the data, would have picked up any specific issues in relation to NI and also flagged anything that was emerging from the larger scale and more embedded GB Scheme which may be either directly relevant to NI or of interest to NI.

c. You also appear to have indicated in your PWC interview (see PWC-04537/8) that the information was 'logged or banked'. Please explain how this was done.

9.4 The context of the PWC interview is important. I was interviewed on 14th October 2016 some 3 years after I had left DETI and the interview was conducted in the absence of being given any prior access to papers from the time I worked in Energy Division. Therefore, all comments made in the course of that interview have to be considered in the knowledge that I was working entirely from memory. My comment about information being 'logged or banked' is in the context that all of the information associated with the Scheme, how it was developed, how it was rolling out, contact with stakeholders, briefing material (including for meetings) would be filed on TRIM and also that officials would have their notes and recent memories of same. This would all have been accessed and drawn on in preparing for and conducting the review.

d. With reference to DFE-342799, in relation to where the email correspondence with Ms O'Hagan was stored on TRIM, please set out whether you consider this correspondence was sufficiently accessible to other officials subsequently coming to deal with the issue.

9.5 I have seen Peter Hutchinson's Handover document and it specifically references Mrs O'Hagan's e-mail and provides the TRIM reference for this. While I note from DFE-342799 that there was also other material in this particular container, it would be my view that the reference in the handover document to the specific e-mail and the inclusion of the TRIM reference number easily identifies where the information is stored and can be accessed. I also note that in his evidence to the Inquiry, Michael Woods (Head of Internal Audit, DETI), refers to accessing information on TRIM regarding the Scheme as follows, TRA 16083 lines 13-16:

'*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'*.

So, as the Handover document provided a specific reference to the e-mail and the specific TRIM reference number, I believe it was easily accessible to other officials.

DfE corporate statements

10. The Department for the Economy has provided a number of corporate statements which touch upon your involvement with the RHI Scheme and/or your evidence to the Inquiry. These include DfE Corporate Statement No 5 of 24 November 2017 (WIT-03272 to WIT-03296), provided in advance of the conclusion of your oral evidence, and DfE Corporate Statement No 10 of 25 May 2018 (WIT-03526 to WIT-03531). To the extent that you consider that the evidence of the Department is incorrect in respect of any significant issue or is materially incomplete in respect of any significant issue and/or to the extent that the interests of fairness require it, you should take this opportunity to provide further written evidence, but only insofar as (a) the said evidence has not

already been provided by you either orally or in writing and (b) the further material you wish to provide constitutes evidence of fact as opposed to mere commentary on the evidence of the Department which would be more appropriate for submissions.

10.1 In relation to the DfE Corporate Statements, I will focus on the two statements referenced above, that is DfE Corporate Statement No 5 of 24 November 2017 and DfE Corporate Statement No 10 of 25 May 2018.

DfE Corporate Statement No 5 (24 November 2017)

10.2 In relation to how the Scheme could be suspended, I would clarify this as follows. The position is that the means of closing the Scheme was via a change in the Regulations and I do not believe that the statements referred to by DfE at WIT 03272 imply anything substantially different. At WIT 06085 Peter Hutchinson covers the relevant sections from the 2013 Consultation Document in relation to cost controls; WIT 08747and WIT16497 are the same page from a document prepared by Team 1 and refer to tiering and the final bullet point refers to DETI having power to revise the scheme at any stage; WIT 15071 describes the two elements of cost control being pursued, i.e., the interim measure of administrative triggers and degression, and makes the point that the administrative trigger approach was a tool to provide a 'brake' to the scheme pending the introduction of degression which could result in the closure of the scheme mid-year while work was being undertaken to examine why the budget was nearing saturation earlier than anticipated.

10.3 Had the work been undertaken, post the 2013 consultation, to implement the interim administrative triggers as proposed, the Department would have had a suspension clause in place which could have been used to shut the Scheme down when the problems arose in 2015. Whilst I accept that the interim administrative triggers approach, like the interim measure introduced by DECC, was less robust than degression, the fundamental issue is that it contained a suspension clause which could have been utilised to prevent the Scheme spiralling out of control.

