

John Mills
c/o Michelle Malcolmson
Departmental Solicitor's Office
Victoria Hall
12 May Street
BELFAST
BT1 4NL

7 June 2018

Dear Sir

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

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

I know you will by now be extremely familiar with the work of the Inquiry and its Terms of Reference from your previous engagement with the Inquiry (including, of course, your previous attendance to give oral evidence).

The Inquiry is grateful for the witness statements you have already provided to it and for your oral evidence. As you will be aware, however, the Inquiry's oral hearings are now moving into a new stage, addressing Phases 3 and 4 of the Inquiry's work. Having considered the written evidence which you have already provided, and some other evidence relating to Phases 3 and 4, there are a number of further matters in

respect of which the Inquiry considers it would be helpful to have additional evidence from you in writing (in advance of your further, upcoming attendance to give oral evidence in relation to Phases 3-4). It is also hoped that the facility for you to provide some additional evidence in relation to Phases 3-4 at this time may reduce the amount of time required for completion of your further oral evidence.

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

I apologise that this requirement is being imposed upon you so close to your forthcoming attendance to give evidence again. It is hoped that the production of the statement required in response to the enclosed Notice will be facilitated by the preparation you may have been undertaking for that appearance in any event. In order to assist you in preparing your further statement, the Inquiry has endeavoured to keep the matters about which you are being asked at this stage within reasonable limits. (Should it prove necessary to revert to you for further evidence in writing at a later date that, of course, remains a possibility). You are obviously encouraged, however, to provide any additional information that you can which will be relevant to the Inquiry's investigation of the matters falling within its Terms of Reference in relation to Phases 3 and 4.

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

As before, it is vital that the witness statement you provide to the Inquiry is your own evidence, absent the influence of others; that it is comprehensive; and that it fully explains your involvement in the matters about which you have been asked.

Although you should recently have been sent some additional materials by the Inquiry relevant to your evidence in Phases 3 and 4, I continue to appreciate that you may require or desire access to some documentation in order to assist you in preparing your statement. In particular, you may wish to see documentation to which you

previously had access but now no longer have access in your current post. If that applies in your case, as before, the Department for the Economy (DfE) can make arrangements to permit such access, at least in the first instance, and you should contact Terence Coyne at DfE, who is the Department's RHI Task Force Information Manager.

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

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

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

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

Yours faithfully



Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE
[No 118 of 2018]

Phase 3

1. Provide such further details as you can of the meeting in June 2015 to which you refer in paragraph 161 of your first witness statement (at WIT-14557). In the course of this, please describe what you meant by the reference to the fact that you were frustrated with some of the other discussion and some of the subsequent actions you were asked to take.
2. Please describe the relationship between Energy Division and Finance Division within DETI during the period covered by Phase 3 (including, in particular, whether there was any disagreement and/or dissatisfaction as between the two Divisions as to how the RHI Scheme should be dealt with).
3. Provide such further details as you can of the "*initial contacts with the SPAD in June in an attempt to pave the way to get the introduction of tiering agreed*" (as discussed in paragraphs 153 to 154 of your first witness statement at WIT-14555). Without prejudice to the generality of the foregoing, please:
 - a. Describe the contact you had with the Special Adviser;
 - b. Specify how, where and when this contact occurred;
 - c. Outline the approach or attitude which you understood the Special Adviser to take in relation to the introduction of tiering at that stage (and the basis for any such understanding); and
 - d. Describe what concessions, if any, you consider had already been given (and how this came to be so) *in advance of* the finalisation of the submission to the Minister of 8 July 2015.
4. Provide as full details as you can of the extent to which you (a) were aware of,

- (b) directed or encouraged, and/or (c) sanctioned or acquiesced in, the provision of information about the Department's intentions as to the introduction of tiered tariffs to the renewable heat and/or farming industries by your officials (in particular, Stuart Wightman and Seamus Hughes) from in or about mid-June 2015 onwards.
5. Arising out of paragraphs 156-158 of your first witness statement (at WIT-14555/6), please provide such further details as you can, including (but without prejudice to the generality of the foregoing):
- a. To whom (in terms of your line managers) you passed on the issue of potential applicants being aware of the intention to introduce tiered tariffs; when you did so; and what, if anything, was the result.
 - b. Provide details of precisely what was discussed at the meeting with Moy Park at which you and Mr Stewart were in attendance.
 - c. Explain why you say that advance knowledge was a "*persistent problem*" (in paragraph 158 of your first witness statement) and how you consider this came to be.
 - d. Please also set out how, in your view, the industry knew of the Department's intentions as early as June 2015 (see paragraph 149 of your first witness statement at WIT-14554).
6. In paragraph 147 of your first witness statement (at WIT-14553) you have indicated that you "*wished to avoid lengthy consultation because [you] anticipated that there would be a spike in application prior to the introduction of tiering as applicants sought to beat the deadline to get the higher tariff*". As to this: do you now, and did you at the time, consider that the same concerns arise as a result of applicants being informed of the Department's intentions *outside* a formal consultation process?
7. Evidence available to the Inquiry (including, by way of example, the email from

Mr Wightman, copied to yourself, of 23 July 2015 at DFE-10031) suggests that DETI officials, including yourself, were aware of the possibility of a spike occurring as early as mid-July 2015. As to this:

- a. When were you first conscious of (i) the possibility of and (ii) the actuality of a spike in applications to the Scheme occurring?
 - b. What steps, if any, did you (or DETI generally) take in order to (i) avoid or (ii) minimise a spike in applications in or around summer/autumn 2015?
 - c. Do you consider that more could or should have been done in order to avoid or minimise the spike which ensued in autumn 2015? Please give reasons for your answer.
 - d. Why do you consider it was (again, see paragraph 149 of your first witness statement) that the Department underestimated the ability of the heat industry to install boilers quickly?
8. Describe your view and understanding of the relationship between Minister Bell and his Special Adviser Timothy Cairns during the periods covered by the Inquiry's Phase 3 and Phase 4 work. In particular, but without prejudice to the generality of the foregoing, provide such details of you can of:
- a. Any differences or disagreements between the Minister and his Special Adviser (including any such differences or agreements as arose during the Ministerial trip to London on 9-10 June 2015);
 - b. The circumstances of Timothy Cairns' absence from the Department from in or around 10 to 29 June 2015 and of his return to work in the Department at that time; and
 - c. The working relationship between the Minister and his Special Adviser;

if and insofar as you believe such matters did have, or may have had, an adverse effect on the Department dealing effectively with the RHI issue during the periods covered by Phases 3 and 4 of the Inquiry's work.

9. Please explain as fully as you can why you consider (see paragraph 149 of your first witness statement) that the introduction of tiering took longer to introduce than imagined. (In the course of your answer please also address, separately, the reasons, in your view, for the additional two weeks delay in the implementation of tiered tariffs, from 4 November 2015 to 18 November 2015.)
10. Provide as full details as you can of any discussions you had with the Special Adviser (Timothy Cairns) throughout the period of July to September 2015 in relation to the RHI Scheme and/or the 8 July 2015 submission to the Minister (including, where possible, the date of any such discussion, who was present and the nature and content of the discussion, insofar as you can recall it).
11. Without prejudice to the generality of the preceding paragraph, please give as full details as you can of:
 - a. Your meeting with Timothy Cairns (along with Chris Stewart) on 28 July 2015 (including, in particular, what 'additional caveats' to the AME funding for the Scheme were discussed at that meeting); and
 - b. The Issues Meeting of 24 August 2015, at which the Minister approved the submission with an amended timescale for the introduction of tiering (explaining, insofar as you can, who proposed the additional time; what attitude each of the attendees at the meeting took to this; and why there appear to be no minutes of this meeting or recorded reasons for the Minister's decision).
12. Did you consider that there was 'reluctance' (as suggested by Dr Andrew McCormick) on the part of the Minister and/or his Special Adviser to either (a) provide a decision on or (b) approve the recommendations set out in your Division's submission of 8 July 2015? If so, please give reasons for your

answer (including how you discerned such reluctance and why and from where you considered then, and consider now if different, any such reluctance arose).

