(i) observe the highest standards of propriety and regularity involving impartiality, integrity and objectivity in relationship to the stewardship of public funds;

(ii) be accountable to users of services, the community and, through the Assembly, for the activities within their responsibilities, their stewardship of public funds and the extent to which key performance targets and objectives have been met;

(iii) ensure that all reasonable requests for information from the Assembly, users of services and individual citizens are complied with; and that departments and their staff conduct their dealings with the public in an open and responsible way;

(iv) follow the seven principles of public life set out by the Committee on Standards in Public Life;

(v) comply with this Code and with rules relating to the use of public funds;

(vi) operate in a way conducive to promoting good community relations and equality of treatment;

(vii) not use information gained in the course of their service for personal gain; nor seek to use the opportunity of public service to promote their private interests;

(viii) ensure they comply with any rules on the acceptance of gifts and hospitality that might be offered; and

(ix) declare any personal or business interests which may conflict with their responsibilities. The Assembly will retain a Register of Interests. Individuals must ensure that any direct or indirect pecuniary interests which members of the public might reasonably think could influence their judgement are listed in the Register of Interests.

The Seven Principles of Public Life

1.6 The seven principles of public life referred to at (iv) above are as follows:-

**Selflessness**
Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

**Integrity**
Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
**Statutory Ministerial Code**

**Objectivity**
In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

**Accountability**
Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**Openness**
Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

**Honesty**
Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

**Leadership**
Holders of public office should promote and support these principles by leadership and example.
# PRIVATE OFFICE GUIDANCE

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Ministerial Correspondence

Any papers sent to the Private Office (private.office@detini.gov.uk) should be sent electronically (unless by prior arrangement) and should be copied to the Permanent Secretary, the relevant Deputy Secretary and Head of Division, as well as the Press Office (press.office@detini.gov.uk).

N.B. The Special Advisor will see and clear all papers before they are submitted to the Minister. All submissions, briefings, correspondence and invitation cases should be addressed
1. Andrew Crawford
2. Arlene Foster MLA
and be emailed to the Private Office, copied to Andrew Crawford.

Responses

1. Private office will decide whether a letter addressed to the Minister should receive a Ministerial reply, and if so which division should prepare the advice, or whether it can be answered by the Minister’s Private Secretary, or an official.

2. First names should be used when the Minister is corresponding with fellow MPs, MLAs and Peers. The exception to this rule is correspondence with the Prime Minister, First Minister and deputy First Minister who must be referred to by these titles in all circumstances. The Minister will sign letters as Arlene Foster MLA.

Transfers

3. If a division is allocated a letter that they feel would be more appropriately answered by another division Private office should be alerted immediately and the letter will be reallocated. If the division considers that a letter should be answered by another department, or an official should reply instead of the Minister, or vice-versa, then Private Office should be contacted and the division’s reasoning laid out. No action should be taken without the awareness of Private Office. The Private Office will arrange any Departmental Transfer.

Deadlines

4. A prompt response to Ministerial correspondence is an essential part of the department’s commitment to openness and accountability. All correspondence should be answered within 10 working days of its receipt by the department, with a draft reply to Private Office within 5 working days. If this deadline cannot be
met Private Office should be informed and a holding reply should be provided and an extension to the due back date negotiated for the full reply.

5. **N.B.** Inputs to FM and dFM briefings etc. operate on tighter deadlines and need time to be cleared by the Special Adviser and the Minister before going to FM and dFM.

### Form of response

6. The Minister has asked that draft letters be as polite and helpful as possible and use simple and concise language and relatively short sentences. The degree of complexity of the answer should take account of the likely expertise of the ultimate recipient.

7. The names of organisations should be written in full on the first occasion they occur and drafts should not normally be more than one page unless there are several points to get across. The use of jargon, acronyms and foreign terminology should be avoided, where possible.

8. Draft replies for any signatory other than the original recipient of the letter should make clear that the letter has been passed to them for reply and has been read by the Minister.

### Treat Official Replies

9. Treat Official replies (TOs) are letters sometimes addressed to the Minister or a named official, usually from members of the public, which the Private Office has decided should receive a reply from an Official on the Minister’s behalf. Private Office must be copied in on the final reply.

10. The same rules that apply to Ministerial Correspondence apply to TOs; i.e. deadlines, courtesy and clarity of language.

11. Correspondence relating to the day-to-day operations of the department’s NDPBs should be answered directly by those organisations. The Minister will, however, continue to respond to correspondence on policy matters.

12. A transfer of correspondence to an NDPB would not normally be notified to the sender and the reply should therefore make it clear that the letter has been read by the Minister and is being sent at the Minister’s request.
Ministerial Submissions

13. Submissions to the Minister should be brief and to the point. They should be submitted to the Private Office in enough time to allow the Special Adviser and the Minister, should they wish to, to request further advice and hold a meeting before taking a decision. Even in the case of urgent submissions this should be at least 48 hours before the deadline for decision. This is particularly relevant to Invest NI casework submissions which need the Minister's careful consideration.

14. Submissions should normally only be copied to those who need to see them rather than those who might just be interested.

*(All submissions to FM/dFM should go through the Special Adviser and the Minister, except in cases of great urgency or by agreement with the Private Office, and should be copied to the Permanent Secretary and to the Special Adviser)*

15. The Permanent Secretary must have been consulted on policy proposals which have major resource implications, raise Accounting Officer issues, or have Machinery of Government implications before a submission is sent to the Minister.

16. The Press Office should be copied in on all submissions and if a press release is required it should be approved by Press Office before it is included in the submission (allow two days, prior to submission deadline, for clearance by Press Office). The Assembly Section should also be copied in if the submission is likely to result in action in the Assembly.

17. If a change in the law or a significant decision is being proposed, or where there are legal problems of any kind, the submission should have the appropriate legal advice/clearance.

18. Submissions should follow a standard format, which aids the Minister's speedy consideration of the issues involved. They should be Arial font, point 12 and single spacing. The text of the submission should follow the subheadings detailed below:
Sample Submission

From: A.N. Official
Date: 9 June 2008

Copy Distribution List Below

To: 1. Andrew Crawford
    2. Arlene Foster MLA

Issue: To Notify Colleagues of the Appropriate Style of Submission

Timing: Desk Immediate, Urgent or Routine

Need for referral To the Executive: There MUST be a comment here, even if it is simply Not Applicable

Presentational Issues: Likely interest from Media, Political Parties, Interest Groups etc.

Freedom of Information: Most Submissions are likely to be disclosable – if in doubt speak to your Local Information Manager

Programme for Government /PSA Implications: There MUST be a comment here, even if it is simply Not Applicable

Financial Implications: There MUST be a comment here, even if it is simply Not Applicable

Legislation Implications: There MUST be a comment here, even if it is simply Not Applicable

Statutory Equality Obligations: There MUST be a comment here regarding compliance with Section 75

Recommendation: An indication of what is required from the Minister
Ministerial Boxes

19. Whilst the Minister will endeavour to clear paperwork on a daily basis, Divisions should not automatically assume that the Minister will be able to clear a submission overnight or over a particular weekend. Private Office should be given good notice of any particularly weighty submission and they will advise on the best time for it to be sent to the Minister. It should not be assumed that this will be over a weekend. Fridays are normally constituency days and therefore the Minister is not normally available to clear papers. It is imperative that papers are received in Private Office no later than 4.00pm on Thursday afternoon.

20. If possible, divisions should submit controversial/significant submissions well before the deadline for a final decision. This will allow the Minister to seek further advice or a meeting, if necessary.

21. If in doubt regarding any aspect of sending a submission to the Minister it is advisable to contact the Private Office.

N.B. Executive Papers from other NICS Departments will be handled by David McCune (david.mccune@detini.gov.uk), and they must be copied to alu@detini.gov.uk. Executive papers generated by DETI will be issued to Ministerial Colleagues by Private Office.

Ministerial Meetings

22. When an external request for a Ministerial meeting is received, the Private Office will seek advice from Officials as to whether the Minister should agree to the meeting. It is helpful to have this advice quickly as an organisation that has requested a meeting will often press for an early response. This should be accompanied by the appropriate Accept or Decline draft letter. Advice to the Minister should be copied to the Special Adviser (andrew.crawford.@detini.gov.uk) and to the Press Office (press.office@detini.gov.uk).

23. The ultimate decision on whether to accept the meeting will however remain with the Minister, although draft replies should be submitted on the basis of the official advice.

24. Officials need only advise on whether a Minister should accept or decline an invitation on its merits. The Diary secretary will inform Officials if the Minister is free or not.
25. It is essential that the purpose of the meeting and the agenda should be established with the visitors/hosts well in advance of the meeting, and preferably in writing. This ensures the best use of the Minister’s time.

26. Officials should, where relevant, consider whether a particular meeting could prejudice the Minister’s position in taking a subsequent decision.

27. Where a policy division is acting as secretariat for a meeting they should let the Private Office know well in advance of any potential dates. These should also be confirmed as soon as possible as it is difficult to keep a number of dates free in the Minister’s diary for any length of time.

   **N.B. Dates in the Minister’s diary will not be held without the minister seeing a relevant submission.**

**Briefing**

28. If the Minister agrees to a meeting, briefing will be requested by Private Office who will set a clear deadline by which this is needed. The length and detail of the briefing will vary to suit the occasion and the Minister’s tastes.

29. Briefing for courtesy calls, lunches, dinners, receptions and photoshoots should be as short as possible and usually no more than two sides of paper.

30. Fuller briefing for meetings should be clearly flagged with a ‘contents’ page at the front. This is especially important for large meetings, but should not be overlooked for other meetings.

31. A meeting may deal with a number of different subjects, but the Minister needs to be presented with one agenda and one set of papers. Private Office will allocate co-ordination responsibilities where necessary.

32. Every brief should include the reason for the meeting; an agenda (agreed in advance with the participants); a list of participants (including pen pictures where relevant); lines to take in a form that can be read out, including defensive material and counter arguments on areas of vulnerability; and some background information (the length of which should be in inverse proportion to the Minister’s knowledge of the subject).

33. Private Office will arrange a 15 minute pre-brief prior to all meetings to enable the Minister to discuss issues in more detail. Early notification would be appreciated if officials feel a longer pre-brief is required. On receipt of briefing, Private Office will advise if a pre-brief is no longer necessary.
During the meeting

34. The Minister will normally take the lead in the meeting, but may well invite the visitors to explain their views first. The visitors will want to hear the Minister’s views, but officials should also contribute if appropriate.

35. If the Minister is the visitor it is customary for them to listen to their hosts and respond accordingly.

36. The physical arrangements for a meeting are the responsibility of the Private Office, except for some statutory or regular meetings where responsibility lies with a particular policy division.

