RENEWABLE HEAT INCENTIVE INQUIRY

RHI Inquiry
Headline Building
10-14 Victoria Street
BELFAST, BT1 3GG
T: 028 9040 8833
E: general@rhiinquiry.org
W: www.rhiinquiry.org

John Mills
C/O Michelle Malcomson
Departmental Solicitor's Office
Victoria Hall
12 May Street
Belfast
BT1 4NL

By Post and Email: michelle.malcomson@finance-ni.gov.uk

6 November 2018

Dear Madam,

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

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

I know you will by now be familiar with the work of the Inquiry and its Terms of Reference from your previous engagement with the Inquiry. The Inquiry is grateful for the witness statements and oral evidence you have already provided to it.

As you may be aware, the Inquiry is now in the process of seeking some further written evidence from witnesses and participants, particularly where issues have arisen in evidence recently provided in respect of which it is necessary, or appropriate, to provide an opportunity

for further response. The Inquiry Chairman also retains the right to require witnesses to attend to provide further oral evidence, and consideration will be given to whether that is necessary in light of additional written evidence which is received.

The Inquiry is likely to revert to you shortly seeking responses to a number of specific questions arising from evidence or documentation which has been considered by it in the course of its ongoing investigations or hearings. However, without prejudice to that requirement, it is considered that it would be helpful to now give you an opportunity to comment on two specific recent developments in order that the Inquiry might gain an early understanding of your position in respect of them, namely the recent oral evidence of Michael Woods (of 19 October 2018, found at TRA-15975 to TRA-16088) and the most recently received DfE corporate statement (DfE Corporate Statement No 12, of 26 October 2018, found at WIT-03560 to WIT-03576) which deals principally with a period of time during which 'Team 2' had responsibility for the RHI Scheme.

Please therefore 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 these two matters, as identified in the Schedule to the Section 21 Notice.

As indicated above, it is likely that you (along with others) will receive a more detailed notice in the coming days, and you are likely to be able to expand more fully on some of the issues touched upon in Mr Woods' evidence and/or the recent DfE statement in response to that notice. However, your response to the enclosed notice – which I acknowledge is required within a short period – will be of assistance to the Inquiry generally in considering how best to approach any further evidence-gathering which may be required in relation to these issues.

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

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

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

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

Yours faithfully

Patrick Butler
Solicitor to the RHI Inquiry
02890408928

SCHEDULE
[No 200 of 2018]

The evidence of Mr Michael Woods

1. You are referred to the oral evidence of Michael Woods[1] given on 19 October 2018 (see TRA-15975 to TRA-16088). In the course of his oral evidence, Mr Woods appeared to make a number of express or implied criticisms of your and/or other officials within DETI Energy Division's conduct as to:

   a. the adequacy of Energy Division's questioning in relation to, and evaluation of, the value for money of the RHI Scheme in 2015 and 2016;

   b. failure to bring relevant matters in relation to the RHI Scheme to the attention of Internal Audit and/or the DETI Audit Committee during 2015 and 2016;

   c. the adequacy or utility of responses provided during the course of the 2016 Internal Audit investigation in relation to the RHI Scheme and the level of cooperation afforded to that investigation; and

   d. failure to provide full information to Internal Audit, or in the course of the Department's preparation in 2016 for the Public Accounts Committee's investigation into the RHI Scheme, as to the existence of:

      i. the May 2014 handover note prepared by Peter Hutchinson; and/or

      ii. Janette O'Hagan's 2013 to 2015 email communications with the Department,

[1] Mr Woods' written evidence, in his witness statement of 14 September 2017, is at WIT-23001 to WIT-23078 (along with annexed documentation at WIT-23079 to WIT-23552) and has been available to you for some time in your capacity as an enhanced participant with access to the Inquiry's witness statement bundle.

and what had been done with or in respect of each of these.

Please set out any response you wish to make to the evidence of Mr Woods to the extent (a) that the said issues have not already been addressed in your existing oral and written evidence and (b) that the further material you wish to provide constitutes evidence of fact as opposed to mere commentary on the evidence of another witness or participant which would be more appropriate for submissions.

DfE corporate statement No 12 of 26 October 2018

2. You are also referred to the recently provided supplementary corporate statement provided by Mr Brendan McCann on behalf of the Department for the Economy dated 26 October 2018 (DfE Corporate statement No 12, found at WIT-03560 to WIT-03576), the contents of which are said to relate to "*the management and control of the Scheme from mid* 2014" and respond, *inter alia*, to written and/or oral evidence you have provided to the Inquiry.

Please set out any response you wish to make to the matters addressed in that witness statement to the extent (a) that the said issues have not already been addressed in your existing oral and written evidence and (b) that the further material you wish to provide constitutes evidence of fact as opposed to mere commentary on the evidence of another witness or participant which would be more appropriate for submissions.

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

Supplementary Corporate Statement

- Chris Stewart (**WIT-11501** to **WIT-12395**)
- John Mills (**WIT-14501** to **WIT-14997** and **WIT-26001** to **WIT-26009**)
- Stuart Wightman (**WIT-17001** to **WIT-17716**)
- Seamus Hughes (**WIT-14001** to **WIT-14100**)

The Statement also draws on:

- Andrew McCormick (**WIT-10501** to **WIT-11429**)
- Eugene Rooney (**WIT-24401** to **WIT-24456**)
- Trevor Cooper (**WIT-18501** to **WIT-19050**)

DATE: 26 October 2018

Witness Statement of: Brendan McCann

I, Brendan McCann, will say as follows:

1. This witness statement by the Department for the Economy seeks to supplement Stephen McMurray's previous corporate statement dated 19 May 2017. The statement deals with matters in relation to which I have no direct knowledge and, therefore, it has been produced with input from a range of colleagues across the Department and reflects the corporate view of the Department.