13. Explain why you thought (see paragraph 144 of your first witness statement) that it would be *“very difficult to obtain political agreement for an unpopular measure with the heat industry”*.
14. In relation to paragraph 168 of your first witness statement (at WIT-14558), please provide further details of the *“allegations of abuse of the RHI”* of which you became aware around Autumn 2015 (including when you heard of the allegations; from whom; what the nature of the allegations were; and what, if anything, you did in relation to this).
15. In respect of your email of 17:16 on 11 August 2015 (at DFE-278983/4), please address the following issues:
 - a. Where did the *“suggestion of heating empty sheds”* to which you refer in that email come from? What awareness did you (and the Department generally) have about this issue of potential abuse at that time?
 - b. In respect of the identification of a potential rate of return of 38.46% with a 3,000 hour tier threshold:
 - i. What consideration (if any) was given at that stage to the possible rates of return available under the Scheme as it then stood (with no tiering)?
 - ii. Did the rate of return identified above not give rise to concern on your part in respect of non-compliance with the EU Commission’s State Aid approval (and EU law more generally)?
 - iii. What, if any, further steps were taken to investigate or address issues of potential over-compensation at that time?
16. Explain why the Department did not move, with the introduction of the 2015 Regulations, to either suspend or close the Scheme or, at least, provide itself

with the power to do so (particularly in light, for instance, of the contents of the policy template of 7 July 2015 purporting to set out the Department's intentions, at DFE-120432/3). In the course of your answer, please explain what consideration was given to such a course in the summer/autumn of 2015; and whether you consider that greater or earlier consideration of this issue ought to have occurred.

Phase 4

17. Please explain:

- a. The background to the Energy Division submission for the Minister of 31 December 2015 (at WIT-11740, amongst other places in the Inquiry's places) and why the situation had escalated at that stage; and
- b. How and when that submission was cleared by the Minister.

18. Please explain:

- a. The background to the further Energy Division submission of 19 January 2016 (at WIT-02784, amongst other places in the Inquiry's papers);
- b. Why the Minister was not provided with a recommendation which would have seen the Scheme closed or suspended in the shortest possible time;
- c. Whether, and if so why, a closure or suspension of the Scheme in March 2016 was considered to be adequate to meet the concerns which had given rise to the need for such action; and
- d. Your understanding of the circumstances of the 'recall' of the Minister's decision to clear the submission of 19 January 2016 (on Friday 22 January) (see, for instance, your email of 22 January to Chris Stewart

and Andrew McCormick at WIT-11768).

19. Please explain:
 - a. The background to your further submission to Minister Bell of 29 January 2016 (at WIT-02804, amongst other places in the Inquiry's papers);
 - b. Again, why the Minister was not provided with a recommendation which would have seen the Scheme closed or suspended in the shortest possible time;
 - c. The background to your further submission of the same day (at WIT-11808, amongst other places in the Inquiry's papers);
 - d. Your understanding of how it appears that the Minister changed his mind as to the appropriate option to be adopted (comparing paragraph 1 of the submission mentioned at sub-paragraph c. above with paragraph 1 of the submission from Chris Stewart of 4 February 2016 at WIT-02818); and
 - e. Your understanding of the involvement of any other Ministers or Special Advisers (external to DETI) at or around this time.
20. Describe your understanding of the role of Energy Division, and the DETI Minister, in the period January to February 2016, in light of the fact that the issue of Scheme closure and suspension had been identified as an issue requiring referral to the Executive Committee.
21. Provide any evidence of which you are aware which relates to former Minister Bell's concerns as to the amendment (or, in his words, 'cleansing') of the submission of 4 February 2016 by his Special Adviser, Timothy Cairns.
22. Provide details of any lobbying in respect of the proposed closure of the Scheme of which you were aware during the period of January to February

- 2016.
23. Provide details of any reluctance to close the Scheme on the part of any Ministers or Special Advisers of which you are aware or which you believe to have been material, setting out the basis for your answer.
 24. Provide any evidence of which you are aware in relation to the ultimate decision to postpone the proposed date of suspension of the Scheme from 15 February to 29 February (including who made this decision; why; and what, if any, analysis was undertaken as to the effect or estimated cost of the further delay).
 25. Set out whether DETI anticipated a further spike in applications during the period immediately prior to the suspension of the Scheme and, if so, what (if any) steps the Department took to (i) avoid or (ii) minimise a spike in applications in or around February 2016?
 26. Provide as full details as you can of the extent to which you (a) were aware of, (b) directed or encouraged, and/or (c) sanctioned or acquiesced in, the provision of information about the Department's intentions as to the suspension of the Scheme to the renewable heat and/or farming industries by your officials (in particular, Stuart Wightman and Seamus Hughes) from in or about January 2016 onwards.

General

27. Provide such other information as you consider relevant, or of which you consider the RHI Inquiry ought to be aware, (a) having regard to the Inquiry's Terms of Reference in the context of Phases 3 and 4 of the Inquiry's work; and/or (b) having regard to the contents of the further disclosure provided to you by the Inquiry on 31 May 2018.

NOTE:

It is important for the efficiency of the RHI Inquiry that the issues identified above are addressed as fully as possible and by reference, where available, to the dates and

locations of specific incidents to which reference is made. The statement should be broken down into paragraphs, which should be numbered sequentially from '1' to the end. The use of appropriate section headings or sub-headings is also encouraged. A template witness statement is provided with this Notice for your assistance and should be used as the format for your response.



INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 118 of 2018

DATE: 18 June 2018

Witness Statement of: John Mills

I, John Mills, will say as follows: -

Phase 3

- 1. Provide such further details as you can of the meeting in June 2015 to which you refer in paragraph 161 of your first witness statement (at WIT-14557). In the course of this, please describe what you meant by the reference to the fact that you were frustrated with some of the other discussion and some of the subsequent actions you were asked to take.**

1 I now know there were two meetings of senior management in June 2015 (3rd and 17th) to discuss RHI (outside of routine senior management meetings) through reading evidence provided to the Inquiry. The fact that there may have been more than one meeting is mentioned in paragraphs 141 and 161 of my first statement.

Departmental Action on Escalation of RHI June 2015

- 2 In March 2015 we had become aware of the escalating costs of the non-domestic scheme such that we anticipated exceeding the limit that we inferred existed for the RHI AME budget. This period is covered in paragraphs 103 to 121 and 137-141 of my first statement.
- 3 In summary, until March 2015, I believed that funding for the RHI was (demand-led) AME with budget limits that we were supposed to try to stay within. In an ill-defined



way I assumed this to be why the AME was not “normal AME”. We were significantly underspending against these budgets. We were aware of correspondence which suggested we would receive a notional population equivalent of DECC’s RHI budget but there was no “piece of paper” from our own finance system which set out our 15/16 budget.

- 4 I had only become aware in around mid/late May 2015 that the Department should have sought DFP approval for the non-domestic RHI well before March 2015 as was required by the original DFP approval for the non-domestic scheme. This was brought to my attention by Mr. Wightman who had been advised by Finance Division (WIT 17044 – paragraph 90 of his statement).
- 5 We sought clarity on budgetary matters from DETI Finance Division colleagues on 26 March 2015. We included a copy of the “Parker email” which we had rediscovered in March 2015 (WIT 14880/85) in correspondence with Finance Division. What I understood from the Parker email was that limited penalties would apply if DETI exceeded the AME budget figures.
- 6 By the end of April 2015 clarity had not been forthcoming and I escalated the matter via my assurance statement (paragraph 139 of my first statement) and, eventually at a regular DETI Senior Management Meeting on 29th May 2015 (Andrew McCormick’s first statement WIT-10512). A separate meeting was subsequently convened on 3rd June (WIT-10513) to discuss the RHI. The meeting was chaired by the Permanent Secretary. The outcome was broadly three strands:
 - pursuing budgetary issues;
 - dealing with the value for money of the scheme;
 - dealing with the absence of DFP approval for the non-domestic scheme.
- 7 The DfE statement of 19th May 2017 (WIT-00114) and Dr McCormick’s statement of 22nd May 2017 (WIT-10516) record a further meeting of 17th June (the two statements are very similar and one seems to be based on the other for this period). Dr McCormick briefed the Minister on 8th June (DfE WIT-00114).
- 8 While the June meetings were necessary and helpful, I found the position in June



frustrating. This centred on a number of issues – the need to straightforwardly ask DFP/Treasury for budgetary clarity; the legislative constraints we found ourselves in; the need to get on with tiering and esoteric debate about the format of DFP re-approval of the scheme

Budgetary Clarity

- 9 The outcome of discussions on the budget was that we should approach DECC. I felt that pursuing budgetary questions with DECC would not yield answers. Seeking budgetary clarity through established channels (i.e. DFP and, thence, HMT) was required. As the DfE/McCormick statements record, we had already questioned whether DECC RHI funding could be used for NI (DfE paras 289 & 290 – WIT-00112) in late May 2015. This had been tacked onto a meeting about Electricity Market Reform. The (predictable) outcome was that DECC said that it was a matter for DETI/DFP/HMT. I could not understand why we did not simply write to DFP (to get them to write to HMT) to definitively establish the nature of the budget.
- 10 I wrote to DECC on 7th July 2015 and received a reply on 5th August 2015 on a number of financial questions. The basic answer remained that the budget was a matter for HMT not DECC. The emails are in the papers provided to the Inquiry in advance of my statement.
- 11 Shortly, prior to this (29th June 2015) is an email from me to Dr McCormick (WIT-10642) which is annexed to his first statement. The email concerns the drafting of a letter from DETI to DFP on RHI approvals. It notes that should the approach to DECC prove a dead end, DFP would need to write to HMT. This was an attempt to press a point in an uncontentious manner which I perceived Dr McCormick was reluctant to pursue. Rightly or wrongly, at the time, my perception was that he and finance colleagues did not wish to challenge DFP or imply that they might somehow be remiss. As far as I am aware, a straightforward letter asking for budgetary clarity was never sent.