Notes of Ministerial meetings

37. Meeting notes are intended to record accurately any decisions taken or undertakings made by the Minister. They may also, if necessary, summarise the main facts and arguments used during the meeting. They will not however record, blow by blow, each turn of a discussion.

38. The Permanent Secretary has directed that for all internal and external meetings involving officials it will be the responsibility of the agency, branch, division etc to record a relevant note of the discussion, decisions taken and action agreed. The author should ensure that he/she has issued the minutes to any relevant official – including PS/Minister. This will allow the Private Secretary to concentrate on following up on the Ministers action points. At the same time the minutes will properly record the discussions on complex issues as officials will have the advantage of a closer knowledge of topics. Please provide details of note taker in briefing, as requested.

39. Officials are normally responsible for any follow-up action detailed in the meeting notes.
Ministerial Visits and Engagements
(including speeches)
(also see Press Office section below)

40. A visit or engagement can have a variety of purposes including gathering information, public relations and promoting Government policy.

41. The Minister will have their own views on the engagements they want to undertake. Others may arise from invitations from outside organisations or suggestions put forward by the Department.

42. Most invitations will be sent to officials for advice on their merits. The Minister will expect a steer on whether it is a suitable occasion for ministerial participation. Is the occasion high profile enough? Will it be a valuable use of the Minister’s time? Will there be anything newsworthy and suitable to say?

43. Background information on the organisation will be required (including their relationship with the department) and the specific event (including the likely size and background of the audience). Consideration should also be given as to who the immediate audience will be and what audience could be reached.

44. If it is a speaking engagement, an indication of the length of the speech and its main messages/purpose and whether it will be followed by a question and answer session are also valuable. Details of likely fellow speakers and whether they will precede the Minister are also useful.

45. For visits outside Belfast, a number of engagements in the area will usually be co-ordinated for a single visit.

46. The Press Office will cross-reference the Minister’s diary with the PR Planner as appropriate. It is important that each Division responds to the Press Office’s weekly request for updates to the PR Planner. Press Office contributes to a central Departmental wide Media Activity Planner which will allow them to check whether the Minister is likely to be competing with colleagues for news coverage and they will be able to advise on likely clashes of visits.

47. If the invitation is to be declined there should generally be a few words wishing the occasion well in the draft response.

48. In the majority of cases Private Office will ask the relevant policy division, NDPB, agency etc. to take the lead in organising the engagement, but they should be consulted before decisions are taken or programmes finalized. The Private Office will usually be responsible for the Minister’s travel arrangements.
Briefing

49. Briefing for the Minister should be as concise as possible. Private Office should receive a detailed itinerary (including contact mobile telephone numbers and names of people and the full address of the venue and a contact name and number there); please ensure you allow time in the itinerary for media interviews and photographs, where appropriate; a short brief on the engagement and the people the Minister will meet, including pen pictures where possible; briefing on the main issues likely to arise and, in the case of visits further afield, background briefing on major issues/problems within the area, especially where there is press involvement (this may be wider than departmental responsibilities).

Speeches

50. Often the main reason for a visit or engagement will be to deliver a speech. Generally the Minister requires that the speech be in the form of a deliverable text, rather than bullet points on which to elaborate. Speeches should be submitted in double spacing in Palatino Linotype Point 20 with pages numbered. All foreign names should be spelt out phonetically in brackets. The deadline will be specified by Private Office when the speech is commissioned, but a final speech is needed a week in advance. This gives the Minister time to study it and incorporate any necessary amendments. Ministers speak at different speeds but, as a rough guide, allow for about 125 words per minute.

51. Whenever possible the minister should receive an outline of a speech well in advance of the engagement to enable their initial views to be incorporated in any fully worked up draft speech. The precise tone of the speech will depend on the occasion; an after-dinner speech will often be more light-hearted than a speech delivered to a conference of experts.

52. Early consultation between the policy division and the Press Office should take place to pinpoint potential announcements/publications which might be allied to a speech increasing its newsworthiness and to discuss attendant publicity.

53. The public presentation of policies and activities is a key element in ensuring the effective implementation of policy. The Press Office is the primary source of advice to the Minister and Officials on presentational issues and acts as a channel for public and media attitudes, as well as providing the machinery for announcing decisions and issuing news releases.

54. The timing of announcements is crucial to the achievement of maximum impact. It is important to avoid bunching Departmental announcements and competing with other Government Departments for news coverage. The Press Office will liaise with OFMDFM to pinpoint potential dates for announcements.
55. The Minister will expect the Press Office/Special Adviser to be consulted about the timing, method and content of any significant submission before it is put forward. Where an announcement has positive news value the Minister will expect as a minimum a news release to be issued.

56. The policy division would normally be responsible for preparing a first draft of the speech. The Press Office should then be consulted in advance of seeking clearance with the SPAD and Minister.

57. Early consultation about the message, target audience and timing of an announcement is essential, particularly if paid publicity is involved.

58. It is important to ensure that any significant announcements on policy are made to the Executive before the media is informed when the Assembly is sitting.

Press Office Contacts

Principal Information Officer:

Ann Williamson ann.williamson@detini.gov.uk / 29263

Senior Information Officer:

Nicola Steele nicola.steele@detini.gov.uk / 29297

General Office:

press.office@detini.gov.uk / 29305 or 29604
59. The Minister is assisted by a Special Adviser, Andrew Crawford (andrew.crawford@detini.gov.uk). He is employed as a temporary Civil Servant for the duration of his appointment.

60. All policy submissions and briefings for all Ministerial meetings should be copied to Mr Crawford when being sent to the Private Office for the Minister. It is often worth discussing policy proposals with the Special Adviser at an early stage.

61. When asked, Officials should provide non-political advice and information to the Special Adviser. Particular attention is drawn to the need to ensure political impartiality.

62. Officials can provide the Minister and Special Advisers with factual information for political speeches and documents and can check them for factual accuracy; but they should not comment on any part of the text which is essentially subjective or which seeks to draw political lessons or criticises other political parties.

63. Anyone wanting to book a tour or function in Parliament Buildings (PB) should do so through Private Office. The Events Co-ordination Office in PB will not accept bookings through any other source. Branches should note however that following revised guidance issued by the Assembly in March 2008, the signatures of 3 MLA’s, reflecting cross community support are now required when booking events and one of the MLA’s must be in attendance. Branches can discuss specific requirements and timings etc with the Events Co-ordination Office direct, on Belfast Tel 90521948 (direct dial ext. 21948).

64. Albert Stewart is the Minister’s driver and his dairy will be managed from the Private Office. Albert’s priority will be driving for the Minister and the car will only be available for officials under exceptional circumstances.
**Private Office Contacts**

Departmental Private Secretary:
Glynis Aiken [glynis.aiken@detini.gov.uk](mailto:glynis.aiken@detini.gov.uk) / 29452

Assistant Private Secretary:
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Christine McLaughlin [christine.mclaughlin@detini.gov.uk](mailto:christine.mclaughlin@detini.gov.uk) / 29222

Diary/Ministerial Car/Parliament Buildings Bookings & Tour Forms:
Gillian Cahoon [gillian.cahoon@detini.gov.uk](mailto:gillian.cahoon@detini.gov.uk) / 29440
Janet McKernan [janet.mckernan@detini.gov.uk](mailto:janet.mckernan@detini.gov.uk) / 29504
being able to get a North/South interconnector in place and what impact that was having on
energy costs and security of supply and that type of thing.

So, those issues would’ve been, I suppose, more alert in the Minister’s mind; they’d’ve
been more alert in my mind, but that doesn’t discount the fact that, you know, we went
through the submissions, we went thoroughly through them, and we expected —. You know,
we signed them off, and then expecting the scheme to be operational and be a success, and,
unfortunately, that’s not what happened when we start to see how it unwinds.

Dr MacLean: Dr Crawford, just going back to the question that Mr Aiken asked earlier on
about risk, do you believe now that there were significant risks in the RHI scheme that (a)
should’ve been brought to your attention and (b) had they been brought to your attention
would have raised the importance and the priority of looking at this scheme? Or do you just
think that, at the time, there was never any reason for it to have been a high priority?

Dr Crawford: No, I’ve no doubt if key documents and key information was brought to the
Minister’s attention and brought to my attention, at the very least we would’ve had closer
scrutiny of the documentation and I would like to believe that we would have taken a
different direction. You know, how do we know, with hindsight, whether we would’ve or
not? But it certainly would have raised it, our antennae would have been more concerned
about the issue and, you know, those issues should’ve been brought to our attention. They
weren’t. And I believe if they had’ve been brought to our attention, none of us would be in
this room today.

Mr Aiken: Well, those are matters I’m gonna come to in some detail.

So, what I want to do, having —. We’ve referenced the nature of ministerial meetings and
contrasted the approach, potentially, over advice to do with meetings. I want to take us
down to paragraphs 37 to 39, please, which is at 416566. And this is to do with notes of
ministerial meetings. And there are two issues that I want to ask you — well, three issues in
fact — that I want to ask you about.

The first is to do with, paragraph 38 requires, in bold, that a minute is made of meetings that are taking place with the Minister. And that minute is to be taken by the division, branch, whoever’s bringing the matter forward to the Minister, not by the private secretary, which is a change, as I understand it, from how Whitehall would operate. When did you first realise that, in fact, that direction was not being followed?

Dr Crawford: I suppose, taking a step back, this guidance would have came back — the guidance from private office and how meetings were taking place — would have been very much set up when the Minister first went into DOE. The Minister’s private secretary was Glynis Aiken, she’d previous experience working with direct rule Ministers as a private secretary, and the template would’ve been set up and followed with, you know, when the Minister went into DOE and Glynis Aiken joined her as private secretary. That then followed, possibly tweaked at times, but would have been followed with the Minister and the private secretary from DOE to DETI.

In terms of —. And this was always a debate and, you know, there was three individuals probably in the private office would’ve been very vocal about it was the private secretary, the assistant private secretary and Christine McLaughlin. They’d have always said, you know, “If there’s a meeting to do with energy, it’s up to the energy officials to take notes of that”. And I can understand why that’s the case, because it’s a technical issue, it’s full of acronyms, it’s, you know, as we see with this issue, there’s a lot of complexities to it, and this was only one of a number of different energy schemes. You go into the NIROC scheme, it’s complex, it’s technical and all the rest of it. And that is why the guidance was that, if a branch is coming to have a discussion with the Minister, that they should bring somebody to take a note of the meeting. And that is what happened in practice. That is my understanding of what happened in practice.
Mr Aiken: Well, that’s what was to happen. What I'm asking you about is when you first realised that that was not in fact happening.