2. The Department has considered the witness statements provided by Chris Stewart, John Mills, Stuart Wightman and Seamus Hughes, and the related oral evidence heard by the Inquiry to date. The statement also draws on the witness statements and evidence provided by Andrew McCormick, Eugene Rooney, Shane Murphy and Trevor Cooper.

3. The purpose of this statement is to seek to assist the Inquiry in clarifying issues which the Department perceives arise from the witness statements mentioned above, relating to management and control of the Scheme from mid 2014.

4. In providing this supplementary statement the Department does not seek to apportion blame or suggest any final conclusions, and the Department remains fully committed to providing evidence in a fair and balanced manner. However, the Department considers it is necessary to respond to particular comments made by individual witnesses where they disagree with our corporate evidence.

5. In providing this supplementary statement the Department will briefly identify areas of dispute. As some of this ground has been covered in the Opening Statements by Counsel for the Inquiry, we have endeavoured to only add additional explanatory material where necessary.

6. It is important to note that this statement references sections of material from the evidence bundles which are marked for redaction by the Inquiry. The Department has not carried out any redactions of quotes or references to that material, therefore the Inquiry will want to consider this matter before publishing this statement.

Knowledge of Energy Efficiency Branch work and relevant policies

7. The Department has already accepted the criticisms arising in the NIAO Report (**CAG-01680** to **CAG-01697**) which highlighted the failings in the oversight and management of the Non-Domestic RHI Scheme. Specifically the report found that the Department had not properly monitored and controlled the Scheme, but rather had relied overly on the work being done by Ofgem (**CAG-01694**).

8. Officials joining Energy Efficiency (EE) Branch (previously Renewable Heat Branch) in June 2014, have asserted that senior management had identified the domestic RHI Scheme as the priority for action. Nevertheless, officials were aware that they also held responsibility for, “management of the Non-Domestic

RHI Scheme", as this is included in the Branch Plan from as early as July 2014 (**DFE-419612**).

9. However, not all of the actions in the Branch Plan for 2014/15 were progressed and John Mills noted in Stuart Wightman's 2014/15 performance appraisal that Phase II of the Non-Domestic Scheme (which would have introduced cost controls) had "had to take second place" to other priorities (**DFE-430507**). In the Department's view, the decision to defer the Phase II work was taken without a full consideration of the risks, and without the rationale for the decision being formally documented and agreed with senior management (Grade 3 and above).

10. During oral evidence it was confirmed that officials in EE Branch accessed documents and regulations relevant to the Branch's policy responsibilities on an occasional basis in response to work on specific issues but that they did not "sit down and read the regulations from start to finish" (**TRA-05833**, **TRA-09183** and **TRA-09571**). EE Branch held responsibility for both Schemes and it is reasonable to expect that incoming staff should have been fully informed of: the working basis (including any statutory duties for the Department as set out in the legislation); the policy intent; the nature of approvals; and the parameters under which the Schemes were operating. The Department would suggest that unfamiliarity with any new role should encourage the post holder to actively investigate the scope of their work and new responsibilities.

11. The Department has identified this as a point of learning, and will seek to be more explicit in future around the need for new staff to read and understand the legislation which underpins their new role. This is especially important in a situation where there is no continuity of staff at management level, and where consideration is being given to deferring actions in the work area, due to the limited staff resource being required to focus efforts elsewhere. The Department acknowledges that the unusually high level of staff change in this case contributed to the loss of corporate knowledge, and had a negative impact on the management of the Scheme. In this regard, the Department recognises and appreciates the need for continuity of staff who have knowledge and experience

to be available to support incoming staff and where there is change, especially at management level, there should be robust “handover” processes.

12. The Department has acknowledged that omitting to implement robust project management principles was a key failing (**WIT-03281** to **WIT-03282**). Arguably, EE Branch may not have been in a position to remedy this in late 2014, with resources being largely occupied with the launch of the domestic RHI Scheme. Despite the lack of a robust project management structure, it would have been beneficial for the key background information, referred to above, to have been reviewed and understood by the new team at the outset. As officials had not reviewed the key background information (**TRA-05833**, **TRA-09183**), they were not sufficiently informed to recognise that the Scheme was not operating as had been intended.

13. The Assurance Statement submitted to Chris Stewart in May 2015 confirmed, with regard to Energy Division, that:
    a. Necessary DFP approvals for expenditure had been obtained;
    b. Programmes and projects were managed in accordance with good practice including, where appropriate, Gateway Reviews, Prince II Methodology and guidance that issues from Central Procurement Directorate;
    c. Authority, responsibility and accountability within the Group are clearly defined so that decisions were made and actions taken by appropriate people; and
    d. Staff within the Group were made fully aware of their job responsibilities (**DFE-387439** to **DFE-387510**).

    These assurances do not appear to have been provided as a result of due diligence in relation to RHI. The Department will ensure that its Corporate Governance Division will remind staff at middle and senior management level of the steps that should be taken in relation to the completion of assurance statements, providing additional training as necessary. Corporate Governance Division will also advise senior management (Grades 3 and 5) of the importance of testing the answers given to them by their management teams.

Handover note - understanding of priorities

14. The Department is unaware of any evidence of active consideration of the degree of priority merited by each of the actions on the "Immediate actions (by end August 2014)" list from the Handover Note (**DFE-383318**). In the Department's view, where work cannot proceed to address actions that have been identified as requiring immediate attention, there should be an informed consideration of the inherent risks – particularly in this case where the risk was identified as a financial one i.e. "to prevent excessive payments" (**DFE-419612**).

15. The "Immediate actions" list part of the Handover Note (**DFE-383318**) indicated that urgent consideration should be given to reviewing existing tariffs, highlighting biomass under 100kW as requiring urgent attention, and suggesting tiering as a potential "solution" (**DFE-383322**). The Department is not aware of any evidence to suggest that advice and support was sought from the Analytical Support Unit (ASU) in the Department, which could have assisted with a review, given the previous experience of the ASU economists at the time when the tariffs were originally set. Neither is there evidence that Energy Division considered using its own dedicated economist, who was embedded permanently within Energy Division, and whose work programme was set by Energy Division, to progress this work. It would have been advantageous if the reference in the Handover Note to potential overcompensation had prompted urgent attention from officials in EE Branch.