Legislative Constraint

- 12 In May 2015 Ms Brankin suggested that we cease entering commitments on RHI. This was frustrating because it was not in Energy Division's (or Finance Division's) power



to decide that matter. It was a matter for the Minister and, ultimately, the Assembly. It was also the case that we could not cease entering into commitments. There was still no clarity on the AME budget so the advice to “just stop spending” was not very helpful.

Tiering

- 13 Mr Wightman and I already felt (from mid-May) that the key issue was to introduce tiered tariffs and that we should submit advice to introduce this as soon as possible (as I say in paragraph 143 of my first statement). I felt that the main concern at the June meetings appeared to be the question of regularity of expenditure and qualification of the Department’s accounts. Obviously, these are fundamental requirements of the public expenditure system but did not the means to solve the problem.

Format of Re-approval

- 14 Part of the delay in formulating a response to the RHI problems, at least in terms of DFP approval, lay in not being clear precisely what the format of or requirements for “re-approval of the RHI Scheme” consisted of. As I recall debate centred on whether it was necessary to “re-do” the RHI business case (which would have taken a considerable length of time) or whether a lesser review would suffice. Some of the issues are reflected in emails about how to approach DFP during 16-19 June 2015 (my papers to the Inquiry).

2 Please describe the relationship between Energy Division and Finance Division within DETI during the period covered by Phase 3 (including, in particular, whether there was any disagreement and/or dissatisfaction as between the two Divisions as to how the RHI Scheme should be dealt with).

- 15 Like all DETI Divisions, Energy Division provided information to Finance Division to co-ordinate financial returns and respond to budgetary exercises for DETI as well as managing its budget. Finance Division also coordinated business planning activities as well as the casework process. Energy Division bid for funds through Finance Division and received its financial allocations from Finance Division.



Communication with other financial bodies such as DFP were via Finance Division. The main conduit for communication with Finance Division was Energy Division's Finance Officer, Sandra Thompson.

- 16 These arrangements were unexceptional in my experience though casework was particular to DETI. The finance function tended to dominate DETI's approach to its work.
- 17 During the period covered by Phase 3 the two Divisions variously worked together, debated, disagreed, misunderstood or distrusted one another. Relations were probably as often strained as they were harmonious. From my perspective Finance Division was good at demanding information and not very good at providing it when Energy Division asked for help. I imagine that mine is not a unique business unit perspective on its finance division.
- 18 In attempting to answer this question I would distinguish between DETI Finance Division and the wider "finance function" (including DFP, Treasury, the DETI Board etc). In dealing with RHI during this period we encountered two problems with the "finance function":-
- (i) it proved impossible to get a straight answer to the questions we raised in late March 2015 about the nature of the AME budget;
 - (ii) there was a dislocation between the finance function and wider issues. It was as if only financial factors (such as gaining DFP re-approval for the scheme) mattered – regardless of the necessity to change the law to effect changes in the scheme. The only people who could decide this was the Assembly.
- 19 Finance colleagues would, of course, point to Energy Division's failure to meet the terms of the original DFP approval regarding review and re-approval of the scheme. As indicated above, I was not aware of the terms of the original approval letter. Equally, Finance Division or DFP could have issued a reminder.

3. Provide such further details as you can of the *"initial contacts with the SPAD in June in an attempt to pave the way to get the introduction of*



tiering agreed' (as discussed in paragraphs 153 to 154 of your first witness statement at WIT- 14555). Without prejudice to the generality of the foregoing, please:

- a. Describe the contact you had with the Special Adviser;
 - b. Specify how, where and when this contact occurred;
 - c. Outline the approach or attitude which you understood the Special Adviser to take in relation to the introduction of tiering at that stage (and the basis for any such understanding); and
 - d. Describe what concessions, if any, you consider had already been given (and how this came to be so) *in advance of the finalisation of the submission to the Minister of 8 July 2015.*
- (a) 20. Probably around early June I recall speaking to Mr Cairns about the RHI. I explained what the scheme was, that it was one of DETI's two major schemes to incentivise renewables, that we needed to make changes to the scheme for reasons of budgetary controls and that this would require legislation and a debate in the Assembly. I said that the changes would not win the Minister any popularity and I noted that the Minister personally supported renewables. One reason I recall the conversation is that Mr Cairns advanced a more cynical reason for the Minister's support for renewables as being electorally advantageous in South Belfast.
21. My recollection of the discussion is along the lines I have described in paragraph 153 of my first statement. That is, I suggested degression and tiering and Mr Cairns suggested there was no need to do everything at once – However, on re-reading paragraphs 153 and 154 I may have conflated the later extension of October to November for the timescale for introduction of tiering into this earlier conversation (first sentence of paragraph 154 is certainly out of place and should be at the end of that paragraph or in the next).
- (b) 22. As far as I recall, this was a face to face meeting in Mr Cairn's office in



Netherleigh. I cannot be specific on timing but this was probably after the 3rd June senior officials meeting on RHI and subsequent RHI update meeting with Chris Stewart on 5 June but before the London meeting with DECC on 10 June.

23. It is only fair to acknowledge that my memory is fallible but I am reasonably content that I met with Mr Cairns in early June. I was unsure whether there would be any documents to support my contention that discussion took place in June but I note that Mr Cairns had other DUP meetings and conversations with/special advisors on RHI cost controls in June 2015 (WIT-20053/4, and WIT-20056 and WIT-20058). See also WIT-22515, paragraph 9 of former Minister Bell's statement which refers to June/July 2015.

(c) 24. I don't recall having an interaction with Mr Cairns specifically on RHI previously. I don't recall Mr Cairns having a pre-existing "position". I would characterise his attitude as, "we'll do the difficult thing if necessary; don't make it more difficult than it needs to be; put it in a submission".

(d) 25. As described in paragraph 153 of my first statement and above – tiering first; degression later – frankly, what was possible anyway.

4. Provide as full details as you can of the extent to which you (a) were aware of,

(b) directed or encouraged, and/or (c) sanctioned or acquiesced in, the provision of information about the Department's intentions as to the introduction of tiered tariffs to the renewable heat and/or farming industries by your officials (in particular, Stuart Wightman and Seamus Hughes) from in or about mid-June 2015 onwards.

26 I did not direct, encourage, sanction or acquiesce in the provision of information about the Department's intentions to introduce tiering in June 2015. By the end of June I was aware that the RHI Branch was receiving queries about proposals as mentioned in paragraph 149 of my first statement. I was on leave for much of July 2015. By August



our intentions appeared to be common knowledge. I did not direct etc communications with stakeholders. It was usual in Energy Division for the heads of branches and senior branch members to take lead on stakeholder engagement in their specific area. This was a valuable activity. I was aware that there had been discussion between the Branch and stakeholders including Moy Park about the proposals. I advised Mr Stewart and Dr McCormick of this interaction in an email of 20 August 2015 (IND-05719). This was prior to formal announcement of the changes. Given the widespread knowledge of the proposals it would have been hard to honestly maintain silence. It is also the case that we would have expected to have policy clearance by that point. Engagement with stakeholders is a feature of policy development and there was advantage in having an indication of stakeholder reaction and views – albeit allied to a risk of altering the industry to imminent changes. Suggesting proposals is not the same as pre-announcing government policy.

- 5. Arising out of paragraphs 156-158 of your first witness statement (at WIT- 14555/6), please provide such further details as you can, including (butwithout prejudice to the generality of the foregoing):**
- a. To whom (in terms of your line managers) you passed on the issue of potential applicants being aware of the intention to introduce tiered tariffs; when you did so; and what, if anything, was the result.**
 - b. Provide details of precisely what was discussed at the meeting with Moy Park at which you and Mr Stewart were in attendance.**
 - c. Explain why you say that advance knowledge was a "*persistent problem*" (in paragraph 158 of your first witness statement) and how you consider this came to be.**
 - d. Please also set out how, in your view, the industry knew of the**



Department's intentions as early as June 2015 (see paragraph 149 of your first witness statement at WIT-14554).

