DETMINISTER'S FIRST DAY BRIEF – MAY 2015

Division/NDPB: Energy Division

Subject: Renewable Heat Incentive (RHI)

Current Position:
DETI’s Non-domestic RHI scheme provides an ongoing financial incentive for generators of renewable heat for 20 years. A similar scheme applies in Great Britain.

The Domestic RHI Scheme was introduced in December 2014 and provides households with an upfront payment followed by 7 annual tariff payments.

The SEF target is to achieve 10% of heat from renewable sources by 2020, with an interim PfG target of 4% by 2015. Current DETI estimates suggest that around 3.1% renewable heat is in place.

Way Forward:
Phase 2 of the Non-domestic RHI Scheme will see expansion to include new technologies and tariffs.

This is currently being taken forward with the objective of having the changes introduced in late 2015.

Key Stakeholders Other Than DETI (e.g. other Depts, ETI Committee etc):

Funding Issues:
The allocated budget DETI budget for 2011-2014 was £25m. Work is ongoing to get clarity on future RHI budgets for 2015/16 onwards. Current RHI forecasts are that annual RHI expenditure in 2015/16 will be around £22m.

Need for Primary/Subordinate Legislation:
Primary (No) Subordinate (Yes)

Subordinate legislation required for RHI phase 2 amendments

Need for Referral to the Executive Yes/No (Approx Timing)
No
Hi Jeff – as discussed please see below (and attached) re our concerns re RHI/ AME budget going forward. I appreciate that we basically secure our budget via AME profiling but it would be helpful if we could establish some parameters as non-domestic commitments made now/ in next couple of years will have implications for the next 20 years. I and RHI team will be happy to provide further info/ clarification as required.

Thanks and regards

Sandra

Sandra Thompson
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Sandra

Please see email exchange below and attachment concerning the Northern Ireland RHI budget. We made contact with HMT for advice but have been directed to DFP. We are seeking some clarification around the future NI RHI budget. As you are aware, the level of uptake of the Non-domestic scheme has increased significantly over the last few months and we’re expecting uptake to remain high with over 200 new applications for biomass heating systems from the poultry industry (linked to Moy Park’s expansion) expected over the coming 12 months. With RHI payments for accredited non-domestic heating installations committed for 20 years, it is important we manage our budget carefully. In addition, with the introduction of the full domestic RHI scheme in December 2014, we now have the added pressure of annual domestic tariff payments.

We were originally allocated £25M for the 4 years from 11/12 to 14/15 (£2M-11/12, £4M-12/13, £7M-13/14, 12M-14/15) and to end 2014/15 we will have spent £7.88M. However with the increase in uptake recently, the rolling estimated monthly RHI spend has risen to around £928k which we are assuming will increase by an additional £64k for new accreditations each month (£60k non-dom / £4k dom). Based on these figures our projected total monthly RHI spend will have reached £1.68M by March 2016 and £2.496M by March 2017. The corresponding projected annual spends will be £16M.
in 15/16 and £25.5M in 16/17. I'm therefore keen to identify the total RHI budget going forward to ascertain if any tariff reductions will be needed. We'll be making amendments to the Non-Domestic RHI Regulations later this year which provides an opportunity to introduce future tariffs reductions if necessary. We basically need to know what our maximum budget is going forward so we can try to manage future scheme uptake/tariffs to manage costs.

It is worth highlighting that our current projections might be a little conservative with the numbers of applications we’re expecting from the poultry industry during 16/17. If we allowed to carry over the remaining £17.12M (we haven’t spent) this might cover our payments for 15/16 but I would be much happier if I knew we also had our 15/16 allocation on top of this. This would enable us to continue to accept new applications during 15/16 safe in the knowledge that we will not overspend. We would also like some clarity around our likely budget from 16/17 onwards however I realise that this probably won’t be possible until sometime after the Parliamentary elections.

In summary, our queries around the RHI budget are:

(1) Can the unspent balance of £17.12M from the original £25M be carried forward into 2015/16;

(2) Have we received a budget allocation for 2015/16 which based on our current understanding would be 3% of the DECC allocation (£430M) which would equate to £12.9M.

(3) Can any clarity be provided on the maximum annual budget available from 16/17 onwards or is this determined by our own AME profile.

Urgent clarification on the above matters from DETI Finance Branch and DFP would be appreciated so we can factor in tariff reductions if necessary as part of our Phase 2 Non-domestic RHI changes.

Happy to discuss.

Thanks

Stuart

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From: Smyth Murray, Samuel - HMT [mailto:Samuel.SmythMurray@hmtreasury.gsi.gov.uk]
Sent: 20 March 2015 09:48
To: Hughes, Seamus

Received from DFE on 02.05.2017
Annotated by RHI Inquiry
I attach completed monitoring forms for Energy Branch.

As this round does not include AME re-profiling, we need to flag a significantly increased requirement for AME (RHI). Non Domestic applications in 2014/15 are approximately 430 compared with 130 total for the previous 18 months. We have just completed a major review of current applications including a reassessment of the expected monthly uptake. The expected uptake – including accruals – for 2015/16 is now almost £25m (£3m capital + £22m resource). Based on this profile we will run out of money approx mid Sep and would be grateful for advice as to how/if this can be managed. We would also be grateful for clarification of the total AME budget available to NI – my earlier e-mail refers.

We are also flagging a new pressure of £75k in relation to the HEaT programme – SIB funding. We have not submitted a bid as, at present, we have an allocation to cover costs of EMR which, depending on ministerial decision, may or may not proceed. If EMR does proceed, we are likely to need at least the full allocation to cover these costs and will have to bid separately for funding for HEaT. If EMR does not proceed there will be a reduced requirement.

There is also a further potential pressure on Admin side for up to £115k in relation to EMR legal costs. We have again not submitted a bid pending ministerial decision as to whether EMR is to proceed. If it does not, we are likely to have a reduced requirement of up to £50k on admin side.

Regards

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Trevor, thanks for this morning’s meeting on the Pilot Energywise OBC. It was very helpful.

I mentioned that I’ve been trying to get some clarity around future AME budgets for the RHI. Please see email exchange below. Uptake of the non-domestic RHI scheme has increased dramatically over the past twelve months. During the first 18 months of scheme (Nov2012-March2014) we received 130 applications. We have received a further 470 applications in the past 12 months. The table below sets out our revised RHI AME forecast based on the recent uptake figures. We have not factored in any saturation point (drop in uptake) until the scheme closes to new application in March 2020. The funding requirement is at its highest in 2020/21. Reducing non-domestic payments will continue for a further 19 years. Reducing domestic payments will continue for a further 6 years. We have also factored in the 1,500 boilers to be installed as part of the Pilot/Full Energywise Scheme. Our current AME profile only forecasts £11m of spend in 15/16 and needs revised, otherwise we run out of funds in mid September. We weren’t given an opportunity to submit a revised AME profile as part of June monitoring. We are therefore keen to revise our AME profile asap.

Our initial RHI budget for the 4 year budget period 2011/12-2014/15 was £25m. This was based on 3% of DECC’s RHI allocation. We haven’t yet spent all of the £25m. DECC’s RHI budget for 15/16 is £430m (see attached letter). We await confirmation from DFP that NI has received 3% of DECC’s RHI budget (£12.9m) for 15/16. This budget together with the underspend from the £25m should cover our current forecasted 15/16 RHI spend of £22m.

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In policy terms we are chasing a target of 10% renewable heat in NI by 2020. We hope to have achieved around 4% by the end of 15/16 but this will cost £22m/yr for next 20 years even if we close the scheme at the end of next 15/16 and accept no further applications. This is because once an installation is accredited onto the scheme, the RHI payments are committed for 20 years (irrespective of future budget availability). I am therefore keen to identify what the maximum RHI budget for NI is likely to be from next year onwards. Do we wait until DECC receives its budget for 2016 onwards and assume NI receives 3% of this? Or do we take 3% of DECC’s most recent AME forecasts (Table 2 of the second attachment)? Our revised AME forecast is running at just under 3% of DECC’s high forecast. This makes sense as NI uptake is higher than GB scheme with NI application numbers currently running at 5% (and not 3%) of GB scheme.

As part of Phase 2 of the Non-domestic RHI I will be amending the legislation to extend the scheme to some additional technologies. I’m also keen to take this opportunity to include a number of future tariff reductions to help manage our budget going forward so any clarity that can be provided on the future AME budgets that are likely to be available for RHI would be greatly welcomed.

Happy to meet to discuss further.
decide what type of duties will this person have to fulfil, what type of person do we want to
fulfil them —

Mr Cairns: That’s correct.

Mr Lunny: — and then you go looking.

Mr Cairns: That’s correct.

Mr Lunny: So that’s clearly what’s envisaged.

Mr Cairns: Yes.

Mr Lunny: But it’s questionable whether that’s actually what happens. I want to take you
to each of your appointments to see what your experience was.

Mr Cairns: Absolutely.

Mr Lunny: And just before leaving the code, if we scroll just further down that page to
paragraph 10., it says there:

“There are 3 types of Special Adviser – expert, political or both.”

Now, do you know which of those three types you were considered to be?

Mr Cairns: I believe political, although I think, having reviewed the letter of appointment
from Mr Bell, I believe he was holding out some expertise that I’d had in relation to DETI
matters while I was head of policy.

Mr Lunny: Right. So, possibly you fell into the third category of “both”? 

Mr Cairns: Possibly, on the basis of that letter, I think that was what Mr Bell was
suggesting.

Mr Lunny: We’ll look at your first appointment. You were appointed as a spad to Mr Bell
when he was a junior Minister in OFMDFM —

Mr Cairns: That’s correct.

Mr Lunny: — for the period June 2012 to June 2013. Now, before we look at the letter of
appointment in relation to that, can you explain to the panel how that appointment came
about? Was it a competition? Did you make an application?

Mr Cairns: No.

Mr Lunny: Did you put your name forward into a pool of possible candidates? How did that appointment arise?

Mr Cairns: As I recall, I was actually at the party executive meeting, and Mr Robinson approached me after the meeting and said he would like to have a private word with me.

And we went to another room and Mr Johnston was present, I believe, and Mr Robinson said that Gavin Robinson was gonna be Lord Mayor of Belfast, and would I move from my position in the party to become a special adviser in his office. And I accepted that appointment.

Mr Lunny: So Gavin Robinson was, at that point, the special adviser —

Mr Cairns: He was.

Mr Lunny: — to Mr Bell as junior Minister and he was going to be mayor for a year —

Mr Cairns: That’s correct.

Mr Lunny: — which is why that appointment then was for a year. So you weren’t aware of any competition or any other candidates in the pool?

Mr Cairns: The first time I became aware that I was even being considered to replace Gavin Robinson was at that meeting.

Mr Lunny: And was there any sense of it being viewed as a reward for work that you had done up to that point, or as a test, perhaps, to see whether you could go on to be a core special adviser?

Mr Cairns: It was a very brief meeting. Mr Robinson just briefly said, “As you know, Gavin’s going to be Lord Mayor. We need to replace Gavin, and we’d like you to do that if you are willing to do that”. I said I was. He said, “Very good”. I think he left the room at that point in time and I’d a brief conversation with Mr Johnston, who told me to report to
Stormont Castle — or it was probably Parliament Buildings — because the First Minister’d be there on a Monday and Tuesday, on the Monday morning. This would’ve been the Thursday night.

Mr Lunny: Right. So that was three or four days’ notice?

Mr Cairns: That’s correct.

Mr Lunny: And you’ve mentioned Mr Johnston and Mr Robinson being there. Can we take it that the Minister, to whom you were actually going to be a special adviser, he wasn’t in the room or involved —

Mr Cairns: He wasn’t.

Mr Lunny: — in that conversation?

Mr Cairns: That’s correct.

Mr Lunny: That’s Mr Bell.

And we know that part of the process involved in the actual appointment of a special adviser, involves the Minister writing to the permanent secretary in the relevant Department, setting out who it is he wants to appoint and why. You’re aware of that?

Mr Cairns: That’s correct, yes.

Mr Lunny: And I know you’ve seen, as part of the Inquiry process, the letter that was sent then to Malcolm McKibbin, who was the head of the Civil Service at the time, by Mr Bell. If we could bring it up, please, it’s at DOF-82182. So this is one of the documents from your personnel file. And we can see it’s a letter dated the 6th of June of 2012, and it sets out what is required of a special adviser to a junior Minister in OFMDFM. Amongst other things, it does refer to the requirements including:

“A knowledge of legal matters, including a detailed knowledge of constitutional law

• A detailed knowledge of Northern Ireland legislation”.

And, the very bottom of the page — if we could maximise the bottom half, please, you’ll
sorted and Mr Bell did not mention the incident again and relations were back to normal.

I. Insofar as not addressed in your earlier evidence, clarify why and by whom you were assigned as Special Adviser to Minister Bell;

In OFMdFM, the First Minister had three SPADs and the Junior Minister has one. In reality the SPADs serve both Ministers as various issues are divided out between SPADs and fall under the authority of different Ministers. I was Jonathan Bell’s SPAD in OFMdFM but other SPADs would have undertaken work for Jonathan as I undertook work for the First Minister.

On the day Mr Bell was appointed to DETI, I believed that the SPADs would remain in post. It seemed to me logical that if a new Minister was moving to a Department that the SPAD in post would remain. I was brought into the First Minister’s office five minutes before the announcement of the Ministerial reshuffle and told I would be moving to DETI, Dr Crawford (despite his experience) would be going to DFP. I was given no chance to object.

I believe the decision was communicated as coming from the party officers, but I suspect it was made by Mr Robinson alone, who informed the party officers.

The decision defied logic. Mr Crawford had several years of DETI experience, Mr Ewart, had been the SPAD in DFP for several years, yet he was moved to DSD. Mr Brimstone, who had years of experience in DSD was moved to my post in OFMdFM. Further, given the negative press surrounding Mr Brimstone, it seemed strange to be moving him to OFMdFM. The press took his appointment to my post to be a promotion, given Mr Brimstone was the experienced DSD SPAD it seemed odd to invite negative publicity from a move that defied logic.

While I had no input in the decision to move me to DETI, I resolved to undertake the position to the best of my ability, in the face of what I knew were difficult circumstances, while the decision was not ideal, the issues in DETI were a challenge
knowledge, Minister Bell’s wishes (providing full details of any relevant representations);

While I did not want to be Mr Bell’s SPAD (given his volatility and given I knew he did not read his papers), Mr Bell, by contrast, kept calling me “top SPAD.” This gave me the impression that he was in favour of my appointment. Indeed, he attempted to gain a pay rise for myself, however this request was turned down by Dr McCormick.

o. Specify who, given the difficulties which appear to have arisen in the working relationship between you and Minister Bell around the time of the Ministerial trip to London on 9 to 10 June 2015, decided that you should continue to work together thereafter;

It was clear and apparent to me that no other SPAD wanted to work with Mr Bell. Indeed, on one occasion Mr Bullick had accompanied Mr Bell to a conference. When Mr Bullick returned he had a name plate that read “Richard Bullick – Special Adviser to Jonathan Bell” in an amusing monologue Mr Bullick described it as the most embarrassing thing ever written. This shows the regard in which Mr Bell was held.

It is clear from what happened in June 2015 and commitments made to me by Mr Johnston in October 2015 (following my return to work after the in/out period) no one wanted to work with Mr Bell. Given his well-known history in the party, this is not surprising.

p. Clarify whether, given the difficulties which appear to have arisen in the working relationship between you and Minister Bell, any procedures were in place / put in place, either formally or informally, to monitor, manage, and/or address this issue and whether those procedures were implemented (providing full details of the said procedures and their
meeting and the meeting. The meeting. Are you talking about the meeting — not the pre-
meeting — the meeting, being with civil servants? So, with somebody else?

Mr Cairns: Let’s say, for an example, there was an outside body coming in to meet with
the Minister —.

The Chairman: Yes, that would be an outside body for the meeting and then the pre-
meeting would be —.

Mr Cairns: There would be a pre-meeting with just the civil servant. The outside body
would be brought in, and then the meeting would take place with the Minister: the civil
servant would be present, the special adviser and, obviously, the Minister themselves.

The Chairman: And in what way would the pre-meeting help that? Would the Minister be
expected to ask if there was something that he didn’t follow or —

Mr Cairns: That was the expectation.

The Chairman: — would civil servants have to advise him?

Mr Cairns: These meetings typically, in a functioning office, would be 15 minutes for the
civil servant to basically say, “Look, did you understand my brief? Is there anything about
this meeting you don’t understand?” —.

The Chairman: “I can help you on that”.

Mr Cairns: — “Can I help you? Is there any page you can point to that you don’t
understand?”.

The Chairman: “These are the points. Have you picked these up?”.

Mr Cairns: That’s right. But the civil servant was coming in and was having to go from A to
Z because the brief hadn’t been read.

Dame Una O’Brien: If I may, Mr Lunny, in terms of the business which was being
transacted when you worked with Mr Bell at OFMDFM, you’ve mentioned the visits and
meetings and so on; were there also submissions related to decisions? Was that a type of
business that went through that ministerial role?

Mr Cairns: That’s slightly more complicated because, ultimately, the junior Minister
doesn’t have any power. Only the Minister can make the decision, being the First Minister,
jointly with the deputy First Minister. So, routinely, Jonathan would’ve been given
submissions on a number of areas for his comment and input. They would’ve been put into
the First Minister’s box and the First Minister would’ve made the final decision. So, the
special adviser would’ve read the submission, Jonathan would’ve read the submission, any
comments that the junior Minister had would’ve been then put into the First Minister’s box
for the First Minister to make the decision jointly with the deputy First Minister.

Dame Una O’Brien: Thank you. I’m sure we’ll come on to this, Mr Lunny, but I think that
marks a difference in the nature of the ministerial role that’s potentially significant when the
change happens in May 2015.

Dr MacLean: Was Mr Bell reading those sorts of submissions at that point in OFMDFM?

Mr Cairns: It wouldn’t have been my belief that he was, as evidenced by how meetings
and interactions were conducted.

Dr MacLean: So, you’re describing what should’ve happened rather than what did
happen?

Mr Cairns: That’s correct.

Mr Lunny: Well, then that —. You’ve described how he wasn’t, essentially, across his brief
typically, and that was something that was known to you and the other special advisers. Was
there any other feature of how he operated as a Minister which would have rendered other
special advisers unenthusiastic about being his special adviser in DETI?

11:15 am

Mr Cairns: Well, I think at least one other special adviser in the First Minister’s office had
experienced similar experiences to myself.
Mr Lunny: And what, in terms, what experiences had you had by that point, May 2015?

Mr Cairns: Just one experience by that point that I had had, which I believe was February ’13.

Mr Lunny: Right. Is that the Valentine’s Day incident that you —

Mr Cairns: Sure. That’s correct.

Mr Lunny: — talk about in your witness statement? And, in summary, what did that incident involve?

Mr Cairns: Well, Mr Bell —. I mean, it’s laid out in full, I believe, in the witness statement. I’ll just give a very brief description. Mr Bell believed that, um —. [Short pause.] Well, I had told Mr Bell to take his wife out for Valentine’s Day rather than go to an event. Mr Bullick was teasing him about that, and I — Mr Bell looked at me for affirmation. I didn’t give that affirmation at the time, and Jonathan was angry about that. He believed that I should’ve backed him up, whereas I think everybody in the room saw it as gentle office banter. And then there was an exchange between us, where Mr Bell got, I think it’s fair to say, extremely angry.