16. The Addendum Business Case submitted by EE Branch in October 2015 (**DFE-285372** to **DFE-285399**) seeking DFP approval for the continuation of the RHI Scheme stated that:

> *"Ministers prioritised introduction of the domestic RHI including deferring other measures which would have slowed down its introduction."* (**DFE-285374**)

The "other measures" referred to include consideration of a cost control mechanism for management of the overall RHI Scheme budget. The failure to recognise that this was an issue which was separate from the need for review of

existing tariffs (and the potential introduction of tiering), meant that the exercise to determine value for money was mistakenly deferred. The Department is not aware of any evidence which supports the assertion that prioritisation of the Domestic RHI Scheme was determined at Ministerial level.

Monitoring of Scheme applications and usage and comparing these with assumptions underpinning the Scheme

17. It was submitted in oral evidence that EE Branch monitored application numbers and payment levels under the Scheme for budgeting purposes (**TRA-06978** to **TRA-06981**). However, no comparisons were carried out between the typical boiler size applying for accreditation and the usage profile, with the underlying assumptions of the Scheme upon which the business case was based (**PWC-04676**). This meant that it was not recognised that average boiler capacity and load factors were well above those projected in the CEPA work. The need to carry out regular reviews to check that the CEPA assumptions were accurate was articulated in the Regulatory Impact Assessment for the Scheme (**DFE-143870**).

18. The tariff level, based on the CEPA work, was made up of a number of component parts, of which, expected annual usage and capital costs were vitally important. As capital costs are heavily dependent on market conditions, ongoing monitoring of the level of such costs was crucial to ensure that the tariff level remained appropriate – this was promised in the original Business Case (**DFE-81038**, **DFE-81047**), the Regulatory Impact Assessment (**DFE-143870**) and the CEPA Reports (**DFE-400320** to **DFE-400321**, **DFE-317093**, **DFE-317098**). Capital costs and expected usage levels of the installations were noted by applicants on their application forms for the Scheme. Ofgem sent regular reports to the Department detailing the total number of applications, the installation capacity, efficiency and average hours of operation per week (as recorded on the application forms). Energy Division officials did not actively monitoring costs (**TRA-05849**, **TRA-06975**). The Department acknowledges there was overreliance on Ofgem for the management and administration of the Scheme,

however, it considers that the monitoring of usage should have been carried out by the Department.

19. This failure to monitor key component parts was a continuing failure. Assumptions made in the Addendum Business Case, submitted in October 2015 (**DFE-285372** to **DFE-285399**), show that Energy Division officials used incorrect and outdated assumptions of boiler capital costs which worked to overstate the assessment of the value for money of the tariff payments. This can be seen for a 199kW boiler in respect of which the Addendum Business Case estimates a rate of return of 12.8% based on a Tier 1 payment (capital return) of £11,531 divided by an original capital investment of £90,000 (**DFE-285389**). It is unclear why this capital investment figure was used, as Energy Division officials had received information in July 2015 from a local supplier indicating that biomass boiler capital costs in Northern Ireland were significantly lower, including £52,000-£53,000 for a 199kW boiler (**DFE-107153**). If this lower figure had been used, instead then the rate of return, using the methodology in the Addendum Business Case, would have been 22%, a return above the State aid approved level.

20. There were also other errors in the Addendum Business Case which included: no counterfactual capital cost; an erroneous application of the fuel efficiency factor; and an approach to calculating the rate of return that was inconsistent with the original tariff calculation. Correcting for these errors increased the estimated rate of return further to 39%[1].

21. The Department has already commented on the fact that documentation suggests that Energy Division officials in early 2015 were considering reductions to the single tier tariff level, to be introduced from April 2017 (**WIT-00106**). Ultimately, however, the starting Tier 1 level of tariff under the tiered tariff structure, introduced later in 2015 was based on the previous single tier tariff. Although there appears to have been awareness that this was too high (on the

[1] Removing the fuel efficiency factor increases the Tier 1 payment to £12,813. Applying the cost per kW of £97 from Table A.25 of the 2012 CEPA report implies that an 199kW oil boiler would cost approximately £19,300 so that the additional investment on the biomass boiler is £33,200.

basis that officials were proposing to reduce it), it was still recommended to DFP as part of the Addendum Business Case, as representing value for money.

22. The Department further notes that Energy Division officials were aware that there was the potential for Scheme recipients to receive excessive payments from as early as 11 August 2015. This shows that in considering the proposed change there was a risk of the payments being too generous and outside of EU approval levels. John Mills sent an email to Chris Stewart on 11 August 2015 (**DFE-293161** to **DFE-293162**) in response to a request from Timothy Cairns that the Department give consideration to the introduction of a tiered tariff to engage at 3000 hours as opposed to 1314 hours. John Mills' response stated that a tiered tariff engaging at 3000 hours would provide a rate of return of 38.46% which would be well outside of State aid approval limits. This e-mail indicates that Energy Division did know that returns had the potential to be higher than intended.

23. The Department notes that, throughout the period when changes to the Scheme were being discussed, there is no evidence of ongoing dialogue with GB officials in DECC while policy options were being developed. In view of DECC's experience of the impact of policy changes on operation and practice under the GB RHI Scheme, such engagement could have usefully informed Energy Division officials' deliberations. This again is a key learning point for the Department.