Dr Crawford: I believe it did happen. I believe there was always a record taken of meetings. Now, I go back to the point of the submission was the bedrock of a discussion for a meeting. Very often that submission, when a meeting was taking place in relation to it, it acted as an aide-memoire. We worked our way through the submission. No doubt we’ll do that about meetings that, you know, took place. But it was always my view and it is my belief that there was a note taken by the relevant energy official when they were having a meeting with the Minister.

Mr Aiken: Well, if we pause there, Dr Crawford. If that were right, we wouldn’t be spending hours upon hours of evidence about what happened on the 14th of June 2011; because we could all read about it in the note.

Dr Crawford: There’s two issues. One is: was a note of the meeting taken? The second issue: what happened with the note of that meeting?

Mr Aiken: So are you —?

Dr Crawford: That is not something that, I suppose —.

12:45 pm

Mr Aiken: Are you saying a note was taken?

Dr Crawford: I can’t confirm. In terms of that meeting, I know the meeting took place, because of my annotated note and the discussion and it was an issue, but I cannot recall where that took meeting took place or who was at the meeting, so it’s wrong for me to sit here and say, “A note of the meeting took place”. But I was an adviser for nearly 10 years to three different Ministers, in four government Departments, under five permanent secretaries, and I don’t recall one meeting where there wasn’t officials round the table taking notes. Now, what they done with those notes I can’t answer, but there was always
people taking notes.

The Chairman: Well, let’s just focus in on that. You were at this meeting.

Dr Crawford: Yes.

The Chairman: And you had a note: you’ve just told us that.

Dr Crawford: Sorry?

The Chairman: You’ve just told us that.

Dr Crawford: No. I’ve said there was a note taken of the meeting. It was up to the energy official to take the note.

The Chairman: No. I have — unless I misheard you, you said you were making a note at that meeting.

Dr Crawford: No. Sorry. I must’ve — I apologise if I’ve, you know, mis— been misunderstanding or whatever. An energy official — I believe that there was an official always taking a note of the meeting. Now, in relation to the meetings, when they took place, it was very much working through the submission that was there. I may have tak—.

The Chairman: But that is not the same thing as a note being taken. That is not what paragraph 38 says.

Dr Crawford: No, but, when I was at meeting — when, you know —. No matter what meeting I was at with civil servants, there was always somebody out with a blue book would’ve been taking notes, going through it.

The Chairman: And was there —?

Dr Crawford: Or —.

The Chairman: And was there on this occasion? Let’s just focus in on this occasion.

Dr Crawford: On this occasion, I can’t say, for the simple reason I cannot recall who was at the meeting or where the meeting took place.

The Chairman: Well, you were at the meeting.
Dr Crawford: I would’ve been at the meeting.

The Chairman: And the Minister was at the meeting.

Dr Crawford: The Minister would’ve been at the meeting.

The Chairman: Yes. Now, let’s look at it from there on. Are you saying that there was a submission that a note was made on?

Dr Crawford: There was never — that’s what I’m trying to make the distinction on, and I apologise if I’m not being clear. There was always officials taking notes. We did not, however, see what happened those notes.

The Chairman: Well —.

Dr Crawford: So, I don’t know. We don’t have access — and we’ve already touched on it — to TRIM and knowledge network and that side of things. I don’t know whether the officials — I don’t know what they were writing in their books, but I assumed that there was a note taken of the key issues.

The Chairman: Why do you assume that?

Dr Crawford: Well, what else would they’ve been taking notes on? You know, when there was somebody there — when there was always somebody going through with the key issues, I only assumed it was in relation to the discussion that was taking place.

The Chairman: You were at the meeting. The Minister was at the meeting. You cannot say if a note was taken. Isn’t that right?

Dr Crawford: I can’t go into the detail of that meeting, but the practice of meetings with the Department, and I’m sorry, I don’t mean to be — I’m trying to be as clear as I can here.

The Chairman: You’ve told me what the practice was, but I want you — and you can tell me all sorts of things about the practice, if you want, later on — for the purposes of this meeting at which you were at and which the Minister was at and which, we know, Fiona Hepper was at —. You were there. You knew, as you’re going to tell me or have told me, that
the practice was the official should take the note.

Dr Crawford: That’s correct.

The Chairman: You don’t remember that.

Dr Crawford: The only reason why I don’t remember that was because I — I don’t remember simply because I can’t remem— I don’t know where the meeting took place; I only recall that a discussion took place on this issue. Now, what I am saying is slightly different: I am saying, when all meetings took place, there was always somebody there with a blue book taking notes.

The Chairman: Well, was there on this occasion?

Dr Crawford: Well, I assume so, yes, but I can’t —.

The Chairman: Why do you assume so?

Dr Crawford: Well, I can’t turn round and say, “It was Fiona Hepper or Glynis Aiken or Peter Hutchinson”, because I don’t even know where the meeting took place.

The Chairman: Well, let’s look at it another way. If there was no note taken, would you have said something about that?

Dr Crawford: In terms of the submission, we worked our way through the submission and a conclusion was made, and we’ll go on to the detail of that in due course, I would imagine.

The Chairman: Yes.

Dr Crawford: I had — I was never cc’d into or rarely was I cc’d into, “Here is a note of the meeting that took place on the 14th of June” or whatever, so, no, I wouldn’t have questioned it. However, I’m very clear: when meetings took place with officials, there was always people there taking notes.

Mr Aiken: Dr Crawford, let me come at this a different way. The guidance is clear: the official who’s coming from whichever division they’re coming from is supposed to take a note of the discussion that takes place — not working through submissions and whatever
annotation you may or may not want to put on it, not what you may or may not write in your blue book. They’re supposed to take a note of the discussion, so that, afterwards and for posterity, there’s a note of the discussion. Are you happy with that as a —

Dr Crawford: Yes.

Mr Aiken: — plan?

Fiona Hepper’s evidence and David Sterling’s evidence is that, at some point, for some reason, that stopped being the practice. What I asked you at the very start and what I want to get an answer to because of the question that flows from it is when you first realised that’s what was happening. Now, if the answer to that is, “Until you’re standing here, Mr Aiken, telling me that, I didn’t know that’s what was happening”, then, fine; then, we’ll get to the next question. But what I want to know is: when did you first realise that, whatever they were supposed to be doing, the officials weren’t complying with paragraph 38 of the private office guidance?

Dr Crawford: In terms of the practice of note taking, there was no change in the process in my entire time in the Civil Service, from DOE to DETI to DFP to DAERA. There were always people there who was taking notes. I cannot answer your question when they stopped recording those notes because I never was part —.

Mr Aiken: Dr Crawford, I haven’t asked you that question, all right? To be clear, what I’ve asked you is: when did you first realise that notes of discussions with your Minister, as required by paragraph 38 of the private office guidance, were not in fact being made by the officials?

Dr Crawford: I believe notes were always taken by officials. It is a news to me —. This Inquiry has brought up, however, that those — there is no formal filing of those notes or put onto the knowledge network or put onto the TRIM.

Mr Aiken: Yes.
Dr Crawford: Now, I cannot answer whether that system changed during my time in DETI or any of the —

Mr Aiken: And I’m not asking you that.

Dr Crawford: No, but it has been brought up in terms of the Inquiry, and I think it’s only right, you know —.

Mr Aiken: When did you first realise that they weren’t doing it?

Dr Crawford: During this Inquiry —.

Mr Aiken: Right. Now, let me — cos I think you’re seeing danger where there isn’t any.

There’s a harbour for you here, because what I’m wanting to understand is, if you’d known that at the time — one of your roles, presumably, is protecting your Minister — if you’d known that they weren’t keeping a note of the discussions that were happening, what would you have done about that?

Dr Crawford: I would’ve expected a record. It would’ve been raised with the — it would’ve been raised with the perm secretary of the Department, but —.

Mr Aiken: And the reason for that?

Dr Crawford: Well, so that they know — look, to protect the Minister so that there is a clear record of what was taken and when. However, I must go back: there was early evidence to this Inquiry was making the point that the system changed or alluding that the system changed because of fear of information being released and all the rest of it.

Mr Aiken: I’m going to come to David Sterling’s specific reference about FOI — and you’ve a view about that, and that’s fine — but what I’m talking about is a simple rudimentary record of a meeting that occurs between a Minister and an official. The guidance required there to be one; the officials are saying at a point in time they stopped making them. You’ve now said you didn’t know that until the Inquiry, which is fine, and what I’m trying to understand is what you would’ve done — because you can see the risk that
now arises: we’re having a debate about what happened because no one has a note of it —
and what I’m saying to you, given your role of protecting the Minister, “If you’d known that
at the time, what would you’ve done about it?”. Now, you’ve said you would’ve spoken to
the permanent secretary; you presumably had talked to the Minister.

Dr Crawford: Well, the Minister would’ve been — before we’d been speaking to the
permanent secretary — the Minister would be speaking to it. I would’ve had a discussion
with the Minister, but we’d’ve expected and we do expect and I did expect a note to be
taken of all those meetings.

Mr Aiken: I know you expected it, and the guidance required it, but they weren’t doing it,
as it turns out. What I’m trying to understand is what you’d’ve done at the time. You’ve
explained, if you’d known at the time, you’d’ve spoken to the Minister and you’d’ve then,
between you and her, talked to the permanent secretary, because you would presumably
see the very risk that we are now talking about.

Dr Crawford: Yes. Well, it’s in hindsight you can see the risk, yes.

Dame Una O’Brien: Dr Crawford, it says on this guidance that these notes of meetings
should be copied back to the private secretary to the Minister — and, obviously, we will hear
evidence from that person as to at what point was it actually noticed that, apparently, notes
were not coming back — but this is quite —. I’m just trying to clarify that it was not evident
to you at the time, not only in relation to this area but others, that notes of meetings were
not finding their way back to the private office.

Dr Crawford: Well, there would’ve been action points coming back to the private office,
so, if there was a further discussion to be had or if the meeting had agreed to speak to, for
example, the Chair of the Committee, those action points would’ve come back to it, but —.

Dame Una O’Brien: Formal notes of decisions taken?

Dr Crawford: But there was — at no stage in any Department did I ever receive formal
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notes of decisions that were taken following a meeting.

Dame Una O’Brien: Yes. In terms of ensuring that the Minister’s decisions then get followed through, is that something has concerned you: the fact that they’re not recorded in that way?

Dr Crawford: Well, I go back to the point and appreciate for the Inquiry this is the challenge. It is the decision that was taken regarding to — on the submissions is what is then taken forward. I appreciate the difficulty with this is there’s no clear recommendation in hindsight when we look at the submission, but normally there is a clear recommendation, which is a formal note, and that can be taken forward.

Dame Una O’Brien: Because submissions, as we know, are often discussed after they arrive at the Minister’s office, and that’s why the meeting — the discussion — is so relevant to this.

Dr Crawford: Yes.

Dame Una O’Brien: Thank you.

Mr Aiken: You mentioned —.