10.4 At WIT 03275 DfE makes the point that it agrees the mechanism consulted on would have suspended the Scheme, however the Department would not have been able to maintain the suspension if only the proposals in the Consultation had been put into Regulations. It further states that there would not have been time to review the scheme, or to make changes before the Scheme had to be re-opened.

10.5 I would, however, have expected that the Department would have reacted proactively to any activation of the administrative triggers and suspension clause. It is likely that if the suspension of the scheme was triggered, immediate and significant effort would have been made to identify the underlying cause. I would have expected this to have included an immediate and focused review. Also, if it required a longer period of time to identify the cause of the problem and put a solution in place, then the Department would have had to keep the Scheme closed for as long as it took and it could have acted to do so. This likely would have necessitated emergency Regulations having to be taken through the Assembly process to ensure the Scheme did not re-open until the review and any required remedial action had been completed.

10.6 The administrative triggers were an interim measure. The consequences of the failure to bring the administrative triggers into Regulations in either 2014 or 2015 was that the Department had no brake on the Scheme when difficulties arose.

10.7 I accept that the absence of tiering in the tariff for biomass was a flaw in the Scheme. We acted on the erroneous advice from CEPA that tiering was not required. There were, of course, other flaws including the failure to review the Scheme in 2014 and the failure to bring in the cost controls after the consultation. When the Scheme was brought in it was a new, novel and untested approach being introduced to a fledgling market. It needed review and adjustment as the market matured and was never intended to be static.

10.8 In relation to monitoring of the Scheme, at WIT 03278, the Department considers that divergence from the assumed load factors and assumed boiler

size would have been apparent from as early as 2013. I still regard this as a conclusion reached by the Department in light of information which we are now aware of without properly taking hindsight into account. Up to November 2013, when I left the Department, there were 40 accreditations on the Scheme, 5 of which had received 2 payments and 11 had received one payment. At that time Ofgem had just provided their first annual report. In this they stated that:

'*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*.'

I feel there is a significant danger in drawing conclusions from what we know ultimately occurred and projecting these upon the position in 2013. The monitoring that Peter Hutchinson had in place, as the numbers increased in 2014, did indicate some trends. He picked these up and covered them in his Handover document. The monitoring put in place and operating up to mid-2014 obviously did work and allowed Peter Hutchinson to reach an appropriate conclusion once sufficient information was available.

10.9 As I covered in my previous evidence, the principles of project management were followed. There was no formal decision taken by the Department around project management arrangements, either to use PRINCE methodology or not to do so (WIT 16654). In any event, resource constraints were such that full project management could not easily have been implemented. I therefore note and would concur with the point the Department makes at WIT 03283, paragraph 39 that:

'*The Department recognises that a formal project management structure would have been difficult to administer given the limited staff resources committed to this project*.'

And also the point made at para 40:

'*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…'

My evidence has been that I raised the issue of resources numerous times with the Department during my tenure. This was not solely in relation to the RHI and as an example, it is reflected in the evidence of former Minister Foster (WIT 20595-20596) in which she notes that she raised concern at the lack of resource within Energy Division and flagged this concern to David Sterling and also to HoCs (Dr McKibbin) at the time of her input to the annual appraisal of Mr Sterling. They were therefore all aware of the significant pressures that I was working under.

DfE Corporate Statement No 10 of 25 May 2018

10.10 This statement focuses on an element of the approval process and, particularly, whether Energy Division sent a copy of the business case to the Minister after the Casework Committee meeting in March 2012. I note that the Department appears not to have found a submission to this effect in their systems.

10.11 At this stage (some 6 years later), I do not have any further concrete evidence on this point. I remain of the view (as at TRA-02360) that the business case would have been sent to the Minister. Without this occurring I do not see how the approvals process could have been completed.

10.12 The business case was sent to DFP, via DETI Accountability and Casework Branch (ACB), for consideration. The procedures allowed for the business case to be sent to DFP in parallel with the approval of the Minister being sought. However, it is my recollection of the process that DFP would have had to be informed by ACB that Ministerial approval had not yet been given and was in the process of being sought. When the approval was given, ACB would have informed DFP. In fact, DFP approval would not/should not have been forthcoming until they received that message from ACB.