Mr Lunny: Yes. And can you describe that exchange? Where did it occur?

Mr Cairns: It occurred in his office in Parliament Buildings. Mr Bell was extremely angry and was shouting that, you know, I shouldn’t make a fool of him in front of the First Minister. He was sitting across the room from myself. I was standing a few feet from the door, and Mr Bell then put me in, I think it’s fair to say, fear or apprehension of assault at that point in time.

Mr Lunny: By doing what?

Mr Cairns: Well, he started to walk across the room while he was aggressive and angry. Now, I don’t know if anything would’ve come of it or not, but certainly I was placed in fear at that time.
Mr Lunny: How was he manifesting his aggression and anger?

Mr Cairns: Well, he was walking across. He was stood up. He was angry. His fists were clenched.

Mr Lunny: And how did you bring the situation to an end?

Mr Cairns: I said I was leaving the room, and I left the room and went down to see Mr Johnston at that point in time.

Mr Lunny: And did you complain to Mr Johnston about that incident?

Mr Cairns: I told Mr Johnston what had happened. Mr Johnston told me to leave for the day, and then when I came in the next day, Mr Johnston said it was all sorted out, so —.

Mr Lunny: OK.

The Chairman: This is something which occurred in 2013, is it? Mr Lunny?

Mr Lunny: It is the event that Mr Cairns describes in his witness statement. He doesn’t give a year, but you’ve just clarified it was 2013.

Mr Cairns: I believe it was 2013.

Mr Lunny: It’s the Valentine’s Day event. Mr Cairns gives a description of it. It’s in his witness statement, if we could bring it up.

The Chairman: That’s before he became spad to Mr Bell for —

Mr Lunny: For DETI.

The Chairman: — RHI purposes?

Mr Cairns: That is correct.

Mr Lunny: Yes, it’s —. For your note, it’s at WIT-20170, and it’s the 14th of February incident that you describe there.

Mr Cairns: [Inaudible.]

Mr Lunny: So, that was an incident relevant to the proper functioning of your relationship as Minister and spad —
Mr Cairns: That is correct, yes.

Mr Lunny: — that made you unenthusiastic about —.

Mr Cairns: That’s correct, and I think it’s fair to say, and I’ll not go into any details, but other people had had similar experiences. I can leave that there.

Mr Lunny: OK. I want to take you on to Mr Bell’s evidence about your appointment, and his input into it and his views about it, before finishing this topic, so I don’t know if that would be a convenient time to have a short break.

The Chairman: Aim for 25 to?

Mr Lunny: Yes.

[The hearing was suspended at 11:18 am]

[The hearing resumed at 11:37 am]

The Chairman: Yes, Mr Lunny.

Mr Lunny: So, Mr Cairns, we were looking at your appointment to being special adviser to Minister Bell when he became DETI Minister, and we’ve gone through your perspective on that, and I told you I would bring you, then, to Mr Bell’s evidence in relation to it. His evidence — for the panel’s note — in his witness statement is at WIT-22624, at paragraphs h and i. And, in terms, he says there that you wouldn’t have been his: “first choice”,

even though you were his existing special adviser; that other special advisers had “superior skill sets”,

but they were already taken, so he agreed to take you. And then he addressed some of this in his oral evidence last week. And, again, the reference for the panel is TRA-12319, at line 5 onwards. And what he said there was that:

“In the course of four years of working with Gavin Robinson, Emma Little, Timothy Johnston, Richard Bullick, I would have chosen any of those in advance, and there were also several highly qualified distinguished
Mrs Foster: I do, yes, absolutely. I think that if a special adviser is in receipt of a
submission in early July, knowing now that they were told in June that there was a significant
issue with the scheme, to leave it then to the 24th of August for a direction seems to be
rather strange, and I can only put it down to the fact that there was a bad working
relationship between the two of them.

Mr Scoffield QC: If you agree with Mr Johnston that it was a mistake for them to continue
to work together, whose mistake do you think that was?

Mrs Foster: Well, I think that the party leader had met with both of them. He had
discussed the issue individually and then, as I understand it, the two gentlemen were
brought together. Reflecting now on Mr Cairns’ evidence, he felt that he had to go back to
work with Mr Bell because, from a financial point of view, he needed to pay his mortgage
and, therefore, he needed to get back into work and felt that he had to go back to work with
Mr Bell. I don’t think that that’s a particularly good way of working or a good relationship
because the relationship between a special adviser and a Minister is one of trust, one of
mutual understanding, and if that is not there, then it makes it very difficult to work.

The Chairman: Was Mr Robinson a defender of Mr Bell?

Mrs Foster: Well, Mr Robinson and Mr Bell had a very close relationship, I think it’s fair to
say.

The Chairman: Thank you.

10:15 am

Mr Scoffield QC: Are those two answers really a way of saying that it was Mr Robinson’s
mistake to require the two of them to work together?

Mrs Foster: Well, it was Mr Robinson’s decision to put the two gentlemen back together
again, and I think that Peter would’ve known that Jonathan had a temper and a particular
way of doing things, and, yet, he decided to put Timothy back in with him again.
not explore the question of previous occasions with Mr Cairns, please explain this;

I understood the previous occasions to be at least one other occasion when Mr Bell had shouted at Mr Cairns. I am unable to recollect when and where. I was also aware of a previous occasion when Mr Bell had allegedly shouted loudly, and was claimed to have acted in an intimidatory manner, towards a previous adviser to him, Ms Emma Little Pengelly.

I. Insofar as not addressed in your earlier evidence, clarify why and by whom Mr Cairns was assigned as Special Adviser to Minister Bell;

Mr Cairns previously worked in OFMDFM with Jonathan Bell and when Mr Bell was appointed by Mr Robinson to the post of DETI Minister in May 2015, Mr Cairns was asked by Mr Robinson to work with him as Special Adviser as they know one another well have worked together previously at Stormont Castle.

m. Specify whether Mr Cairns and/or Minister Bell had any input into this decision and, if either of them did, provide details of this including, but not limited to, the following:

i. Any representations made by either of them including details of when and to whom they were made);

I assume that they did and that this would have involved conversations with FM Robinson at the time although I don’t have any recollection of being privy to them. In particular, Mr Robinson would have had regular meetings with the then Junior Minister Bell at which I would not have been present. It would be fair to say that in general terms there would not have been great enthusiasm for an offer of working for Jonathan Bell. I do not recall any particular representations from either man rejecting the notion of working together.

ii. Without prejudice to the generality of the foregoing request, whether Mr Cairns could realistically have
I was on leave for most of July 2015. I do not recall any contact with Minister Bell in July and August of 2015, or Minister Foster, until the political crisis arising from the murder of Kevin McGuigan in mid-August 2015 which then radically changed the political environment within Executive Government.

13. In respect of Mr Cairns’ written evidence that Minister Bell “rarely read papers or briefing documents and accepted advice on most matters without question or comment”, that he was “not as engaged … as one would reasonably expect a Minister to be”, and that “he often boasted … that he only ever read the summary sheet” paragraphs 7 and 8 of WIT-20022 to 20023 refer), please address the following issues:

a. Explain, to the best of your knowledge, how widely known Minister Bell’s approach to reading, questioning, and engagement, was amongst each of the following: you, other Special Advisers, other Ministers, and DUP officials;

Mr Bell’s approach to reading, questioning, and engagement was known to me to be very poor during his time as a Junior Minister in Stormont Castle. I have no first hand knowledge of his work pattern when he moved to DETI but I suspect it did not change. Mr Bullick, and in particular Ms Little and Mr Brimstone as Advisers who worked for him on specific policy areas, would also have had knowledge of his lack of focus as outlined in Mr Cairns’ evidence. I do not think other DUP Ministers would have had that knowledge although Mr Sammy Wilson as Finance Minister did tell me on one occasion that when he met Mr Bell as part of a monitoring round bi-lateral meeting he was appalled at his lack of preparation (when Mr Bell was Junior Minister).

b. Clarify whether any steps were taken by you or by any others to address these issues in respect of Minister Bell’s approach to reading, questioning, and engagement providing details of any steps taken and the outcome of same or, if no steps were taken, an explanation for this);

On the steps taken in relation to my knowledge about Mr Bell’s approach to reading etc., I advised the First Minister of my view that
he was not a suitable candidate to be appointed to the role of Minister of Enterprise, Trade and Investment. From memory Mr Bullick shared my assessment.

c. State whether, and if so in what precise respects, Minister Bell’s approach to reading, questioning, and engagement adversely affected the ability of the Minister, the Department, officials, other Special Advisers, or other Ministers to function effectively and, in particular, to address issues in respect of the RHI Scheme.

Ultimately this is a matter for the Inquiry but it is hard to reach any other conclusion other than his lack of attention to detail and engagement more generally must have had an adverse impact in respect of the RHI Scheme. I never found Mr Bell to be interested in detail.

08 July 2015 Submission

14. The document at DFE-120439 to DFE-120457 is a submission from Stuart Wightman to Mr Cairns and Minister Bell, dated 8 July 2015, entitled ‘Renewable Heat Incentive RHI – Introduction of Cost Control Measures and Ensuring Effective Administration of Domestic Scheme’. The submission sets out options to deal with budget pressures within the RHI schemes including the introduction of a tiered tariff for medium sized biomass boilers within the scheme and the introduction of “digression [sic]”. As to this, please explain in detail:

a. When, and for what reason and in what circumstances, each of you and to the best of your knowledge) the First Minister first became aware of the existence of this submission;

I did not become conscious of the existence and content of this submission until a copy was sent to me as part of the gathering of information about the RHI scheme by Andrew Crawford in December 2016. I had no knowledge of its existence in Summer 2015 but as outlined in 8e (ii) I have become aware that a copy of it was forwarded to me by email on 16th July by Andrew Crawford. I was on leave from work
Dr McCormick: Yes.

Mr Scoffield QC: Was that your experience of the Minister?

Dr McCormick: I hadn’t had that much experience of the Minister at this stage, whereas Tim had worked for him as spad in OFMDFM. So, I defer to Tim’s analysis of that. I think that strikes me as sound. I wasn’t conscious of it. I think what Tim says in that section of his statement is totally understandable.

Mr Scoffield QC: At that stage, you hadn’t had a great degree of contact —

Dr McCormick: Not very many.

Mr Scoffield QC: — with the Minister, but does it ring true in terms of the experience you had later on with the Minister?

Dr McCormick: It does. It makes sense, yes.

Mr Scoffield QC: I think, a page or two prior to what we have on the screen, Mr Cairns makes a more trenchant observation, which is to the effect that you were aware that the Minister didn’t read his papers but you didn’t take any action in relation to that. And we can have a look at that, that’s at the bottom of page — I think at the bottom of the next page, possibly. Yes, you’ll see that:

“To the best of my knowledge Dr McCormick, who witnessed Mr Bell’s approach, took no action.”

And I think what we find in the preceding paragraphs is what might be described as a limited relationship that Mr Bell had with the paperwork that was placed before him. I should say Minister Bell takes issue with this, but do you have any views on that?

Dr McCormick: There was a reference to New York on one of those pages. So, yes, just down a little bit more, please. So, obviously, the New York point is January ’16. So, if Tim Cairns is saying that I was crystal clear on his limited reading of papers after January ’16, that’s at a point in time; that doesn’t flow back into July or August of ’15.

Should I have been sensitive at that point anyway? Maybe I should, but what he’s saying
The Chairman: Well, it wasn’t a matter for Mr Cairns to say, “You must do this”. Mr Cairns is there to advise, not to determine.

Dr McCormick: Yes. I agree. Yes.

The Chairman: And the Minister appears to have felt that he was being told what to do. Is that the —?

Dr McCormick: I think that’s fair. Yes.

Mr Scoffield QC: One of the reasons, Dr McCormick, why the Inquiry necessarily has to look at a number of these issues is because, as you’ve said in your witness statement — this is paragraph 2.15 of your first witness statement — that there was:

“a breakdown of trust”,

which, you’ve said:

“created an additional challenge for ... officials”.

And indeed you’ve said that, after the disagreement in London, there was:

“a degree of distrust which made the difficult RHI issue significantly harder to resolve”.

You’ve said then, in your third witness statement, that:

“the difficult relationships”—

between Minister Bell and the special adviser —

“did have an adverse effect on the Department dealing effectively with the RHI issue”.

Now, I should say, and we’ll hear over the next number of days’ hearing that neither Minister Bell nor Mr Cairns accept that analysis in quite that way. Other witnesses have said something similar to what you have said, which is why this is a line of enquiry that the — a line of enquiry that the Inquiry has to consider.

One of the other things that you said in your witness statement, paragraph 90, however, is that:

“in practice” —
Mr Scoffield QC: And would that apply right up to permanent secretary level?

Mr Stewart: I couldn’t speak for all colleagues, and certainly not for all permanent secretaries across the service, but I don’t recall it in my experience.

Mr Scoffield QC: Are the officials scared of the spads?

Mr Stewart: [Short pause.] Again, I might answer that with a generalisation and be unfair to some of my colleagues. The culture that exists is of spads acting on behalf of Ministers. To be fair to spads, I’m not aware of any example of a spad trying to take on to himself or herself ministerial authority directly but they do tend to be the source of decisions emanating from the Minister, and in that sense acting almost — well, not in loco Minister but on behalf of the Minister in conveying instructions to officials, and that tends to be the direction of the relationship. It’s the spads conveying instructions or requests to officials, not the other way round.

Mr Scoffield QC: We’re moving into territory now which is the next topic that I wanted to discuss because, as we discuss in due course what’s happening throughout the summer of 2015, obviously there’s quite a lot of interaction between yourself and Mr Mills and the Minister’s special adviser.

I wanted to spend just a few minutes talking about the relationship between the Minister and the special adviser, to test, in particular, whether the proposition you made a few moments ago that, generally, the spad is speaking with the authority and the knowledge of the Minister held good in this case.

And one of the next things that we come to in the chain of events in June 2015 is the trip to London on the 9th and 10th of June. Am I right in thinking that you weren’t on that trip?

Mr Stewart: I wasn’t, no.

Mr Scoffield QC: After the trip, there was a period when Mr Cairns wasn’t present in the Department. What did you understand from colleagues as to what had happened in London
and the reason for Mr Cairns’ absence?

Mr Stewart: That there had been a sharp disagreement between Timothy and the Minister in front of officials, centring on whether the Minister had the right to decide matters for himself or whether he was required to revert to his party for endorsement or non-endorsement of a decision that he was minded to make.

Jonathan took the very clear view that authority rested in him and in him alone. Timothy took rather more of a realpolitik view that the Minister may, in law, be the head of the Department and the person who controls and directs the Department — that’s absolutely correct — but the Minister owes his or her position to the nominating officer, usually the party leader, and the realpolitik consequences of that are that there is a degree of central control from Minister to party leader. Sorry, the other way round: party leader to Minister.

Mr Scoffield QC: Just on this topic, Chair, if you have a look at Mr Stewart’s second witness statement, at paragraph 30. It’s where you move into this area in your written evidence, and you do say that the relationship between Minister Bell and his special adviser:

“was, at times, strained”.

And you say that:

“The tension in the relationship did not appear to stem from any fundamental difference on policy, nor to any lack of personal chemistry. The root cause appeared to be resentment on the part of Minister Bell to Mr Cairns’ ‘party liaison’ role and how it was exercised.”

And the disagreement in London, was that the most obvious example of this tension?

Mr Stewart: Yes.

4:15 pm

Mr Scoffield QC: Were you or, to your knowledge, the permanent secretary, Dr McCormick, either asked to or did you give Minister Bell any advice about this issue around this time, so in the summer 2015 period?
Mr Cairns: I mean, it’s very difficult to function in the special adviser/Minister relationship if the Minister isn’t absolutely across his brief. And I think every special adviser in OFMDFM had experienced that issue with Mr Bell, and I think primarily that would’ve been on everybody’s mind. It makes things exceptionally difficult when you’re meeting outside groups, when you’re meeting, you know, businesses. In OFMDFM, there would’ve been international relations. It makes it very difficult when you’re constantly going into meetings and your Minister’s not briefed.

Dame Una O’Brien: Can you just explain a bit what you’re —? When you say he’s not across his brief, are you saying that he’s being insufficiently briefed by his civil servants or that he’s not engaging with the briefing, not understanding it? Can you unpack that?

[Inaudible]?

Mr Cairns: He wasn’t reading it, in simple terms. Now, there is always a pre-brief, as I’m sure you’re aware, before the Minister would meet with some outside guests, but that’s 15 minutes, and the civil servant is coming in assuming the brief is read. That’s really —. That meeting is really, “Look, do you have any problems?”, and you would say, “Look, I’ve a problem with, you know, schedule 2, paragraph 5. I don’t understand that. Can you talk me through that?”. That’s really what that meeting with the civil servant is for. But the civil servant would be coming in, you’d 15 minutes, and it was abundantly apparent to everybody in the room that the brief hadn’t been read.

Mr Lunny: So, in terms, did that make the special adviser’s role much more difficult than it was with a Minister who read their briefs in detail?

Mr Cairns: I think certainly that would’ve been a point of conflict, or a point of difficulty is perhaps a better word, on a daily basis.

The Chairman: I’m not sure I quite picked up the distinction between the 15-minute pre-
Other than in exceptional circumstances (i.e. the absence of the Special Advisor), submissions were then passed to the Minister's Special Adviser. When I was Minister Bell’s Private Secretary the usual practice was that the Special Adviser (Timothy Cairns) would consider the submission, and thereafter return it (usually in a hard copy) to me, whereupon I would pass it to the Minister for his consideration. The Special Adviser would record his comments in handwriting on the submission. At that stage the Minister would consider both the submission and any comments from the Special Adviser. Most often, submissions were passed to the Minister to read and consider when he was in one of his Ministerial offices, either in Netherleigh House or Parliament Buildings. I would not routinely have been present with the Minister when he was reading or clearing submissions and their annexes on such occasions. As such, I cannot state to which extent the Minister read the submission or any annexes as I was invariably working on other duties. I was often present when the Minister read and considered submissions in the Ministerial car, at which stage I formed the impression that he would read those documents in a summary fashion and rely on the Special Advisor's guidance. In either scenario, (whether in the office or travelling) I understood that the Minister would usually discuss the submission and any annexes with his Special Adviser, and would then record his decision on the paperwork. On several occasions the Minister remarked directly to me that he had not read all the detail of the submission or annex, but was guided by the Special Advisor’s comments.

When the Minister had cleared a submission (by recording his decision on the paperwork), it was returned via myself to the Private Office, where the decision was recorded and the outcome was relayed electronically to the author of the submission and any officials on the cc list.

