

RHI REF:

DATE:

## Witness Statement of: John Mills

### I, John Mills will say as follows:

1. I make this statement to address matters raised in the most recent Statement submitted to the Inquiry by Mr Trevor Cooper dated 4 September 2018.
2. In Paragraph 11, Mr Cooper gives an account of exchanges at the senior management team meeting of 29<sup>th</sup> May 2015. Mr Cooper says that he pointed out that the Scheme was already over budget. However, it was in fact I who raised RHI at the meeting because of the budgetary position with the scheme. It had been clear to Energy Division for several weeks that that the existing AME forecast was insufficient to cover Scheme expenditure. This was raised directly with Mr Cooper by Mr Wightman on 7 May (WIT 02704). This email raises several queries around the nature of the RHI budget (which we had been trying to resolve for several weeks). I do not accept the portrayal of my own or Energy Division's position as being simply one of demanding more money with Finance trying in vain to raise other issues. This is a good narrative for Finance but one based on hindsight. . It eaves aside questions of establishing the real nature of the AME funding and the fact that there was not an "RHI budget" for 2015/16 – only an AME forecast and an inferred "budget" based on DECC's budget. Finance Divisions have an obligation to provide clarity on the nature of finances and to tell business units what their budgets are.
3. In paragraph 11 Mr Cooper claims to have been aware of the "*absence of tiering*".
  - (i) I believe this was highlighted by Energy division by early June 2015 – not in May. This is consistent with paragraph 13 of the Mr Copper's statement (i.e. that Mr Cooper only sent an e-mail raising concerns about the scheme on 12<sup>th</sup> June 2015. In fact, in paragraph 12, Mr Cooper states that Top Management was apprised of the numerous issues, including the absence of tiering, at the meeting of 3<sup>rd</sup> June 2015. This accords with my recollection of events.
  - (ii) If Mr Cooper was aware of the absence of tiering prior to this, why did he not bring this to the attention of Energy Division?
  - (iii) However, if Mr Cooper claims he was aware at an earlier stage then he should be able to set down for the purposes of the Inquiry what steps Finance Branch took to check the viability of the scheme from 2012 onwards.
4. In paragraph 4 and, again, at paragraphs 16 and 25, Mr Cooper seems to imply that Energy Division chose not to represent Ms O'Hagan's concerns in senior management discussions. The importance of Ms O'Hagan's statements were not realised by Energy Division staff in post at that time and her correspondence was not known to me. It is not the case, as perhaps implied by Mr Cooper, that Mrs O'Hagan's concerns were concealed. It remains a mystery to me, and as yet remains unexplained by Mr Cooper, why immediate action was not taken in 2013 when Ms O'Hagan first raised her concerns and discussed them with DETI officials?

5. In paragraph 14 Mr Cooper suggests (or implies?) that Finance Branch were pressing for closure of the scheme by June 2015:
- (i) While Ms Brankin's e-mail of 20<sup>th</sup> May 2015 (DFE 277173) had suggested ceasing expenditure on the scheme, there is limited evidence to suggest Mr Cooper or Finance Division corporately continued to press for closure after Energy Division explained that legal advice was such that we could not close the scheme without consultation. Evidence shows that Finance Branch accepted this advice.
  - (ii) In fact, Finance Branch asked Energy Division to "talk to DECC" about the financing of the Scheme on 3<sup>rd</sup> June (as noted in DFE Corporate Statement at WIT 00113) (and later asked for details of "their contact" in DECC). DFP's Michelle Scott e-mailed Mr Cooper on 29<sup>th</sup> June 2015 asking DETI to speak to DECC (WIT 18767).
  - (iii) Mr Cooper prepared a note to DFP seeking re-approval (DFE-146624/5) in late June 2015 which did not mention a need to close the scheme. This note underwent significant revision from Mr Cooper's original. I suggested a redraft on 29 June (DFE-10120/23); this was commented on by Dr McCormick (DFE-10113/17) and eventually issued by Mr Cooper on 1 July 2015 (DFE 10127/29). Despite the exchanges on the letter and the ground it covered there is no suggestion of a Finance view that the Scheme should close. Closure is not included in the list of options for future controls at paragraph 8 of the letter (DFE-147445). If Finance felt so strongly or were as sure about closure as Mr Cooper's statement now says, this is hard to explain.
  - (iv) What is apparent from the development of the letter of 1 July is that I attempted to introduce questions about the nature of the RHI budget but these were removed so that it ended up with no questions or actions for Finance/DFP. What remained were solely actions for Energy Division – the business case addendum, confirmation of the legal position, measures to deal with value for money/controls and engagement with DECC on budget issues that should have been directed to DFP.
  - (v) DFP, following advice from Finance Division in Mr Cooper's note of 1<sup>st</sup> July and the submission of the Business Case Addendum, gave re-approval to the scheme on 29<sup>th</sup> October 2015 (WIT 30810-30812). It follows that if DFP and Finance had thought the scheme needed to close they would not have taken steps to secure re-approval.
6. A similar point is made in paragraph 7 where it is suggested that I did not, "take on board the advice from the head...Finance...around potential overcompensation...up to January 2016...and that the issues...were lack of budget." The accusation that I thought the only answer to problems with RHI lay in obtaining more money would not seem to square with the fact of the introduction of tiering throughout the latter half of 2015. It is also at odds with the letter sent by Mr Cooper to Ms Scott on 1 July 2015, paragraph 8 of which sets out the measures being considered by Energy Division in the short and long term (DFE-10129): tiering, degression & tariff reduction.
7. In paragraph 21 Mr Cooper implies that the process of preparing the Business Case was materially delayed by me, by reason of my apparent instruction to Stuart Wightman to work on the "Energywise" business case rather than prioritising RHI.
- (i) This is factually incorrect. Stuart Wightman was reporting directly to Chris Stewart in relation to "Energywise". I did not issue instructions to Stuart Wightman to prioritise Energywise.