10.13 I am not clear from the evidence whether ACB passed on a message that Ministerial approval had been obtained to DFP which then triggered the approval from DFP. I have not found a record of this in my consideration of

Inquiry evidence to date. If approval had been given by DFP without receipt of the Ministerial approval this may be a matter of concern to the Inquiry. I, however, remain of the view that there would have been a submission and that the approvals process was followed.

General

11. To the extent that you consider the evidence of any other witness or participant, not mentioned above, 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.

11.1 There are a number of points that I would like to take the opportunity to raise, as follows:

Mr Stuart Wightman

11.2 On 15 May 2018, during the evidence session with Mr Wightman, there was a focus on the ability to suspend the non-domestic scheme. At TRA 09211, page 65 of the transcript, lines 10-14, Mr Wightman states:

'*Um, there was a sense of panic you know, "Surely they know that we can't" and I think it was around that stage where I suddenly realised we didn't have the ability to suspend the scheme. I think my predecessors also assumed that, even with the trigger proposal that they had in the 2013 consultation, you could do that without needing to do legislation*'

11.3 Mr Wightman is incorrect in his speculation that we ('Team 1') did not recognise that legislation was required to implement the administrative triggers to suspend the scheme. Team 1 devised an administrative cost control measure (to cover both the non-domestic and the forthcoming domestic schemes) and consulted

on this in the period July-October 2013. This measure was the tailored NI version of the DECC interim cost control/suspension mechanism which was deployed in GB after the GB non-domestic scheme was launched.

11.4 The GB interim cost control mechanism was delivered by legislation and, as the NI measure was a copy of what occurred in GB, it too would require a legislative underpinning. There was never any doubt that a new Regulation would be required.

11.5 In relation to the work that would be required to implement the administrative triggers (including the ability to suspend the scheme), this would have been relatively straightforward. All of the work on the administrative triggers had been completed ahead of finalising the consultation document. As I recall, there were no issues raised by respondents to the consultation that required the measure as presented in the document to be amended. In terms of the drafting of the new regulation, there was a model to follow in the form of that which DECC had prepared for the GB interim suspension mechanism. Using this as a template, the NI version could have been drafted either by the Renewable Heat Branch officials or the legal advisors. Thereafter, given that there were no issues raised by respondents to the consultation, the ETI Committee and Assembly process ought to have been straightforward.

11.6 It is therefore incorrect of Mr Wightman to say (evidence session of 20 June 2018, TRA 10960, page 59, lines 12-14):

'*the resources of my team wouldn't've been able to do the trigger system without additional staff is really the point I'm making, and you would've needed to have those staff in place*'.

It would not have taken additional resources to craft the legislation to bring into play the interim costs control (the administrative triggers and the associated suspension clause) and take it through the appropriate channels for approval. It would then be a matter for Ofgem to operate their processes in line with the triggers and the suspension mechanism. Given that the work had been

completed on the trigger mechanism, either a standalone single clause Regulation could have been put through the Assembly process, or a clause carried in the next Regulation (on the non-domestic or the domestic scheme, whichever was done first). Either way, dealing with this element of the work would not have been problematic and should not have delayed the implementation of the domestic scheme.

11.7 In order to provide clarity on the approach being taken by DETI to cost control and the synergies with the phased approach taken by DECC in relation to the GB Scheme, in the same Chapter of the consultation (para 4.12) there is reference to DECC introducing a system of tariff degression in GB and that DETI expect to introduce similar measures in the future but that in the interim the simpler administrative triggers system would be put in place. It is therefore clear that DETI was following the same approach taken in GB, i.e. launch the scheme, bring in an interim cost control and then bring in the more complex degression mechanism. That was the approach agreed with the Minister in order to progress with the launch of the Scheme and there was no change in this pathway during the period that I was in post (i.e. up to when I left on 28th November 2013).

11.8 At various times in the evidence sessions, Mr Wightman refers to not understanding the budget and that, being AME, he appears to consider that there was no 'cap' on the amount available in any given year. However, in relation to the budget, the 2013 consultation covered the reason why cost controls were required. This includes a very clear reference at para 4.13 (WIT 07502) of the document to the budget being finite and that the budget limits could not be breached. This point is also highlighted in the Minister's Foreword to the consultation document. In the absence of clarifying the budget position by other means (e.g. by accessing the TRIM records, contacting Team 1 colleagues or engaging with Finance Division), a reading of these paragraphs in the consultation would have made it obvious that the budget was not open ended and could not be breached.