**Involvement with RHI Scheme**

8. During my period in DETI, from May 2015 until May 2016, I had no direct involvement in the RHI scheme, nor did I offer any advice on the Scheme to the
g. No one. The fact Timothy Cairns followed me to the car and apologised for his behaviour again a second time I regarded the matter as resolved. Nothing was raised with me subsequently.

h. When appointed Minister by Peter Robinson on the Friday before we spoke about Special Adviser and it was agreed as other Special Advisers were not available Timothy Cairns would come across to DETI.

i. While Timothy Cairns was not my first choice as I regarded some of the other SPADS to have superior skill sets. However, as they were taken I agreed to take Timothy Cairns. I was not aware Timothy Cairns had any issues with being my SPAD. Indeed, to the contrary, he spoke to me several times about looking forward to the role and enjoying it.

j. As outlined at h.. I don't know what input Timothy Cairns may have had.

k. The issue was resolved, as I understood it, with Timothy Cairns unequivocal apology and I agreed to Timothy Cairns continuing to work for me.

l. No. I regarded the matter as resolved.

m. Timothy Cairns was acting to not allow issues to be dealt with due to information he was stating coming from other SPADS. I do not believe that any relationship issue was the reason.

n. My understanding was the SPADS were employed as temporary civil servants and the normal civil service procedures would apply.

o. No.
before me, but what I was told was I was being appointed as a Minister and that, “You will
sign for the special adviser we appoint to you”. So, you know, looking at this now for the first
time, that would not have been what I would’ve done. The procedures clearly haven’t been
followed. But Timothy, while being good, wouldn’t have been the excellent person I
would’ve looked for. In the course of four years of working with Gavin Robinson, Emma
Little, Timothy Johnston, Richard Bullick, I would have chosen any of those in advance, and
there were also several highly qualified distinguished people in outside life that I would’ve
chosen for the job if I had’ve been allowed to make a choice on it.

12:30 pm

Mr Scoffield QC: I’m not so much, Mr Bell, on the point of the selection procedure or the
qualifications of the candidate. I’m on trust between the parties. Do you think you had the
requisite amount of trust?

Mr Bell: I think, to be fair to Timothy, his greater degree of trust was to the more senior
special advisers. I mean, he frequently deferred to them. The other special advisers felt that
he was almost like a Walter Mitty character that aspired to be them. And I understand from
this history within the party, and I really don’t want to go into this, but the party had serious
concerns about him in relation to one particular incident, and it’s long before he ever came
to me, and it’s for the party to outline those concerns.

And, secondly, he’d come to me to say senior figures in the party, when he was working
for the party, had basically told him he would have to resign: some mistake, or alleged
mistake, he’d made in relation to Diane Dodds’s European nomination papers. He’d said to
me, “You know, the deputy leader came to me and told me, ‘You’ll just have to resign’”.

And then what I could see subsequently — it wouldn’t have been my choice — he told me
he felt intimidated. He felt he had to act to the sen— more senior advisers. I remember, in
one specific case, he said to me, “Look, I’m weak and I’m a coward”. One specific case. It was
The Chairman: Thank you very much, Mr Lunny. Two o’clock?

Mr Lunny: Thank you, Chairman.

[The hearing was suspended at 1:01 pm]

[The hearing resumed at 1:59 pm]

The Chairman: Yes, Mr Lunny.

Mr Lunny: Thank you, Chairman. Mr Cairns, we were just about to start looking at the trip to London on the 9th and 10th of June 2015.

Mr Cairns: That’s correct.

Mr Lunny: As we understand it, that was the trip where you, Minister Bell and a number of DETI energy officials were meeting Amber Rudd, who was the DECC Minister, about the renewables obligation. Is that correct?

Mr Cairns: That’s correct.

Mr Lunny: And about decisions that she was making that would affect the NIRO.

Mr Cairns: That’s correct.

Mr Lunny: And you deal with it in some detail in your most recent witness statement, and you deal with it in, I suppose, two separate parts. There’s the 9th of June interactions, and then the 10th of June interactions, you have with Minister Bell. I want to take you first of all to the 9th of June and to the dinner you had that evening with Minister Bell and his private secretary, Sean Kerr.

Mr Cairns: Uh-huh.

Mr Lunny: So, you’ve given us an account in your witness statement of how you covered a number of documents, or briefs, that were relevant to the following day’s work —

Mr Cairns: That’s correct.

Mr Lunny: — at the dinner. And then you mentioned your meeting of the previous evening with Minister Foster and Mr Crawford.
the 9th of June and:

“that in that conversation the Minister had made clear his determination to bring the RHI under control”.

Now, your evidence — this is at WIT-22619 in your third witness statement, paragraph 14 a. — is that you:

“have no recollection of any discussion on the RHI scheme”

that night. And what you say is that the whole purpose of the meeting was to talk about the NIRO issue. It wasn’t RHI at all.

Mr Bell: That’s correct, yes.

Mr Scoffield QC: I’m just wondering, when you say you’ve no recollection of any discussion on the RHI scheme, are you saying that it might have been discussed but you don’t remember or, on balance, you think that it wasn’t discussed or raised at all?

Mr Bell: On balance, I don’t think it was discussed or raised at all. I mean, it’s so —. The purpose —. I mean, we were in a very difficult situation that next day because of the detail of the meeting and, just to contextualise, it was Northern Ireland businesses under the NIRO — and let me be clear it was the NIRO — had been told that there was a working understanding from government that they would have two years plus a one-year grace period. And we knew a lot of people had taken that information that the previous Minister Arlene Foster had quite faithfully given out because that was the information she had received, as I understand it.

So, a number of businesses had taken the information from government and invested on that basis. Now, I was being told that the new Secretary of State, Amber Rudd, was moving the goalposts by a year, and the entire purpose of going to London was to press the issue, which I thought was only fair to Northern Ireland business. If government has told you you’ve two years and a one-year grace period, if they’ve given you that working assumption, then that should be honoured, particularly if you’ve invested, as I understand at the time,
not only their own money but, sometimes, their future money, grandchildren’s money and
money that they had put aside, and they’d put this into the scheme on the basis that they’d
two years and a one-year grace period. This was not about RHI.

Mr Scoffield QC: So, your focus on that trip —

Mr Bell: Yes.

Mr Scoffield QC: — and at that meeting was on the forthcoming business to be done the
next day?

Mr Bell: Yes, and this was not a —. Very often, for example when I went to Bombardier to
do my best there, I would’ve had a meeting with the High Commissioner from Ca— in
Canada, and we would’ve had a business dinner where we, you know — we didn’t formally
sit and take notes but we agreed specifics of what was happening. This was not one of those.
This was us arriving very late one evening and having a meal together, and it was just
general socialisation and chat.

Mr Scoffield QC: Yes, and I should say we — the Inquiry has no interest in delving into the
detail of the social conversations and chat or, indeed, the consideration of other issues other
than RHI.

Mr Bell: Yes.

Mr Scoffield QC: The reason, and I don’t want to spend much longer on this, but the
reason that I want to ask you about it is because Mr Cairns maintains the view in the
evidence he’s given to the Inquiry that there was some exchange about the RHI scheme that
night. Now, he’s not saying that it was a particularly lengthy or necessarily a particularly
significant exchange, but if we just have a look at WIT-20158 — this is paragraph 4 b. of his
evidence — he does say — this is the lengthy paragraph just over half way down the page —
that he was giving you advice after a conversation that he says he’d had recently with Arlene
Foster and Andrew Crawford, which he will be asked about.
room. Following this, all five of us travelled in a taxi from the hotel to Amber Rudd’s office in DECC and during that taxi journey Jonathan Bell shut down any conversation about the meeting and stated twice that Timothy Cairns would not be attending the meeting. When we arrived at the DECC offices, Jonathan Bell, Andrew McCormick and John Mills went into the meeting and I remained outside and arranged a flight home for Timothy Cairns, who proceeded on to the airport.

My understanding of their respective positions was that the Minister did not feel obliged to consult or take direction from any Party colleague in any circumstance, and he was openly hostile to the idea that he could be directed from that source when making any decisions in relation to his Department. I am aware that the role of a Special Adviser includes providing advice to Ministers that is more politically aware than that which can be offered by a politically neutral Civil Servant, and this seemed to be in keeping with Mr Cairns’ position that, in making any potentially major or politically sensitive decisions, any Minister should seek his political party’s view before proceeding. The Permanent Secretary took no firm position to my mind on either of these views – his primary concern was that a decision should be made urgently as the Department required one.

I am quite clear that the discussions on 10 June 2015 were about the Minister’s autonomy in respect of decisions to be made about NIRO. I am aware from reading Andrew McCormick’s second statement (at paras 147-149 WIT-11292 to WIT-11293), Annex 18, para (WIT-11417) in which he exhibited a text message from Timothy Cairns to Andrew McCormick, and wish to confirm that this accords with my own recollection of events. I recall that during that Indian meal on 9 June 2015 there was a discussion between Timothy Cairns and Jonathan Bell that concerned the Minister’s authority in terms of party political control. I do not recall that it related to RHI, although it is possible that this was the stimulus for the conversation, however, as far as I was concerned, my clearest recollection was that I felt uncomfortable at the heated nature of the conversation between Timothy Cairns and Jonathan Bell.
He said he was giving you advice that there was a wealth of experience there and it would:

“be worthwhile meeting”

both Minister Foster and Andrew Crawford to discuss the RHI scheme and what should be done, and he says that your response was, essentially, to say, “This is my Department. I’m the Minister. Mrs Foster is not the Minister. I’ll be taking the decisions”. Do you recall any exchange of that nature?

**Mr Bell:** Nothing to do with RHI. We discussed NIRO and, as was coming to the point, he was saying to me, “Oh, we need to watch that. You may not be able to — you’ll not be able to make a decision on that”. And the point that I was making was, quite genuinely — I knew it was going to be a difficult decision. I knew it was going to be difficult for the party. I knew it was going to be difficult for me personally. But it was a decision that had to be taken if the Secretary of State would not work with us. I thought it was a grossly unfair decision but it was a decision, even unfair though it was, I was gonna have to implement if I was gonna be a good steward of public money.

And that’s where the — I mean, people talk about a row, and I’ve read a lot and I don’t accept a lot of what is there. But this was me saying to the special advisers, “Look, ultimately, I’ll have to take the decision. The buck rests with me”. You don’t get the choice to, you know, have sort of multi-ministerial office. I mean, that’s the way OFMDFM did work, but when you’re a Minister of a Department, you have to take that decision. And there was a need for urgency in that decision, and there was — when they say a row; a disagreement, I’d prefer to call it. We were in a restaurant. We were chatting, and he was saying, “No, you can’t. You’ll not be able to take this decision, and the party’ll sorta have to take these decisions” and everything else. I was saying, “Look, at the end of the day, the decision rests with me, and I will have to take the decision”. And I took the decision, and I think that’s clear
The Chairman: Could this be seen in perhaps a slightly different way, I wonder, Mr Bell?

The spad is a fairly unusual creature. He’s appointed as a temporary civil servant, and his or her task is to ensure that you’re advised about the political aspects of your work, unlike the Civil Service who are completely unpolitical. Could this fall out — for want of a better word — have been because you thought that the spad was saying you didn’t have a decision power; he thought he was saying you need to take advice or consider other people?

Mr Bell: I think what was happening through a series of meetings that led up to the following morning was — even in meetings with, as Minister, with others, stakeholders and other groups, he was interrupting the Minister, overruling the Minister. If I gave an indication of where I was wanting to take things, he would say, “Well, we’ll need to look at that again, or we’ll need to take that back”. I think, to be fair —.

11:15 am

The Chairman: So you had the distinct impression that this spad was attempting to limit your ministerial decision powers?

Mr Bell: Yes.

The Chairman: It wasn’t just a case of him saying, “Look, you need to maybe think about this when you get back to Belfast and talk to Sean”?

Mr Bell: No, I think it was a deliberate attempt to limit my powers because, as had been said before, including by this spad, “Ministers come and go. Spads remain”.

The Chairman: That, in itself, of course, isn’t true. If a Minister is dis — goes, the spad goes with him.

Mr Bell: Yes, that’s correct, but in all of the — in my time in office, there’s been very few spads haven’t been retained. He was one of them subsequently, but there’s been very few haven’t been retained, and when the reshuffle happened —.

The Chairman: Yes, I don’t want to take up too much time on it. I just want to get clear in
me of the source from which he was seeking advice, particularly if it was outside of normal departmental channels.

b. I have no recollection of details on the Ministerial clearance of this submission.

17. I cannot confirm nor recall whether or not I attended this meeting. I outline my involvement at “Issues Meetings” at paragraph 13 above. No formal records or minutes were made of these meetings unless any of the attendees kept a record on their own behalf.

18. Minister Bell was scheduled to meet with the DECC Minister, Amber Rudd MP, in London in the morning of 10 June 2015. I had arranged a breakfast pre-meeting at which the Minister, Timothy Cairns, Andrew McCormick, John Mills and I were present. As I recall, Mr McCormick and Mr Mills were pressing the Minister to make a decision on the future of the NI Renewables Obligation (NIRO) that day at the very latest. Mr Cairns advised Mr McCormick and Mr Mills that, before making such a major policy decision, it was customary that the Minister would consult with some of his party colleagues, and that it was unlikely that a decision would be made that day. Mr McCormick and Mr Mills persisted that a decision should be reached and Mr Cairns, I assumed in keeping with his duty as Special Adviser to draw the Minister’s attention to any business that had potential political implications, reiterated the need for the Minister to speak to party colleagues. This infuriated the Minister who interpreted this as an attempt by Mr Cairns to undermine his authority, which Mr Cairns denied. The Minister stated that he alone made the decisions for the Department and Mr Cairns tried to reflect that, on this occasion, it would be prudent to consult his political party colleagues. This disagreement on whether to consult or not became heated and the meeting came to an abrupt conclusion, without agreement, when the Minister dismissed Mr McCormick, Mr Mills and I from the table. Shortly after this, when I was paying for the breakfast, Timothy Cairns approached me and said that he wanted me to arrange a flight home for him as the Minister had told him he was sacked after we had left the breakfast
Overall it was the proverbial curates egg "good in parts." Timothy could give quality advice but he could also be dismissive of quality advice given by the Permanent Secretary.

13. In particular, but without prejudice to the generality of the foregoing enquiry, provide such details as you can of:

a. During the Ministerial visit to meet Secretary of State Amber Rudd to address the issue of wind energy in June 2015 Timothy Cairns frequently spoke over me and stated the Department would take a different perspective on the one that I was considering during discussions over dinner with officials. It was inappropriate and led to tension whereby on the evening I did state that I would following listening to all the options take the necessary decision on the wind energy issue. The following morning during breakfast again Timothy in front of officials contradicted the position I was formulating and at that stage I had asked to speak to him on his own. The purpose of this was I wanted to tell him that he could have his perspective however it was not a SPAD role to overrule and contradict the Minister in front of officials and certainly not in the incoming meeting with the Secretary of State. Timothy Cairns initially refused to speak with me and a second request was made via the Private Secretary. Timothy then came into the breakfast table, he appeared agitated and when I attempted to address the issue he stated to me with his finger raised "now your going to listen to me big balls." I was shocked and taken aback at this outburst. At this stage I dismissed him from further input and requested he did not attend the Secretary of State meeting. Timothy Cairns stated he was ignoring my request and decision and would attend the meeting regardless of my decision. This continued for about 6 statements from me including that he would ignore me as Minister and he would attend the meeting regardless of my view as Minister and that I would see what he would do with my instruction by attending the meeting and
Dr McCormick: The topic was NIRO. I think we were looking ahead to what Secretary of State Rudd might say. We weren’t going in with high expectations that she would, you know, give way in the face of our fantastic arguments and give us what we were asking for. The consequence of that would then be some hard decisions about moving forward because the accelerated closure of NIRO to onshore wind was a big issue for the renewables sector in Northern Ireland. And I mentioned earlier, then, what she said in the meeting was, “Why didn’t you see this coming? This was in our manifesto”.

Now, so, we’re then having to think ahead, “Well, what are we going to do afterwards? When we come out of this, there’ll be a hard decision to take”, and this is then where the short fuse burned out pretty quickly from a routine, businesslike discussion of those issues to quite a fierce exchange. And, as I said, I can’t remember who started it — who started down the road of this being, you know, above the DETI level of decision-making.

Mr Scoffield QC: When you say “above the DETI level of decision-making”, you mean above the DETI Minister’s level of decision-making?

Dr McCormick: Yes.

Mr Scoffield QC: So —.

Dr McCormick: Just introducing it in as low-key a way as possible [Inaudible] your steer.

Mr Scoffield QC: Well, in terms of the substance of the discussion, I think you can speak entirely freely, but the issue here is a difference of view between Minister Bell and his special adviser as to the extent of his authority —

Dr McCormick: Yes.

Mr Scoffield QC: — to take decisions without consultation with others within the party.

Dr McCormick: As I say, I think, and I don’t think either Timothy Cairns’ statement or Jonathan Bell’s statement contradicts this, I think I was the one who said, “Are you sure that doesn’t need to go to the First Minister?” , or something to that effect.
Mr Scoffield QC: Was there any discussion at this breakfast meeting of the issue of what Minister Bell calls in his — or former Minister Bell — calls in his statement: “collective responsibility”?

Dr McCormick: I don’t recall that in those terms, no. This was more about whether a strategic decision in relation to the options available to us to deal with onshore wind post the cutting-off of any further support from DECC —. What to do about that? There were a range of options, none of which were easy, and I sensed that this was gonna be quite difficult. I think —. I’m not sure if this is accurate or not. My recollection would be that I asked the question, the Minister said something to the effect of, “Well, I’m the Minister. I’ll take the decision”, and Timothy Cairns then said in a very sharp way something to the effect that, “You’ll need to take that to party colleagues”. And I found some resonance in when I read Jonathan Bell’s statement to the effect of Tim Cairns talking over him or being more assertive than was appropriate. As I said in my statement, Tim Cairns’ intervention jarred. It was a sharper rebuke to a Minister from a special adviser than I’d seen before.

Mr Scoffield QC: In terms of the tone of voice or —?

Dr McCormick: Tone. The language was terse, pointed. It was right at the borderline of normal conversation, if not a bit over it. It wasn’t long before John Mills, Sean Kerr and I realised, you know, this is not for us to be involved in. “Not in front of the officials” is the phrase, and either we were asked to leave or we got up and said, “We’ll leave you to it here”.

Mr Scoffield QC: Before you left, had you offered any advice to the Minister on the issue of substance?

Dr McCormick: On the choices between — I don’t recall advising on the relative merits of the different ways to deal with the substantive issue. I think the point that we’d got to was, “Is this for you as —? Is this within your discretion as a Minister, or does this need to go to a
Mr Cairns: Well, I think it’s fair to say this probably isn’t the proudest moment of my working career and it’s not a very savoury incident, and I think I made many mistakes in the meeting and I acknowledged those at the earliest opportunity. I want to acknowledge that at the earliest opportunity now as well. I think my initial frustration at that meeting — and my frustration bubbled over inappropriately — was with Mr Mills. Mr Mills was asserting — quite rightly of course — that Amber Rudd was gonna make, was gonna confirm, the decision that day, and on foot of that, if the regulations were going be passed in this session of the Assembly, as in the June — before the end of June — an SL1 would need to be issued that day to get it before the Committee, to get it within the Assembly within the two weeks, so that it could heard, passed and the i’s dotted and t’s crossed. The difficulty with that, as I was pointing out, was not only were DUP MLAs against what the Department was proposing, there were no MLAs within the Assembly who were in favour of what the Department was proposing. And subsequently, of course, Minister Bell did make the decision and they went to get the SL1 on the 7th of July and they couldn’t get it because no MLAs, and particularly DUP MLAs, were the most vocal in opposition to the departmental line. So I suppose I was a little frustrated — well, more than a little frustrated; a lot frustrated — that that point wasn’t being listened to. I think —.