- (a) 27. My line managers were Chris Stewart and Andrew McCormick. I would have mentioned this in the meetings on RHI in June 2015 (and 3 and 17 June senior officials meeting on RHI). RHI meeting on 5 June with Chris Stewart and 8 June meeting on Energy with Chris – WIT 11535).
- (b) 28. I believe that the meeting referred to occurred on 17 February 2016. See Q26 below. I have confused matters by mentioning it in paragraph 157.
- (c) 29. Because of stakeholder contact which appeared to be well informed of governing policy developments before they had been announced. This probably reached a nadir in around February 2016 when stakeholders appeared to have greater knowledge than officials.
- (d) 30. At the time I assumed that the mostly likely explanation was that details had been relayed through SPADs. It is the case that DETI had issued public documents that would have alerted stakeholders that something was happening in October 2015. Indiscrete engagement with the industry by officials has also been highlighted by the Inquiry.

6. In paragraph 147 of your first witness statement (at WIT-14553) you have indicated that you *"wished to avoid lengthy consultation because [you] anticipated that there would be a spike in application prior to the introduction of tiering as applicants sought to beat the deadline to get the higher tariff"*. As to this: do you now, and did you at the time, consider that the same concerns arise as a result of applicants being informed of the Department's intentions *outside* a formal consultation process?

31. I accept that informal consultation could have similar effects. A formal consultation period was, at that time, I think, a minimum of 12 weeks. A recent comparable consultation on the NIRO side had taken 15 months. I rejected this as too long to make the changes that were, in my view, obviously needed. I did not anticipate that the

changes that were proposed in July would take as long to implement as they did or that they would be disclosed so quickly such that by August 2015 they appeared to be common knowledge. This is regrettable though, for all the faults, still quicker than a formal consultation.

7. Evidence available to the Inquiry (including, by way of example, the email from Mr Wightman, copied to yourself, of 23 July 2015 at DFE-10031) suggests that DETI officials, including yourself, were aware of the possibility of a spike occurring as early as mid-July 2015. As to this:

- a. When were you first conscious of (i) the possibility of and (ii) the actuality of a spike in applications to the Scheme occurring?**
- b. What steps, if any, did you (or DETI generally) take in order to (i) avoid or (ii) minimise a spike in applications in or around summer/autumn 2015?**
- c. Do you consider that more could or should have been done in order to avoid or minimise the spike which ensued in autumn 2015? Please give reasons for your answer.**
- d. Why do you consider it was (again, see paragraph 149 of your first witness statement) that the Department underestimated the**

(a) 32. Specifically, in this instance it is likely that we appreciated that there could be a spike associated with the proposal for tiering from the outset – May/June 2015. Stuart Wightman included estimates for a spike in forecasts for scheme expenditure. Without checking, I think these may have been two or three times normal application levels – so around 150 in the months prior to tiering. Actual levels far exceeded these forecasts. The magnitude of the actual spike probably became apparent around October 2015.

(b) 33. The actual spike of autumn 2015 was unanticipated in its magnitude. This was a limiting factor to our reaction of itself. We regarded a spike as an unavoidable

and an inevitable consequence of the way the scheme was set up in legislation. Legal Advice had already been sought on queuing and the need to keep paying scheme applicants. We sought to introduce tiering as swiftly as reasonable with what we regarded as a minimum notice period avoiding the need for consultation by linking the proposal reference to the 2013 consultation.

(c) 34. Without having the legislative power to suspend or curtail the scheme options were limited. The way the scheme was established made it very hard to avoid the spike. Had we obtained clarity on the budget earlier, we might have been able to proceed more quickly – demonstrating that financial risks would crystalize. If tiering had been introduced from the inception of the scheme, the spike could have been avoided. If we had realized the risks earlier, we might have been able to introduce tiering at the same time as the domestic scheme. Further issues on closure and suspension are at the answer to question 16.

35. Leaving aside the constraints of the scheme. It might have been possible to curtail public information (e.g. asking DARD to suspend any promotion) or to have taken more measures to stress confidentiality in relation to the policy proposals;

(d) 36. We did not have sufficient understanding of the market and how quickly boilers could be installed. I was not involved at the outset of the scheme and did not have historical knowledge. There may have been a supply surplus due to digression in England and a high demand in NI due to industry foreknowledge.

8. Describe your view and understanding of the relationship between Minister Bell and his Special Adviser Timothy Cairns during the periods covered by the Inquiry's Phase 3 and Phase 4 work. In particular, but without prejudice to the generality of the foregoing, provide such details of you can of:

a. Any differences or disagreements between the Minister and his Special Adviser (including any such differences or agreements as arose during the Ministerial trip to London on 9-10 June 2015);



- b. The circumstances of Timothy Cairns' absence from the Department from in or around 10 to 29 June 2015 and of his return to work in the Department at that time; and**
- c. The working relationship between the Minister and his Special Adviser;**

if and insofar as you believe such matters did have, or may have had, an adverse effect on the Department dealing effectively with the RHI issue during the periods covered by Phases 3 and 4 of the Inquiry's work.

- (a) 37. At a breakfast meeting I attended on 10 June, the Minister and SPAD disagreed about the Minister's freedom to make decisions. The context many have been decisions about the future of the NIRO but I cannot be certain. The crux of the disagreement was that the Minister said words to the effect that "I am the Minister, I can do anything". Mr Cairns said that any decisions were subject to clearance by the Party (I use this word as a generality, I do not recall if Mr Cairns was more specific, referring to "party officers" or "the first minister" or the collective group of "special advisers"). The discussion became more heated and the Minister asked Andrew McCormick and myself to excuse him while he and Mr Cairns continued the conversation. Subsequently, in the car on the way to meet with the DECC Secretary of State, I said to Mr Cairns that he should make a particular point (unrelated to RHI) to the Secretary of State. The Minister said Mr Cairns would not be attending the meeting (which he did not). . It was very unusual for the inner workings of political party power structures to be exposed in front of civil servants in this manner.

- (b) 38. Following the events described above Mr Cairns was absent from the Department and the role of SPAD not filled. I subsequently learned that Mr Cairns was sick. Initially I assumed the illness to be political in nature but as time



went on and Mr Cairns was not replaced, I thought it possible that he was unwell. I do not believe I was aware of issues around Mr Cairns being dismissed by the Minister and then, despite this, reappointed.

39. I do not recall anything particular in relation to the RHI regarding Mr Cairn's return to work. I do recall a discussion about a NIRO press release which had some connection to the meeting with the Secretary of State.
- (c) 40. As regards the working relationship between Minister and SPAD and whether this had an adverse effect on dealing with RHI, I do not recall speculating on this very much. I had met Mr Cairns fairly early in when he became DETI SPAD. He stressed to me that Minister Bell was not someone who became involved in the detail of issues, undertook lengthy preparation or was good at absorbing complex submissions. Mr Cairns had been Minister Bell's SPAD when he was a junior minister so I assumed they had a reasonable working relationship. Even after the dispute in London, I assumed that they had patched up any differences as Mr Cairns had returned to his post.
41. There was a point – either late August/early September 2015 or during January 2016 – when I asked Andrew McCormick if Jonathan Bell realised that, legally, he was personally responsible for decisions or lack of them in DETI and that he would “carry the can” for actions on RHI and NIRO. This was in the context of the Minister appearing to be less involved in decision making than, in my opinion, he should have been. Finally, in January/February 2016, I understand that relations were becoming increasing strained between Minister Bell and his Party's leadership. At this point – whatever had transpired earlier – Mr Cairns helped to secure various approvals and actions to get the scheme closed.



9. **Please explain as fully as you can why you consider (see paragraph 149 of your first witness statement) that the introduction of tiering took longer to introduce than imagined. (In the course of your answer please also address, separately, the reasons, in your view, for the additional two weeks delay in the implementation of tiered tariffs, from 4 November 2015 to 18 November 2015.)**

42 Tiering took longer than imagined due to the time taken to get 1) Ministerial clearance; 2) financial clearance and 3) legal clearance and because of the constraints of the way the RHI scheme was set up. This was compounded by lack of clarity on scheme funding.