RENEWABLE HEAT INCENTIVE INQUIRY

Mr John Mills

11.9 During a number of evidence sessions there has been reference made to a decision to prioritise the work associated with the domestic scheme ahead of the work required to implement Phase 2 of the renewable heat programme following closure of the consultation in October 2013 (which would have included completing the work on cost controls i.e. the administrative triggers, the suspension clause and then degression.) This has been referred to as 'decoupling'. In particular, on several occasions in giving evidence, Mr Mills refers to the domestic scheme being prioritised ahead of other aspects of the RHI work portfolio (22 March 2018, 17 May 2018, 20th June 2018). And he refers to the decision being made prior to his arrival.

11.10 In so far as Mr Mills may be alluding to that decision having been taken while I was in post, i.e. up to November 2013, I am absolutely clear that I took no such decision and, indeed, it would not have been appropriate for me to do so, as this would have been a decision for the Minister. On completion of the analysis of the consultation responses (which was still ongoing when I left DETI), there would have had to have been a post consultation report produced and a submission made to the Minister. The submission would have included this report, the details of the next elements of the work to be completed and a proposal as to the order in which these would be completed, within the staff resources available (my oral evidence of 23rd February 2018, TRA 05376 to TRA 05378 covers this issue).

11.11 In relation to the submission of 26 November 2013, which has been referred to in the context of (perhaps) being the first sign of decoupling, this submission includes a draft note updating the ETI Assembly Committee on progress with the RHI. At paragraph 13 it states:

'Given that the domestic RHI does not require State Aid approval, it is likely that it can be launched earlier than the non domestic aspects of phase 2 – probably during 2014.'

This is not a 'decoupling' of any elements of the work. Rather it is a reflection of the view then held that, at that stage, one aspect of the work may be able to progress ahead of another. While the Minister did sign this off to go to the Committee, she had yet to receive the outcome of the consultation and the detailed submission that would be needed (referred to at paragraph 11.10 above). So, this sentence cannot be used to make the case that decoupling occurred at this point. If there was a decision on decoupling it occurred after I left the Department and was taken by either the Minister or another Official.

Mr Alan Smith

11.12 I refer to WIT 27233, para 10, at which Mr Smith is asked to identify any flaws or difficulties with the Scheme. In answering he comments that the major flaw was that the tariffs were based on assumptions which proved to be incorrect. This was the work of the experts we employed (i.e. CEPA).

11.13 While I do not fundamentally disagree with the point made, I believe this needs to be set in context. Any model developed and any new Scheme of this type will be based on a range of assumptions, which then need to be tested in the market and refined over time on the basis of how the market interacts with the Scheme. That is why regular reviews are important and why they were built into the Scheme from the start.

11.14 Also, not only was the Scheme a new concept (across the UK, not just in NI) but the market itself was a fledgling market. Any market will change as it matures over time. Also, the component parts of the tariff itself will change, i.e., the fuel price, the cost of raising capital; plus the technologies being supported will themselves change and mature over time and some will no longer need incentivised. Therefore, the assumptions underpinning the Scheme will change over time and would need to be reassessed and reshaped in light of the changes in the market and technology. As with many incentive Schemes, this was not a 'one size fits all, fixed product', it was a living Scheme which needed review and change. In any event, assumptions are not absolute – they are the best theories/hypothesis at a point in time and based on the information

available at that time. So, no assumption can ever be totally correct.

Mr Shane Murphy

11.15 In his 5 October 2018 statement, Mr Murphy refers to the quality of the CEPA economic appraisal. At WIT 19638 he states that the approach taken by CEPA was *'generally seen as inferior within NIGEAE*' and at WIT 19639 that '*in effect CEPA did not really do an Economic Appraisal.*'

11.16 Mr Murphy has now had the benefit of considering the consequences of the Scheme. I note that the internal economist, who reported to Mr Murphy, signed off that the appraisal met the 10 steps of NIGEAE. The Renewable Heat Team officials are not economists and were therefore reliant on the internal economists (and also CEPA) to produce an appraisal which met the required standards. The statement of Mr Murphy casts doubt on the robustness of their respective work in this regard. It also calls into question the robustness of the wider scrutiny process. However, at the time I considered that the scrutiny process was, and certainly felt, robust.