Mr Lunny: To be clear. Sorry to interrupt you, there —

Mr Cairns: That’s OK.

Mr Lunny: — were two stages to the breakfast —

Mr Cairns: But this was the initial —

Mr Lunny: — disagreement.

Mr Cairns: — conversation.

Mr Lunny: The initial one that the officials were present for; —

Mr Cairns: Yes, that’s correct.
scale wind, and the DUP MLAs — it’s hard to remember the exact and precise details but I’ll try to be as precise as I can — they were, particularly one MLA, Paul Frew was particularly vocal against the Department’s position and had been vocal with statements etc against the Department’s position. And obviously I was aware of that.

2:15 pm

The Chairman: What was the Department’s position?

Mr Cairns: So, the Department’s position was to close all technologies at once, do this as one — in one movement, rather than cherry-pick different technologies. So, leave the question of wind energy to one side, deal with that down the line and then close the type of energy that was the waste-to-heat plant that Bombardier were planning to put in. Close that in piecemeal fashion. So, take all the technologies that were under NIRO and close them in stages rather than all at once. The Department wanted to do it all at once, and MLAs — DUP MLAs — were against that position and were probably supportive — I think, from memory, although I might be wrong on this — but were probably supportive of Amber Rudd’s position on all of this, where different concessions were being negotiated at that time for Northern Ireland.

So, the position was that the Committee had indicated this was to be done in piecemeal fashion, but the Department wanted to do it as a whole, as an integral whole. Now, on the 7th of July, they went to the Committee to close this as a whole, and the Committee rejected that position. There wasn’t a vote taken on it, because the indication was very clear from the debate: not one MLA supported it at the Committee. So, I suppose I was very frustrated trying to articulate that, and I freely admit that, look, my frustration bubbled over in an inappropriate way.

Dr McCormick, I think, tried to save the day, in fairness, but, I think, probably at that point in time the train had left the station, so to speak, and there was probably a sharp exchange
between myself and Jonathan. I fully accept my blame in that. I’m not minimising my role in that in any way, shape or form. Obviously, at the first opportunity, when it was explained to Peter Robinson, Timothy Johnston and Richard Bullick, I accepted my responsibility on that point. Then at that point in time, I left the table, tried to withdraw.

Mr Lunny: Well, had you, by that point, had an interaction with Minister Bell where he said, “I’m making the decision”, in terms: “I’m not referring it to anybody else. I’m making the decision”?

Mr Cairns: That was the gist of it, yes.

Mr Lunny: You’ve used the word, I think, in your witness statement on 20160 that he became “enraged”.

Mr Cairns: He was annoyed with me, yes. I think a particular overbubbling [sic] of anger in an inappropriate way. I think, probably, he was right to be annoyed with me in that earlier part of the meeting, and I think there’s no doubt about that. I mean, I hadn’t covered myself in any glory at that point in time. I realised “This is not good”, and Minister Bell had said he would be making the decision and he would be making the decision that day. I just felt I needed to remove myself from that because it was a situation that was rapidly descending, and I felt the best thing to do was just to let everybody cool down, cool heads, we’ll revisit this later in the day. That was my thought process.

Mr Lunny: And we know you then left the breakfast table.

Mr Cairns: That’s correct.

Mr Lunny: Andrew McCormick gave evidence about this last week, and he, in describing the first of the two interactions — he didn’t witness the second, but, in describing it — the one you’ve just described — I think he described it as a “fierce exchange”. He said you were talking over the Minister; you were more assertive than was appropriate; it was a sharper rebuke to a Minister than he had seen before — and he’s obviously an experienced civil
trying to bring the whole thing to an end. I said what I said. Clearly, that was an inappropriate thing to say as well, um, and Minister Bell’s level of anger ratcheted up and, then — I’ve obviously recorded from my perspective what happened — and, at that point in time, I just wanted to leave and get away. And Minister Bell told me that, if I left the table, I would be fired, and I just went, “Look, well, look, whatever, if that’s what it takes. I just need out of this situation”.

Mr Lunny: But, in terms of — I mean, to take it step by step — in terms of the unsavoury language that you used when you were addressing him, you accept you shouldn’t have done that.

Mr Cairns: Absolutely.

Mr Lunny: You both independently have given —

Mr Cairns: The unsavoury language, yes.

Mr Lunny: — the same account of the unsavoury language. But his account of it is you simply say:

“Now, you’re going to listen to me”.

Mr Cairns: I didn’t say that.

Mr Lunny: You didn’t say that. Your account of it is in a different context. You’re essentially saying to him, if he wants to make the decision on his own, go right ahead, but it affects east Belfast; at the very least, he should run it past Peter Robinson.

Mr Cairns: I was trying to appeal at this point in time —. My strategy there, as awful as that strategy turned out to be and as terrible as it was, was to appeal to Jonathan because he respected Peter Robinson — they’d a very close relationship — and it was an appeal to Jonathan to say, “Look, come on. You need to speak to Peter about this, if nothing else”.

Mr Lunny: That’s because of the Bombardier being in east Belfast.

Mr Cairns: Yes. I was just trying to defuse the whole thing, and it clearly was a disaster on
Jonathan said he would be making whatever decision he saw fit and would not be referring anything to the party. I advised the Minister that that would not be a sensible course of action.

Mr Bell became enraged. I knew from previous experience that I should retreat from the situation. I had not checked out of my room, therefore to try and defuse the tension I stood up and said I was going to check out and we could resume discussion in a few minutes. Mr Bell ordered me to sit down, but I went to my room and collected my bags and checked out (I did this in the hope it would defuse tension).

Upon returning to reception Mr Kerr informed me that Jonathan was refusing to leave the breakfast table until I returned. I therefore went back to the table were Jonathan started behaving in an aggressive manner. He referenced the evening before saying he was the Minister and he would be making decisions. By this stage neighbouring tables were looking round.

For my part, I certainly did not handle the conflict well. I was embarrassed and simply wanted the incident to end. I said “well Jonathan if you want to be the man with big balls and just make the decision go right ahead, but this is an East Belfast matter and if I was you I would consult Peter Robinson at the very least”

Jonathan was enraged by what he saw as disrespect. While I was making this comment I must have been waging my finger, Jonathan reached to grab my finger, I pulled it back from his grip. In an aggressive tone Jonathan said “if you wag your finger at me again I will break it”.

At this point I felt under immediate physical threat and wanted to leave. Jonathan stood up and said that if I didn’t apologise he would fire me. I replied that if that’s how he felt he should fire me. He proceed to point out his finger and say “you’re fired.” I was relieved to be getting away from the table and an obviously enraged and aggressive person who had threatened me physically.
I informed Mr Kerr I was dismissed and could he arrange for a flight home. I proceeded to DECC with the others. Mr Mills made a comment about what I should say in the meeting. Mr Bell stated “Mr Cairns will not be attending meetings”

Upon arrival at DECC I walked to the nearest tube station and returned back to Belfast. I went straight to Stormont Castle and informed Richard Bullick and Timothy Johnston what had happened. Mr Johnston telephoned Mr Bell and told him that only the party officers could dismiss me. I went home and was told to come to Stormont Castle the next day.

b. Did any such discussion or disagreement involve, or relate to, the RHI Scheme or how it should be dealt with (or alternatively, issues such as the extent of Minister Bell’s Ministerial decision-making authority, autonomy or independence which, although not directly related to the RHI Scheme in that discussion, were nonetheless relevant to the RHI Scheme)? If so, please give full details of all such discussions.

Discussion was focused on NIRO, however Mr Bell referenced the evening before and my suggestion that we consult with Mrs Foster and Dr Crawford in relation to RHI.

c. To the best of your knowledge and understanding (based upon your involvement in events on 10 June 2015 and thereafter), did Jonathan Bell intend to sack or dismiss you from your role as his Special Adviser on or about 10 June 2015?

I believe he did

d. Did you understand yourself to have been sacked or dismissed from your role as Special Adviser on or about 10 June 2015?

I believed I was, until Mr Johnston intervened

e. Were you, in fact, sacked or dismissed by Jonathan Bell as his Special Adviser on or about 10 June 2015? If so, please explain the reasons
If that's the worst I did, JB has come out of this very badly. Firstly because I now owe him nothing and will report his every transgression to TJ who wants him out. Also I've made sure Andrew and Arlene know that he is messing up their department.

He is a

My goal now is that he has one year max and done. If I get a chance I'm going to film him drunk and talking shit and show it to TJ.

You should - but he will rip your head off if he catches you! I am seriously re estate agent - but we would need to talk to your friend about the set up costs.
my mind, you —.

Mr Bell: Yes, I think it was a limitation of ministerial authority because I think, to be fair to him, he felt responsible to the other senior spads; more responsible to them than he did to his Minister.

The Chairman: But spads, of course, are not democratically elected. They don’t have, or shouldn’t have, decision-making powers.

Mr Bell: That’s right.

The Chairman: Now, are you clear that it was the spads who were trying to make the decision or were they going to report back to their Ministers?

Mr Bell: I think it — on reflection, I think, on many occasions, it was spads that were taking decisions.

The Chairman: Thank you very much. Thank you for clearing that up for me.

Mr Scoffield QC: I want to move on to a new topic now, which is the next day, the breakfast meeting, but I see the time, Chair, and it’s probably a convenient time for a short break.

The Chairman: I just — I wanted to clear that.

Mr Scoffield QC: Of course, Chair.

The Chairman: Sometimes, in these social [Inaudible] you can get — people can approach it from different backgrounds, but I’ve got — Mr Bell’s cleared that for me. Sit again at half past.

[The hearing was suspended at 11:16 am]

[The hearing resumed at 11:34 am]

Mr Scoffield QC: I just want to pick up, Mr Bell, where we left off.

Mr Bell: OK.

Mr Scoffield QC: So, we were talking about the discussion on the 9th of June. I want to
discuss the NIRO. The evening before was a social with no agenda. The breakfast meeting was we were agreeing to go through exactly what we were going to do with and the positions we were going to take with the Secretary of State, Amber Rudd, and that was specifically to deal with this. This was an agenda breakfast item to deal with it. I wasn’t bringing in other energy issues, and we’d nothing to discuss with Amber Rudd. So, it was a pre-briefing for a meeting. It wasn’t just an issues meeting, as it were. It was a pre-briefing for the meeting with Amber Rudd.

Mr Scoffield QC: OK. But, I think, you’ve agreed that there is an issue of principle here about the extent and the bounds of your ministerial authority.

Mr Bell: Yes, and the subsequent conversation I remember following that with Peter Robinson, I was saying, “Look, you know, in any meeting, it’s always assumed there may be differences of opinion with the special adviser, but they’re passed to you by a note; they’re passed to you quietly”. And then it’s up to you as Minister to make the decision. The spad will not be held accountable by the party for the political advice he gave if he gave the advice and the Minister took a different position. But what was difficult in these meetings was Timothy Cairns was openly, in front of my permanent secretary, in front of some of my senior management team, saying, “No, the Minister won’t make that decision. We’ll make that decision”. And that’s where the difficulties came. And when I was stating that I would fulfil my function as a Minister, he was saying, “You won’t”, and that’s when it became very uncomfortable, even for Andrew McCormick and my senior management team, cos the spad was saying they would make the decision.

Dame Una O’Brien (Statutory Inquiry Panel Member): Mr Bell, are you saying the difficulty was that it was being talked about in front of the permanent secretary? Or are you saying the difficulty was about the substance of the difference between yourself and Mr Cairns?
Mr Lunny: Yes, but it was you telling him, “We can always get somebody else to do your job”, again suggesting that you were in a position of potential authority over Minister Bell.

Mr Johnston: Well, as I said to you last week, Mr Lunny, I didn’t shy away from the fact that, in the business there with Mr Bell, it was very much at the First Minister’s instigation. It was very much that the First Minister, you know, was the man who was respected by Jonathan Bell. I don’t —. I mean, that’s a text which, from my point of view, very much labours on the party officers. The party officers would not have been somebody who Jonathan Bell would’ve regarded as particularly important. The First Minister would.

Mr Lunny: Well, if we scroll two pages further on — I think we’re still on the 10th of June. If we scroll to 25375, we’ll see Mr Cairns still talking to Mrs Pengelly, and he says at the top:

“JB has come out of this very badly. Firstly because I now owe him nothing and will report his every transgression to TJ who wants him out. Also I’ve made sure andrew and arlene know that he is messing up their department”.

Ms Little-Pengelly then replies, and he then says:

“My goal now is that he has one year max and done. If I get a chance I’m going to film him drunk and talking shit and show it to TJ”.

So, that very much suggests a highly dysfunctional relationship, a total lack of trust and confidence. Mr Cairns still viewing DETI as Andrew and Arlene’s Department, and one that Minister Bell is:

“messing up”,

and that Bell’s time is limited.

“one year max”

is a reference to the Assembly election that’s coming up in May ’16.

Mr Johnston: Yes, and I think the other thing it shows is that he clearly did know that, in sharing any information with me, I was gonna share it with Peter, who —. I suppose the one
thing that Timothy would’ve been aware of: any information like that shared was gonna be
sent right to the top. And Jonathan knew that the boss was Peter Robinson, so, I mean, it’s
colourful —

Mr Lunny: Yes.

Mr Johnston: — to say the least. It’s not something —. It’s relatively new to me, but I
think Timothy was always aware, and I think I touched on it last week: he knew that, in the
absence of not being able to get hold of Mr Bullick, that I would take the issue seriously and
that I would involve Peter. And I think he did, certainly, in the early stages, realise that I was
sympathetic to him in terms of the type of situation that he found himself in.

Mr Lunny: Yes, but it’s certainly contemporaneous evidence of a highly dysfunctional
relationship.

Mr Johnston: Oh, I accept that.

Mr Lunny: And it’s being shared with a DUP colleague. Was she then a special adviser as
well?

Mr Johnston: That’s correct, yes.

Mr Lunny: In the First Minister’s office?

Mr Johnston: That is correct, yes.

Mr Lunny: Did she share this information with you?

Mr Johnston: No, she didn’t.

Mr Lunny: If we could scroll further down, then, within that bundle to 25384, this,
hopefully, will take us on to the 25th of June, which is the day before the reconciliation
meeting. And we can see, again, it’s Mr Cairns and Mrs Little-Pengelly, and he says:

“I’ve been summoned to a meeting in the castle tomorrow at 1pm! Sort it or go is fairly much what I was
told”.

So, pausing there, that seems to be him, again contemporaneously, reflecting his
remain impartial, but the spad’s job is to advise, from a political background, how that can
work to neutralise, if you like, a Minister. I think one has to be very careful about that and
look at particular instances of what’s happening on the ground.

Mr Lunny: Yes, and it might help set the context and explain some of the interactions that
then occur, like those in June when there is perhaps a blurring of the lines, or a perceived
blurring of the lines, by Minister Bell about whether you’re giving him advice or whether
you’re telling him what to do, and we’ll come on to look at that, but it’s to set the context for
that.

The Chairman: That’s exactly why one has to be careful.

Mr Lunny: So, I’m sorry if that wasn’t clear.

The Chairman: No, no.

Mr Lunny: Another issue, apart from from whom you took instructions, was an issue that
doesn’t seem to be controversial amongst many of the witnesses who provided us with
witness statements, and that is that there was a hierarchy amongst the special advisers
within the DUP, and at the top of that hierarchy was Timothy Johnston.

Mr Cairns: That would’ve been my understanding throughout my time in the Democratic
Unionist Party.

Mr Lunny: That was your understanding. It seems to have been Dr McCormick’s
understanding. Mrs Foster says there was no hierarchy per se in her witness statements, but
that the First Minister’s spad’s views might’ve been given more weight because they’re
coming from the First Minister’s special adviser. But Mr Johnston appears to say in his
witness statements that there was no hierarchy, but you certainly always perceived there to
be one?

Mr Cairns: I think I can even go further than that: there’s not one elected representative,
not one party employee or special adviser, who did not recognise that Mr Johnston was very
much at the top of the tree within the Democratic Unionist Party.

The Chairman: And that is something which operates within the Democratic Unionist Party. It’s certainly not consistent with the code, but it’s a practice that they enforce and endorse, isn’t it?

Mr Cairns: That is correct, Mr Chairman.

The Chairman: At least, that’s what your evidence is.

Mr Cairns: Well, that’s my evidence. Yes.

The Chairman: Yes. Yes.

12:15 pm

Mr Lunny: And one particular thing I just want to take you to in your witness statement, where you mention Mr Johnston and his position of seniority. It’s at WIT-20181. And I just want to clarify what precisely you’re saying.

The Chairman: Is this one of his statements, Mr Lunny?

Mr Lunny: This is Mr Cairns’s most recent — third statement —

The Chairman: Yes. Thank you very much.

Mr Lunny: — of last week. It’s the bottom paragraph on that page, so if we could maximise the bottom half. Thank you. You say:

“Timothy Johnston was/is a powerful individual within the DUP. He ran all matters relating to the party. When I was a party employee in the policy unit, even the mundane activity of communicating absences and sickness was attended to by Timothy Johnston. He controlled all party matters and was viewed as being the most senior DUP employee by elected representatives and staff. I believe that Mr Johnston in running party matters while a SPAD was operating outside of what he was permitted to do. This would obviously be problematic for the DUP if the media were to get hold of the story.”

So, it’s that penultimate sentence:

“I believe that Mr Johnston in running party matters while a SPAD was operating outside of what he was
that I want to explore with you. What precisely did you mean by that?

Mr Cairns: This was obviously in the context of the text message. Is that correct, Mr Lunny?

Mr Lunny: Yes. It’s in the context of a text message in December 2016, where you talk about the spads running the show, or there being a perception that the spads were running the show.

Mr Cairns: Well, I think we’ll probably come to this later in the evidence, but there’s a 26th of June meeting where Mr Johnston, myself and Mr Bell were at. This was, obviously, I would have considered, an internal party —.

Dame Una O’Brien: Sorry, is this June 2015?

Mr Lunny: Yes.


The Chairman: Is this meeting after you returned?

Mr Cairns: Yes, just before my return.

The Chairman: There were actually three meetings.

Mr Cairns: There was two pre—two meetings on the 11th of June and, then, one meeting on the 26th of June.

The Chairman: Well —.

Dr MacLean: That you were involved in?

Mr Cairns: That I was involved in.

The Chairman: Yes, there were —.

Mr Cairns: Well, there was two meetings I was involved in. Sorry, it’s getting complicated, Mr Chairman. I’m sorry.

The Chairman: Yes. I think the evidence we have from Mr Bell, which may or may not be
right, is that there were three meetings: there was one in which he and Mr Johnston were
involved and one in which you and Mr Johnston were involved and, then, a final meeting
where you all got together.

Mr Cairns: Er, I don’t know that that that would be my evidence, but —

The Chairman: I think that’s his —.

Mr Lunny: We will come on to look at that.

Mr Cairns: — we’ll come on to that.

Mr Lunny: You’re setting the context for these comments that you’ve made about Mr
Johnston operating outside of what he was permitted to do as a special adviser.

Mr Cairns: Well, it’s within the context of the text message I think I supplied to Mr Bullick
at the time.