Scheme performance, the need for cost controls and review of the Scheme

24. As stated in oral evidence by Peter Hutchinson, there was an error in the draft business case for the Domestic RHI Scheme (prepared before Stuart Wightman and Seamus Hughes joined EE Branch), which referred to the first formal review of the Non-Domestic Scheme RHI commencing in 2015, with changes implemented in 2016 (**TRA-05145**). This is contrary to the previous commitments, on which DFP approval for the Scheme is based, and which was also repeated to the European Commission, i.e. that a review of the Scheme would commence in 2014. Stuart Wightman indicated that he understood from

this that the decision to defer the review had been taken prior to his arrival (**PWC-04664**).

25. Evidence presented by Energy Division officials involved in setting up the RHI Scheme (i.e. "Team 1") indicates that it was intended that ongoing "monitoring and review" would achieve cost control of the Scheme. However, it is the Department's view that the complete reliance on this activity as the sole mechanism intended to control costs would never have been adequate, in particular because the Scheme had no failsafe mechanism to allow urgent intervention if "monitoring and review" led to the identification of a problem. In addition, Team 1's intended approach was not appropriately conveyed to staff joining later, and it was not recorded anywhere in Divisional Management documents which would have ensured that the importance of a review was understood by new staff. This meant that the staff who later joined Energy Division did not recognise the need for review as a priority.

26. Commenting in his witness statement on his view of the "usefulness" of any such review being carried out in 2014, John Mills states:

> *"there would have been very limited data upon which to base any sensible analysis in 2014…Given the lack of data it is hard to see the benefit of a tariff review in early 2014 or that it constitutes a "missed opportunity". If, on the other hand, what is meant by a tariff review is, "a complete re-assessment of the original economic basis" for Non-Domestic Scheme RHI, perhaps this might have made a difference. However, I did not have the resources to fundamentally review Non-Domestic Scheme RHI or any other policy areas, nor was it indicated to me that a substantial overhaul review was anticipated."* (**WIT-14534**)

27. This view does not take into account that, as noted in the Department's witness statement clarifying issues on design, setup and launch of the scheme (**WIT-03279**), divergence from the load factors and boiler sizes assumed by the consultants would have been apparent from as early as 2013. It is reasonable to expect that this analysis would have happened in a Branch with responsibility for

managing the Scheme. This is the action that was anticipated when the Regulatory Impact Assessment was drafted which refers to:

> *"regular, planned, reviews of subsidy levels after a number of years of experience with the subsidy. This will provide an opportunity to amend tariffs if required and ensure they remain appropriate given potential changing market conditions".* (**DFE-143870**)

28. As has been demonstrated in the Department's Witness Statement of 24 November 2017 (**WIT-03280**), it would have been clear from the projected usage information, stated on the applicants' application forms, that the projected usage differed from the assumed usage profile upon which the economics of the Scheme had been based. As indicated in the Department's earlier statement, the projected usage information, as recorded on application forms for the Scheme, was sent to the Department on a weekly basis by Ofgem (**WIT-03278** to **WIT-03279**). These weekly reports were used to monitor the number of new applications received, but were not used to carry out comparisons against the assumptions underpinning the Scheme. At this stage, in mid 2014, some 198 applications had been received, 63% of which were for a 99kW biomass installation, with an average load factor of 45% resulting in an average annual payment of £22,900 as opposed to CEPA's assumed 50kW installation, 17% load factor and average annual payment of £4,500[2].

29. While staff in Energy Division have made comment on the fact that the projected usage profile, as reported by applicants, was understood to be unreliable – it was perceived that some applicants would under/over estimate for purposes of making their application more favourable – the *actual* usage figures associated with the payment information was also made available to the Department on an ongoing basis.

[2] 50kW * 17% load factor * 8,760 annual hours * 6.1p/kWh tariff = £4,542

Janette O'Hagan's email alleging abuse of the RHI Scheme

30. Janette O'Hagan, sent a strongly worded email alleging widespread abuse of the RHI Scheme to the Department in May 2014. The issues raised in her email were recorded in the Handover Note, which referred to Janette O'Hagan by name, along with details of where the email was saved on TRIM. As Janette O'Hagan received no response, she wrote again a month later in the same terms. The Handover Note was passed to incoming staff joining EE Branch in June 2014, and the Department is not aware of any evidence that they took action in response to the issues raised by Janette O'Hagan.

31. When Janette O'Hagan wrote to the Department again in March 2015, the email chain contained the 2014 emails, which described widespread abuse of the Scheme, and the comments on the importance of tiering in that context. A response was issued stating that changes to the Scheme were being considered, but that tiering was not being proposed. Janette O'Hagan responded the same day, reiterating the importance of tiering in addressing the perverse incentive to waste heat and expressed disappointment that the Department had not taken her concerns seriously, and had not taken any action in response to her repeated approaches (**WIT-17381**). This email was not responded to and no action or further investigation was undertaken by EE Branch. In the Department's view, Janette O'Hagan's warnings warranted immediate attention and swift action.

Policy Group Assurance Statement May and June 2015

32. On 29 May 2015, Chris Stewart sent the routine six monthly assurance for Policy Group[3] statement to Andrew McCormick (**DFE-277238** to **DFE-277239**). This included an explanation of the position on the RHI Scheme under the heading "Significant Internal Control Problems". The explanation included the following:

[3] ie his Grade 3 command within DETI

"Despite repeated requests for information from Finance Division (and DFP) The (sic) Division has yet to receive any clarity around the maximum available RHI budget going forward."

33. The same day, at the fortnightly Senior Management Team meeting, there was a sharp exchange of views between Trevor Cooper, the Finance Director, and John Mills, the Energy Director. John Mills stated that Finance Division needed to secure additional budget in relation to the Scheme. Trevor Cooper pointed out that the Scheme was already over budget and that whilst the Scheme had overspent, clearly there were more control issues with the Scheme than securing additional budget cover. At this stage Trevor Cooper was unaware of the lapse in Scheme approval (**DFE-278081**), or of the content of the Energy Division assurance statement (**DFE-277236**), but was aware of the overspend, the absence of tiering, and had been working with Energy Division over the previous two weeks to assist Energy Division to calculate its expenditure, including accrued expenditure, given the very significant shift in the forecasts provided by Energy Division over a 4 month period, which had suggested reduced forward budgetary requirements in 2015/16 no later than November 2014 (**WIT-02992** to **WIT-02993**). Andrew McCormick closed down the discussion in that meeting and called a special urgent discussion to address the issues more fully.