The Chairman: Sorry, Mr Aiken. I’ll try and get this in before —.

Mr Aiken: No, I know. I understand.

The Chairman: Should I understand your evidence to be that the submission of the 8th of June is a record of the meeting that subsequently took place on the 14th of June?

Dr Crawford: That was the main — that was effectively the — that was used to work a way through that submission, and that was what was used for that discussion.

The Chairman: On the 14th of June?

Dr Crawford: On the 14th of June, yes.

The Chairman: Now, there is nothing in writing on that submission that indicates a further meeting took place on the 14th of June. There’s nothing to say, “And on the 14th of
June, we discussed this further’.”

Dr Crawford: No, but the Minister initialled that she, on the 14th of June, I believe it was, she put her initials, signed and initialled or initialled and dated the submission, and that is the system that the Minister used to record that she has been through that particular submission. Now, I appreciate there’s difficulties, and I would imagine we’ll go on to those. There is difficulties with that submission, but the fact that she initialled it and dated it is a — shows that that was discussed on the 14th of June.

The Chairman: With the submission of the 8th of June there was no CEPA report.

Dr Crawford: That’s correct.

The Chairman: Fiona Hepper’s evidence appears to be that she produced that report on the 14th of June — and Mr Aiken will deal with this in much more detail — and she talked it through with the Minister, and we’ll hear about what was mentioned, what was not mentioned. Is there anything on the submission of the 8th of June that indicates a report was subsequently produced and discussed on the 14th of June?

Dr Crawford: No, there’s nothing in that 8th of June statement to indicate that.

The Chairman: No. The final point then is, as I understand it — and you keep me right — you did not know there was a habit of not taking records of meetings until this Inquiry.

Dr Crawford: That’s correct.

The Chairman: Did you ever read the Bytel report?

Dr Crawford: I would’ve been through the summary of the Bytel report.

The Chairman: Yes. Did you know that that recorded a history of not taking notes?

Dr Crawford: Well, it would’ve been discussed and lessons would’ve been learned from that, and we expected the civil servants in terms of to ensure that the processes were put in place to do that.

1:00 pm
The Chairman: Well, does that mean you did know there was a previous history of not taking notes, because the Bytel report was not on its own? There was another report. There was comment from David Sterling about what had happened about not taking notes.

Dr Crawford: In terms of —. Sorry, for clarification, I’m not —. I would’ve read the Bytel report. It doesn’t register with me the fact that no notes were taken of minutes was one of the recommendation of that was coming out of that report. However, it was in the Department, it was in the Department in question in terms of DETI, and I would’ve expect the key senior management of the Department to take the lessons out of that Bytel report and ensure mistakes were not repeated.

The Chairman: Well, one thing is clear: whatever your expectations, you did not see in reading the Bytel report that a habit had grown up of not recording decisions, even though it is absolutely and clearly recorded there.

Dr Crawford: Sorry, I can’t recall going through that report and picking that out.

The Chairman: Well, presumably, as a special adviser, you would be able to recall that if you’d read it.

Dr Crawford: Apol—. In terms of the issue, sorry —. I’m aware of the Bytel issue. I’m aware of the report on it and I’m aware that the Department set up processes, or I assumed they set up processes, on the back of that report.

The Chairman: Mr Aiken, no doubt you’ll take that up with him, and the other — the alternative — the other report that also dealt with the same problem that had grown up in the same Department and the comments subsequently made by David Sterling.

Yes, we’ll take a break now and sit again at two o’clock.

[The hearing was suspended at 1:01 pm]

[The hearing resumed at 2:00 pm]

Mr Aiken: It’s back to the minutes, I’m afraid, Dr Crawford. Where we got to before lunch
I just want to summarise it this way: those you were meeting with the Minister, as opposed to her private secretary, however it came about, were to take the record and what is described as:

“a relevant note of the discussion, decisions taken and action agreed”

which, in effect, is a minute of the meeting. And you were not aware until the Inquiry that it seems that process that was required by paragraph 38 had fallen into disuse or a lack of use by at least some senior officials. Is that fair?

**Dr Crawford:** That’s correct, yes. That’s fair.

**Mr Aiken:** And I want to take that on, then, one stage further, because what the guidance here appears to require is that the author of the minute, record — whatever one wants to call it — is supposed to issue that to any relevant official that’s involved, including the permanent secretary/—. Or that —. I think that’s including to the private secretary of the Minister.

**Dr Crawford:** Yes.

**Mr Aiken:** Had that also fallen into abeyance in the sense that: do you ever remember getting minutes of meetings that you’ve been involved in sent to you through Glynis Aiken?

**Dr Crawford:** No, at no stage do I recall any minutes being sent to me of meetings. There would, however —. Glynis would have had follow-ups in terms of meetings —.

**Mr Aiken:** I’m going to come to that —.

**Dr Crawford:** [Inaudible.]

**Mr Aiken:** No, no. Because she — that was a requirement that did remain on her — the action points issue that I’m going to come to — but, so, however it has come about, this requirement was not being followed, and you didn’t know it wasn’t being followed. Is that fair?

**Dr Crawford:** That’s fair, yes.
Mr Aiken: And [Short pause] I appreciate it’s very easy with hindsight, Dr Crawford, but this is private office guidance, so it’s supposed to be for the functioning of the ministerial relationship with officials. Does this not sit out on the desk, as it were, and if it’s not being complied with, that’s something that should be spotted and dealt with?

Dr Crawford: Well, in terms of the private office guidance, I was aware that a guidance was in place, but it is not a document that I went regularly back to and scrutinised or looked at or followed up to make sure everything was being followed as set out in the guidance.

Mr Aiken: OK. Well, can I ask you it this way, then? The practical outworking of what happened was that, from your perspective, as the person you’re to protect — the Minister — is left in a scenario where there is no record of what is said to have occurred — for instance, on the 14th of June 2011 — and there’s now a dispute about that. Is it fair if I said that’s not a satisfactory state of affairs?

Dr Crawford: No. I would like it that there was a clear —. It would suit us all if there was a clear record, note, clear understanding of what was decided on that day: both what the Minister was being informed and what the Minister decided on that day.

Mr Aiken: And the wider issue that that raises — if it is a wider issue, cos we’re only looking at RHI, but it seems that the suggestion that this had fallen into abeyance was not restricted to RHI and assuming it’s not necessarily restricted to DETI. If that is the position, would you regard that as a healthy position for transparent and accountable government if meetings are taking place that are supposed to be minuted but they’re not being minuted?

Dr Crawford: No. Meetings that are taking place should be minuted. I’ve no difficulty — and it is my understanding there was a clear record being taken of them, and that is something that I would expect to happen.

Mr Aiken: And it seems that, according to Mr Sterling, there’s a plan to make sure it does happen when devolution returns. Would you not, during your time as special adviser, in
fact that is so embedded in the systems that I’m used to that I’ve been intrigued to find that
that is not a practice that’s followed here, and I wonder whether it’s something that could’ve
helped in this situation if notes of meetings had been taken by your office so that you
would’ve been confident that your decisions were accurately recorded.

Mrs Foster: Well I think undoubtedly, coming out of this Inquiry, that’s one of the issues
that will no doubt form some of the recommendations because, as I’ve said, in all of my time
through all of the Departments, this wasn’t the practice, even though I’ve now read the
guidance and seen that that is there. Would it have helped in this particular instance? Yes,
because we would’ve had a contemporaneous note of what happened on the 14th of June,
and I think undoubtedly it would’ve been helpful.

Dr MacLean: Were you not aware of the guidance at the time?

Mrs Foster: No, I wasn’t. No.

Mr Scoffield QC: I just want to take you to that, actually, when it’s been mentioned. We’ll
find that at DFE-416566. This is the particular portion. Now we understand that this was
introduced in 2008. I think it refers to both you and to Dr Crawford, so I think it’s fairly clear
that it must’ve been produced during your time as Minister. You’re saying this is something
that you wouldn’t have been aware of?

Mrs Foster: It may well have came to me but I have no recollection of reading the
guidance. Certainly when I was reading it for this Inquiry it didn’t — my memory was not
jogged.

Mr Scoffield QC: OK. It’s paragraph 38 which I think is relevant to the issue that we’re
talking about just at the moment. And you — I think you mentioned yesterday that
something in bold text in one of the submissions would normally be considered to be adding
some additional emphasis. And we see here, paragraph 38:

“The Permanent Secretary has directed that for all internal as well as external meetings involving officials
it will be the responsibility of the agency, branch, division etc to record a relevant note of the discussion, decisions taken and action agreed."

So, let’s stop there. That, I think, from what you’ve said this morning, is what you would’ve expected to have been happening —

Mrs Foster: Yes.

Mr Scoffield QC: — and you would’ve expected that energy division was taking a note?

Mrs Foster: Uh-huh.

Mr Scoffield QC: And am I right in understanding that you’re saying that you also would’ve understood and would’ve expected that that would be converted into some kind of formal record which was either held on file, either a paper file or maybe, more likely, electronically within energy division, or turned into some kind of submission or recounted in a submission which came back to you so that there was some formal record?

Mrs Foster: At the very least I would’ve thought it would’ve gone on the file as a file note, to use my language.

Mr Scoffield QC: OK. That’s not something, I understand, that you’re simply saying now with hindsight ought to have been done. You’re saying to the panel —

Mrs Foster: No, I would’ve expected —

Mr Scoffield QC: — you would’ve thought that was being done at the time?

Mrs Foster: I just don’t understand how things can run if you don’t have a record of what decisions were being taken at meetings. How do you refer back if there’s nothing there? I mean, all there is on this submission is me saying “Noted”, it doesn’t record anything else as to what I had to say. So that’s what —. I don’t know whether, given the fact that Mrs Hepper has a very clear recollection of what happened, whether there are any other notes, but certainly I didn’t have a clear recollection of what happened.

Dr MacLean: How did you, then, keep tabs on what you had requested at meetings? You
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will have no doubt have asked officials to do things, to carry out actions, so how did you
keep yourself right, then, and make sure that that was actually carried out?

Mrs Foster: Well, as I say, if my private secretary had’ve been there she would’ve kept
action points in her notebook as to what was happening and then would’ve sometimes
followed up with an email to the relevant official, “You’ve agreed to do this for the Minister,
will you come back to me?” or whatever around it. But I have been surprised to learn that —
and to listen to Mr Sterling’s evidence around the note-taking issue.

Mr Scoffield QC: It’s an issue that we might come to more broadly later on, but I want to
just focus on the guidance for the moment that we’ve got on screen. We’ve looked at the
first sentence. I think your evidence is fairly clear that you would’ve — albeit you weren’t
aware of this guidance at the time — you would’ve expected that to have occurred. The next
sentence says that:

“The author should ensure that he/she has issued the minutes to any relevant official — including
PS/Minister.” —

that means private secretary to the Minister. Now, I think your evidence has been that
wasn’t something that you were familiar with happening in the Department that whatever
file note or minute there was would come back to the private secretary.