I think what I’m getting at there is there was a prevailing interest within the media at the
time of the RHI story breaking about the function of special advisers and what they were and
what they were not doing and what they did and did not know. And I think I was pointing out
that the meeting on the 26th of June 2015 between myself, Mr Bell and Mr Johnston
would’ve been a party meeting — I would’ve taken it to be a party meeting — and that was
chaired, called and run by Mr Johnston. And I felt that was probably reflective of a role he
had within the party, where, if you were, as I say there, a policy officer, an administrative
staff within the Democratic Unionist Party or whatever your role, Mr Johnston would’ve
taken your absences, staff reviews would’ve been conducted by him. At one point in time, in
2014, there was a weekly meeting of all staff in party headquarters that was chaired by Mr
Johnston; that was only party staff, there was no other special advisers there. So, I just think
it’s reflective that Mr Johnston had a very powerful role within the party as well.

Mr Lunny: So you saw him as doing a lot more than only providing advice to his
appointing authority.
Mr Cairns: Absolutely. Mr Johnston’s influence was seen from the party top to bottom.

Mr Lunny: Was he more akin to a chief executive at that point?

Mr Cairns: I think that’s possibly how one might describe it, but it’s —.

Mr Lunny: How would you describe it?

Mr Cairns: Um, a chief executive’s probably a fair, a fair way of describing it. It’s maybe even — if I say, it’s maybe even more than that; I don’t know. That’s —. But a chief executive’s probably a fair summation.

Dr MacLean: Sorry, so he was employed as a spad and what you’re saying is that he was doing an awful lot more than just the spad’s role —

Mr Cairns: That’s correct.

Dr MacLean: — carrying out almost disciplinary and managerial —

Mr Cairns: That’s correct.

Dr MacLean: — work on behalf of the party.

Mr Cairns: That’s correct.

Dr MacLean: He is currently, if I understand it correctly, employed to do that as the chief executive.

Mr Cairns: Yes, once government collapsed, yes.

Dr MacLean: At this time, he had no separate contract to be doing that alongside his spad job; it was just something that had evolved with time.

Mr Cairns: Well, he may have had a separate contract. I certainly wasn’t aware of it.

Dr MacLean: That’s something we can pick up with him, but de facto he was carrying out not only the spad duties that we’ve seen outlined previously in all the documentation but roles which you describe as sort of party management, disciplinary and that that may or may not have been on the basis of a contract that he had with the party but, whether it was or not, he was carrying out those. Is that what you’re referring to by saying:
“outside of what he was permitted to do”?

Mr Cairns: That’s correct.

Dr MacLean: Or is it more “expected to do”? Because, if he had a contract, then clearly — a separate contract — then he clearly — or instruction — then he clearly was permitted to do it.

Mr Cairns: Well, if he has a separate contract of employment with the Democratic Unionist Party at this point in time, then “permitted” would be an unfair word. I’d say I believe he probably didn’t.

Dr MacLean: OK, but what you’re getting at there is that it goes way beyond what a spad would’ve been employed to do.

Mr Cairns: That’s correct.

Mr Lunny: And if you were to tell the Inquiry what the hierarchy within the Democratic Unionist Party, both elected representatives and unelected people like Mr Johnston, was at that time — so May ’15 to May ’16 — where would Mr Johnston be on that hierarchy, in your view?

Mr Cairns: At the top.

Mr Lunny: At the very top?

Mr Cairns: Well, obviously, First Min— party leader, Mr Johnston —.

Mr Lunny: Everybody else.

Mr Cairns: Well, not everybody else; there would be a lot of levels of hierarchy below that, but that would be the top two echelons.

Mr Lunny: Yes, so he would be second only to the party leader, in your view?

Mr Cairns: That would’ve been how I would’ve viewed it and I’d imagine, at that point in time, that is how most — well, all — elected representatives and party staff would’ve viewed it at that time as well.
Mr Cairns: That’s correct.

Mr Lunny: — and met Mr Johnston and Mr Bullick and gave them an account of what had happened.

Mr Cairns: Yes.

Mr Lunny: And did you give them a full account of how you —?

Mr Cairns: At the first opportunity I said, “Look, I didn’t” — I think, probably, the form of words I that I have in my witness statement: that I didn’t handle this the best, you know, so, from my part. And, when I was speaking, then, to Peter Robinson with Timothy Johnston the next day, I said, “Look, yes, you know, like, hands up”.

Mr Lunny: You gave them a full account of how you’d behaved.

Mr Cairns: “It wasn’t great on my part”, which is what Mr Robinson then seized on in terms of my behaviour, and then, I think, that was able to deflect away from Jonathan’s behaviour or, at least, the allegation that I had put.

Mr Lunny: Yes. Well, you know, from Mr Bell’s statement, he suggests that, in those later meetings, when he had the meeting with the First Minister, it became apparent that you hadn’t revealed how you had spoken.

Mr Cairns: I know he said that, but, from the earliest opportunity, I, I said that I hadn’t handled it the best.

Mr Lunny: Minister Bell gives a different account of the second interaction at the breakfast table.

Mr Cairns: Absolutely.

Mr Lunny: He says you were constantly speaking over him; you were told you weren’t going to the DECC visit; you said you were going to go; you said you were ignoring him; that happened maybe six times. Is that correct?

Mr Cairns: That’s not my recollection.
Mr Lunny: Well, to take it a day forward, then, to the 11th of June, you believe you had a meeting with Mr Johnston and the First Minister, Peter Robinson —

Mr Cairns: Yes.

Mr Lunny: — that day. And you’ve given an account in your witness statement at WIT-20162, and, in summary, Peter Robinson was very much taking Jonathan Bell’s side, and Timothy Johnston was advocating on your behalf.

Mr Cairns: That’s correct.

Mr Lunny: And, again to be clear, did you tell Peter Robinson at that meeting —? Did you give him a full account —

Mr Cairns: That is correct.

Mr Lunny: — of how you’d behaved, including the unsavoury language?

Mr Cairns: Including the unsavoury language. Everything was said from my perspective.

Mr Lunny: And did Peter Robinson at that stage, was he indicating that he thought your employment should be at an end?

Mr Cairns: No, he wasn’t.

Mr Lunny: What approach was he taking?

Mr Cairns: He was saying that, “Clearly, what you did was inappropriate. We’re gonna have to see where this places you”. At that point in time, he was saying — he was advocating that it would be unlikely that I’d go back with Jonathan, but the approach that was being advocated would be: would I switch with somebody else or go back into the party machinery? That was very much the conversation.

Mr Lunny: So, there wasn’t any discussion at that point about you and the Minister resuming your Minister/spad relationship?

Mr Cairns: Not at that point in time, no.

Mr Lunny: After that meeting, we know that you went to your doctor and you were
signed off work for a number of weeks. What about that meeting caused you to need to take
time off work? If you didn’t think your job was in jeopardy, what specifically about that
meeting?

Mr Cairns: Well, it was the [Short pause.] It was the fact, I think, that Mr Robinson was
not, in my opinion, giving enough weight or taking seriously the allegations that I had made
against Jonathan, and I think just the whole —. Take everything in its totality — that what
had happened the day before; how I’d felt the day before; the stress that that’d put me
under; the stress that I felt in the meeting then with Mr Robinson, with him taking Mr Bell’s
part — I mean, there comes a point in time where stress is stress, and stress heaped upon
stress. I’m not a doctor, and that’s how I felt. It was stress heaped upon stress, and I went to
my doctor, who clearly agreed.

Mr Lunny: And, to be clear, what complaint were you making to Peter Robinson on the
11th of June about Minister Bell that you didn’t think he was taking seriously?

Mr Cairns: Well, it’s in my witness statement, and —.

Mr Lunny: The complaint of the day about —

Mr Cairns: On the day. And —

Mr Lunny: — how he had behaved the day before.

Mr Cairns: — I was pointing out that this was not an isolated incident. This had happened
with others, as Mr Johnston, of course, was pointing out on the day as well: that this was not
an isolated incident. But it seemed to me that that was being dismissed, and I think it was
probably that dismissal of it that made me, I suppose for want of a better word, upset, I
guess: that something that I felt was quite serious, that other people had made complaints
about, something that had happened to me before —. I mean, stress heaped upon stress,
and, yes, it wasn’t a good moment.

Mr Lunny: So, we know you then did go to your doctor. Obviously, you got signed off
The dismissal had not formally taken effect. I believe this needs to be made in writing. It is my belief that the paperwork was never submitted to DETI HR (HR Connect).

f. Insofar as you have not already comprehensively addressed the issue in response to other questions set out in this Schedule, explain how, after the occurrences on or about 10 June 2015, you came back to work as a Special Adviser on or about 29 June 2015.

The next day I met with Peter Robinson and Timothy Johnston. Peter Robinson made it clear that he was backing Jonathan in the matter. Timothy Johnston expressly took my party in the meeting and advocated on my behalf.

I left, feeling unwell, .

I had no contact with anyone in the DUP or DETI until the evening of the 25th June 2015. Mr Johnston telephoned to ask that I attend Stormont Castle the next day for a meeting to resolve the matter. I asked Mr Johnston would Mr Bell be warned about his behaviour and would he apologise? Mr Johnston stated that this was his understanding. I attended the meeting, Mr Bell did not apologise and when I sought an apology this was closed down by Mr Johnston. I was simply told to accept the circumstances or leave my post.

6. From documentation made available to the Inquiry, it appears that a series of electronic communications took place in December 2016 between you and Richard Bullick (then Special Adviser in OFMDFM), around the time of the broadcast of Jonathan Bell’s interview with Stephen Nolan in relation to the RHI Scheme. The messages appear to refer to a meeting which took place on or around 26 June 2015 during which allegations made by you against Jonathan Bell in relation to bullying (of you) were discussed with Timothy
Johnston. In this regard, see: IND-31974 to 31975 and IND-31977 to 31978.

As to this please address the following:

a. Confirm that a meeting took place, on or around 26 June 2015, at which your allegations of bullying against Jonathan Bell were discussed;

Confirmed

b. Specify where the meeting took place, its time, date and length, and the names of all those present (the text messages suggest that you, Jonathan Bell, and Timothy Johnston were in attendance but please clarify whether any other individuals were also present);

The meeting took place in Stormont Castle in the First Minister’s office.

Only Myself, Mr Johnston and Mr Bell attended

c. Clarify who called the meeting and who, if anyone, chaired the meeting;

I’m not sure there was a formal chair, Mr Johnston took the lead.

d. Clarify who, as far as you are aware, knew the meeting was taking place;

Beyond the attendees I have no knowledge.

e. Outline the events which led to the meeting being called;

Mr Johnston telephoned the evening before and asked me to attend. He described it as a meeting at which we would both apologise and hopefully build a working relationship going forward. Mr Johnston assured me that if I apologised Mr Bell would reciprocate.

f. Without prejudice to the generality of the foregoing question, clarify whether the meeting was linked to events which took place between
you and Jonathan Bell in London on 9-10 June 2015, and, if so, please provide a full explanation;

Events on 10th June. See above for explanation.

g. Clarify the purpose of the meeting;
To reconcile and restart a working relationship

h. Outline fully all that was discussed at the meeting;

At the meeting I was invited to apologise. I apologised to Mr Bell. At which point Mr Bell stated he was happy with the apology and that he would take me back as a SPAD. I enquired if he would apologise. He said he would not. I asked did he feel he had done anything wrong, he stated he had not. I turned to Timothy Johnston and asked was Mr Bell going to apologise? Mr Johnston simply replied that it was now a matter for myself and Jonathan and if I didn’t want to return to work that was a matter for myself. He stated that civil service sick pay covers 6 months and if I wished I could avail of that, but my relationship with the DUP would be at an end. I found the meeting exceptionally upsetting.

i. Other than your allegations of bullying, clarify the issues that were discussed at the meeting;

Mr Johnston stated that we should catch up on the main issues of business that I had missed. I recall NIRO and RHI being discussed. This was a very brief discussion

j. Clarify whether this was the same meeting at which:

i. You were instructed to liaise with Andrew Crawford in relation to the RHI Scheme (see WIT-20057);

I was requested to liaise with Andrew Crawford, in the presence of Mr Bell who raised no objections.
The issues of the behaviour of Mr Bell in London on 9-10th June 2015, and his more general behaviour, were discussed during a meeting held in Stormont Castle at which Peter Robinson, Jonathan Bell and myself were present. I cannot be specific on a date and time but I recall the meeting taking place after Mr Robinson had met Mr Cairns to hear his version of what happened in London, and before the meeting when both Mr Bell and Mr Cairns were present on or around 26th June 2015.

c. Clarify whether you discussed these allegations with Peter Robinson or Jonathan Bell at any time providing full details if you did so or, if you did not, please explain this;

I was present at the above meeting as outlined. I am sure that Mr Robinson and I would have had a further discussion after Mr Bell left, and perhaps before he arrived, at the meeting I describe above. I do recall taking the view that Mr Bell needed strongly warned that the behaviour as described by Mr Cairns needed to stop and advising Mr Robinson that he needed to take no nonsense from Jonathan Bell.

d. Clarify whether you discussed these allegations with any other DUP officials, elected representatives or Special Advisers providing full details if you did so;

I would have discussed the allegations concerning Mr Bell's conduct in London with FM Robinson in the presence of Richard Bullick. I have no recollection of discussions with anyone else.

e. Clarify when, to the best of your knowledge, Mr Robinson became aware of the allegations providing full details including how and through whom he became aware);

Mr Peter Robinson would have become aware of Mr Cairns’ concerns and his version of events in London following Mr Cairns telephone call to me on the morning in question (10th June 2015) and when Mr Cairns met with Mr Robinson and I. I don’t recall a particular date of that meeting but I think it is safe to assume this was the first of the three meetings that took place culminating in a meeting with both
men, Mr Robinson and I, in Stormont Castle on or around 26th June 2015.

f. Outline Mr Robinson’s reactions to the allegations;

I recall Mr Robinson recognised these were serious issues and that the relationship between Mr Cairns and Mr Bell had deteriorated. Following the first meeting Mr Robinson undertook to speak to Mr Bell and to listen to his version of events. I sensed Mr Robinson felt both men were very volatile characters.

g. Clarify whether, in your opinion, the allegations were not taken seriously by Mr Robinson and provide reasons for your answer;

I believe the allegations and the concerns expressed were taken seriously at the time by First Minister Robinson. He expended time and effort with both men to try to bring about a solution to the problems as outlined at the time and I witnessed him doing so. I do think, with the benefit of the additional knowledge as to how Mr Bell behaved in subsequent months, it was a mistake to not have instigated a more formal process within the party, and potentially the Department of ETI as Mr Cairns was ultimately an employee of the NICS in that Department and personnel matters were therefore a matter for DETI.

h. Clarify whether, in your opinion, Mr Robinson was one of those who, according to you, was not working to get the matter resolved (the documents at IND-31977 to 31978 refer in this regard);

Mr Robinson was not one of those who I viewed at the time as not working to get the issues resolved.

i. Clarify whether Mr Robinson asked you to deal with the allegations;

I informed Mr Robinson upon initial contact from Mr Cairns following the events in London. Mr Robinson was very much at the centre of the process following my becoming aware of the events on 9-10th June 2015 in London. My involvement from that point was as a result of the contact by Mr Cairns. I was present at the meetings at Mr Robinson’s request.
Mr Johnston: There was a lot of backwards and forwards on that point before we got to a place that I felt was probably likely to have been the truth.

Mr Lunny: Right. Well, did he —? Did Minister Bell accept that he had been guilty of any bad behaviour or inappropriate behaviour?

Mr Johnston: He accepted —. Yes, is the short answer to your question. I think he tried to mitigate it. He tried to mitigate it, but I think he accepted that, you know, from a ministerial adviser and a wider public perspective, what had happened was not good and he had played a part in that.

Mr Lunny: Did he admit losing his temper or something like that? What precisely did he admit from your recollection?

Mr Johnston: Ah. I think he admitted that he had lost —. I think he admitted that he’d lost some control.

Mr Lunny: Now —.

Mr Johnston: You appreciate, from my point of view, I’m trying to give you an accurate picture without over-ascribing what I’m not absolutely certain about.

Mr Lunny: Well, one issue here is, I mean, everything would be a lot easier if we had a set of minutes of each of these meeting.

Mr Johnston: We agree on that.

Mr Lunny: Yes, and we’ll maybe come on to touch on that in a little bit more detail in a minute, but the absence of a contemporaneous note is — this is not the only occasion when this issue has arisen, you’ll be aware.

The Chairman: It didn’t occur to you to make a note?

Mr Johnston: Truthfully, Chair, no. I saw it as a very informal process.

The Chairman: An informal process?
Given a lot was made of me not saying I didn't want to go with JB in May I want to put on record now my disappointment and annoyance that at yesterday's meeting no mention was made of JB's temper and that it was not dealt with. That is still an issue. I am prepared to go back but I trust he has been warned about that and his future conduct. I felt yesterday everything was directed against me. I feel the need to put this on record.

In my view that is an unfair characterisation of the meeting. It was up to you to raise any outstanding issues at the meeting. Believe me there were not many working to get this resolved so bear that in mind.
In my view that is an unfair characterisation of the meeting. It was up to you to raise any outstanding issues at the meeting. Believe me there were not so many working to get this resolved so bear that in mind. I am satisfied this has been handled fairly to all concerned dealing with ALL the issues raised. Concentrate on moving forward. Tim

I will work on moving forward but I still feel that JB has got away with it again. I do not feel yesterday was fair and I want that on record.

All of that is your call. My bit is done. As I said yesterday you will both have left being dissatisfied with some elements of the meeting and no doubt my commentary but that’s life. Texting over for

Two pictures of a text exchange with TJ when my allegations of JBs bullying. It taken seriously by PR. I also have a contemporaneous medical note

Not taken seriously. Y PR

V interesting - undoubtedly the party’s response to this and the other complaints was totally inadequate. Presumably you don’t want to go public about any of this on a named basis.
“Texting over” —

we can’t see the end of it, but you say —

“Texting over for today”.

So you bring that exchange very firmly to a close. That very much suggests that he wasn’t happy with how the meeting on the 26th of June had been progressed. He didn’t think it had focused at all on Bell’s shortcomings or inappropriate behaviour. The whole focus had been on him. Now, you, can we take it, disagree with that?

12:30 pm

Mr Johnston: No, I remember that text came on the Saturday, I think —

Mr Lunny: Yes.