34. That meeting took place on 3 June 2015 (see **WIT-10588**). In the period between the Senior Management Meeting and the meeting on 3 June 2015, Trevor Cooper reviewed some of the original casework documentation (including the minutes of the Casework Meeting, and the DFP approval letter from 2012). It was this action that resulted in the recognition that Energy Division had not secured approvals for the scheme post 31 March 2015 and that ongoing expenditure was therefore irregular. At the meeting of 3 June 2015 there was a discussion on the range of weaknesses in the management and control of the Scheme: the overspend against the budget; the failure to review the Scheme as originally planned; the absence of the tiering of tariffs in the Scheme from the outset; the absence of a mechanism to constrain or cease expenditure on the scheme from the outset, without the introduction of primary legislation; and the

very significant and ongoing growth in demand for the Scheme for which there was no budget cover.

35. Prior to the meeting on 17 June 2015 there was an exchange of emails between Trevor Cooper and Shane Murphy in relation to their concerns about the Scheme (**DFE-146538**, **DFE-146546** to **DFE-146557**, **DFE-146565** to **DFE-146571**). At a subsequent meeting on 17 June 2015, attended by Andrew McCormick, Eugene Rooney, Trevor Cooper, John Mills, Shane Murphy and Stuart Wightman, Energy Division indicated that its legal advice was such that the only action that could be taken by the Department in the short term (estimated to take three months) was to introduce tiering on existing tariffs to dampen demand and improve VfM. The option to close the scheme was also discounted on the basis of Energy Division's representation of the legal position. They further advised in this meeting that the amendment of tariff levels and the introduction of budget/cost controls, which were absent from the Scheme, would each take between six months and a year from that date so there was no mechanism available in either the medium or short term to cease further additional commitment, or to reduce additional commitment other than the action to tier existing tariffs.

36. Trevor Cooper has stated in his witness statement that, at this meeting, he raised the issue of the Scheme being in breach of State aid rules and Shane Murphy suggested that an urgent focussed review of the Scheme be undertaken that would include a review of tariffs across each technology (**WIT-19058**).

37. It was on the basis of this legal advice from Energy Division (referred to in paragraph 35 above) that Andrew McCormick confirmed that urgent action should be taken immediately on the only short term option (as presented by Energy Division) being available to reduce the budget pressure from the Scheme, and improve its value for money as quickly as possible, with follow up action to be taken around the introduction of budget/cost controls and tariff review and amendments across the Scheme to follow on as soon as practicable (i.e. in six to twelve months).

38. Shane Murphy also advised Energy Division to discontinue promotion of the Scheme, so that demand was not further increased.

Delay in resolving non-standard AME and DEL penalty

39. The HM Treasury email of 2011 (**DFE-164136** to **DFE-164137**) was available to new staff in EE Branch from the outset, being referred to in the Handover Note. While the profile of the funding was unusual, the 2011 email from HM Treasury indicated that overspends would have to be recouped from the Department's future allocations and it referred separately, to a likely 5% DEL penalty which would also apply even if the balance could be recouped from future AME allocations.

40. The 2013 consultation document explicitly stated that the budget for the RHI Scheme was limited, and evidence shows that staff joining EE Branch in summer 2014 were aware of this, as they subsequently used this text to populate draft policy templates in early 2015, stating:

> *"The RHI is different in nature to the NIRO in that there is a finite budget for new installations and these budget limits cannot be breached."* (**DFE-117627**)

41. It seems to be the case that in 2015 the staff in Energy Division did not understand the true nature of the funding profile as described in the HM Treasury email. The evidence shows that Energy Division staff were actively seeking clarity on this from 29 March 2015: which indicated that they aware that the budget profile was in question. However, prior to that point (on 10 March 2015), Finance Division had formally confirmed the budget that Energy Division should work to and gave a clear signal that under no circumstances should commitments be entered into without budget cover (**DFE-195800** to **DFE-195804**, **DFE-195999**, **DFE-196000**).

42. At the meeting on 17 June 2015, Andrew McCormick instructed that the actions to regularise expenditure, reduce the rate of further budget commitment through the introduction of tiering, and seek further budget should all be given top priority.

However, Trevor Cooper has advised the Department that these actions were delayed because John Mills directed Stuart Wightman to prioritise work on the Energywise business case over the progression of work on the RHI addendum.

43. In spite of the fact that Bernie Brankin, in her email of 24 August 2015 (**WIT-02741**), again highlighted the potential for DEL penalties, Energy Division continued to incorrectly describe the nature of the funding, which was referenced again in a submission dated 6 November 2015, which sought the Minister's signature for the Motion for Approval for the draft 2015 Regulations (**DFE-123805**).

44. A slightly different understanding of the nature of the historic funding position was represented to the Minister in a submission from John Mills on 31 December 2015 (**DFE-122356** to **DFE-122361**) which referred to a "change in HMT policy" whereby the NI DEL budget would be liable for the full cost of the overspend, rather than only 5% of the overspend as had been (wrongly) understood, linking it to the Chancellor's Autumn Statement.

Engagement with RHI Recipients and the Renewables Industry

45. Paragraphs 308 to 313 of the Department's corporate statement of 19 May 2017 (**WIT-00118**, **WIT-00119**) provide information in relation to stakeholder engagement and the premature disclosure of the 2015 tariff reductions.