Mrs Foster: Yes. Well, if it happened, I wasn’t aware of it happening. In other words, the
private secretary wasn’t making me aware that it was happening. I’m just not aware of it
happening.

Mr Scoffield QC: And we can certainly check that with the private secretary, but is that
not something that, if it were happening, you would’ve expected to have known about?

Mrs Foster: Um, yes, probably, yes.

Mr Scoffield QC: And then, the reason why this direction has been given is explained to
some degree in the following sentences:
“This will allow the Private Secretary to concentrate on following up on the Ministers action points.”

Does that mean if there’s something that you need to do, or something that you’ve directed that the officials need to do, or is it covering both?

Mrs Foster: Well, probably it’s if I have asked officials to do something at meetings, then it’s my action points, in other words, what I’ve asked them to do.

Mr Scoffield QC:

“At the same time the minutes will properly record the discussions on complex issues as officials will have the advantage of a closer knowledge of topics.”

Mrs Foster: Yes.

Mr Scoffield QC: I mean, would you agree that that guidance really bites in a very direct way on this meeting that we’re discussing? This is the very type of meeting where an important decision is being taken, where there are options to be weighed, and the issues are, on any reading, fairly complex. This is precisely the type of meeting where you would want a minute.

Mrs Foster: Yes.

Mr Scoffield QC: Now, I wanted then, just to ask you about a number of things again that Fiona Hepper has said about that.

I think the thrust of her evidence was she accepted that there wasn’t a minute. She accepted that it would have been much better, particularly as we now stand, that there had been, but her evidence was that it wasn’t unusual for there not to be an official note of a meeting with the Minister. We find that at TRA-05199 at line 25 through to the next page, line 2. She also says that that was, in her phrase, “the working practices of the time”. That’s TRA-05209, lines 8 to 9.

The thrust of her evidence was that when guidance like this comes out, it is observed assiduously for the first while and then tends to fall into disuse but that at this stage in the
Mrs Foster: Well, I do have to say that I was somewhat taken aback that there were no notes of the meeting. I would’ve expected notes to have been, if not taken at the meeting at least after meeting that there would’ve been some sort of record of what I had said at the meeting, what she had explained to me. That’s why it is disappointing because, of course, if we had those notes, there would be clarity around all of this.

The Chairman: Absolutely. Neither you nor Dr Crawford thought it appropriate to ask Fiona to produce notes.

Mrs Foster: But that would not have been the normal practice. I would’ve expected notes to have been taken.

The Chairman: Yes, you would, and if notes hadn’t been forthcoming, either you or Dr Crawford might well have thought, as a common sense, “We’ve just been told more information. This submission has now been explained in a very different way. Could you give us the notes, please, of what was said?”

Mrs Foster: Well, all I can say is I would’ve expected notes to have been taken. I wouldn’t in the normal course have seen a copy of the note of the minute — or, of a meeting, sorry. It wouldn’t have came back to me. I would’ve expected that to have been put — and I do realise I’m a bit old school and work on paper files, but —.

The Chairman: I can assure there’s nothing wrong with that. I share that entirely.

Mrs Foster: I mean, in the normal course, when I was a solicitor, I would’ve always had file notes and telephone attendance notes and personal attendance notes —

The Chairman: I know that.

Mrs Foster: — etc, etc. So I would’ve expected a note to have been kept of the meeting and then put into the file, whether that was in electronic formulation on TRIM or whatever. I didn’t see it as my role to check if a minute was put somewhere of the meeting, and I know that the question you’re asking is: why did I not ask, “Can I see a minute of the meeting?”
But it wasn’t my normal practice to do that cos I would’ve assumed.

**The Chairman:** Right. Let’s accept it wasn’t your normal practice. What seems to me to be incontrovertible is that your expectations of the two trusted people were completely unfulfilled.

**Mrs Foster:** Well, that’s something that you have to —.

**The Chairman:** If you can correct that, please do so.

**Mrs Foster:** Well, I mean, in terms of Andrew, he was a special adviser, and I suppose the question is: what does special mean in terms of adviser? We’ve been through all of that, and I think he has been asked about that in a lengthy question-and-answer session. I think it was the fact that he was a political appointee, yes, but, in his case, because he has a doctorate in agriculture, he does have a specialism in that direction.

**The Chairman:** I fully understand. You’ve told us that you wouldn’t —. I can understand fully, with the demands being made on you as head of the Department, you wouldn’t have read technical reports. That is why you accepted Dr Crawford to have read them. That is why you would have expected Fiona to produce a note, and, indeed, there’s guidance for her to look at and read to see she has an obligation to produce a note. I just wonder about how this Department was actually working in practice.

**Mrs Foster:** Well —.

**The Chairman:** One further point. Mr Scoffield may — I hope I’m not over — I’m treading on your toes here, but one point I did pick up from the differences between Ms Hepper and Mrs Foster was Ms Hepper said that Mrs Foster would’ve seen the paperwork and the documents from the business case, whereas Ms Foster says she never looks at business cases. So, again, there’s a —.

**Mrs Foster:** They weren’t sent to me, sorry.

**The Chairman:** Yes, I understand that. They weren’t sent to you, but she says she
the energy issues to have made the note, so it would’ve been energy division officials that
should’ve taken that note.

Mr Scoffield QC: And I think you’ve made clear that it wouldn’t have been usual for a
note of such a meeting or a minute or a record of such a meeting, if it was taken in the usual
course, to have been sent back to you for your agreement or clearance?

Mrs Foster: That’s correct. It wouldn’t have come back to me.

Mr Scoffield QC: Would that not be a sensible thing to happen; either it comes back to
you or the special adviser or, at the very least, the private secretary to make sure that it’s an
agreed minute, as it were, so that there’s no dispute or ambiguity as to what transpired?

Mrs Foster: I suppose in a perfect world it would’ve been, yes, but that certainly wasn’t
the process throughout all of my time as Minister regardless of the Department I was in.

Dr MacLean: But was that not actually the documented process, that the note would be
taken by energy division and given back to private office? It was my understanding from the
—

Mrs Foster: I think, from the guidance, that’s what it says is to happen, but in my
experience throughout my time in government, that was not what happened.

Dame Una O’Brien: Mrs Foster, when we had Mr Sterling to give evidence, and we did
focus a bit on this point, because although, at one level, it can sound like a very humdrum,
routine thing to do —

Mrs Foster: Yes.

Dame Una O’Brien: — obviously, when we end up in a situation like this, or indeed in any
accountability for ministerial decisions, the absence of records becomes a highly significant
matter, and in my experience one of the ways that this risk is managed, ie that there are
multiple versions of what went on in a meeting and a Minister’s wishes are not accurately
recorded, is for the ministerial private office to have control of the pen in that regard, and in
I, Glynis Aiken, will say as follows:

Background

1. I left Banbridge Academy in 1986 with 7 GCE 'O' Levels. I then undertook a Secretarial course at Banbridge College of Further Education and obtained several RSA qualifications and a further GCE 'O' Level. Over a number of years I undertook several part time courses obtaining RSAs in Teaching Office Studies (Typewriting), Word Processing and Desk Top Publishing. My occupational history is set out below:-

   July 1987 - March 1990 – Cash Sales Clerk – Lisburn Glass & Glazing
   March 1990 - March 2000 – Typist - DFP seconded to NIO
   March 2000 – Sept 2003 - Personal Secretary – Corporate Services Division, Department of the Environment
   Sept 2003 – Sept 2004 - Senior Personal Secretary – Personnel Division, Department of Regional Development
   June 2005 – Feb 2007 - EO1 – Assistant Private Secretary, Department of the Environment
   Feb 2007 - June 2008 - SO – Private Secretary, Department of the Environment
   June 2008 – May 2015 – SO – Private Secretary, Department of Enterprise, Trade & Investment
   May 2015 – June 2016 – SO – Private Secretary, Department of Finance & Personnel
a. As outlined in the Guidance it was the responsibility of the business area to record notes of the meetings. I assumed that the relevant official attending the meeting would produce these and save them to the relevant records on TRIM. The only occasion where I may have taken a note of a meeting or any action points agreed would have been when the meeting was with persons outside the civil service, and an official from the business area (for whatever reason) was not in attendance, but this would have occurred only on rare occasions.

b. I do not recall receiving copies of notes of meetings in DETI and so the note/minutes were not routinely provided to me.

c. As it was not common practice for officials to provide notes/minutes (as specified in the provisions set out in paragraph 38 of the guidance) and due to a lack of resources, competing priorities, and pressures on staff time, it did not occur to me that I should routinely request the minutes of the meetings, when they were not provided to the Private Office. When relevant I would have made a record of the Minister’s action points and, per the Guidance, my focus was to concentrate on ensuring that those action points were followed up. With hindsight, I sincerely regret that I did not observe that officials failed to adhere to paragraph 38, and specifically prompt them to provide minutes from meetings.

d. See answer to 7 c above.

e. If I sat in on a meeting I would have noted for my own information any action points for the Minister e.g. if the Minister had agreed to meet with someone, write a letter or was being asked to give urgent consideration to an issue which would be sent to the Private Office in the next couple of days. I would generally revisit these notes at the end of the week and follow up on any that hadn’t been actioned. I was not reliant on the minutes/notes of the meeting from the official to understand what the Minister’s action points were.
I’ve explained why all meetings weren’t being minuted, and I think I’ve set out that our intention would be that when we get an Executive back, which we hope for as soon as possible, that this is the type of issues that we will tighten up. But on the specific issue, in regard to the meeting that took place, then I think my view is clear that the decision that was taken at that meeting, if it wasn’t to be reflected in a minute of the meeting, should, nonetheless, have been clearly articulated in a subsequent submission or the final submission some way or other.

Mr Scoffield QC: I was hoping to take you to some of these instances in more detail later, but perhaps we can do it now, and I’ll look at some of the documents in relation to them. But just so I understand where we’ve got to in the discussion that you’ve been having with the panel, there are, I think, probably two significant meetings with the Minister in respect of which there doesn’t appear to be a clear written record of the decision or the reasons for the decision. The first is the meeting on the 14th of June 2011, which is when the Minister chooses between the ongoing incentive-type scheme and the challenge fund option, at least for the purposes of consultation. That’s an important point where the Department’s and the Minister’s preferred view is sought and obtained. And then the second instance is sometime around the summer of June 20 — or summer of 2012 — sometime after the end of June when the Ofgem team have given these warnings about proceeding and not holding off on the Northern Ireland draft regulations until amendments have been made.