Mr Johnston: — the day after the meeting. I remember being a bit, sort of, disappointed that — and I was a bit surprised when I got the text. It seemed to me a bit out of characteristic with where I had thought things had been left the day before. I took it as a bit of a criticism of my role in it, which I think it probably was. I think you probably see a bit of frustration in my response because it was the case that there weren’t a huge number of people who were trying to get this sorted, and I was of the view on the Saturday that we were maybe sliding back to a position where the Friday meeting hadn’t resolved business. I mean, I certainly do recall the issue — I don’t think the temper piece — I don’t think the temper piece in terms of the meeting on the Friday — Jonny’s temper or broad temperament, I think it is fair to say that probably wasn’t raised or certainly not laboured on in the way that Timothy would’ve wanted. But the reason that I’d gone back and I’d said, you know, “I’m satisfied all has been handled”, or, you know:

“fairly to all concerned dealing with ALL the issues”,

was I was satisfied that that issue had been dealt with by Peter with Jonathan in the meeting that Timothy wasn’t present, and I was trying to make the point there that there was a
Relating to the relationship with Jonathan Bell and Timothy Cairns in the period June 2015 and beyond, it had become fractious. They appeared to be regularly in disagreement across a range of issues from basic working practices, how to communicate and seek advice from colleagues, and when and how decisions should be taken. During the Ministerial trip to London on 9-10 June 2015 I was contacted by Mr Cairns, (I think on the morning of the 10th), to indicate he and Minister Bell had been involved in a significant public row and that Mr Bell had told Mr Cairns he was sacked. I recall there were arguments around the approach to a meeting the Minister was due to have with Amber Rudd, who would attend, and how the DETI Minister would handle the meeting. My recollection from my conversation with Mr Cairns was that the argument had been heated and Mr Cairns indicated Mr Bell had threatened him physically, verbally and attempted to grab him.

b. The circumstances of Timothy Cairns’ absence from the Department from in or around 10 to 29 June 2015 and of his return to work in the Department at that time;

Following his return to Northern Ireland my recollection is that Mr Cairns presented a medical note to his Department citing sick leave for the period in or around 10 to 29 June 2015. This was clearly as a result of the events in London. Mr Cairns’ return to work was facilitated following meetings between the then First Minister Peter Robinson, Mr Bell, Mr Cairns and myself to attempt to resolve the relationship difficulties between them.

c. The working relationship between Mr Cairns and Minister Bell; and

The working relationship between Mr Cairns and Mr Bell appeared to get back on track after those events, however, with hindsight, trust appeared in short supply between the two men and neither appeared to respect the other.

d. Your assessment of whether any of the aforementioned matters did have, or may have had, an adverse effect on Mr Cairns and/or the Department and/or the Minister dealing effectively with any RHI issue during the periods covered by Phases 3 and 4 of the Inquiry’s work.
In my view it is highly likely that the aforementioned may have had an adverse impact on both Mr Cairns and Mr Bell on matters pertaining to RHI (and possibly other issues). Looking back the two men did not appear to like one another much less trust one another.

3. It appears to the Inquiry from information and evidence received by it that there was a discussion or disagreement between Mr Cairns and Minister Bell over breakfast in London on 10 June 2015, after which it was reported (according to the Minister’s Private Secretary: see WIT-25826 to 25827) that Mr Cairns had been “sacked”. As to this, please address, to the best of your knowledge, the following matters:

   a. The subject matter of any such discussion or disagreement (in particular, whether it involved the RHI Scheme and/or issues such as the extent of Minister Bell’s Ministerial decision-making authority, autonomy or independence);

   To the best of my knowledge and as outlined above, I recall being told by Mr Cairns in a phone call on the morning in question that the row had been in relation to what Mr Bell would say to Amber Rudd, whether Mr Cairns would attend the meeting, and whether the Minister had spoken to FM Robinson about any requests to be made of the UK Minister. I do not recall any reference to RHI at the time although I do recall a sense that Mr Cairns was attempting to ensure that Minister Bell would seek advice from other Ministerial colleagues before reaching a view on the matters at hand.

   b. Whether Jonathan Bell intended to sack or dismiss Mr Cairns from his role as his Special Adviser on or about 10 June 2015;

   At the time Mr Cairns said Mr Bell had sacked him. I must have had a later conversation with Mr Bell, and I cannot recollect whether it was that day or later, but I sensed from him a build up of frustration as to how Mr Cairns was behaving and that he did not intend to sack Mr Cairns but was seeking the First Minister to intervene to ensure respect was afforded to him as Minister by Mr Cairns.
11. The transcript of this recording commences seventeen minutes approximately into the recording because I had started recording before entering the building.

Relationship with Timothy Cairns

12. My Relationship with Timothy Cairns was generally good following a long history of working together when Junior Minister in OFMdFM. In addition to our working relationship we had meals together socially, Timothy and his wife had hosted us for meals in their family home and socially in Belfast and he had been supportive to me at times of family bereavement. Timothy would have confided his confidential family and personal information which I was content to listen to and with my therapeutic background provide support as best I could. While information to the contrary has been given to the Inquiry I recall that Timothy frequently expressed support for me to me and on one occasion during this period stated he believed in me as a politician.

There were though many occasions when Timothy spoke over me in Ministerial meetings, contradicted me and the perspective I was taking in ministerial meetings and on one occasion, detailed at question 13, told me he would tell me what to do. Following his apology for his inappropriate behaviour this behaviour significantly decreased but did not end.

My perspective is that Timothy saw himself as working for the other SPADS as opposed to the Minister and felt intimidated by them. An example of this was when he confided in me that Timothy Johnston had told him to get out and canvass for Gavin Robinson then running for MP in East Belfast while he was a SPAD or he wouldn't have a job as SPAD in the morning.

Timothy also confided in me that Nigel Dodds had told him he would have to resign his post with the DUP following mistakes in Dianne Dodds application to be returned to the European Parliament.
RE closing scheme: It is my recollection that we both, on occasion, would have telephoned each other.

   iii. Where it occurred;

RE cost controls: Stormont Castle
RE closing scheme: by telephone

   iv. Who was present;

RE cost controls: Minister Bell

RE closing scheme – only myself.

   v. What the substance of each conversation or discussion was;

RE cost controls: Timothy Johnston requested that I liaise with Andrew Crawford to formulate a suitable and appropriate policy.

RE closing scheme: Instructions from Timothy Johnston in relation to how OFMDFM wanted the closure to be managed.

   vi. Whether (to your knowledge) the DETI Minister was aware that you were having such conversations or discussions;

RE cost controls: Minister Bell was present

RE closing scheme: I informed Minister Bell of the substance of any contact I had with Timothy Johnston.

   vii. Whether (to your knowledge) Timothy Johnston’s then Minister was aware that you were having such conversations or discussions;
I have no knowledge.

viii. Whether you understood or believed what was said by Timothy Johnston to be communicated to you on behalf of his then Minister; and

I did.

ix. Whether the substance of the conversation was relayed to the DETI Minister and, if not, why not.

The substance/gist was conveyed to Minister Bell (on the occasions he was not present) as soon as practicably possible after such a conversation.

7. Without prejudice to the generality of paragraph 6 above, specify in particular whether Timothy Johnston encouraged, urged or requested you to seek to delay the introduction of cost controls in the Scheme or soften the introduction of cost controls in the Scheme (including by alternation of the proposed tiering arrangements or cap) from what was initially proposed by DETI officials I their submission of 8 July or in any other way. If so, provide full details and explain your understanding (both at the time and now) of why any such request or representation was made.

At the meeting in June 2015, when I returned from sick leave, at which Minister Bell was present, Timothy Johnston stated that tariff controls would not be introduced and I should work with Andrew Crawford at looking into an alternative. Minister Bell raised no objection. An example of such an idea is at 5, above.

8. In paragraph 6 of your first statement, you indicate that you also spoke with several MLAs from different parties in relation to the RHI Scheme. Please provide the names of those MLAs whom you recall speaking to and provide details, as far as you can, of whether the MLA approached you or you approached them, and the substance of any exchange.
you and Jonathan Bell in London on 9-10 June 2015, and, if so, please provide a full explanation;

Events on 10th June. See above for explanation.

g. Clarify the purpose of the meeting;

To reconcile and restart a working relationship

h. Outline fully all that was discussed at the meeting;

At the meeting I was invited to apologise. I apologised to Mr Bell. At which point Mr Bell stated he was happy with the apology and that he would take me back as a SPAD. I enquired if he would apologise. He said he would not. I asked did he feel he had done anything wrong, he stated he had not. I turned to Timothy Johnston and asked was Mr Bell going to apologise? Mr Johnston simply replied that it was now a matter for myself and Jonathan and if I didn’t want to return to work that was a matter for myself. He stated that civil service sick pay covers 6 months and if I wished I could avail of that, but my relationship with the DUP would be at an end. I found the meeting exceptionally upsetting.

i. Other than your allegations of bullying, clarify the issues that were discussed at the meeting;

Mr Johnston stated that we should catch up on the main issues of business that I had missed. I recall NIRO and RHI being discussed. This was a very brief discussion

j. Clarify whether this was the same meeting at which:

i. You were instructed to liaise with Andrew Crawford in relation to the RHI Scheme (see WIT-20057);

I was requested to liaise with Andrew Crawford, in the presence of Mr Bell who raised no objections.
ii. you caught up on what had happened as regards the RHI Scheme whilst you had been absent (see WIT-20056); Briefly, but yes

iii. Timothy Johnston is said to have ‘stated that tariff controls would not be introduced and that [you] should work with Andrew Crawford at looking into an alternative’ (see WIT-20058);

Yes, but I do not believe Timothy was fully appraised of the seriousness of the matter when he made that remark.

iv. Jonathan Bell was said to be present but voiced no objections to these instructions (see WIT-20058).

Yes

k. Specify what the outcome of the meeting was including, in particular, whether you were satisfied with it and, if not, the reasons for this;

I was not satisfied with the outcome of the meeting and was upset at its conclusion. This was not the first time that I, or others, had made allegations against Jonathan. It felt that, once again, Peter Robinson was backing Jonathan and ignoring serious allegations. This was a recurring pattern.

l. Specify to whom, beyond those in attendance, the outcome of the meeting was communicated;

Apart from family, the only person I communicated the outcome of the meeting to was Emma Little-Pengelly. I had arranged to meet her for lunch (this was pre-arranged). We discussed the matter in depth and what options I had. Beyond that I have no idea who was informed of the outcome of the meeting.

m. Clarify whether there was an agenda for this meeting (providing a copy of it if possible) and, if there was no agenda, explain this;
Mr Lunny: We can check that, and I’m grateful that it’s Miss Logue who provided me with that transcript reference so speedily.

The Chairman: It’s great to have efficient helpers, isn’t it?

Mr Lunny: Absolutely.

There’s one other issue I want to explore with you in relation to the 26th of June meeting, and that is what was or was not said about RHI at that meeting.

Mr Cairns: Yes.

Mr Lunny: So, this is your first time, really, back at work after your two-week absence, and I want to explore your recollection of what exactly was said about RHI. You do deal with this in your witness statement. If we could close the transcript bundle down, please, and open WIT-20164, please. And what you say, at the very bottom of that page, is — you are asked what other issues, apart from the bullying, were discussed, and you say:

“Mr Johnston stated that we should catch up on the main issues of business that I had missed. I recall NIRO and RHI being discussed. This was a very brief discussion”.

And then you are asked a number of questions about whether this was the same meeting at which you were instructed to liaise with Andrew Crawford in relation to the RHI scheme.

Mr Cairns: That’s correct.

Mr Lunny: All of these questions refer back to your earlier statements, where you have said these things. And you say:

“I was requested to liaise with Andrew Crawford, in the presence of Mr Bell who raised no objections.”

So, you’re clear: that request to liaise with Mr Crawford about RHI was made by Mr Johnston at that meeting?

Mr Cairns: That is correct. At that meeting, yes.

Dame Una O’Brien: At the meeting of the —

Mr Lunny: The 26th —
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1  Dame Una O’Brien: — the 26th of June?

2  Mr Lunny: — of June. Yes. So, this is the “patch it up” meeting, if we can call it that.

3  Dame Una O’Brien: Yes.

4  Mr Lunny: There were, then, a couple of other issues discussed, and they were about —

5  very briefly about departmental business.

6  3:15 pm

7  Mr Cairns: And I believe some business had been transacted in NIRO. I suppose, the
decision of the 10th of June that I’d said shouldn’t be taken or — for the political reasons — I
believe that decision was taken, and that was actioned in that two-week period. And I think
Mr Johnston and perhaps Mr Crawford had maybe some hand in that. So, I think there was a
much more fulsome catch-up on that, because that was obviously prescient.

8  Mr Lunny: OK. But you’re clear you were told by Mr Johnston to liaise with Andrew

9  Crawford, and that specifically was about RHI —

10  Mr Cairns: RHI and NIRO, yes.

11  Mr Lunny: — and NIRO. And, if you scroll on down to the next page, 20165, you’re asked
whether it was the meeting where you caught up on what had happened with RHI while
you’d been absent, and you’ve said:

12  “Briefly, but yes”.

13  Is that because very little, if anything, had happened with RHI?

14  Mr Cairns: That’s right. Nothing had happened. Basically, “This is a live issue. We know
about it. Andrew’s raised it to our attention”.

15  Mr Lunny: “We don’t have the submission yet”.

16  Mr Cairns: “We don’t have —”. I wasn’t told at that meeting we didn’t have the

17  submission —

18  Mr Lunny: Right.
taking matters forward. Mr Cairns had been on sick leave for several weeks and I think there may also have been a suggestion that Andrew could help him with some of the backlog. I recall Mr Robinson hoping that it was the last time he hoped he would have to deal with the issues around their working relationship.

ii. You “stated that tariff controls would not be introduced and that [Timothy Cairns] should work with Andrew Crawford at looking into an alternative” see WIT-20058;

I do not believe there was any discussion on the RHI scheme and I did not instruct or suggest at any point to Mr Cairns that tariff controls would be introduced, the details of which I was unfamiliar with at the time.

iii. Jonathan Bell was said to be present but voiced no objections to the aforementioned instructions see WIT-20058.

Minister Jonathan Bell and First Minister Peter Robinson were both present at this meeting. Again I do not believe details pertaining to the RHI scheme were discussed at the meeting.

k. Specify what the outcome of the meeting was including, in particular, whether you understood Mr Cairns to have been satisfied with it and, if not, the reasons for this;

The outcome of the meeting was that Mr Cairns was prepared to return to work and Mr Bell was prepared to have Mr Cairns as his Adviser. Mr Cairns complained to me subsequent to the meeting via text message (IND-31977 to IND-31978) that he was unhappy that Jonathan Bell had not been challenged regarding his temper.
we’ve covered the 26th of June meeting, all other aspects of it. The one aspect we haven’t covered yet is what, if anything, was said about RHI. And you know that Mr Cairns has given evidence of his recollection, and that is that you requested him, at the end of that meeting, to liaise with Andrew Crawford about the RHI and the NIRO, in the presence of Jonathan Bell. And he confirmed, in his oral evidence, that was a clear recollection that he had. And the two references for that are in his witness statement, at WIT-20164, and his transcript, at TRA-12707.

And he also said in his witness statement, at 20165, that, at that meeting, you also said that tariff controls would not be introduced into the scheme. He caveats that by saying he doesn’t believe you would’ve been aware of the seriousness of the situation or the detail at that point, so it wasn’t a statement that he took seriously, as it were. And, when pressed on that issue, I think by the Chairman, in his oral evidence, he said the strength of his recollection on that particular issue he put it that he wasn’t “gonna go to the sword on it”.

Those were his words, and the reference for that is TRA-12711. But he was very clear that he recollects you telling him to liaise with Andrew Crawford about RHI. Now, what the panel wants to know is your recollection of that part of the meeting.

Mr Johnston: And this, of course, goes right to the heart of why, I think, I’m sitting here, and it goes to the heart of the last two years and why I’ve scratched my head in terms of some of the things that have been said and how that is traced back to me. I had a very clear recollection, Mr Lunny, of those meetings at the castle and the purpose of them. I’d also a very clear recollection of both men having left the room; we discussed earlier the state or otherwise of happiness. I am absolutely certain that there was no discussion with me about RHI or, in fact, the other issue —

Mr Lunny: Tariff control.
Mr Johnston: — yes — in that period at all; there was no discussion about RHI in any of
the individual meetings in terms of let's call it “the reconciliation process”; and that, given
my absolute lack of knowledge, lack of interest — it wasn't my area of expertise — the
notion that I would’ve made any comment like that — and I’m being very clear about it; it's
not a case of saying, “Well, I don’t think — I might have done this and I might have done
that” — I’m being very clear that I think Mr Cairns is wrong. I respect the fact that he has a
different recollection. I don't know why he has that recollection. It wasn't a recollection that
he came back and he shared with me, you know, in subsequent months to say, “Well look,
you know, I’m doing this because you suggested to me X or Y”. I am absolutely certain that I
did say — and this had been discussed at a number of previous meetings — about the issue
of Mrs Foster and Dr Crawford that, if they wanted issues more generally bounced around,
in terms of having come in as a new team, having had a very experienced team left. I
absolutely am clear that I did say that.

Mr Lunny: Yes. If we could bring up maybe that part of your statement, at WIT-74101.

That’s paragraph (j). You say:

“I don’t believe there was any specific reference at this meeting to the RHI scheme but I do recall the
suggestion being made by FM Robinson that Mr Bell should use Arlene Foster as a reference point if he felt
he needed information or advice on DETI matters. Arlene had only recently moved to finance prior to
Jonathan Bell being appointed to the DETI. In that context Timothy Cairns was also encouraged to work with
Dr Andrew Crawford who had been the long standing Adviser in DETI prior to moving with Mrs Foster. It is
totally possible that I made that suggestion. I had no sense that either Mr Bell or Mr Cairns were instructed
by Mr Robinson, much less I, as to how to proceed in terms of taking matters forward.”

And you think there was some suggestion that Andrew Crawford could have helped with
some of the backlog after Mr Cairns had been sick. You also, if we scroll down, just to see,
you were asked a question about whether you stated that tariff controls would not be
introduced, and you say:

“I do not believe there was any discussion on the RHI scheme and I did not instruct or suggest at any point to Mr Cairns that tariff controls would be introduced, the details of which I was unfamiliar with at the time.”

So you are clear that there was a general direction/instruction/suggestion to both Mr Bell and Mr Cairns that they should each liaise with their counterparts: Mrs Foster and Dr Crawford?

Mr Johnston: Yes, in the sense that “If they felt that was helpful”. I don’t recall. I remember a conversation with Mr Robinson and Mr Bell present in the context of, “Look, you know, if there are issues coming up that you need help with or you feel there are issues coming up that you want to use a bit of institutional knowledge”, because, in fairness, Mr Robinson didn’t have that knowledge; I didn’t have that knowledge. It was — it was material which we wouldn’t’ve had the knowledge about.

Mr Lunny: Well, was it a suggestion that they tap into the experience and expertise of Minister Foster and Minister — or Dr Crawford? Or was it more than a suggestion? Was it, you know, “We strongly advise that you do this”, or, “We think you should do this”? Or was it actually a direction or an order?

Mr Johnston: No, it wasn’t a direction, and, ultimately, there was nobody saying, if they didn’t do it, that was wrong. I think it was suggested as a practical, sensible thing to do.

Mr Lunny: If you were the one that suggested that Mr Cairns liaise with Dr Crawford, would you have said something like, “I think you should liaise with Andrew Crawford about that”?

Mr Johnston: No, I think, probably, I would’ve said, “Andrew Crawford would be a good reference point, if there any issues that you need to talk him about”, because there was no point in him coming to talk to me about DETI issues. And, again, I don’t want to sound aloof about this, but I’d enough issues on my plate at that stage, as we’ve evidenced throughout
all of this. I mean, we were trying to take a view at the end of this process — “Could the men
work together? Was that possible?” — and to get it moving forward. There was no formal
process to monitor how they were getting on, but the suggestion was made in terms of,
“Look, you’re a new team. There’s the old team, which wasn’t supposed to be moving but
has moved. But they’re only in the office round the corridor from you. If you need to bounce
ideas, go and do that”.