46. The Department notes the views expressed by Stuart Wightman in his witness statement around balancing the risk of legal challenge and the need to include specific details to render the consultation meaningful (**WIT-17066**). The Department accepts that these are legitimate points, but it does not consider that the process followed in respect of engagement with industry was in line with the guidance on policy making in Northern Ireland. The Department's understanding of those parts of the guidance that deal with consultation is that the process should be driven by Government. In practice, what happened from July 2015 onwards was that officials provided information on tariff reductions following approaches from the Industry.

47. There appears to have been some awareness of the risks involved in informing industry stakeholders of proposed changes in the Scheme, as Stuart Wightman refers to it when discussing the response to Janette O'Hagan's March 2015 email:

> *"in March we were already thinking we need to do tariff changes here at some stage but we wouldn't have written back to her and said 'we were doing tariff changes' because we don't want a spike, we don't want to let people know what we're necessarily doing"* (**PWC-04673**)

> *"I think when we received that email we were pretty clear what we were going to do tiered tariff [sic], we would need to do tier tariffs but I wouldn't have said that to any individuals for obvious reasons."* (**PWC-04683**)

However in the draft policy template dealing with cost control proposals shared with Ofgem for comment by EE Branch on 25 March 2015, tiering is not mentioned (**DFE-118586** to **DFE-118587**). A reference to tiered tariffs first appeared on 15 May 2015 in a document entitled "The Northern Ireland Non Domestic Renewable Heat Incentive: Response to consultation and final policy" (**DFE-117124**). The reference to tiered tariffs was then added to the draft of a policy template on 20 May 2015 (**DFE-117621** to **DFE-117622**).

48. Stuart Wightman states that it was considered that a full public consultation in June 2015 would "*provide the industry with too much notice*" of the changes being proposed (**WIT-17039**). Evidence shows that EE Branch were sharing information with external third parties regarding the Non-Domestic RHI Phase II changes from as early as January 2015, with respect to the proposal to increase the biomass banding limit (**DFE-106825**), and again in February 2015 (**DFE-106830**, **WIT-263925**), and that industry representatives had understood from that early stage that a reduction in the profitability of tariff levels was likely:

> *"We have a time window until the start of October to complete this and have the system installed – after then the Renewable Heat Incentive (RHI) may reduce, making the investment less attractive."* (**COM-126870**)

49. In his witness statement John Mills also stated that a lengthy consultation was to be avoided as it was anticipated that this could drive a spike in applications; he noted that a period of 6 weeks had been agreed between "giving notice" and the changes being made (**WIT-14553**).

50. The Department would draw a distinction between stakeholder interactions where general views are sought on possible scenarios and policy options, and meetings targeted at selected interested parties (with a significant commercial interest) involving disclosure and discussion of final policy proposals, and consideration of the timescale for their introduction, as it appears occurred in this case.

51. The candour that characterised EE Branch discussions with some industry bodies during this period meant that many recipients of, and potential applicants to, the Scheme were effectively briefed on the detail of the final policy and cost control proposals, and the outcome considered likely by EE Branch officials, before the proposals had even been submitted to the Minister for consideration on the 8 July 2015 (**WIT-02764**, **WIT-02769**, **DFE-107108** to **DFE-107110**). Indeed, the proposals, and the likely outcome, continued to be openly discussed pending the Ministerial decision confirmed on 3 September 2015 (**WIT-02766**, **DFE-107131** to **DFE-107132**, **DFE-107137**, **DFE-107144** to **DFE-107145**, **DFE-107161** to **DFE-107162**, **COM-05156, COM-05173**, **WIT-195355** to **WIT-195360**).

Statement of Truth

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

Signed: Brendan Mc Cann

Dated: 26 October 2018

RENEWABLE HEAT INCENTIVE INQUIRY

INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 200 of 2018

DATE: 14 November 2018

Witness Statement of: JOHN MILLS

I, John Mills, will say as follows: -

The evidence of Mr Michael Woods

1. *You are referred to the oral evidence of Michael Woods[1] given on 19 October 2018 (see TRA-15975 to TRA-16088). In the course of his oral evidence, Mr Woods appeared to make a number of express or implied criticisms of your and/or other officials within DETI Energy Division's conduct as to:*

   a. *the adequacy of Energy Division's questioning in relation to, and evaluation of, the value for money of the RHI Scheme in 2015 and 2016;*

1 The question asks about my and Energy Division staffs' conduct regarding the adequacy of Energy Division's evaluation of RHI's "Value for Money" during 2015 and 2016.

2 As far as the adequacy of the evaluation is concerned, plainly, it was inadequate during those years given what we know now, most especially in light of the evidence available from the RHI Inquiry testimony and documentation, the vast majority of which was previously unseen by me. We considered that our

[1] Mr Woods' written evidence, in his witness statement of 14 September 2017, is at WIT-23001 to WIT-23078 (along with annexed documentation at WIT-23079 to WIT-23552) and has been available to you for some time in your capacity as an enhanced participant with access to the Inquiry's witness statement bundle.

predecessors in post had carried out a "Value for Money" evaluation before we were in our posts. We did not "reassess" its value; therefore we did not realise that the scheme, from its outset, paid people to use fuel to gain money. (The need for review in January 2014 was not highlighted or confused with other aspects of "review" and other timings.) In 2015/16 my belief was that problems were due to the absence of tiering. There was a view that tiering would fix the budget and prevent it from running out of control. The basic premise of this approach was based on our understanding at that time – that tiering impacts on the number of hours payable. My recollection is that it was only around the time that I left Energy Division i.e. during the Spring of 2016, that the fundamental "design flaw" in the scheme was being identified i.e. the RHI payment were greater than the cost of fuel.

3 I also feel compelled to highlight the strong element of hindsight at play in accusing me and Energy Division staff of any misconduct in failing to identify the Scheme's lack of "VFM" before spring 2016. What seems obvious now, did not seem obvious then. If Mr Woods' evidence implies that we *knew* the RHI Scheme was fundamentally flawed, I reject this criticism. If we had known, we would have reacted earlier.