Now, in respect of the first of those meetings, there was a submission, but there is no written record at all of the Minister’s reasoning for the decision or what was explained to her. So let’s just deal with that first of all. From your perspective, is that a satisfactory situation?

Mr Sterling: No. I think I’ve made the point that I think there should always be a clear record of the decision a Minister has taken, and you should be able to trace back from that
why the decision was taken and what factors were in play, you know, what matters were
considered before the decision was taken. Now, I should say that my experience was that
energy division were very good in this regard, you know, so what has happened here to me
would be unusual and not characteristic of the division.

Mr Scoffield QC: I want to take you to some evidence about that in a moment, but let’s
just deal next, then, with the exchange in the summer of 2012. Now, there are potentially
two problems there. Firstly, there is no submission to the Minister which deals with the issue
of the concerns that Ofgem had raised and the competing reasons for proceeding or holding
off. So, one of the things that the Minister — or the former Minister, rather — has said
herself in her recent evidence to the Inquiry is that she feels that this issue should’ve been
brought forward by way of formal submission.

And, unfortunately for the panel, she’s also said that, if these concerns were raised with
her, she thinks that they would’ve been significantly downplayed. Now, that’s unfortunate
for the panel because Mrs Hepper’s evidence is that she doesn’t believe that the concerns
which had been raised by Ofgem were downplayed in any way. And, if you want me to take
you to the references for those two pieces of evidence, I can do so. The difficulty for the
panel is they don’t know what precisely the Minister was told and how these things were
couched.

Now, on the absence of a submission in relation to that particular issue, is that something
which you think is satisfactory?

Mr Sterling: Well, I think the fact that we have a difference of opinion between two key
people in regard to the development of this scheme just flags up, you know, the importance
of actually ensuring that, whenever a decision point like this is reached, that there is a clear
record of the decision taken and the factors that were considered before the decision was
taken. I wouldn’t want to be drawn on, you know, the respective merits —.
Mr Scoffield QC: I’m not asking you to adjudicate on who’s right or who’s wrong, but the fact that there’s no submission setting out (a) that there’s an important decision to be taken, (b) why that decision has arisen at that time because of warnings given by Ofgem and (c) the reasons why the Minister might plump for one option over the other, the fact there is no submission in relation to those issues, is that satisfactory or not?

Mr Sterling: No, it’s not. And, again, the fact that we have a difference of opinion flags up why — sorry, it highlights the importance of there being a clear record of what was decided and why it was decided.

Mr Scoffield QC: Well that, of course, is a separate issue. In addition to providing the information in a submission to the Minister, there should be a separate record, whether it’s in a note for the file or whether it’s in a later submission, setting out what was decided and why. You would agree with that?

Mr Sterling: Yes. You know, as I say, I wouldn’t be too precious about the exact mechanism through which the decision is recorded. You know, whether it is a final submission, whether it’s a note on file, whether it’s a combination of the two, so long as there’s a clear record, then I think that’s the important thing.

Mr Scoffield QC: But if there isn’t in relation to a decision of this type, which you’ve highlighted as one of the particular areas which was ripe for escalation, again, is that something that you are content with as the former permanent secretary or that you are unhappy with?

Mr Sterling: No. I think I’ve made it fairly clear that, you know, this — there should have been a clear record of the decision that was taken in that case, either in an ad hoc note for file or in a submission somewhere or other, you know.

Mr Scoffield QC: What I want to explore with you, then, arising out of that, is whether this is an instance of there simply being no procedures or guidance for which, arguably, you
as the accounting officer might be responsible, or whether it’s a situation where there is
clear guidance but it’s not followed by one of your more junior officials. And if that’s so,
whether it’s an instance of there being guidance which was routinely not followed within the
Department, which might be more of a cultural practice, which, again, might be more for the
very top management team rather than those in a more junior level. Now, let me just take
you to some documents and then I’ll ask you to comment on that.

Mr Sterling: Sure.

Mr Scoffield QC: I think one of the documents that the panel were alluding to in some of
their exchanges with you a few moments ago was the guidance that came from the private
office in 2008, and I think it was then revised in a relatively immaterial way for present
purposes in 2009. But I wonder if we could go to that, and
we’ll find
that
at
DFE-416559. I
don’t think you’re using the numbering in your witness bundle, Mr Sterling, but if you are,
it’s at page 3039. But we’ll see here that this is guidance which is issued and it deals with a
range of things but, in particular, amongst other things, ministerial submissions and, then,
ministerial meetings. And if we look at DFE-416562 first of all. We see at paragraph 13 that
there’s some advice about submissions. They:

“should be brief and to the point. They should be submitted to the Private Office in enough time to allow the
Special Adviser and the Minister, should they wish to, to request further advice and hold a meeting before
taking a decision.”

And then:

“Even in the case of urgent submissions this should be at least 48 hours before the deadline for decision.”

So, even in urgent cases, there should ideally be a submission and time for appropriate
reflection.

I want to just show you paragraph 14 while we have this document open. I’ll maybe come
back to this in a different context, but it says:
Mr Sterling: Um — [*Short pause.*] —.

The Chairman: Among your —.

Mr Sterling: No, no —.

The Chairman: Among your robust controls —

Mr Sterling: Yes.

The Chairman: — did you ensure or try to ensure that important decisions either were
the subject of a submission — a written submission — or, even if not, were properly
recorded by those who would have to be held responsible for taking the decision?

Mr Sterling: Yes.

The Chairman: Now we have a series of three major interviews here: one with the
concerned person — no record of that, despite that it was attended by Fiona Hepper, Peter
Hutchinson; we have the decision to proceed notwithstanding the advice from the lawyers
of Ofgem; and we have the earlier decision relating to the change or potential changes in the
CEPA reports. None of those were recorded.

Mr Sterling: Um [*Short pause*] I’ll put it this way: this is 2012, you know, by that stage I’d
been working —.


Mr Sterling: 2012, 2013. I had been working with Fiona for four years by that stage.

The Chairman: Yes, and you told us that.

Mr Sterling: I wouldn’t consider Fiona to be somebody who was an excessive risk-taker. I
wouldn’t have considered her to be somebody who would normally cut corners, you know,
so, if she decided at that stage that this was — that we should continue to proceed in this
course, it would have been on a sort of balanced assessment of the risk.

The Chairman: Yes.

Mr Sterling: And, again, setting aside — alongside the concerns being reflected by Ofgem
and the lawyers I think there would’ve been the sense that, from the consultations before, that perhaps our scheme wasn’t going to be that successful. I think there were some questions from those stakeholders about whether it was going to be — sufficiently incentivise people to change behaviours in the way that we were seeking. So I’m assuming that, in reaching this decision, Fiona would have weighed up those various factors. But coming onto the — you referred to the discussion with the Minister. I would say that, good practice, that particular discussion should’ve been formally recorded.

**The Chairman:** It should’ve been part of a formal submission —

**Mr Sterling:** Indeed. I would have to say —.

**The Chairman:** — and it should’ve been recorded. And why was Mrs O’Hagan, Ms O’Hagan — why was no record made of what she was saying?

**Mr Sterling:** I don’t know. I don’t know.

**The Chairman:** Then I need to know what, if anything — what rule or direction did you have in force to indicate to people working in the team that they ought to ensure that important decisions were recorded?

**Mr Sterling:** There would have been — there wouldn’t have been anything that I had sort of written down and said that; that would’ve been a general understanding that anybody who had reached the Senior Civil Service would know — is that Ministers need to get advice that is comprehensive, thorough and complete. Now, on occasions, there would be discussions between Minister and officials that may not be minuted, but I think my view would always be that the ultimate decision needs to be reflected in a submission so there’s a clear record of what considerations the Minister took and what the final decision was and why it was taken. So, a submission — there should always be a final submission which deals with all the issues that a Minister would need to consider before reaching a final decision.

**Dr MacLean:** That’s a general understanding — an unwritten rule — rather than anything
meeting with the Minister and there not being an official note was not unusual at that time?

**Ms Hepper:** It’s certainly my experience that it was not unusual.

**Mr Scoffield QC:** And is that your experience in the other areas of the Civil Service that you have worked in?

**Ms Hepper:** It’s certainly my current experience. A while back when we had a change of Minister, we actually put out a note similar to this and a pro forma which the divisions had to use. And, certainly, it started with — it started a couple of years ago, and there would’ve been action points recorded on the note and that would’ve been filed and we’ll see what happens when we get back.

**Mr Scoffield QC:** Can we take from that then that this type of guidance is not — it wasn’t specific to DETI at that stage? This would be the type of guidance you might expect to see across different Departments?

**Ms Hepper:** I think probably a lot of private offices would’ve issued something like that. I certainly had the private office issue something a couple of years ago, not the same but similar, and we gave a pro forma for notes to be taken and action points to be followed up.

**Mr Scoffield QC:** From a number of the observations that you made in your evidence in the last few minutes, the impression that I’ve gained — tell me if this is wrong — is that — and, indeed, this might well just be human nature — when this type of direction or missive or guidance comes out, it is adhered to fairly strictly for the first while and then, to a greater or lesser degree, falls into disuse. Is that a fair comment?

**Ms Hepper:** I think that would not be an unfair reflection of what happens. And, certainly, even in the early days, I don’t recall the private office ever formally asking for a minute if something didn’t turn up. But, then again, private offices are busy areas and the onus was being put on divisions and directorates to do it. But I think human nature is, when things get busier and busier, you know, some of these things do fall by the wayside.
Mr Scoffield QC: I know, of course, we’re looking at all of these issues now with the benefit of hindsight. You’ve said that on a number of occasions in your evidence. But I think you would accept in relation to these two meetings that we’ve been discussing where, in terms of now determining what advice the Minister was given, what was discussed with her, what her decision was and the reasons for that, we have to do that on the basis of recollections. I think you would accept it would be much better to have had both a submission and a note of the meeting in each of these cases. Is that right?

Ms Hepper: I think the hindsight point is that that would’ve been helpful as we sit here today, but it was the working practices of the time that prevailed.

Dr MacLean: Mrs Hepper, I find that answer almost more difficult than the fact that it wasn’t recorded: that you, even now, don’t think that it should be good governance to record key decisions that are being made, as the Chairman rightly emphasises, on issues about how public money is going to be spent and what risks are being undertaken in the public sector. I have a company that I am the only person in. I still have to record any decision that is made that is relevant for an annual return in a formality. I find it completely difficult to understand that you still do not think that best practice, or actually fundamental practice, should be to record these things in writing.

Ms Hepper: I think the contrary. I think I was agreeing with the point that, with hindsight, it would’ve been the right thing to do and would be more than helpful now, and I think it’s a learning point for going forward. So, I’m actually agreeing with you.

Mr Scoffield QC: I have to say I hadn’t understood Mrs Hepper to be disagreeing what I put to her. I think possibly the issue that Dr MacLean is on is: not only with hindsight but actually at the time in light of the guidance, it should’ve been done then irrespective of how things turned out.