12. 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.

12.1 On 14th November, the Inquiry sent me a copy of a further Witness Statement submitted by Stuart Wightman on 13th November (WIT 17800-17827) and asked if I had any specific comments to make with regard to the Bytel case and, any other comments on the statement in general. I will use this section of this supplementary statement to do so, as suggested by Mr Butler in his e-mail of 14th November 2018.

Bytel

12.2 The 2006 Bytel issues are different to those of the RHI Scheme. Whilst I have not had an opportunity to review or consider the Bytel documents, I will provide as much comment from memory as I can.

12.3 I note that at paragraphs 31-32 (WIT 17812-17813 and 45 & 55 (WIT 17818 and WIT 17822-17823), in making reference to the handling of the Janette O'Hagan meeting of October 2013 and the subsequent e-mails she sent in May 2014 and beyond (most being during Mr Wightman's tenure as head of the RHI branch), Mr Wightman specifically raises the issue of the Bytel Project and that both Joanne McCutcheon and myself were involved with Telecoms policy at that time. In my first witness statement, I give a clear chronology, as requested, of my career and made it clear that I was the Director of Strategic Policy Division, in DETI, of which Telecoms Policy Unit was one of the branches that reported to me in the period 2005-2010.

12.4 My recollection is that when I started in post, the Bytel project had been approved to proceed as one of a number of projects under the InterReg Programme, funded by the EU and jointly managed with our counterpart Department in the ROI (at that time, the Department of Communications, Energy and Natural Resources). I would point out that Joanne McCutcheon was not the Grade 7 responsible for this particular suite of projects.

12.5 In the scale of the work on developing a new telecoms policy and projects that were being taken forward at that time, the Bytel project was not significant in terms of size (or amount of funding). The day to day work in relation to the suite of InterReg projects was managed by a Deputy Principal Officer, reporting to a Grade 7 (Principal). I would have received a composite update on progress on all the InterReg projects periodically, as would the Grade 3 in charge of Finance and EU matters.

12.6 In relation to the handling of the whistleblower, in late 2015 this was the subject of an investigation by the Head of the Group Internal Audit and Fraud Investigation Service (DFP) and I was interviewed as part of this. If I cut to the end of the process, I subsequently received a letter from the Head of HR in DETI stating that the investigation had been concluded and in light of all the information available the matter was closed and no action would be taken.

12.7 In terms of the specifics of the issue, when the whistleblower e-mailed the Grade 7 (on 4th June 2006) advising of a dispute he was having with the owner of the company in relation to irregularities in one of the Bytel affiliated companies, he received a prompt response seeking further details about his concerns and was told the matters would have to be investigated. The whistleblower complied and subsequently provided relevant information. Within the day, I had been informed of the issue and requested a full series of checks be completed on all the relevant financial transactions. I also convened a meeting (for 6th June 2006) with the Grade 3 (who was the senior finance director and to whom Internal Audit reported) and the Grade 7 and Deputy Principal from Telecoms Policy Unit. The meeting was minuted. At that stage, the Unit had, at my request, checked all payments to Bytel and ensured that they had been appropriately accounted for and were in order, all receipts were available and bank statements inspected; the Bytel Letter of Offer had been checked to ensure the project was within its timescales, etc., and confirmed that an independent technical audit of the project would now be carried out. All of this was available for the meeting as was the information that all of the necessary internal and EU audits had been successfully completed.

12.8 As the then Head of Internal Audit Service (IAS) was not available, my recollection is that Grade 3 sought the advice of the deputy Head of IAS (Michael Woods) on next steps. Later on 6th June, the Deputy Principal met with Mr Woods and it was confirmed that a specific (EU required) independently conducted Article 10 check had been carried out on the project (and all was in order) and that a face to face meeting with the whistleblower should be held.