4 An example of the "benefit of hindsight" appears at TRA 16004 where there is a reference to meetings on audit planning which took place in January 2015. Counsel asked Mr Woods if he was advised by Energy Division in March/April 2015 that DFP approval for the scheme had lapsed. Obviously, Energy Division did not and could not have advised about that in January 2015 as the event was yet to occur. (It would not have been conveyed in March or April either, as it was not known until May 2015). The simple answer is that we didn't know. It may well be that we could have or should have known but I didn't.

b. failure to bring relevant matters in relation to the RHI Scheme to the attention of Internal Audit and/or the DETI Audit Committee during 2015 and 2016;

5 The question of failing to bring matters to the attention of audit is another criticism of our "conduct" i.e. the failure to highlight matters to audit. I repeat again, that we could not warn Internal Audit or the DETI Audit Committee of matters which we did not (then) appreciate.

6 My overall reaction to Mr Woods' testimony is that it does not add new evidence, it is merely that he implies that I or my colleagues deliberately concealed information. I strongly reject this, for the reasons already stated in my evidence.

7 It is also my understanding that the Inquiry has heard evidence that no audit action was taken in respect of RHI until 2016. However, DETI Audit Committee was advised about the *emerging* problems with the RHI scheme in mid-2015.

8 Despite the criticisms which he makes now, I note that this information did not prompt Mr Woods to advance the audit of RHI planned for the end of 2015. In this respect he and his audit colleagues join a long list of people (including myself) who did not foresee the severity of the RHI risk that eventually materialised. Therefore, I reject his (generalised) criticisms that audit took no action because Energy Division did not raise various issues. We provided whatever information we knew. However, it is also of note that in Mr Woods' own statement accepts that "Internal Audit is an independent source of advice to the Accounting Officer" (WIT-23020). I recall no advice being provided by Internal Audit which would have brought to the flaws in the RHI Scheme to light, at an earlier stage. Had he concerns, he could have escalated them that route, or utilise that route for his now alleged concerns regarding my responses to his queries were inadequate, which I completely refute.

> *c. the adequacy or utility of responses provided during the course of the 2016 Internal Audit investigation in relation to the RHI Scheme and the level of cooperation afforded to that investigation; and*

9 As regards the adequacy of the responses to internal audit during the 2016 investigation (which I assume refers to the period between January-April 2016) I note, from Mr Wood's evidence (TRA 16064), that some of Energy Division's

responses were inadequate on their own. I do not recall seeing the document that is exhibited at DFE-126895 but it appears to be a draft upon which Mr Hughes was seeking further information. For all I can contribute, the answers quoted may have just been holding markers before fuller information was obtained. These responses were presented in oral evidence to give an impression of lack of cooperation. But this does not look to me like evidence of lack of effort to supply information.

10 This is to distinguish this criticism from the accusation that Energy Division should have known this information without reference to OFGEM. I acknowledge that we relied upon OFGEM for scheme administration – just as we did on NIRO. I have to say I do not recall many of the governance arrangements mentioned in the document being in place with OFGEM on that scheme. There was a reliance on OFGEM's experience to help deal with our lack of resources. As far as general lack of understanding of the RHI goes, I acknowledge this. In 2014 the Division was engaged in the domestic scheme and during 2015 we went from one crisis point to the next on the non-domestic scheme. I do not recall ever having the space to think about the scheme. As far as I am concerned this only started to occur with the internal audit of early 2016 and as I was leaving.

11 I should add that the period from January to March 2016 was particularly pressured for me (due to RHI, the NIRO closure, judicial review of NIRO etc) and my recall of exactly what information was provided to the audit is not distinct. I am sure it is the same for Mr Wightman and Mr Hughes. I do not recall these responses but any alleged inadequacy merely reflects the pressure we were under rather than any attempt to be unhelpful.

12 I would also add, however, that I do not recall Mr Woods raising any issues with me concerning (i) the adequacy of our response and/or (ii) the level of our cooperation. If he had considered it was "lacking" I would have expected him to speak to me about that. As far as the internal audit investigation is concerned, I recall commenting on the terms of reference for the review (see WIT 23245 for terms and IND 06085/8 for exchanges) and discussions/meetings on arrangements for independent review of installations which became a separate strand of work (IND-05957-05959; IND-06030, for example). My view is that we engaged as much as we could regarding what we knew at the time. It is simply not credible to now read my

answers to queries and to import some sort of mal intent on my part, which I believe Mr Woods is seeking to do. Mr Woods, had he genuine concerns, could have lifted the phone to me and express those concerns. He never did. Nor did he contact my superiors, either Chris Stewart or Andrew McCormick (to whom Mr Woods was an independent source of advice outside the Energy Division or Department) to advise of any alleged lack of co-operation on my part or the part of my team.

13 On 26 February 2016 (WIT-23253) Mr Woods emailed me to ask for "comments or information which we may have missed or should consider" on a document entitled "Initial Synopsis of Issues from Internal Audit Review". It was explained by Mr Woods that it represented internal audit's "initial thoughts" which were "outlining our interim conclusions". He went on to describe it as an "initial attempt to establish the main issues" and it was made clear that it was not a formal draft report.

14 Mr Woods asked for a response by 4 March. I was only able to reply on 23 March (IND-06031/WIT-23274). The lateness was simply due to work pressures. I attempted to provide a comprehensive reply on the 23rd. We met subsequently to discuss its contents on 8 April 2016 (see WIT-23282 for internal audit's note of the meeting). I recall all meetings as being candid and cordial. Certainly the notes of the meeting of the 8th April 2016 do not reflect any lack of co-operation and no subsequent follow up from that meeting made any allegation to that effect. The minute of that meeting reflect the high level of discussion at the meeting, which was an exploration of issues.