**Mr Lunny:** Do you think, given your standing that we’ve been discussing already within
the DUP, that Mr Cairns might have perceived your advice on that point as something that
he really must do?

**Mr Johnston:** No, I don’t think so. I would’ve perceived that it was sensible, logical advice,
but I didn’t get any sense nor did I have a sense at the end of that meeting that that’s what
he was going to do.

**The Chairman:** Mr — if a meeting — in a meeting with the First Minister and you, as the
First Minister’s spad, you or Mr Robinson suggest that it would be, if necessary, a good idea
for him to go and speak to Mr Crawford if he’s got a problem, I don’t see why you don’t see
that he would’ve perceived that as something that he should do.

**Mr Johnston:** Well, he may well have done, Chairman. I accept that.

**The Chairman:** Yes, I don’t see the problem about that.

**Mr Johnston:** He may well have. All I’m saying, from my point of view, I don’t know if
that’s what he did perceive.

**The Chairman:** Well, it is. We know that from what his evidence is. I think the more
interesting thing is: why do you think he would’ve made the very specific suggestion or
statement that you said tariff controls would not be introduced?

**Mr Johnston:** I don’t know, Chairman, because —

**The Chairman:** If, as you say, you were a person who hadn’t taken any part in the RHI,
why would he make a statement which could so patently be disproved? Why would he say that?

Mr Johnston: Well, I don’t know whether, at the time, or whether, with subsequent recollection, he has conflated the issues, because, from my point of view, I didn’t have the knowledge. I wouldn’t have had the knowledge at that time around RHI issues. I didn’t have any background knowledge of it.

The Chairman: I know. You’ve told us that. My difficulty is I can fully understand how you might have different recollections about whether this was an instruction to follow Mr Crawford or whether it was a suggestion, and he may have perceived it in a different way you did. I can understand that. What I find very difficult is: how is it he comes to make such a specific technical suggestion from a person who, as you say, had absolutely no familiarity with it — wouldn’t have known a tariff from a chestnut?

Mr Johnston: I have —

The Chairman: It’s very strange, isn’t it?

Mr Johnston: I have struggled, because it goes to the heart of the issue. I have tried in my head to recollect: was there some misinterpretation? I don’t believe there was.

The Chairman: That’s what I’m — I don’t see the basis for it.

Mr Johnston: Yes. I have tried, you know, going back and looking and saying, in that period, you know, did I pick up knowledge elsewhere, which I didn’t, on it. We’re talking here, at the end of a meeting where we’ve talked about —.

3:15 pm

Mr Lunny: Sorry to interrupt you there. Just maybe if it’s of assistance: I think Mr Cairns suggested that you may have picked up knowledge in meetings that you and/or the First Minister would’ve had with Minister Bell, without him, in the period between the 10th of June and the 26th of June.
Mr Johnston: Well, no. I mean, I’m clear, counsel, that I didn’t pick up any knowledge. I’d certainly no sense that the First Minister picked up knowledge of the RHI issue during that period at all.

Mr Lunny: Because we know that Minister Bell and Mr Cairns had had the benefit of a meeting on the 8th of June with energy division officials, who had told them, it seems, three things: DFP approval had lapsed and had to be regained; there were tariff controls that the GB scheme had that our scheme didn’t, that would need to be introduced; and that there was a budget issue.

The Chairman: There was a big budget problem.

Mr Lunny: There was a budget issue. So, both Minister Bell and Mr Cairns had that knowledge, which they obviously — whilst they didn’t have a submission on it by the 26th of June, and one was promised to them by energy division officials — they would’ve each had the ability to pass that knowledge, at least, on to yourself or First Minister Robinson.

Mr Johnston: All I can say on that is — for the benefit of clarity — that certainly wasn’t passed on to me at that point at all.

Mr Lunny: And you don’t recall it being raised, then, by somebody else at the meeting — like the First Minister saying that —

Mr Johnston: No.

Mr Lunny: — there’s tariff controls —

Mr Johnston: No, no.

Mr Lunny: — or Jonathan Bell saying or Timothy Cairns.

Mr Johnston: No, I don’t, and I have no sense that we —. I mean, it’s a very specific comment to make. I mean, I take you back again to the tariff control point. You could probably figure out what it is if you don’t have much knowledge, but just about. I mean, from my point of view, at the end of a reconciliation meeting where, on the one hand, I’m
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1. trying to get two guys to work, move on; not, at the end of that meeting having an
2. absolutely clear sense that, you know, that Mr Cairns is coming back, but my sense was that
3. that was the case. You know, to have got into, you know, “Well, here’s the RHI and here’s
tariff controls and here’s all of that”, that would have (a) planted me with a level of
4. knowledge that I didn’t have; (b) it puts me in a position where I’m — even of the height of
making a suggestion on the back of information that I don’t have; and (c) even if you take it
that I had that information, which I hadn’t delved into or talked to officials about or knew
anything about, you know, it doesn’t make any sense.

5. **Mr Lunny:** Well —.

6. **Dr MacLean:** Sorry, can I just ask on that? In the written evidence there, you mention that
Andrew Crawford might be able to help him with some of the backlog. Was the backlog
discussed at that meeting?

7. **Mr Johnston:** No, it wasn’t, but I do recall, very specifically, Timothy making the point
that he had been out of the picture for a couple of weeks, and he had been out of the
picture, obviously, because of the sick leave period. And I do recall, at that point, you know,
there was a sense of — Dr Crawford, because — for two reasons. One, he had been there
and, two, I was conscious that there was a NIRO broad issue, which had come up from
Minister to Minister, had been bounced to me, I’d bounced it on to Dr Crawford because —.

8. **Dr MacLean:** The NIRO issue.

9. **Mr Johnston:** Yes. The, sort of, that broad sense of — that there was some stuff
happening there. Dr Crawford was — rightly, in my view — seen as our expert on these
issues.

10. **Dr MacLean:** Yes, I fully understand that. What I’m trying —. I think what we’re all trying
to do is just to reconcile the different recollections that people have. And I’m just trying to
imagine a situation: if there is, at that meeting, a discussion of the absence period, the need
to deal with the backlog, is it possible, in that, that Mr Cairns might’ve mentioned, “And I’ve
got these issues like the NIRO and the RHI on my list”, and then the generic response to that,
not even knowing what RHI and NIRO might mean, on your behalf was, “That’s the sort of
thing that Andrew can help you with”?

Mr Johnston: Well, I don’t have that recollection, but I have to be honest and say it would
not sit outwith some of the wider suggestions. Because, let’s say it had been said — and that
isn’t my recollection, but let’s say that it had have been said — my answer would still have
been the same. Here’s —.

Dr MacLean: I agree, and that’s the point: that, in Mr Cairns mind, he has mentioned
these issues and the response is, “Right. Well, get Andrew to help you with that”. And, again,
how much that is seen as advice or an instruction may also be different, but you can at least
see how that course of events leads to the two different statements that we have.

Mr Johnston: I certainly don’t, for one moment, walk away from the fact that I was a
proponent of suggesting that Arlene and Andrew — but I would’ve expected a lot of the
work to be done at Andrew’s level, because, again, the Minister’s doing many other different
things at any particular time — were an aide to lean on in terms of the issues, because, you
know —. And the reason that I was clear on that was — if we go back to the political point I
made this morning, which was: it was an unplanned reshuffle, which had come about very
quickly. Ordinarily, if that hadn’t happened, then Mr Bell and Mr Cairns wouldn’t’ve been in
the Department that they were in and, therefore, Mrs Cra— Mrs Foster, sorry, and Dr
Crawford would’ve been continuing to do whatever it was that they were doing at that time.

Dr MacLean: But you’re reinforcing how sensible that is, and I think it doesn’t — it isn’t
unreasonable to think that you probably mentioned that quite forcefully when you were
putting it forward as an idea. And if that was in response to a long list of issues that Mr
Cairns was having to deal with, you can see how those things could come to [Inaudible.]
d. Clarify whether there are any further emails or other documents in your custody or control which are of potential relevance to issues being investigated by the Inquiry but which have not, to date, been provided to the Inquiry and, if there are any such emails documents, (i) provide same to the Inquiry with your response to this Notice and (ii) explain fully the reason(s) for your failure to provide same before now;

I do not believe so (save for what has already been forwarded by myself and others).

e. Set out in detail all of the relevant steps you have taken, or caused others to take, in order to satisfy yourself that you have provided to the Inquiry all emails and documents within your custody or control that are of potential relevance to issues being investigated by the Inquiry.

I have accessed the email account held on the DUP’s server.

I have used the search terms:

• NIRO
• RHI
• Renewable heat
• Green energy

All relevant emails found in respect of those searches have been forwarded to the inquiry.

4. To the extent that you consider it necessary to provide further written evidence to the Inquiry in order to explain and/or provide context for or background to the aforementioned email, please do so.

The discovery of the email has jogged my memory in relation to meeting Mr Johnston and his family in ______. On Saturday 15th August 2015, I do not recall if Mr Johnston was finishing his holiday or on a day trip. I do not recall the specifics of our conversation. I do recall it was very brief and given that our respective
families were present and the noise of discussion, it was not a substantive discussion. Whatever was discussed it clearly prompted the email.

5. Without prejudice to the foregoing request, please clarify the following points in respect of the aforementioned 17 August 2015 email:

   a. Set out the interactions which you believe you had with Mr Johnston regarding RHI in July and/or August 2015 prior to the aforementioned email (if these are limited to the interactions about which you have already given written and oral evidence, simply say as much and identify the relevant portions of your existing written and/or oral evidence);

This has been dealt with in my oral evidence.

Specifically see TRA 12714 to TRA 12717 and TRA 12877 to 12878. As stated in oral evidence, I recall a conversation with Mr Johnston before the issues meeting of 24th August 2015. The email of 17th August 2015 has not provided greater clarity to my oral evidence, however it would seem likely that conversation before the issues meeting may have been prompted by this email. I also recall a conversation with Mr Johnston after the issues meeting of 24th August 2015, again the recovery of this email provides no greater clarity on what was discussed other than what is disclosed in my oral evidence.

   b. Set out the interactions (such as, for example, a ‘catch up’) which you believe you had with Mr Johnston regarding RHI arising out of, or related to, the message you communicated to him in the aforementioned email, including details of when and where such interactions occurred as well as the gist of what was written or said on each occasion;

Aside from my oral evidence, the only other interaction I recall with Mr Johnston is at I had forgotten about this interaction until the email was recovered. I do not recall the specifics of our conversation. I do recall it was very brief and given that our respective families were present and the noise
Hope all well and you survived Barry's!

Attached is latest on NIRO we need to issue this to attempt to save the bombardier scheme.

We also need to get a catch up on renewable heat. If we are to deviate from GB policy it will require a ministerial direction.

T

Sent from my iPad

Begin forwarded message:

From: "Kerr, Sean" <Sean.Kerr@detini.gov.uk>
Date: 17 August 2015 12:45:33 BST
To: "Cairns, Timothy" <Timothy.Cairns@detini.gov.uk>, "Timothy Cairns (timothycairns@dup.org.uk)" <timothycairns@dup.org.uk>
Subject: FW: DESK IMMEDIATE: NIRO Closure and Grace Periods - DETI Response on Non-Wind technologies

Tim

Please see attached desk immediate sub from John Mills. Grateful if you could let me have any comments before I meet Minister tomorrow – if you’re content I can seek clearance then.

Thanks

Sean Kerr
Private Secretary to Minister Bell
Department of Enterprise, Trade and Investment
Netherleigh
Massey Avenue
Belfast, BT4 2JP
Tel: 028 90529452
Mob: 078 8790 5085
E-mail: sean.kerr@detini.gov.uk
Mr Cairns: I recall no instance, and I don’t see why I would’ve ever said that. There’s definitely no difficulty with talking about any issue at a ministerial issues meeting; in fact, the debate was welcomed on my part. I think, in my evidence, I say there’s one or two occasions where I added to the agenda, because I felt it was important to have that dialogue, particularly with Mr Bell’s practice of not always being over the brief to the best of his ability.

Dr MacLean: Last week, Mr Lunny — I don’t have the transcript in front of me, but I did go through this with Mr Bell — that it appeared the only possible meeting at which this occurred was one in June and that there were no other meetings between that one and the August 24th, I think it was, issues meeting. There had — there’d only been a couple of issues meetings, and, for a number of them, Mr Cairns was away anyway, so the only one that we boiled it down to was the, I think, the briefing on the 8th —

Mr Lunny: The 8th of June.

Dr MacLean: — of June. And what I was trying to understand was whether, at that time, there had already been any discussion about Mr Crawford — Dr Crawford helping you out —

Mr Cairns: None.

Dr MacLean: — by the 8th of June?

Mr Cairns: By the 8th of June, none. The 8th — there’s only two instances that I’d heard of RHI before I went off on my sick leave. A briefing from Mr Mills, the majority of which was taken up with NIRO, connection issues, lots of other stuff — a very brief discussion on RHI towards the end of the meeting. And, at the end of the meeting, I was left with the impression that RHI may be something we need to look at, but, by and large, this was a scheme that hadn’t been performing well but was now performing well and was an example of good practice within energy division at that point in time, in early May.

The only other time I’d heard RHI discussed was then at the 8th of June, at a ministerial
issues meeting, where RHI was on the agenda and Dr McCormick briefly, for just a few
minutes, raised some issues and some difficulties with RHI. And obviously, from my
perspective, the briefing from Mr Mills three weeks earlier was therefore at odds with the
briefing of the permanent secretary, but I see from the papers that that’s really when the
issue became live — in those three weeks — within the Department, so, I think, in fairness to
Mr Mills —.

The Chairman: He’d had a meeting on the 3rd of June, and the emails we have seen
confirm that the three issues he was then concerned with were mentioned on the 8th of
June.

Mr Cairns: That’s correct, and that would be my evidence too, although I think my
evidence — just to be absolutely clear, Mr Chairman — would be that I only actually
remember two of them being mentioned and not the third. Dr McCormick presented it by
saying, “Civil servants have — we’ve dropped the ball here, and we’ve dropped the ball in
relation to DFP approval. We’ve dropped the ball in relation to regulations that should have
been included at the time when the domestic scheme was introduced, and we didn’t do
that”. Now, it would be very odd would be my evidence that, knowing what we know now
from the 3rd of June meeting, that Dr McCormick would not have mentioned the third issue.

However —

The Chairman: The budget.

Mr Cairns: — I don’t recall him mentioning it.

The Chairman: You don’t mention — you don’t recall the budget being mentioned.

Mr Cairns: I don’t, I don’t, but it was just the first two were presented as, “We’ve dropped
the ball”, which, I think, is why they stick out in my mind. And — but I would say it’d be very
odd for Dr McCormick not to have mentioned the third. He must have done; I just don’t
recall.
The Chairman: Particularly when the budget was why he had raised the issues in the first place on the 3\textsuperscript{rd} of June.

Mr Cairns: That’s correct, yes.

Dr MacLean: We’ll maybe come back to it, but I also, I think, recall from your written evidence that, at some point, you had said that Mr Bell, following that June meeting, had assured you that he was going to sort out the RHI.

Mr Cairns: Well, I think that’s a bit of a dispute between myself —

Mr Lunny: We are going to —

Dr MacLean: We’re going to come to it.

Mr Lunny: — come to this all in a bit of detail.

Dr MacLean: Just to finish off the agenda issue, is it possible that there was a meeting that involved you and Mr Bell — I don’t know who else may or may not have been involved in it — in which you might have said, “We don’t need to discuss that at the moment. I’m working on this with others”?

Mr Cairns: No meeting like that. There would’ve been no reason to do that.

Dr MacLean: In a relatively harmless way, that is certainly something that could conceivably happen.

Mr Cairns: I can see what you are saying, but there would’ve been no reason to.

Dr MacLean: No.

Mr Cairns: I mean, I would’ve welcomed a discussion at any time.

Dr MacLean: So was it —?

Mr Cairns: No discussion was shut down at any time with anybody by me.

Dr MacLean: No, so we can conclude from that that the only meeting at which you were both involved — certainly of the issues meetings — at which RHI was mentioned was the one on the 8\textsuperscript{th}; that RHI was raised by either Dr McCormick or Mr Stewart; and that the
issues were raised — maybe the budget: you can’t recall — but certainly the others were raised; that you either didn’t attend or RHI wasn’t an issue on the agenda of the other meetings in the time before the final decision was taken at the August twenty-something —

Mr Lunny: 24th.

Dr MacLean: — 24th meeting; and therefore there just isn’t room for any —

Mr Cairns: There isn’t room for that to have been said. Yes.

Dr MacLean: — any other occasions where, had you wished to block it from being on the agenda, that you would’ve been physically there or capable of doing that.

The Chairman: I don’t think there were any other meetings between the 8th and the 24th.

Mr Lunny: There was at least one meeting while you were on sick leave in June.

Dr MacLean: Yes.

Mr Lunny: We know that there were two meetings, I think, on the 1st and 7th of July, but —

Mr Cairns: RHI wasn’t on the agenda.

Mr Lunny: — your understanding is they were all about NIRO.

Mr Cairns: Well, NIRO was — it was exploding at that point in time, you know, so —.

The Chairman: There were no issues meetings between the 8th and the 24th. We know that from the secretary, the personal secretary’s record.

Mr Lunny: There were no issues meetings with RHI on the agenda.

The Chairman: With RHI on the agenda.

Mr Lunny: We understand there were issues meetings on the 1st and 7th of July. Mr Cairns —.

The Chairman: Yes, but there was no —

Mr Lunny: But RHI wasn’t on the agenda, and I think, in fairness, one of the witnesses last week made the point that, if it had been on the agenda for those, all that would’ve been said
is, “We mentioned it on the 8th of June. A submission is coming”, and we know the submission came on the 8th. So, between the 7th of July meeting and the 24th of August, there was no issues meeting.

Mr Cairns: There were no issues meetings that Dr McCormick had put in the diary at that time.

Mr Lunny: We know that. Yes.

Mr Cairns: And, just for completeness, I think, before we move off the 8th of June — maybe we’re coming back to that — Dr McCormick did say that an urgent submission would be coming at that point in time and we were to expect that. So, I think, Dr McCormick’s evidence from last week, whilst I don’t recall some aspects of him saying it, I think that’s probably a complete and accurate record of that meeting.

Mr Lunny: That’s very helpful.

I think you’ve probably told us everything you can about the meeting with John Mills that you had before that.

Mr Cairns: That’s right.

Mr Lunny: You date it to your first week, which would be the 12th or 13th of May, I think the Wednesday. I think, if your first day was Tuesday the 12th, I think it was the —.

Mr Cairns: I think the meeting that John Mills references before the 8th of June meeting is a meeting, I think, in my evidence, I make clear, took place, I believe, after the 8th of June.

Mr Lunny: Yes, I’m sorry. To be clear, I’m not asking you about that; I’m asking you about the meeting you’ve just mentioned, where John Mills —.

Mr Cairns: Whatever the first —. John was in on the morning of the first Wednesday: I remember that.

Mr Lunny: So you had your two-hour meeting with him. It covered lots of things. RHI was mentioned, but it was mentioned in positive terms.
as to when?

Mr Bell: That’s correct.

Mr Scoffield QC: As I’ve mentioned, we’ll come on, in a moment or two, just to talk about
the 8th of June issues meeting.