- Context: The scheme was set out in legislation and could not easily be altered. It had been established with no controls. This could only be changed following an Assembly debate. This is lengthy process. There was a lack of clarity around funding which meant that we did not perceive the funding risk to be as high as in December 2015. The scale of uptake during autumn 2015 was also unanticipated.
- Ministerial clearance – This is set out at question 10 below. It took two months to clear the submission of 8 July. The agreement which was necessary to get approval added an extra month.
- Financial clearance – Approval for future funding of the scheme was only provided in October 2015. The need to secure Ministerial clearance in order to obtain financial clearance is set out in paragraph 162 of my first statement.
- Legal Clearance – DSO cleared the amendment regulations in October 2015 and this had a knock-on effect in terms of Assembly scheduling putting the debate back to mid-November.

The last point is the reason for the two weeks delay in November – though the more



fundamental causes arise from the first 3 points.

10. **Provide as full details as you can of any discussions you had with the Special Adviser (Timothy Cairns) throughout the period of July to September 2015 in relation to the RHI Scheme and/or the 8 July 2015 submission to the Minister (including, where possible, the date of any such discussion, who was present and the nature and content of the discussion, insofar as you can recall it)**
- 43 See my answer to question 3 for my earlier interaction with Mr Cairns. Once we had submitted the 8 July submission it was his job to clear it (subject to whatever questions, clarifications or comment he wished to contribute) and pass it to the Minister for decision. This did not happen as set out below.
- 44 On 17th July 2015, Mr Wightman followed up on clearance of the submission of 8th July (see email from Mr Wightman to me included in bundled of papers sent to Inquiry). It may have seemed premature to press for clearance after a week over the July holidays but, as I have explained, this was in the context of having attempted to pave the way for clearance. Mr Wightman's update advised that the Minister's PS, Mr Kerr, had said the Special Adviser was consulting party colleagues.
- 45 On 28th July there was a meeting between Mr Stewart, Mr Cairns and myself on the 8th July submission – in particular its non-clearance (I was on leave for most of the period between the issue of the submission and this meeting). This is recorded on Mr Stewart's statement (WIT-11538) and reference is made to an Annex 5 (which I could not locate).
- 46 On 30th July, I provided Mr Cairns with a note of the discussion which he had requested for use by him in discussion with those he was consulting. Whether he did so or not is unknown to me. However, this was some 20 days after receiving the submission and the note was reflected what was already in the submission. Mr Cairns had not suggested that he did not understand any aspect of the submission. I did not

receive any communication on the note.

- 47 On 11th August, I responded to a request for an update on RHI from Chris Stewart. This noted that Mr Stewart had already issued a reminder on 7th August to Mr Cairns on clearance of the 8th July submission. Mr Stewart then relayed Mr Cairns request for the limit of the tiering to be raised (i.e. made more generous to applicants). I sought advice from Mr Hughes and went back to Mr Stewart with that advice. I note there were some further exchanges. All these emails are in the documentation sent by me to the Inquiry prior to my statement.
- 48 By 20th August, I raised the issue of non-clearance again (IND-05719) and Mr Stewart raised the issue of a Ministerial Direction with Mr Cairns (he had already hinted at this on 11th August).
- 49 On 24th August, Dr McCormick and I met with the Minister and Special Advisor. I have no clear recollection of the meeting but an email from me to Mr Cairns of 27th August IND 05723 (JM papers provided to Inquiry) records the outcome. This informs Mr Cairns that the submission of 3rdJuly has been altered (from the start of October 2015) to the agreed deadline of early November for implementation of the tiered tariff. The note says Energy Division will work to that deadline if the Minister cleared the submission. The Minister eventually cleared the submission on 7th September.
- 50 At paragraph 154 of my statement, I say that clearance was achieved under threat of invoking the Ministerial Direction procedure and by conceding an extra month's delay in implementation. Mr Cairns statement confirms the discussion of a Direction and expresses surprise at our willingness to agree the November extension (WIT-20021). At WIT- 20066 Mr Cairns gives a different account of these events, suggesting that I proposed the later date of November. For clarity, this is contrary to my recollection and is at odds with my follow-up emails (which were not contested at the time).
- 51 I would have dismissed Mr Cairn's suggestion that we willingly agreed to the extension as having no substance until I trawled through TRIM records over the past



couple of months. I have discovered an email from Mr Wightman on 24th August 2015 advising me that we would struggle to meet the deadline of the start of November, let alone the start of October. (TRIM Ref. EC1/17/0140086).

My assumption is that I had attended the Ministerial meeting and told Mr Wightman that agreement had been secured if we changed the deadline. The timetable was, presumably, in response to this.

- 52 Looking back, it seems obvious that the timetable would have slipped due to the length of time taken to obtain clearance. As I recall it was always our intention to avoid slipping below 6 weeks between announcement and implementation. Again, obviously, we had been pressing for clearance because of concerns about the timetable. Nonetheless, I have no recollection of knowing that administrative concerns now called the October deadline into question. If I had been, I cannot understand why I would not have pointed out at the meeting that the delay in approval already meant that changes could not be introduced as planned. My recollection is that, in discussion with Stuart Wightman, I insisted that we attempt to stick to the start of November deadline – having addressed the most intractable issue – Ministerial agreement – we could not delay for administrative arrangements.
- 53 To follow on the narrative of clearance I instructed Stuart Wightman to alter the implementation dates on the Ministerial submission of 8 July and re-submit it. This was done and the Minister eventually cleared the submission on 3rd September 2015.
11. **Without prejudice to the generality of the preceding paragraph, please give as full details as you can of:**
- a. **Your meeting with Timothy Cairns (along with Chris Stewart) on 28 July 2015 (including, in particular, what 'additional caveats' to the AME funding for the Scheme were discussed at that meeting); and**
 - b. **The Issues Meeting of 24 August 2015, at which the Minister approved the submission with an amended timescale for the**



introduction of tiering (explaining, insofar as you can, who proposed the additional time; what attitude each of the attendees at the meeting took to this; and why there appear to be no minutes of this meeting or recorded reasons

c. for the Minister's decision).

54 See answer to 10 above.

12. Did you consider that there was 'reluctance' (as suggested by Dr Andrew McCormick) on the part of the Minister and/or his Special Adviser to either (a) provide a decision on or (b) approve the recommendations set out in your Division's submission of 8 July 2015? If so, please give reasons for your answer (including how you discerned such reluctance and why and from where you considered then, and consider now if different, any such reluctance arose).

55 I anticipated that getting a decision would be difficult for the reasons set out at Q13 below. Personally, I did not have engagement with the Minister until the end of the period in question (meeting on 24 August). Agree to proceed was based on extending the timescale for implementation until November 2015. It still took a while to get the submission signed (7th September). It was also the case that the point had been reached of seeking Ministerial direction.

56 My view at the time was that Mr Cairns was attempting to delay or avoid a decision on the submission. He said that he was consulting others. This is evidenced by his request for a note to use in discussion with others arising from the meeting on 28 July (IND-05708). Stuart Wightman's email of 17 July (IND-05687) also refers to this. I was, therefore, aware that discussions were ongoing "behind the scenes". I was aware of Dr McCormick's and Mr Stewart's view that Andrew Crawford was still very influential in DETI matters. While I could well believe this, I have regarded Mr Cairns and the Minister as being responsible for clearance. Stuart Wightman's email of 17 July also records that Mr Cairns had read the July submission. This had not resulted in questions



so I was disappointed that there was a need to provide a further note arising from the 28 July meeting.

13. **Explain why you thought (see paragraph 144 of your first witness statement) that it would be *"very difficult to obtain political agreement for an unpopular measure with the heat industry"* .**

57 It is difficult generally to get NI's political system to deal with unpopular measures;

- The "easy answer" for NI is often to go back to GB to ask for additional support rather than take a potentially unpopular decision. To some extent this happened on the NIRO. It could result in extended timescales.
- The Minister was likely to receive criticism in the media from "Green" groups;
- The Minister may have been lobbied by farming or agri-food interests as well as installers. (There was a belief or expectation that DETI's role was to promote NI business).
- It is very easy to put incentive/support schemes in place and very hard to remove the support (as the experience on the NIRO showed);
- Measures had recently been taken and were being taken to curtail support for renewable energy;
- Minister Bell had stressed that he supported renewable energy and the proposals could be seen as contrary to this.

14. **In relation to paragraph 168 of your first witness statement (at WIT-14558), please provide further details of the *"allegations of abuse of the RHI"* of which you became aware around Autumn 2015 (including when you heard of the allegations; from whom; what the nature of the allegations were; and what, if anything, you did in relation to this).**

58 Apologies if I have misunderstood the question which may arise from poor drafting of paragraph 168) but the matters referred to are described in paragraphs 169-171 of my statement. I cannot recall a great deal more detail. I believe that the conference I spoke at was on 10 September 2015 (shortly after the announcement of tiering). I imagine, at the time, that I replied to the person alleging abuse by saying that action was being taken.