Ms Hepper: And, again, I’m not disagreeing, but what I’m saying is that we fell into a way
of doing things. And I’m not disagreeing with you.

Dr MacLean: But you also said that’s how you think things are happening now as well.

Ms Hepper: Um —.

Dr MacLean: So, despite this experience, it’s still continuing.

Ms Hepper: No. No, what I said was that it’s — certainly, in the Department I’m in — we had issued something of this nature, and there’s a pro forma for, um, filling in action points and for then following up with further submissions and advice to the Minister.

The Chairman: And is that being used?

Ms Hepper: Hem, certainly, um, before the Ministers left us, it was being used, yes.

Dame Una O’Brien: I’ve just got a different point, but it’s related to what Dr MacLean and the Chairman have been raising, and perhaps you can give us an insight into it, and we will ask others as well. I’m not familiar with an arrangement whereby the officials in individual areas take the note of meetings with Ministers. I’m familiar with a different approach to this, which is that the private office, on behalf of the Minister, makes a note from the Minister’s perspective, which is often debated with the official as to what exactly was agreed and decided in the meeting. And the private office then behaves as an engine to drive forward the Minister’s agenda and ensure the Minister’s decisions are followed through.

Can you help us to understand the reasons why that approach is not adopted? I mean, I appreciate there are issues about resources and so on. And I’ve been one of these private secretaries myself, a long time ago, so I’m not talking about recent practice; I’m talking about 20 years ago. I’m trying to understand why that isn’t done here and whether that arrangement could give a more certain record of what the Minister has decided or not.

Ms Hepper: If I can go back maybe 15, 20 years, and when I was a more junior official and we were in direct rule, there was always a position where the private secretary took a minute of the meeting with the Minister. I don’t know when practice changed, and there will
be others who would know that. And I don’t know whether it was in the later stages of direct rule or under devolution that it changed, and/or whether it was something to do with just the busyness of the private offices, or whether it was to do with the combination of busyness of the private office and also some of the more detailed technical specialisms, you know, that were coming, and maybe the private office staff felt that they couldn’t take a meeting and they put the onus on the directorates.

But I don’t know when that changed. But, certainly in my early part of my career, I remember getting copies of draft notes that came down from one of the PSs, usually the departmental — what was called the departmental private secretary, as opposed to the travelling private secretary — and that’s the way it was done in those days.

If I had a personal preference, I would have preferred, you know, the approach to be that the private office took min— that they were staffed to do that. And, certainly, that’s a point that I had mentioned to the heads of my private offices in the last number of months: that when —

Dame Una O’Brien: Well, I’m sure —.

Ms Hepper: — we get something back, we’re going to have to look at this.

Dame Una O’Brien: Well, we will ask —.

Ms Hepper: Is it the right way of doing it? What’s the best way?

Dame Una O’Brien: I think it’s —. I mean, we know in human nature that people walk away from conversations with different recollections of what was said and what was agreed. I mean, this is a classic feature of interactions in every part of life. But when it comes to decisions about large amounts of public money, there has to be an irrefutable way of recording what was or wasn’t decided. And we’ve observed here a real significant gap in the record-keeping, and there is no known record of these significant meetings.

The Chairman: Just one final point before we leave this meeting, Ms Hepper. How serious
or important did you feel this decision was?

Ms Hepper: I think —. I mean, it was an important decision. It was the decision that meant that either we stopped the process as it was moving along and went in a slightly different direction to go out and consult on the interim, er, suspension clause and delay the start of the scheme or we continue and we did that piece of work at a later date in line with the process that DECC had done. So it was, from that point of view, important.

The Chairman: So, this was a decision that was of such significance that it would effectively either stop, albeit temporarily, the progress of the whole scheme, which you and others had been putting together for 18 months or whatever it was, or it would allow that scheme to proceed, and that gives us an indication of how important it was. And you, as a senior official, would’ve appreciated that degree of importance.

Ms Hepper: I did, yes.

The Chairman: Looking at the outcome, it would appear that (a) there is no record by the Minister’s secretary of any such meeting or any such contact. You have no record of it. You cannot even remember whether it was by telephone or by face-to-face meeting, let alone who, or if anyone, was also present.

If, for example, this was by telephone, how could any decision-making body accept a decision of that nature, which you knew perfectly well and which I can understand you would have regarded as very important, could have been explained in detail over the telephone to such an extent it would enable the Minister to make an informed decision? How could that be?

Ms Hepper: I think that —. I can only go back to what I’ve said before: I went through all the issues, set out the context —.

The Chairman: And that could have been by telephone?

Ms Hepper: Yes, yes, and there was nothing hidden from the Minister. The options were
that you would enforce.

Mr Sterling: Well, it may be unwritten, but it would be the sort of thing that I would expect any senior civil servant would know. Like, I would’ve known that as I went through the ranks. And, again, it would be something that, as people do policy courses and that sort of thing, you would know. It’s just — it’s such a fundamental.

Dr MacLean: I agree it’s common sense, but we’ve already heard, I think, from Mr Scoffield — I don’t know if you’ve got this — the DFE corporate statement that, in so many words, was saying that the good practice had practically been abandoned of taking minutes of these meetings.

Mr Sterling: Yes, and, indeed, that would’ve been fairly common across all Departments, but —.

Dr MacLean: That doesn’t make it right but —.

Mr Sterling: No, it doesn’t make it right, but I think it reflects, in some respects, just the challenges facing the Senior Civil Service working in this particular devolved Administration.

Dr MacLean: Have you changed all that now?

Mr Sterling: Sorry?

Dr MacLean: Have you changed all that now in the last —?

Mr Sterling: Well, we haven’t had Ministers for the last 14 months, so, um —. Sorry, I don’t mean to be facetious, but we have actually — we have issued draft guidance, which is sitting on the stocks, if you like, for when Ministers return, because this is good practice. But how to explain this? I think the one point I would want to make is that, although meetings with Ministers wouldn’t always have been minuted, nonetheless, I think it should have been clearly understood by everybody that, when a Minister takes a decision, there should be a submission setting out clearly why that decision was taken. That’s a fundamental. That’s, I think, something that all of us, as senior civil servants, should know and should apply on all
endorsed? And, secondly, insofar as Miss Hepper is saying here, “That might be what the
guidance said; it wasn’t unusual for people to disregard that”, do you accept that as being
the case?

Mr Sterling: Yes, well, no, I —. The guidance clearly come out before I was permanent
secretary. I don’t recall ever being asked to, sort of, re-endorse it or reissue it; I think it’s still
extant, or certainly was until I left. I certainly wouldn’t dissociate myself from it. As to the —.
Yes, I think I’ve already talked about the context in which we were operating in, and indeed I
have, in recent times, spoken to just all the permanent secretaries. And the sort of common
view is that, over a period of time, the good practice in terms of minuting meetings with
Ministers largely lapsed.

Now, I can recall, certainly —. This is the sort of guidance that we would have been
originally produced during the long period of direct rule that we had. And, you know, the
experience in those days would have been that the guidance would have been pretty firmly
adhered to. But, in those days, you would have had a Minister who was maybe over here
one day a week or not at all, so the number of meetings that you would have had with
Ministers would have been relatively small, and private secretaries would have taken notes.
Usually, they would have been produced and published within 24-36 hours. And, again, if the
meeting involved somebody from outside, then the custom and practice would have been it
would have been a member of staff in the relevant branch who would have taken a note of
the meeting, and again the expectation is the note would have come out.

Now, I’ve already talked about these, sort of, contexts that we worked in under the
devolved Administration. But I think another factor at work is the pace of day-to-day life has
just increased exponentially since 2008. So with devolved Ministers, obviously they would be
there much more than a direct rule Minister, so you would quite often have had a meeting
where you might have been just called up at short notice: “The Minister wouldn’t mind a
quick word”, or, equally, I would quite often have said to the private secretary, “Is the
Minister in? I wouldn’t mind a quick word”, and you would have gone in and had a quick
word. There wouldn’t have been a minute of that meeting, but, you know, custom and
practice at that time would have been if something was, sort of, agreed, you would go away
and action it. But I think my point is that a key decision on policy would always, or should
always, still have been reflected in a submission at some stage. And that would have been
the way in which you would have ensured that, even if you didn’t have the, sort of, good
practice of old in place, you still had a clear record of why decisions were being taken.

Mr Scoffield QC: Just a couple of questions arising out of the answer that you gave there.
You’d mentioned that the good practice had largely lapsed, and, indeed, I think that’s
consistent with what Mr Thomson’s evidence was to the panel, which was that he said key
decisions being taken with no note being recorded was something that happened more than
he thought that it should have. The question that I have arising out of that is: is that
something that you were consciously aware of at the time? And, if not, should you not have
been?

Mr Sterling: Put it this way: I was — yes, I would’ve been aware that this was the custom
and practice that we had, sort of, drifted into or evolved into over time. I wouldn’t have
considered —. Yes, I would’ve known that, yes, it is good practice to have minutes of all
meetings with a Minister.

I wouldn’t want to get the impression from this discussion that no minutes were — sorry,
no meetings were minuted. I think I would still reckon that, on most occasions where the
Minister was meeting somebody externally, there would’ve been a note taken of that
meeting. It’s the internal meetings with the Minister and special adviser and officials. As I
say, that was where the practice had changed over times, and I think it’s, you know —. I
talked about the devolved context, but I think it’s, as much as anything, just the faster-paced
occasions.

12:30 pm

As regards the minuting of meetings, um, er, Ministers — no different here from anywhere else — but Ministers like to have space, safe space, where they can consider difficult things, think the unthinkable and not necessarily have it all recorded. A feature of the devolved Administration here has been that the two main parties have been sensitive to criticism, and I think it’s in that context that, as a Senior Civil Service, we got into the habit of not recording all meetings on the basis that it is safer sometimes not to have a record that, for example, might be released under freedom of information which shows that things that might have been considered unpopular were being considered.

Dame Una O’Brien: I think, Mr Sterling, it is understood that wherever you’re looking at government in the United Kingdom, or in any democratic process, that there is that safe space between the administration and the politician. So, I think that’s — we do get that. I think the issue here is the discipline about recording decisions, and decisions that relate to key moments in a project and/or to money. So, that’s the first thing.

And then the second one which is tangentially related to this, that we’ve raised with other witnesses, is the advice, which I believe must have gone out under your umbrella, that where there were to be notes of meetings they should be taken by the official from the relevant group as opposed to the private office, which does raise a number of questions about ensuring that the Minister’s view is recorded. Question, whose view is being captured when that practice is followed? So, those are the two things. It is un—. We’re not arguing —. I don’t think there is a —. We’re not putting to you a view that every single thing should be written down, because that’s unrealistic, it’s about the criticality of decisions that affect money or the progress of a project.