12.9 The advice of the Grade 3 and deputy head of IAS was taken. Mr Wightman, in linking this to the initial meeting requested by, and undertaken with, Mrs O'Hagan is unaware of the specifics of the Bytel case, the provision of information by the whistleblower and the action taken, in a completely different set of circumstances, back in 2006. In addition, Mrs O'Hagan did not present to me as a whistleblower, nor did she perceive herself in this role at the time of the meeting in October 2013, nor did she provide evidence despite being requested to do so.

RENEWABLE HEAT INCENTIVE INQUIRY

Mrs O'Hagan

12.10 In relation to the points Mr Wightman raises in relation to Mrs O'Hagan, I note in paragraph 27 (WIT 17811) he states that, after the meeting of 13th October, 'Team 1' did not raise her concerns with Internal Audit nor were they raised by myself or Mrs McCutcheon during the IAS Review in 2016.

12.11 I have covered the meeting with Mrs O'Hagan at length in my previous written evidence and also above in this statement. I consider that she raised an issue without providing evidence and, on being asked to provide it, did not do so in the remaining time that I was in the Department. In these circumstances, and against the background of the small number of applications, I did not consider it necessary to raise the issues with Internal Audit. The time to raise the matter with Internal Audit was when we had received some actual evidence.

12.12 In relation to the 2016 IAS review, I was approached 'out of the blue' by Michael Woods in April 2016 and asked could I help him with a few issues relating to RHI. He apologised for raising this with me and said he felt he had to as he was not getting the level of co-operation he would have hoped for from the current officials and the answers he was receiving, he felt, were sparse and not well informed. I agreed to help and set the context that I did not have access to any papers from my time in DETI so would be working entirely from memory; and, that I would be out of the office for a period of time due to a medical issue. Michael Woods was both content and grateful to be receiving such co-operation. My recall is that he sent through a draft report he had prepared and asked for comment. I dealt with this as comprehensively as I could (based on memory) and returned my comments in a paper to him. I did not hear back from Michael Woods thereafter. I could only deal with the issues in the paper and as best I could, in the absence of any supporting documentation, and having left that area of work nearly 3 years prior to the contact with Mr Woods. In light of this I do not consider that the point Mr Wightman now makes is based in fact.

12.13 At WIT 17813 (paragraph 32), Mr Wightman states – '*It is not clear why Team 1 did not take Ms O'Hagan's concerns seriously,* ….' I do not accept this. The issue had not substantively crystallised in my time in DETI. Mrs O'Hagan was asked for the evidence and had not provided any before I left. The comment that she made at the meeting was not as robust nor as clear as the information she provided in May 2014 and thereafter. I did take the matter seriously, and asked her to provide further information to inform the consultation and the upcoming review. This appears to be in contrast to how Team 2 dealt with the e-mails sent by Mrs O'Hagan after May 2014. I am unclear why Team 2 did not act on this information or on the information in the May 2014 Handover document.

Re-approval of the Scheme

12.14 Mr Wightman states he was unaware of the need for the Scheme's re-approval at paragraph 39 (WIT 17816). He says he was unaware of this, despite all the documentation being filed and indeed Michael Woods stating that all the material was easily accessible, see paragraph 9.5 above. I am surprised that an experienced Grade 7 says that he did not read the material in the files relating to a Scheme he was responsible for and had been given '*no direction to do so*.' A Grade 7 is a senior manager. It carries a level of responsibility and the basic requirements are that the post holder should be proactive and provide leadership in his/her area of responsibility.

12.15 At paragraph 45 (WIT 17818), there is a reference to Mr Mills not being sighted on important emerging issues. I would have expected that, as a Grade 5 (Director), he should have done his utmost to ensure he was up to speed on any emerging issues. It is incumbent on any new appointee, especially those at the more senior levels (including Grade 7) to familiarise ourselves with the work and actively seek out, read, process and understand the information needed to do the job.

Monitoring of the Scheme

12.16 At paragraph 51 (WIT 17821), in relation to the monitoring of the Scheme, Mr Wightman agrees with the Department that the Scheme should have been monitored. I also agree with this. The information in the May 2014 Handover document reflects that there was ongoing monitoring, plus an understanding of, and learning from, the data received. It is also clear from the evidence of the Inquiry, which includes that of Mr Wightman, that he and Mr Hughes, were left all of the spreadsheets (and TRIM links) by Peter Hutchinson. It is not clear what, if any, steps were taken by them to utilise these to monitor the Scheme in general and more specifically in respect of the monitoring of uptake, identification of any trends or forecasting following the departure of Peter Hutchinson.