59 In paragraph 171 of my statement, I say that I discussed this with Stuart Wightman in terms of securing additional audits from OFGEM. Stuart did follow this up in writing. I also mentioned this to Dr McCormick.

15. In respect of your email of 17:16 on 11 August 2015 (at DFE-278983/4), please address the following issues:

a. Where did the "*suggestion of heating empty sheds*" to which you refer in that email come from? What awareness did you (and the Department generally) have about this issue of potential abuse at that time?

b. In respect of the identification of a potential rate of return of 38.46% with a 3,000 hour tier threshold:

- What consideration (if any) was given at that stage to the possible rates of return available under the Scheme as it then stood (with no tiering)?
- Did the rate of return identified above not give rise to concern on your part in respect of non-compliance with the EU Commission's State Aid approval (and EU law more generally)?
- What, if any, further steps were taken to investigate or address issues of potential over-compensation at that time?

(a) 60 The phrase refers back to the cyclical nature of what we understood to be the heat requirement of the poultry industry. It was, roughly, saying that the 1314 hours could be justified by higher levels might be seen to provide an incentive when none was necessary. I do not think this is the same as, "we know that there is a widespread practice of heating empty sheds" (do we even know that now?) The note came about in response to a request from Chris Stewart relaying a suggestion to raise the tiering level from Mr Cairns. I sought advice



from Mr Hughes. Our advice was provided very swiftly. My concern was to rule out any suggestion of diluting tiering I would have been keen to make an overwhelming case against the suggestion as quickly as possible. I felt that the suggestion was a delaying tactic I doubt I gave the phrase about heating empty sheds much thought beyond thinking that it was persuasive. If challenged I would have said that we should not incentivise scheme members to squander heat.

(b)

- (i) 61 It was considered that the rate of return for the un-tiered scheme was around 33% or 3 years. These figures are taken from the Business Case Addendum (e.g. WIT-14955).
- (ii) The question of complying with State Aid approval was a concern. There was discussion of the possibility of retrospective action.
- (iii) Legal advice was sought on the issue of retrospection (though at what point I am not sure). The priority was to try to get tiering introduced.

16. Explain why the Department did not move, with the introduction of the 2015 Regulations, to either suspend or close the Scheme or, at least, provide itself with the power to do so (particularly in light, for instance, of the contents of the policy template of 7 July 2015 purporting to set out the Department's intentions, at DFE-120432/3). In the course of your answer, please explain what consideration was given to such a course in the summer/autumn of 2015; and whether you consider that greater or earlier consideration of this issue ought to have occurred.

- 62 The Department did not close the RHI scheme in autumn 2015 as a number of factors which led to the scheme's closure a few months later were not apparent earlier:
- the budgetary impact was not clear – indeed, DETI's AME budget had been increased by the requisite amount in July 2015 leading to the expectation that the costs of the demand-led scheme would be met;
 - the extent of the spike was not anticipated;



- the business case addendum suggested that addressing tiering would, at least temporarily, bring spending under control.

- 63 There was still a PfG and EU target to meet, the basic premise of trying to replace more polluting fossil fuels was still sound and there were and the economic benefits of the RHI for NI had not been subject to the negative media presentation that followed the scheme's closure.
- 64 Turning to suspension, DFE 120432/3 is one of the policy templates prepared by the RHI Branch as part of the Phase 2 work on the non-domestic scheme. The question seems to imply that the policy template suggests a suspension power whereas it recommends tiering which is consistent with the recommendations in the submission of 8 July and the eventual policy adopted. In the "Rationale" section the policy template includes what looks like a cut and paste from the Cost Control section of the consultation of 2013. This was not followed through at this time because we thought it would not work. Mr Wightman has suggested that this is because it would result in queuing applications until the following year at which point the system would be instantly overwhelmed. I would add that it depended on being able to define the annual budget – a point upon which we were still seeking clarity in 2015 (depending on how matters are viewed we had, in fact, either already exceeded our budget or had no budget or had a budget that was demand led) . Also, determining when a certain percentage of the budget (whatever that was) had been reached was not straightforward and would have needed to be analysed in light of Mr Wightman's work on forecasting the RHI budget. There did not appear to be the necessary background work to support the proposal. In short it was not considered feasible. The recent point made by the Inquiry in oral evidence – that the 2013 cost control proposals could, in effect, have been used as a suspension power– did not occur at the time.
- 65 Consideration of the inclusion of a power to suspend the scheme occurred and legal advice was sought. My interpretation of this was that including a power to suspend would require formal consultation (IND 05659-05662). The above considerations on closure also apply, particularly uncertainty around the budget. There would have been a desire to avoid undermining the scheme by introducing an unconstrained power for



Government to close the scheme arbitrarily. This would undermine the confidence of those we wished to invest in renewable heating. When I looked at the GB legislation in around May/June 2015 and saw that DECC had introduced and then rescinded a suspension power, I, wrongly, concluded that this had been considered an inappropriate avenue to pursue rather than the stop-gap measure which it was.

- 66 In around September 2015, Stuart Wightman suggested the inclusion of suspension powers in the draft regulations. I rejected this for the legal reasons around consultation and because we did not have Ministerial clearance. From my perspective, we had just managed to get agreement to tiering after two months to go back to say that we now wanted a power to suspend at this late juncture would result in unacceptable further delay to the introduction of tiering with no guarantee that the inclusion of suspension would be agreed anyway. I have not had time to check dates and cannot recall if the suggestion to include a suspension power post-dated the announcement of policy in early September 2015.

Phase 4

17. Please explain:

- a. The background to the Energy Division submission for the Minister of 31 December 2015 (at WIT-11740, amongst other places in the Inquiry's places) and why the situation had escalated at that stage; and**
- b. How and when that submission was cleared by the Minister.**

- (a) 67 The magnitude of the spike on October/November 2015 was not anticipated. This added significantly to RHI costs. The revised AME budget – even with additional funding provided in July 2015 – was now well short of the actual spend. Because of this we had put a paragraph in the Minister's speech in the debate on the amendment Order on 17 November 2015 warning that further measures might have to be taken (IND 05821)



- 68 In addition, the 29 October 2015 DFP re-approval for the non-domestic scheme going forward limited approval to March 2016, “due to uncertainty around future funding of the scheme”. (IND-05841) (There was a mistaken belief that the scheme would be closed across the UK). In early November Energy Division began work on powers to suspend the scheme as a result (e.g. IND-05799). I cannot recall if this work was overtaken by the need to take through the tiering legislation, the need to await the Comprehensive Spending Review of 25 November or issues around referring to DFP in the RHI legislation.
- 69 The HMT Statement of Funding Policy which accompanied the Spending Review and Autumn Statement of 25 November 2015 (quoted in my first statement at paragraph 107) appeared to support the view that the NI RHI was an AME Programme. However, the spike and a reduction in DECCs budget meant there was a significant shortfall even in the increased NI RHI budget. This caused increased concern that closure may be necessary and the prospect may have been raised to Ministerial level at this time (IND-05843). Nonetheless, there was still not clarity on the budget.
- 70 On 7 December there were warnings from DFP that Treasury would not cover the shortfall and we were asked to provide bullet points for DFP in discussion with Treasury to see if there was any room for negotiation.
- 71 As noted in my statement (paragraph 176) on 21 December 2015 Chris Stewart (IND 05863) advised me that the AME budget for RHI would be capped at the population equivalent level with additional funding met from NI DEL budgets. This meant closing the RHI scheme (absent the very remote possibility that the Executive would be willing to fund RHI above the population equivalent level). (In fact, the DFP letter of the same date says “HMT are still considering the funding issue” (IND 05861).
- 72 Chris asked for advice. I provided a draft submission by 23 December (IND 05866). This was circulated for input by senior staff and eventually issued to the Minister on 31 December. It invited the Minister to agree to close the RHI scheme and approve procurement of additional audit checks for the non-domestic scheme.



73 The various email exchanges between Chris, Andrew, myself and others during this period show:

- that the main question was how to close the scheme in a legally acceptable way without provoking or facilitating a further spike in applications;
- that there was a debate over closing or suspending the scheme (amounted to the same thing in reality);
- that we were trying to estimate the financial impact of various RHI scenarios;
- that we were attempting to take forward the preparation of legislation to effect closure (Instructions and draft regulations were sent for legal advice on 12 January 2016 – IND 05882);
- that we were also dealing with both securing additional outside audit of the scheme and arranging for an internal audit review – in particular its terms of reference;
- that, despite its urgency, RHI work was intertwined with other extremely urgent and contentious work especially closure of the NIRO.