- (ii) That this was the case is actually confirmed by Mr Wightman in his oral evidence (Day 75 page 100 line 9).
  - (iii) If (as Mr Cooper now contends) the correct priority was not being given, I am at a loss as to why Mr Cooper did not voice his concerns.
  - (iv) In contrast to Mr Cooper's comment, the only discussions I recall having on this point are with Mr Stewart. These discussions occurred on a number of occasions throughout the latter half of 2015. They concerned whether Energywise should be halted to enable the Energy Efficiency Branch to focus solely on renewable heat. It was agreed not to halt Energywise. Considerable risks (of raising costs to large energy users) were attendant on such a course of action and Mr Stewart had plans to supplement grade 7 staffing in the area arising from a gateway review of the Energywise project.
  - (v) As can be seen from the current 30 strong RHI team in DfE, Energy Division's resources were inadequate to deal with RHI in 2015. At paragraph 18, Mr Cooper recounts a suggestion that a tariff review be carried out across all RHI technologies. Given that Energy Division was already struggling to deal with tiering and degression at the same time, how was the proposal for a tariff review to be taken forward? Mr Cooper, and not I, was a member of the Departmental Resource Group which had already turned down additional staff for Energy Division on the domestic RHI.
  - (vi) In paragraph 8 Mr Cooper mentions Mr Smith, the economist placed in Energy Division. He was involved in the development of the Business Case addendum and was available to assist Mr Wightman. Mr Wightman maintained the spreadsheet which set out the effects of RHI payment including tiering. It is not clear to me why Mr Cooper thinks it would have made a difference if Mr Smith had maintained the spreadsheet. It was available to people in the Division, including Mr Smith.
  - (vii) Finally, on the business case addendum at the end of paragraph 8, Mr Cooper makes comments which imply that I relied only on Mr Wightman and then presented the addendum, "as being complete". My recollection is that Finance Division saw a number of drafts of the Business Case addendum rather than being presented with a final version at the end of the process. There was also a casework session in October prior to finalisation (which was attended by DFP). In any event, it had previously been agreed that Mr Smith was not independent of Energy Division and could not give economist sign-off to Energy Division business cases requiring corporate approval.
8. In relation to paragraph 22 and the reference to the Assurance Statement:
- (i) The Energy Division Assurance Statement was sent to all Grade 7's in Energy Division (similar to the rest of the Department) who completed them. I then collated these into a composite Energy Division Statement which highlighted that DETI Finance had not been helping with the RHI issues and that there were not enough resources. This, in turn, was collated into a Policy Group Statement by Mr Stewart. Tracked changes versions of the assurance statement show the sections which state that DETI Finance was "not forthcoming" were removed (WIT 14939). Bernie Brankin of Finance Division e-mailed Stuart Wightman on 17<sup>th</sup> June 2015 asking for the assurance statement to be reworded (WIT 18757).
9. In relation to paragraph 30, referring to my submission of 31 December 2015, Mr Copper suggests "a slightly different understanding of the nature of the historic funding" was represented to the Minister. The narrative being presented (see also paragraph 28 of his statement) is that

Finance warned Energy about the nature of the funding but that I ignored this advice, submitting a series of inaccurate submissions throughout the latter half of 2015. The reality was that Energy Division had sought clarity on funding in March 2015, that I had attempted to get clarity by escalating the matter in May 2015, that I sought to cause this to be pursued with DFP in July 2015 (DFE-10120/23; see paragraph 6 (iii) above), that Finance, DETI and DFP agreed extension of RHI in October and that Treasury finally provided unequivocal clarity in only in November 2015 (as far as I was aware). Finance Division had multiple opportunities to “correct” Energy Division work during this period – an example is given in (i) below:

- (i) This submission of 31 December 2015 was “cleared” with Finance Branch and others before being sent to the Minister (IND 05866). If Finance Branch considered it was flawed or misleading then it is unfortunate that they did not say so and suggest corrections. This would be the situation with other submissions during this period.
- (ii) In paragraph 28, Mr Cooper says that the risk of DEL penalties was highlighted to me by Ms Brankin in her e-mail of 24<sup>th</sup> August 2015 (WIT-02741). I already knew of this risk but not the scale that materialised because of lack of clarity around the funding position, which had been raised with Finance Branch several months earlier. In fact, the e-mail of 24<sup>th</sup> August informed me that, “the RHI budget in 2015-16 has been increased to reflect the £23.17m forecast requirements for the current year.” It goes on to say, “RHI AME is not standard AME” and that penalties are applied. However, there was still no confirmation of exactly what this meant – issues raised with Finance by Energy Division in March 2015.
- (iii) Paragraph 29 goes on to say that I failed to act urgently on a request for DECC to provide a Finance contact. Mr Cooper does not provide clarity on what follow up Finance took when I did pass the information to them. Such information would surely assist the Inquiry yet is absent from Mr Cooper’s Statement.
- (iv) I remain of the view that the Department should have been pressing DFP for clarity in any event. This is illustrated in my email of 29<sup>th</sup> June 2015 to Dr McCormick (WIT-10642).

#### Statement of Truth

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

Signed: \_\_\_\_\_  \_\_\_\_\_

Dated: \_\_\_\_\_ 16/10/18 \_\_\_\_\_