12.17 At paragraph 57 (WIT 17823), in relation to the funding of the Scheme, it is evident that Mr Wightman had access to the pertinent information. For example, the Parker e-mail, (a copy of which is at WIT 12774-12775), from when he was a few weeks in post and appended this to e-mails he sent in September 2014. The issue of launching the Scheme without cost controls has been covered in my evidence and was in line with the pathway GB took and was agreed by the Minister. The clear and obvious intention, which was covered in the 2013 consultation, was to bring the administrative triggers in after the consultation process completed and to follow this with degression. It is unfortunate that after the July-October 2013 consultation closed this was not followed up, especially as, I recall, there were no issues raised by respondents to the consultation with this proposed course of action.

Handover Document

12.18 At paragraph 21 (WIT 17809), Mr Wightman comments that '…*Mr Woods' evidence to the Inquiry confirmed that neither Mrs McCutcheon nor Ms Hepper told him about the handover note during the internal audit*'. I do not accept that the circumstances of my interaction with Internal Audit were such that I ought to have identified a document, about which I had no knowledge, to Mr Woods.

12.19 I left DETI in November 2013, so was not in post when Peter Hutchinson left the Department in May 2014 and produced his Handover document. I would not have been in contact with Peter Hutchinson at that point in time and was unaware as to what he was doing. When Michael Woods contacted me in April 2016, I would not have been aware of the handover arrangements that John Mills would have shaped for the changeover of his staff in 2014. I did become aware of the Handover document when I met Peter Hutchinson in the corridor of Rathgael, by chance, in early September 2016. I had just returned from leave and had read the NIAO report and noted a recommendation on handover had been made. I asked Peter Hutchinson if he had prepared anything for his successors and, as a result, he was able to show me the May 2014 Handover document which he had prepared and passed to colleagues and which he had, fortuitously, kept. I felt this was an important official document that needed to be drawn to the attention of the Accounting Officer as part of his PAC preparations. I arranged for this to happen and was surprised to find out that neither the Accounting Officer nor Mr Woods were aware of it.

12.20 I acted on the Handover document as soon as I became aware of its existence and drew it to the attention of the Accounting Officer. Regardless of whether this document was saved to TRIM or not, Mr Wightman and Mr Hughes both had copies of the document from the time of their arrival in Energy Division. The significance of the Handover document (and its detailed content) makes it difficult to understand how it was forgotten about or not acted upon.

Decision to Prioritise the Domestic Scheme

12.21 I have covered this issue in paragraphs 11.9-11.11 above in relation to John Mills' evidence. In reference to Mr Wightman's latest statement, at paragraph 36 (WIT 17815), he makes the point that the decision to defer Phase II work was taken '*before he or any member of Team 2 took up post*'. This is not consistent with, and is contradicted by, his evidence to the Inquiry which suggests that Mr Mills was involved in that decision. I note that at paragraph 49 (WIT 17820) Mr Wightman states that on joining DETI '*in June 2014, Mr Mills*

had informed me that the introduction of the Domestic RHI scheme was a Ministerial priority' and that '*Mr Mills has made it clear in his evidence that the position is that he made it the Branch's priority in response to Ministerial disappointment that the domestic scheme was not ready'*. He concludes paragraph 49 by saying that *'… it was not the case that the priority had been set by a Minister. It was set by Mr Mills …*' I have been quite clear in my evidence that I (or Team 1 in my time) made no decision on the so-called 'decoupling'. When I left DETI the analysis of the consultation responses was still ongoing and the Minister had not been briefed on the outcome of the consultation nor the shape of the work that needed to follow the consultation, which would have included a list of the issues and a recommendation of what needed to be completed and in what order and the consequences of proceeding in a particular order. The decision would then have been for the Minister to take and transmit to officials. It would have been for Mr Mills to engage with his team and lead this work and send a submission to the Minister.

General

12.22 I do not believe that I have any further significant evidence relevant to the Inquiry's terms of reference, at this stage, that has not already been covered on either my written or oral evidence to the Inquiry.

Statement of Truth

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

Signed:

Dated: __20th November 2018___