(b) 74. As far as I recall the submission was not cleared by the Minister. There is an email to me of 12 January from Chris Stewart saying that the Minister had accepted the advice on RHI (WIT 11746). I recall being concerned about the absence of formal written clearance and raised the matter in my subsequent submission of 19 January (WIT 02785, paragraph 1). Ultimately, the submission was overtaken by events.

18. Please explain:

- a. **The background to the further Energy Division submission of 19 January 2016 (at WIT-02784, amongst other places in the Inquiry's papers);**
- c. **Why the Minister was not provided with a recommendation which would have seen the Scheme closed or suspended in the shortest possible time;**



- d. **Whether, and if so why, a closure or suspension of the Scheme in March 2016 was considered to be adequate to meet the concerns which had given rise to the need for such action; and**
- e. **Your understanding of the circumstances of the 'recall' of the Minister's decision to clear the submission of 19 January 2016 (on Friday 22 January) (see, for instance, your email of 22 January to Chris Stewart and Andrew McCormick at WIT-11768).**

(a) 75. On 19 January, I sent a further submission to the Minister setting out detailed actions leading to closure and seeking his agreement to these actions. This submission noted that we had still not received written clearance of the submission of 31 December 2015. (The submission is Annex 124 of the Department for the Economy Statement and in TRIM – EC1/17/0140321). The submission recommended a three week consultation period, pursuing the normal procedure through the Executive and involvement of the Departmental Committee. This might be described as the “standard procedure” for clearing policy/legislation. The advice concluded that this could result in closure by “early/mid-March. The various documents that were necessary to effect such a procedure were attached (draft Executive paper, draft consultation paper, draft letter to Departmental Committee Chair).

76 The Minister cleared this submission but authorisation was rescinded at the last moment (see below at 18d). To follow through on the succession of submissions, a further attempt to secure Ministerial agreement to closure was made in my submission of 29 January 2015. Due to the ebbing away of time (against the deadline of the last date for legislative change in mid-March 2015, consultation was now down to two weeks and the urgent procedure adopted for Executive clearance. The ETI committee was still given its place in the process. A number of options were presented. The fastest (without consultation) resulting in closure at the end of February 2015; the slowest, with consultation, resulting in closure in mid-March.



- 77 A second submission of 29 January provided a draft letter to the Finance Minister which was the first step in securing agreement to the recommended process. I cannot recall why this took the form of a separate submission. Possibly it was simply a way of getting the earlier submission of 29 January issued more quickly.
- 78 The final submissions in the chain of Ministerial submissions from 31 December 2015 to early February 2016 were the submissions of 3 and 4 February 2016 from Chris Stewart which recommended dispensing with consultation, using the urgent Executive procedure and setting aside the processes involving the Departmental Committee.
- (b) 79. My submission of 31 December 2015 provided advice on “immediate closure” (WIT 11744). It explained why it might be counter-productive in terms of timescales to close the scheme forthwith. If this provoked a challenge it could extend timescales. If this resulted in failing to meet the last date for Assembly debate in mid-March, the financial consequences could be very significant.
- 80 There was something of an absolute deadline on RHI closure in that the Assembly was to rise due to elections in May 2016 making 14/15 March the last days for debate in the Assembly. If this deadline was not met, the scheme would stay open until summer or autumn 2016 at the earliest with escalating financial consequences. It is easy, with hindsight, to criticise the advice on consultation. However, the Department’s concurrent attempts to close the NIRO were judicially reviewed around this time and did result in closure of aspects of the NIRO being delayed beyond the 2015 election.
- 81 I had been advised that the Minister had agreed the submission of 31 December (see 17b above). This included agreement to closure with consultation so I might not have considered it necessary to raise the issue again. Legal advice throughout January 2016 had continued to emphasise the need for consultation if the Department was to act in a defensibly lawful way. It may also have been the case that prompt action on 19 January submission might have allowed closure in similar timescales to what eventually occurred even with consultation, i.e. “early, mid-March” (WIT-02786,



paragraph 5).

82 Further, it is easy to forget that the number of applications for the non-domestic RHI in this period (December/January 2016/17) were 2 and 5 respectively. The financial situation was still, of course, extremely serious and we had referred to the prospect of another spike.

(c) 83. See 18b above. I considered the advice appropriate. The whole process is correctly summarized in paragraph 345 of the DfE Statement (WIT 00128) as a balance between legal and financial risk. As the time to conduct a safer process for closure diminished (against the March 2016 deadline) more risks were incurred of legal challenge with consultation going from 3 to 2 weeks, then the urgent Executive procedure replacing the normal procedure and, eventually, consultation being dispensed with altogether along with the normal procedure for clearing draft legislation through the Departmental Committee.

84 My submission of 19 January (Annex 124 of the DfE Statement; TRIM EC1/17/0140321) set out a timescale encompassing consultation and committee procedures which could have seen closure by “early/mid-March”. The scheme eventually closed on 29 February without these procedures.

(d) 85. Late on 22 January (a Friday), clearance was given to issue various documents to set in train the closure process but this clearance was withdrawn some 20 minutes later (IND 05892) . Subsequently (25 January), it was explained by the DETI Minister’s special advisor that the decision on RHI (and NIRO) closure was, “in the hands of DUP party officers” (IND 05893).

19. Please explain:

- a. The background to your further submission to Minister Bell of 29 January 2016 (at WIT-02804, amongst other places in the Inquiry's papers);**
- b. Again, why the Minister was not provided with a**



recommendation which would have seen the Scheme closed or suspended in the shortest possible time;

- c. The background to your further submission of the same day (at WIT- 11808, amongst other places in the Inquiry's papers);**
- d. Your understanding of how it appears that the Minister changed his mind as to the appropriate option to be adopted (comparing paragraph 1 of the submission mentioned at sub-paragraph c. above with paragraph 1 of the submission from Chris Stewart of 4 February 2016 at WIT-02818); and**
- e. Your understanding of the involvement of any other Ministers or Special Advisers (external to DETI) at or around this time.**

(a) 86. See 18a above. Following the recall of the 19 January submission emails of 26/27 January show that the issue was escalated to the top of the NICS without result (see particularly Andrew McCormick of 26 January to David Sterling and Chris Stewart – WIT 30829 Annex to DoF Statement). This recorded that Andrew had spoken to Malcolm McKibben about the delay in closure and the inability to do more to get closure.

87 Nonetheless, on 27 January, Mr McKibben wrote to Andrew McCormick asking him to expedite closure.

88 On 26 January DFP Public Spending Director, Mike Brennan, is recorded as alleging lack of action by DETI in closing the RHI (unnumbered paragraph at the foot of WIT-30060 of the DoF statement). There is an email exchange between Mike Brennan and DFP special adviser Andrew Crawford, (26 January) annexed to the DoF Statement (referred to as C11.20, WIT-30831). In this, Mike Brennan says he discussed DETI lack of action on RHI closure with Andrew Crawford who, “would take forward the issue at a political level”. Andrew Crawford replied that this is a matter for the DETI Minister (also WIT – 30831).

89 From 28 January, there were continued senior level interactions and, as a result, continued revision of timetables to accommodate more and more truncated timescales for closing the RHI scheme. This is reflected in further submissions from me (set out at



18a above).

90 The final version of advice contained in a formal submission is dated 4 February and signed by Chris Stewart (Annex 126 of the DfE Statement and TRIM EC1/17/0140278). Closure on 16 February was announced and subsequently revised to 29 February.

(b) 91. As above at 18b. The submission does set out an option for immediate closure (albeit still with Committee involvement). It explains the rationale for the recommendation (i.e. proceeding to closure including consultation) but says it is a very difficult judgement and that all options are feasible.

(c) 92. As above at 18a

(d) 93. The Minister received different advice between the two submissions. The submission of 29 January says that the First and Finance Ministers suggested setting aside consultation but, having taken legal advice, on balance we suggest retaining consultation (now down to 2 weeks). The 4 February version advises dispensing with consultation as a result of consulting the Finance Minister. I note the 3 February version of this submission refers also to OFMDFM. The political reality behind this may be that, having involved the Deputy First Minister during the period between 29 January and 3 February, his party had insisted on immediate closure. However, these events were happening well above my level and I could be mistaken.