Mr Bell: Yes.

Mr Scoffield QC: So that’s, I think, your first issues meeting in the Department three or
four weeks after you’ve joined. Can you remember: did that discussion happen at that
meeting?

Mr Bell: No. At the meeting, the issue of RHI was on the agenda as part of several issues,
and when it was raised, the special adviser said, “Oh, we’re not dealing with this today.
We’re not dealing with this”, and alluded to the fact that he was dealing with other special
advisers on the detail of it. There was no further discussion on that, no further detail given,
or no briefing given.

The Chairman: Again, I think we have to take that a bit more slowly.

Mr Scoffield QC: Chair, if I may, I’m about to come to that in just a moment or two. Just
before we get there, I wanted to ask you just about this time, when you come in to the
Department in May, because one of the things that you said —. Maybe we’ll just have a look
at DFE-228964. One of the things that you said when you were giving your interview to
Stephen Nolan in December 2016, just towards the bottom of that page, is that the scheme:

“should have been closed on day one.”

I just want to understand if what you were suggesting then and if you maintain the position
now that, in your view, the scheme should have been closed at the start of your ministerial
tenure.

Mr Bell: Let me be more precise in the language: it should’ve been closed to new
entrants. If the budget wasn’t there, and we could no longer afford it, and there was no
four-week delay. I never ever suggested a four-week delay. And there’s evidence that says
that — if I’ve read it correctly — it says that Timothy Cairns was informing the Civil Service
that, if you want to get this past the Minister, you have to agree a four-week delay to the
scheme.

The Chairman: Presumably, Mr Scoffield, the four-week delay point relates to the
meeting on the 24th of August.

Mr Scoffield QC: Yes, Chair. And —.

The Chairman: Yes. We’re not at that yet.

Mr Scoffield QC: We’re coming to that in due course.

The Chairman: It appears that the assertion that Mr Cairns was preventing this from
coming on the agenda all stems from the statement by Mr Bell that he had said, “We’re not
going to talk about it”, on the 8th of June.

Mr Scoffield QC: Yes, by Mr Cairns —.

The Chairman: And then he makes an inference from that, because it doesn’t appear on
the following three, that his influence is affecting that. That right?

Mr Bell: Yes, I just —. I take it as an influence. I can’t prove that he stopped it going on
the agenda.

The Chairman: No, but it depends on the truth of what you tell us that happened on the
8th of June.

Mr Bell: Yes.

The Chairman: Yes.

Mr Bell: I know you’ve got that email. And I’ve only seen it three years later. But, why —?
I cannot understand, if they had precise figures and real concerns, why it wouldn’t have
gone back on the agenda for the next week, with an update on what they were doing.

The Chairman: Thank you.
unable to recall those meetings, discussions and conversations in order to provide details. The Minister and his Special Adviser had frequent, regular meetings with the DETI Permanent Secretary and his senior team, often referred to as “Issues Meetings”. I have interrogated archived email records from the Department, and those reveal that when those meetings occurred RHI or renewable heat was frequently on the agenda. The Department requested those meetings and the agenda was set by the Permanent Secretary’s office. RHI was on the agenda for the meetings that occurred on 8 June 2015, 24 August 2015, 7 September 2015, 3, 9 and 16 November 2015, 8 December 2015, 1 and 15 February 2016, although this list is not exhaustive. In preparing this statement I also searched the Ministerial Diary using the search terms ‘RHI’, ‘renewable’ and ‘incentive’ and no results came up. I confirmed that the search function was working, but the method of recording the meetings in the Diary did not reveal the specific subject matter as relating to RHI, renewable heat or incentives.

Other frequent attendees at these meetings included the Department’s Press Officer and the Minister’s Assembly Private Secretary, Ian McCrea MLA. I was not routinely present at such meetings and, for those where I may have been in the room, I played no active part nor recorded any minutes. I would not sit at the meeting table but would sit elsewhere in the room processing other work. My only purpose in being present was to be readily available for the Minister, should he require anything.

14. I do not recall any discussion, conversation or meeting with the Special Adviser in relation to or touching on the RHI Scheme, save in relation to my limited role of processing paperwork and passing it between the Special Adviser and officials or the Minister.

15. I do not recall any specific discussions, communications or exchanges and to the best of my knowledge these would only have entailed, in the course of my normal duties, processing departmental paperwork and passing it between the Special Adviser and officials or the Minister.
31. I also believe that pressure was brought to bear on me by Permanent Secretary Dr Andrew McCormick verbally. On several occasions, he referred to OFMDFM and DFP as superior and bigger Departments and for all practical purposes the practice of government was to follow the lead given by these Departments both to delay the introduction of the cost controls and to extend the closure of the Scheme by 2 weeks.

32. To the best of my knowledge I believe that Andrew McCormick, Timothy Cairns and Chris Stewart were subject to influence or pressure from the same individuals outlined above. To that end, I would refer the Inquiry to the contents of the transcripts of the recordings I provided which evidence my discussions with Andrew McCormick.

33. It is also my belief that my SPAD acted in a manner whereby information relating to RHI (whether generated by DETI or otherwise) was filtered and filleted so that, as Minister, I was not provided complete information. I believe this was a form of indirect control of my actions and decisions as Minister.

34. The Statutory Notice requests that I provide evidence as to the funding arrangements for the RHI Scheme. Although the funding arrangements (and amended funding arrangements) pre-dated my tenure as DETI Minister, I understand that initially the funding of the scheme was to be met by the United Kingdom Treasury. Later this was amended to a percentage relevant to Northern Ireland with the balance to be met by the Northern Ireland Assembly budget.

35. As Minister, I did not receive a detailed breakdown of costs or overspend, I did not get daily, weekly or monthly updates of those joining the Scheme and the cost implications. When I requested further detail, I was informed that it would be difficult to estimate any spend or overspend by virtue of the duration of the Scheme and the fact that cost of the RHI Scheme varied with consumption/use.
Code Governing the Appointment of Special Advisers

Laid before the Northern Ireland Assembly under subsection 8 (4) of Civil Service (Special Advisers) Act (Northern Ireland) 2013
by the Department of Finance and Personnel
on 20 August 2013

Updated – 27 June 2016

FI1/16/115613
INTRODUCTION

1. This mandatory Code is for use by Ministers who choose to appoint Special Advisers in accordance with the Civil Service Commissioners (Northern Ireland) Order 1999 as amended. Under section 8 of the Civil Service (Special Advisers) Act (Northern Ireland) 2013 (“the 2013 Act”) such an appointment shall be subject to the terms of this Code. DoF has also prescribed the requirements for these appointments under the Civil Service (Northern Ireland) Order 1999 which empowers the department to make regulations or give directions prescribing the requirements for appointment to the Northern Ireland Civil Service (NICS).

2. The appointment of Special Advisers is subject to Northern Ireland’s employment legislation including anti-discrimination legislation. The Code is designed to ensure that good practice is followed in the appointment process and that Ministers as the appointing authority provide equality of opportunity and avoid unlawful discrimination.

3. Special Advisers have the status of Civil Servants and are remunerated from public funds. It is accepted, however, that there is a personal nature to such appointments which requires a high degree of rapport and trust between the parties involved to make them a success. Article 3(2) of the Civil Service Commissioners’ Order as amended disapplies the principle of selection on merit on the basis of fair and open competition, where an appointment to a situation in the Civil Service is made for the purpose of providing advice to Ministers during a period terminating on a date on which the relevant Minister ceases to hold office. Nevertheless, it would be incumbent on Ministers not to be overly prescriptive in their candidate field. They must take account, for example, of any potential imbalance of religious belief or gender in the circles from which they are minded to draw someone for an appointment.

makes it unlawful to discriminate not only on grounds of religion but on the grounds of political opinion, although it contains certain exemptions, including jobs where the essential nature of the job requires it to be done by a person holding or not holding a particular opinion. It is ultimately for each Minister to decide whether the nature of his or her Special Adviser’s work falls into this category. The key issue is that arrangements made and actions taken by the Minister as the appointing authority are justifiable and untainted by practices which are discriminatory, either directly or indirectly. Getting the balance right between the undoubted personal nature of the relationship with a Special Adviser and the concept of fairness required by the law should not be seen as an onerous task, but as one designed to provide the Minister with a candidate field which will ensure the selection of a candidate who fully meets the Minister’s needs in terms of competence and attributes. The principles which underpin the need for this Code and the required procedures to give effect to them are outlined below. Ministers should also note that appointments of Special Advisers may be subject to investigation by the Northern Ireland Ombudsman.

**FRAMEWORK FOR SELECTION AND APPOINTMENT**

5. As an overriding principle, selection and appointment must comply with the law. Given that principle, there is a framework which Ministers must use to guide them in their objective consideration of the selection and appointment process:—

(a) given Northern Ireland’s unique equality legislation, Ministers must not put themselves in a position which gives rise to challenge. Ministers must be careful therefore to make the selection on justifiable grounds, and to consider potential candidates on their merits;

(b) Ministers have a personal responsibility to ensure that selection is free from unlawful discrimination;

(c) Ministers must ensure that they consider a number of candidates;

(d) each stage of the recruitment must be documented and such documentation must be retained for at least one year; and

(e) all posts must have a contract of employment.
2.17 I had a further meeting with officials on 17 June 2015, by which time DFP had been alerted to the problem, and legal advice had confirmed that we had no means of introducing cost control without new Regulations. Hence we concluded that the introduction of a broad range of cost controls was a matter of urgent necessity (see informal iPad notes at Annex 2.7).

2.18 The concerns as explained above around RHI were mentioned at the Departmental Audit Committee meeting on 24 June 2015.

2.19 A particular period of difficulty arose from the dispute on 10 June 2015 which I referred to in paragraph 2.16 above. This was only patched up a few days before the key submission on the RHI came forward for consideration in early July 2015. While we did not understand fully at the time the degree of tension between Jonathan Bell, Timothy Cairns and others in the DUP, it is now clear with hindsight that there was a degree of distrust which made the difficult RHI issue significantly harder to resolve, both in respect of the changes in summer 2015, and when suspension became necessary in early 2016. For example, in July 2015, it was not clear to officials why the urgent submission referred to in paragraph 2.27 below was not being acted on, even making allowance for the routine delays of the summer period.

**Interactions in Summer 2015**

2.20 In January 2017, I was sent documentary evidence (Annex 2.9) from an anonymous source showing that:

- DfE officials briefed some contacts in the renewables sector in July (or indeed maybe even in June) 2015 that there were very likely to be reductions in the tariff, and
- this information was shared with other companies, accompanied by advice that all possible applications were submitted in time to take advantage of the original tariffs.

2.21 I also received a further set of emails from an anonymous source in February 2017 (Annex 2.10) showing exchanges between DETI officials (Stuart Wightman and Seamus Hughes) and the Ulster Farmers Union, and within the Union. These showed that the UFU had pressed for a grace period between the announcement of a change in the tariff and its imposition.

2.22 On 9 May 2017, I saw a note sent on behalf of Chris Stewart, Stuart Wightman and Seamus Hughes which says

> "Mr Wightman would note that at the meeting on 17 June 2015, Energy officials expressed concerns that they were already receiving enquiries from the industry in relation to proposed tariff changes. The

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6 I have no way of knowing if this was the same or a different source as the source of the emails mentioned at paragraph 2.20.
introduction of the 2015 RHI Scheme amendments Mr Cairns’ evidence at WIT-20022 refers and, if you did do so, provide full details of this including an explanation as to why you did so;

I did not do so, and I do not believe that RHI was discussed during the meeting in June 2015 at which Mr Cairns claims these remarks were made.

b. Clarify whether you at any time suggested, requested, or gave instructions to Timothy Cairns to liaise with Andrew Crawford regarding the proposed 2015 RHI Scheme amendments Mr Cairns’ evidence at WIT-20053 paragraph 4.a refers and, if you did do so, provide full details of this including an explanation as to why you did so;

As previously outlined in my response at 4j (i), (ii), and (iii) I do not believe there was a reference to RHI at that meeting but that the suggestion was made by both Mr Robinson and I that both Mr Bell and Mr Cairns should use Mrs Foster and Mr Crawford for help in DETI matters as they felt necessary.

c. Clarify whether you at any time suggested, requested, or gave instructions to Timothy Cairns that tariff controls would not be introduced into the RHI Scheme and that he should work with Andrew Crawford to look into an alternative Mr Cairns’ evidence at WIT-20058 paragraph 7 refers and, if you did do so, provide full details of this including an explanation as to why you did so;

See answer to 12b. There was no suggestion about working with Andrew Crawford about alternatives to RHI tariff controls. I did not have any information to even be able to make such a suggestion in June 2015.

d. Clarify whether you at any time suggested, requested, or gave instructions to Timothy Cairns that the RHI Scheme and/or the issue of the introduction of cost controls in respect of same should not be on the agenda for any meetings involving Minister Bell Mr Bell’s evidence
done”, and I leave.

My other point is: I’m not clear. I think Mrs Foster is maybe in another office. I’m not sure that she’s on the call or, at least, in absolute close proximity to the call. She may be in the next office. I certainly remember having a conversation with her in the immediate aftermath of that broad telephone call.

Mr Lunny: But, in terms, then, he did make the allegation at that point that he said he made.

Mr Johnston: He made the allegation in relation to Dr Crawford. Yes, he did.

Mr Lunny: Yes, that you had directed him. And, I suppose, what you add to this account is you say you corrected him and said, “No, I directed that you speak to Dr Crawford generally about DETI”.

Mr Johnston: Well, I — and I certainly made the distinction that I wasn’t accepting out of that that there was any determination on my behalf to delay cost controls or get into the detail of all of that, because that — that had always been my position, and it had always been my position, and it still is my position, in the context of that particular issue. That, I think, is the first time, and I think that’s probably the only — with the exception of a text message which he then sends me in the immediate aftermath of the television interview — I think that’s the only contact that I’m aware of that I had around that time with him.

Mr Lunny: Yes, and I think you’ve made that clear in your witness statement.

There are a couple of issues that then flow from that that I want to deal with briefly. They arise from Dr McCormick’s witness statement. So, if I could open it up. It’s at WIT-26288, and paragraph 230. Dr McCormick’s talking about a text message that he sent on the 15th of December to the DUP spads, and it’s in the context of him watching ‘The Nolan Show’. And he sends that text message to a number of you, and he said he:

“found it very surprising that Arlene Foster said ‘I have no idea’, when asked why there had been a delay in
in relation to that at this point? So, I couldn’t’ve even discussed with them tariff changes, or
agreeing to —. And, anyway, why would —? I thought the First Minister office and all of their
evidence was saying that they had no role in any of this at this time. But why would I agree
to tariff changes that I wasn’t even aware of — I had no detail on, or no background briefing
on?

Mr Scoffield QC: I think we have your point on this that this is not a part of the discussion
that you’re involved in.

Mr Bell: Yes.

Mr Scoffield QC: And I take from that that, in terms of any conflict between the evidence
of Mr Cairns and Mr Johnston, you’re not able to help the panel to resolve that?

Mr Bell: Not at all.

Mr Scoffield QC: Now, I want to move on to another topic, and it’s moving back into the
Department, because you’ve said in paragraph 4 of your first witness statement — this is
WIT-22514 — that, by virtue of the way that Mr Cairns communicated with senior officials —
this is just the paragraph beginning Roman vi — he:

“was in a position to (and did) exercise considerable control in respect of the agenda of the weekly
Ministerial Issues meetings.”

12:45 pm

Now, we’ve talked about the 8th of June meeting, but it seemed to me, from your
evidence, that you are making the case in your written evidence that there were other issues
meetings where Mr Cairns was keeping the issue of RHI off the agenda. Now I wanted to ask
you, are you suggesting that he was ensuring that it didn’t appear on the written agenda, or
are you suggesting that when it was raised, as you mentioned earlier on, he was simply
saying, “We’re not going to discuss that”? Can you see the difference between the two
points?
Mr Bell: Yes. I mean, I do, and my understanding is it’s the latter, because the first time it was raised, he’d asked — said he wasn’t dealing with it. And I think, from memory, the next three meetings, it wasn’t even put on the agenda. So, the panel can conclude what they wish from that. I don’t know why they didn’t put it back on the agenda if it wasn’t —. And you’ve got to understand that I was working on the basis that if there was a serious issue, the permanent secretary would come in and talk to me about it.

Mr Scoffield QC: You’re certainly right, and I think the panel looked at these yesterday, that there were further issues meetings on the 22nd of June, 1st of July and the 7th of July. The agendas — again for your note Chair — are at DFE-469006 through to 008.

The Chairman: Just give me the dates again, please.

Mr Scoffield QC: It’s the 22nd of June, the 1st of July and the 7th of July. And you’re right, Mr Bell, the RHI scheme doesn’t appear on the agenda at any of those meetings. I’m just trying to understand what, if any, role you say Mr Cairns had in that and if you’re suggesting that he was saying to officials, “Don’t put the RHI on the agenda”. Is that what you’re saying?

Mr Bell: I was present with him when it was, as I’ve said earlier, in that brief discussion when it was raised for a couple of minutes, where he said “Oh, we’re not dealing with that. I’m dealing with that with others” — spads, I believed — and then it subsequently didn’t appear on the agenda. And I think it was a reasonable working assumption that if no briefing was given to you of any serious issues, and you’re dealing with submissions of much more innocuous issues in comparison, that there was no serious problem with this scheme.

Mr Scoffield QC: I appreciate that point. You’ve made that point before, but —.

Mr Bell: But —. I’m sorry, but I do need to make it repeatedly. If it’s not back on my agenda and they haven’t given me a briefing, how on earth am I to understand that there was a difficulty with this scheme and deal with it?

The Chairman: I think we need to be a bit clearer about this. You are inferring from your
assertion that he said, “We’re not talking about this today” —

Mr Bell: Yes.

The Chairman: — which was on the —. Is that right? The 3rd of June, is it?

Mr Scoffield QC: The 8th of June, Chair.

The Chairman: 8th of June, which is the same meeting at which we have the text stating that he was — Mr Bell was told about it and he was given the three points that had been agreed on the 3rd of June.

Dr MacLean: By Chris Stewart.

The Chairman: By Chris Stewart.

Mr Scoffield QC: It’s an email from Mr Stewart. Yes, Chair.

The Chairman: So we either accept what Mr Bell says about that or we don’t, depending on the view of credibility. The next three are the 26th of June, the 1st of June and the 7th June. Those, I understand from other evidence, are occurring during the time when the submission of the 8th of July is being prepared.

Mr Scoffield QC: Yes, Chair.

The Chairman: Yes. All right. Thank you.

Mr Scoffield QC: So, I’m just trying to understand, Mr Bell, if you’re suggesting that Mr Cairns was actively encouraging the civil servants to leave it off the agenda, or if your suggestion that it was being kept off the agenda is more in the nature of a suggestion that, when it was raised, Mr Cairns was saying, “We don’t need to bother about that now”? Mr Bell: I think Mr Cairns was saying, “We’re not dealing with that”, and it didn’t come back to be dealt with. There was no progress update on any part of it. And I think what I was saying about Mr Cairns exercising is looking at the evidence that has been giving subsequently, which is evidence that Timothy Cairns was saying to the civil servants, “If you want to get this past the Minister, you need to ensure a four-week delay”. I never wanted a