Mr Sterling: Well, to be clear, there are two issues here. Firstly, the general point. I think
world that we live in now, where there is less, you know —. Things are recorded in an email rather than a formal minute. You know, the nature — the way in which we work —. Our basic, sort of, operating practices have evolved over time as well.

Mr Scoffield QC: There are a couple of questions arising out of that as well, because it seems to me that the reason for things having developed in this way, or the reasons that you’ve given, are two separate reasons. Firstly, just with the busyness of the way in which the Civil Service works these days, that’s just something which has happened. But the second consideration that you mention, and again this chimes, I think, with something that Mr Thomson mentioned —. Perhaps a more concerning rationale is that, with the advent of FOI, there was perhaps less of a willingness or desire to have things recorded. Now, as Dame Una has mentioned, we can quite understand why, when ideas are being thrown around in the course of policy development, it’s perhaps not appropriate for all of the discussion to be written down, and, indeed, I think the guidance reflects that. But we’re dealing here with Ministers making decisions on policy issues.

So, two questions really arising out of that. Firstly, to what extent do you think there was a conscious decision to dumb down or reduce the minuting, and, if so, do you think that was appropriate? And the second question is: insofar as this practice was simply a result of the development of the way in which the Civil Service works, how would you propose, particularly wearing your current hat, that that can be put right?

Mr Sterling: OK. The first —. In answer to the first, um —. The absence of routine minuting of all meetings with Minister, that wasn’t a conscious dumbing-down at all. I think it’s largely a reflection of just the changed circumstances in which we were working. So, for example, again I drew a distinction with, or the contrast with, working in direct rule, where you wouldn’t have seen your Minister very often. Now, you were in much more regular daily contact with Minister and adviser, and I would’ve encouraged openness between Minister,
adviser and officials. You know, it wasn’t sort of like ‘Yes Minister’ where there’s absolutely no way adviser and Minister get to, you know, more junior staff without coming through me. That wasn’t the way we worked. My view was that you get more efficient policy development if policy teams are talking to the special adviser and, indeed, the Minister at a very early stage in the policy development process. You know, there’s no greater waste of time than a policy team going away, dreaming up some great policy idea, sending in a 20-page submission, and the Minister says, “This is nonsense. I can’t run with this”.

So, we did have a much more fluid involvement and engagement between Minister and adviser, and I think that’s a good thing. But I think one of the consequences of that is it becomes much more difficult to apply the rigid disciplines of minuting every meeting. And as I say, you know, if —. On the days on which the Minister was in Netherleigh, where I worked, I might have dropped in with her three or four times during an afternoon. And it wouldn’t necessarily be asking of her a major decision. It would have been just simply to talk about a particular issue, maybe get a bit of a steer on something, and, you know, you’re not going to minute all of those. But I think, sorry —.

Dame Una O’Brien: Mr Sterling, if I may, I think the issue is that the practice of that, did it lead to a vagueness around where the boundary should actually be between those discussions and the point at which something had to be recorded? And, if you combine that with the unusual practice, one might say, of the private secretary not having a role, you — a gap opens up where things — important things — and we’re here focused not on those general discussions but on decisions that relate to the progress of a project or decisions relating to money — that that looseness and maybe that understandable freedom of expression leads to a vagueness about the point at which things do have to be recorded, and cos you haven’t got the backup of the private secretary taking a role either, a gap opens up, and the question might ask, “Where else has this gap arisen?”. But we’re not looking at that
today — we’re looking at the RHI — but do you see how the two things go together?

Mr Sterling: No, yes, I do see that. I think what I would say is that we’re looking at a
scheme here where things went badly wrong, and we’re looking at some issues that, clearly,
were part of the evolution of the scheme. I wouldn’t want to generalise from what
happened in this specific instance to what was happening elsewhere in energy division or
across the Department. You know, I think —.

DameUna O’Brien: But these are systems that we’re looking at here.

Mr Sterling: Yes, I know —.

Dame Una O’Brien: We’re looking at a system of relationships with Ministers, and we’re
looking at a system of the way private office didn’t have a role, really, in recording or
following through decisions at that time, and it was those systems, that you were relying on,
that had big holes in them.

Mr Sterling: Yes. No, well, as I’m saying, in this particular case, the outcome of that
meeting should’ve been reflected in something in writing, whether it’s a file note or whether
a submission, I’m absolutely clear on that point. But what I’m saying is that I wouldn’t
generalise from that particular failing to conclude that there was a looseness in the
Department. I can’t think of any other evidence — sorry, I’ll put it a different way: I would be
pretty confident that every other — you know, other major decisions taken during my period
in the Department, there would be a clear audit trail setting out what were the
considerations, what were the factors at issue and what was the decision the Minister took,
and a clear articulation within that as to why the Minister arrived at the decision she did
take. So, I say, I just think it’s important not to sort of, you know, make a conclusion from
this one particular instance about the operation of the division or the Department as a
whole.

Dame Una O’Brien: And what do you say about the role of the private office? Because the
From: David Sterling  
Date: November 2012  
To: SMT

BIOSCIENCE AND TECHNOLOGY INSTITUTE (BTI)

Introduction

1. SMT members will all have received a summary of the recommendations flowing out of the PAC hearing on the Bioscience and Technology Institute, and the Department’s and DFP’s response to those recommendations, and have been asked to bring the lessons learned to the attention of staff in their areas. Recommendation 14 of the Report specifically references leadership and management culture and is therefore of particular interest to the SMT Group.

2. A summary of the background to the actual initiative is set out below:-

Background

The Bioscience and Technology Institute Ltd (BTI) was established in 1998 with the primary objective of providing biotechnology incubator facilities through the development of a specialist building at Belfast City Hospital. The company was funded by a combination of public funds and debt. BTI received public funds of approximately £2.2 million over the period 1999 to 2002 from the Department; from two of its affiliated bodies (the Industrial Development Board and the Industrial Research Technology Unit); and from the International Fund for Ireland.

It was the company’s original expectation that Belfast City Hospital would provide a site in its grounds free of charge, on which BTI would construct business premises. In the event, the premises were not built at that location and, in 2001, the company acquired the Harbourgate building, in respect of which it paid a “finder’s fee” of £100,000 to a firm of Belfast solicitors. Investigations have revealed that the finder’s fee was subsequently disbursed to others, including Teresa Townsley, a director of BTI.
The Institute effectively never operated as the Harbourgare building was unsuitable and would have required to be upgraded at a cost of potentially £4m. The project was therefore never adequately funded or managed from the outset. The Harbourgare building cost £5 million, payable to a developer. The building was subsequently sold, in 2005, by the Ulster Bank for £4.55 million. The latter sum was used, in that year, to satisfy the Bank’s debt and partly redeem one other secured debt.

Invest NI and DETI decision making and monitoring did not follow the processes that had been established within the organisations for the assessment, approval, consideration and approval of material changes, payment of grant, or monitoring of the project.

Public funds of £2.2m were lost with little return in terms of economic value.

3. There were a number of specific issues in the case:-

Guidelines were in place for processes such as project appraisal and approval, project monitoring and payment of claims but were not always applied. For example, projects put forward by promoters should be appraised by the funding body. In this case, the procurement of the consultancy firm that appraised the project was handled by BTI.

Funding was offered to the BTI project despite it not having a well developed and comprehensive business plan. There were also significant uncertainties about the project particularly in relation to the sources of funding. Similar issues arose in the Valence Technology project which was also the subject of a PAC hearing.

The funding bodies included conditions in their Letters of Offer to mitigate the risks and uncertainties surrounding the BTI project. Conditions were also included in the Letter of Offer for the Valence Technology project. In both cases conditions were set aside or relaxed and the risk to the funder increased. Guidance has been issued which highlights the circumstances in which changes in projects or conditions which increase risk would result in a re-appraisal of the project or a re-submission to the original approving authority which may include DFP and the DETI Minister.
A significant change in the project involving the decision to relocate BTI from the Belfast City Hospital site to the Harbourgate Building should have led to a re-appraisal.

There was pressure to meet funding deadlines for the EU Peace and Reconciliation Programme and a Letter of Offer was revised to facilitate payment of grant within the funding deadline.

The project was not adequately monitored. BTI failed to provide information (quarterly management accounts and annual accounts) required by the Letter of Offer. Progress reports submitted by BTI contained limited detail. Similar criticisms arose in relation to monitoring in the Valence Technology project.

Records were not kept to explain each decision. Invest NI entered into a contract to purchase the top floor of the Harbourgate Building for £1.5 million without a business case having been prepared and there was no documentary evidence that the required approvals were obtained.

4. There were established processes and controls within both IDB/Invest NI and DETI which would have led to a different outcome. IDB/Invest NI and DETI decision making and monitoring did not follow the processes that had been established within the organisations for the assessment, approval, consideration and approval of material changes, payment of grant, or monitoring of the project.

5. It appears there was a culture ten to twelve years ago that enabled those procedures to be circumvented and ultimately lead to the substantial loss to the public purse.

6. Disciplinary action was taken in regard to the case, and the Department suffered reputational damage with adverse PAC comment. Recommendation 14 of the Public Accounts Committee Report is set out below.
Public Accounts Committee Report: Recommendation 14

“There is a particular responsibility on top management to encourage a culture of compliance with good practice throughout their organisation. The Committee recommends that both DETI and Invest NI now ensure that the lessons on leadership and management culture arising from the report are assimilated within their respective organisations.”

7. I am content that the culture within DETI is totally different to that which appears to have operated ten to twelve years ago. Indeed the work we have done on our CORE values reinforces that position.

8. **Courage** is DETI’s first CORE value. It takes courage to call a halt to a project, or seek appropriate Ministerial input in any decision, in which a number of individuals have invested time and effort and everyone wants to succeed. Were such a situation to arise today I am confident that we would have **Openness** in communicating the difficulties with the project and **Respect** to be given to those relaying the difficulties. The culture which we would all expect to be displayed would therefore lead to **Excellence** in policy delivery and decision making and the effective management of public money.

9. So long as we continue to foster and implement our CORE values in our work I am satisfied that such that a project such as BTI would therefore not be able to proceed in today’s environment within DETI.

10. I am also happy that as an organisation we can and should take risks in order to deliver our objectives. Risks should be recognised and managed, and decisions taken at an appropriate level commensurate with the funding and risks being proposed. This should not result in undue delay in decision making, and following appropriate and proportionate process protects the individuals involved in the decision as well as the public purse.

11. I would ask that you discuss the issues that arose ten years ago in this case with particular reference to our CORE values with your teams, highlighting that when we operate effectively within our values we can deliver projects and value to the economy and we can also effectively manage the public money for which we are responsible.

**DAVID STERLING**