(e) 94. The Department of Finance had become involved in the process of closure as a result of the need to seek the Finance Minister's views as a result of adoption of the urgent procedure. The OFMDFM had become involved as a result of the need to adopt the urgent procedure. The DFP involvement would have arisen from the DETI Minister's letter to the Finance Minister of 29 January 2015. The involvement of OFMDFM would have been on the basis of informal contact ahead of the submission of the urgent procedure paper on 4 February. However, other DUP SPADs had been involved earlier – see for example 18d) above – as had various DFP officials.



20. Describe your understanding of the role of Energy Division, and the DETI Minister, in the period January to February 2016, in light of the fact that the issue of Scheme closure and suspension had been identified as an issue requiring referral to the Executive Committee.

- 95 Under the Ministerial Code certain issues including those that are cross cutting or controversial must be agreed by the Executive. The normal procedure is quite lengthy involving circulation of a draft Executive paper, receipt of comments from other Ministers, submission of a revised paper taking account of comments and scheduling of the paper on the Executive's agenda.
- 96 Adoption of the urgent procedure for submission of papers (which occurred on RHI) involves simply gaining the agreement of the First and Deputy Ministers to the Executive paper (after having obtained comments from other Ministers who are affected). Either way it is DETI's role (primarily Energy Division's in this case) to prepare the necessary papers and seek the Departmental Minister's approval for issue just as it would if DETI was making decisions without needing to go to the Executive.
- 97 Paragraphs 341 and 342 of the DfE Statement give misleading interpretations of this situation. Paragraph 342 suggests that the Minister approved closure on 22 January but that the decision was delayed due to the natural escalation of the issue to Executive level, "and was now explicitly for Executive consideration". It adds that this was, "not surprising, nor inherently untoward". (WIT 00127).
- 98 This seems to be based on an assumption that responsibility for decision making on RHI had somehow transferred to the Executive or to the First/Deputy Minister (as opposed to resting with the responsible Minister) and contributed to prolonging the decision on closure at the time. The political reality may have been that the DETI Minister felt he had little choice but to act as instructed by his party but I recall saying to Andrew McCormick that I hoped the Minister understood that he was responsible for acting on RHI.



99 However, the effect of the prolonged decision making on RHI may have had little impact on the overall timetable.

21. Provide any evidence of which you are aware which relates to former Minister Bell's concerns as to the amendment (or, in his words, 'cleansing') of the submission of 4 February 2016 by his Special Adviser, Timothy Cairns.

100 I do not believe I have any knowledge of this beyond what I have read in other statements (e.g. WIT 11547/9 paragraph 85-90 Chris Stewart's statement) and what I have noted at 19d) above.

22. Provide details of any lobbying in respect of the proposed closure of the Scheme of which you were aware during the period of January to February 2016.

101 I take lobbying to be approaches by interests outside government. I do not recall being approached in this regard. There was, as I recall, plenty of correspondence (e.g IND-05968 which I passed on to Chris and Andrew). Stuart and Seamus would have borne the brunt of telephone contacts. We developed lines to take or a script during this period to give a consistent message. Chris, Andrew and I met with Moy Park on 17 February (IND 05988 for note).

23. Provide details of any reluctance to close the Scheme on the part of any Ministers or Special Advisers of which you are aware or which you believe to have been material, setting out the basis for your answer.

102 From 22 January to 11 February 2016 many of the discussions and decisions about RHI closure were taken at more senior levels and political levels than I was directly involved in. However, certain themes were apparent to me:

- Various people in the renewable heat and agri-food sectors were appraised of policy developments from early January 2016.
- It was very difficult for DETI officials to get political level decisions during January 2016. This was illustrated on 25/26 January when two separate special advisers reported the position (that the matter was with DUP party officer or



that it was with the DETI Minister).

- By 3 February the DETI special advisor asked if there was a way of circumventing all procedures (including the Assembly) to close the scheme (IND 05952).
- There was no lack of effort or delay by DETI officials in responding to the quickly changing circumstances during this period.
- As well as the work around managing closure of the scheme, Energy Division was also working with legal advisers to prepare legislation, attempting to estimate the cost implications of various scenarios, and contribute to establishing the history of RHI as recriminations started to circulate at senior level from January.

All the while these events were taking place in parallel with the equally fraught NIRO closure.

24. Provide any evidence of which you are aware in relation to the ultimate decision to postpone the proposed date of suspension of the Scheme from 15 February to 29 February (including who made this decision; why; and what, if any, analysis was undertaken as to the effect or estimated cost of the further delay).

103 The final version of advice contained in a formal submission is dated 4 February and signed by Chris Stewart (Annex 126 of the DfE Statement and TRIM EC1/17/0140278). Agreement was given by the First and Deputy Minister on 9 February (TRIM EC1/17/0140260). Closure on 16 February was announced but as reactions against closure began to be received a later closure date of 29 February was announced on 11 February and a letter sent to the Finance Minister (IND-05975). The letter says that the postponement of closure is with the agreement of the First and Deputy Ministers and is to address industry concerns about closure. By this stage my recollection is that decisions were being made above my level.

25. Set out whether DETI anticipated a further spike in applications during the period immediately prior to the suspension of the Scheme and, if so, what (if any) steps the Department took to (i) avoid or (ii) minimise a spike in applications in or around February 2016?



- 104 I recall that we (mainly Stuart Wightman) worked on a number of forecasts which probably included spikes in applications. However, as decisions on closure changed quite rapidly during this period I am not sure how closely we were able to predict the scenario that did unfold.
- 105 The action that we recommended to deal with the budgetary situation was to close the scheme as quickly as possible (which included giving reasonable notice in the circumstances). This was the main way of avoiding a prolonged period of increased applications. An increase in applications prior to closure was inevitable given the nature of the way the scheme had been set up.

26. Provide as full details as you can of the extent to which you (a) were aware of, (b) directed or encouraged, and/or (c) sanctioned or acquiesced in, the provision of information about the Department's intentions as to the suspension of the Scheme to the renewable heat and/or farming industries by your officials (in particular, Stuart Wightman and Seamus Hughes) from in or about January 2016 onwards.

- 106 I was not aware of, directed or encouraged, sanctioned or acquiesced in the provision of information about the Department's intentions on suspension in this period except that:
- I and other Energy Division staff were involved in preparing public notices or statements on closure of the scheme by the Minister or the Department;
 - I was involved in the clearance of some correspondence (whether this was mainly before or after closure, I cannot recall);
 - I, with the Branch, developed standard lines or responses to queries on the scheme. Again, whether this was predominantly before or after closure, I cannot recall;
 - I, along with Chris Stewart and Andrew McCormick met with representation of Moy Park on 17 February 2016(WIT 11554). We discussed issues around scheme closure and the benefits of renewable heating to the poultry industry. I recall Moy Park representative explaining how the industry worked.



107 On 11 January 2016, I reported to Dr McCormick and Mr Stewart that the Energy Division Renewables Branch had been getting calls about the schemes closure on 31 March (IND 05880). On the following day I reported that the Branch had been told that Moy Park had instructed suppliers that the RHI would close and to make applications swiftly.

General

27. Provide such other information as you consider relevant, or of which you consider the RHI Inquiry ought to be aware, (a) having regard to the Inquiry's Terms of Reference in the context of Phases 3 and 4 of the Inquiry's work; and/or (b) having regard to the contents of the further disclosure provided to you by the Inquiry on 31 May 2018.

108 After the decision to close the RHI scheme in early February 2016, the following weeks were taken up with preparing for the Assembly debate on the Regulations to provide the powers to effect closure. There was also a committee session in addition, there was, naturally, a great deal of fallout from installers and applicants to the Scheme who were concerned or angry at its closure. There was for example, a meeting with Moy Park (17 February) and very many items of correspondence. There were operational matters to sort out with OFGEM on actual closure and on dealing with allegations of abuse. (Meeting 24 February, telephone conference 16 February). At the same time I was responding to the DETI Internal audit investigation on the RHI scheme (IND 06032). There was also a great deal of work to clarify the financial consequences of RHI going forward – particularly by refining forecasts (no easy task in light of factors such as seasonal adjustment and estimated v actual costs). Work to analyse the “spike” in applications of October/November 2015 also required attention. A full list of actions is at tab J of J. Mill’s papers to Inquiry dated 3 March. Many of these actions were still ongoing when I left DETI at the start of May 2016. As usual, the ability to deal with them all was constrained by resources. It also remained the case during my remaining time with DETI, that closure of the NIRO was a pressing issue.



109 I cannot think of other information in the time available to address Notice 118. If these occur subsequently, I will submit them.

Statement of Truth

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

Signed: _____  _____

Dated: __18th June 2018_____