15 I cannot reconcile my recollection of these events, with Mr Woods' account of the interaction on the "Initial Synopsis" paper set out in paragraphs 71 & 72 of his statement (WIT-23043). Mr Woods' description in his statement, is that he wrote setting out "initial queries on the scheme and asked for formal response from management". This is entirely at odds with his own supporting evidence. I believed that I was involved in board discussions on the issues and replied accordingly. I believe the documentary evidence supports my interpretation of the events, including internal audit's own minute of the meeting. I note that when previous members of Energy Division were, independently, asked to respond to the paper they replied in a

similar format to myself (Ms McCutcheon on 18 April 2016: WIT-23308; Ms Hepper on 11 April 2016: WIT 23331).

16 In his oral evidence (TRA-16061/2) Mr Woods repeats these allegations of a "lack of co-operation", which I totally refute. My recollection is that we discussed all the issues openly: I do not recall Mr Woods' saying that I was not being "helpful" or being "uncooperative".

17 I have no recollection of being asked direct questions about some of the issues to which he refers. I have also been unable to locate any documentary evidence which might jog my memory – apologies if I have missed any relevant documents.

18 One specific point concerns contacting previous Energy Division staff. At line 12 (TRA 16062) Mr Woods says that he tried to put together a response at the end of February 2016 but he got a response from me – a part of which –asked him to direct some of his queries to the officials who were in the department before me. The impression Mr Woods tries to convey is that this was a cavalier dismissal of his questions. (This is borne out by the subsequent exchange between Mr Woods and Counsel). Again, I would reject this:

19 The last line of my seven page response of 23 March 2016 response stated: "Given the issues raised should our predecessors in Energy Division not be given a chance to comment?" This reply to Mr Wood's was provided to Chris Stewart as well, as Mr Woods asked that I include him in the response.

20 This question was not meant to be cavalier or dismissive. I included this suggestion, because many of the criticisms of the scheme referred to issues which had arisen during my predecessors' time (and, therefore, of their handing of it). It was only fair that they be given a chance to see what was being said about their handling of the scheme. It had nothing to do with dismissing Mr Woods' questions. Mr Woods is choosing to read and advance a view that that question represents a somewhat cavalier attitude. Nothing could be further from the truth. Read as intended, I was merely providing what I considered a helpful suggestion regarding who may also be of assistance. Again, Mr Woods concerns he now says he had are noticeable by their absence in contemporaneous documents.

21 I do not see how this can have been misconstrued either now or at the time because:

(i) I believe it is self-evident from the construction of the sentence that I was genuinely asking him to seek their input;

(ii) I refer to them being given a "chance" to respond and that this was only "fair"'

(iii) I recall, at the meeting on 8 April raising this issue with Mr Woods because he seemed reluctant to act on it.

(iv) At the time I assumed this was either because he had reached his conclusions (and wasn't interested in debating them) or, because there had been some previous conflict between Mr Woods and my predecessor which made him reluctant to approach her.

(v) My replies represent the state of my knowledge at the time. On cooperation with External Audit, I note Mr Donnelly in his evidence says that no problems were encountered. He is unwilling to comment on cooperation with Energy Division. I recall this as being cordial.

22 As regards the tone of Mr Woods' criticisms, I was very surprised by them and that they have emerged only during the Inquiry. As I have said above, he did not voice these criticisms during or after our meetings. I also note Mr Donnelly of TRA says that no problems were encountered and no such evidence has been given by the external auditor. I think I had one or two meetings with external audit during this period (due to the qualification of the Department's accounts) and do not recall any problems of lack of cooperation being raised.

d failure to provide full information to Internal Audit, or in the course of the Department's preparation in 2016 for the Public Accounts Committee's investigation into the RHI Scheme, as to the existence of:

i. the May 2014 handover note prepared by Peter Hutchinson; and/or

ii. Janette O'Hagan's 2013 to 2015 email communications with the Department,

and what had been done with or in respect of each of these.

23 I would not have provided information to Internal Audit in respect of the May 2014 handover note prepared by Peter Hutchinson or of Mr O'Hagan's communications with the Department. I would like to take this opportunity to again state that it was I who asked Peter to prepare a handover note for the person who would replace him in post. It was understood to be a "to do" list for that individual. I did not know then what it said and Peter never at any stage came to speak to me before he left about the issues he had put in the note, or about anything of which he had knowledge of that he thought would require my particular attention, most especially the issues he indicated required urgent attention, for example, the issues raised by Mrs O'Hagan. As I have previously stated in my evidence during the first quarter of 2016 I was **un**aware of Ms O'Hagan's communications. I only became aware of these during October 2016 when I was interviewed by PWC - who provided me with the relevant paperwork.

24 Similarly, in my evidence I have already stated that I was **un**aware of the contents of the handover note and the significance now attached to that document. Of course, I knew a handover note had been prepared – as I was the person who had asked for Peter Hutchinson to prepare it – but none of its contents had been drawn to my attention when he left; therefore, I was not really aware of its contents until the PWC interview.

25 Peter Hutchinson's departure (and the "knowledge" that went with him) was a loss of "corporate memory". However, I do not believe I remembered the handover note or attached significance to it in early 2016. I regarded it rather as a routine piece

of staffing administration providing background and context to his successor, rather than an important warning document highlighting what was to come. It was only one part of a significant recruitment exercise taking place in spring 2014 involving the departure and arrival of several staff and leading to a partial reorganisation of Energy Division in June 2014 in response to changing work pressures.

26 Even if I had recalled the note it would not have occurred to me to mention it to Mr Woods (or others). It was only during October 2016 at my PWC interview that I realise that I was being "blamed" for allowing certain staff to leave the Department in the first half of 2014. Until that point I thought I had done a good and responsible job in dealing with a number of staffing issues which had built up at the time I took over in Energy Division and which I subsequently inherited. (For example, even asking Mr Hutchinson to prepare a "handover note" was not a "normal" Departmental requirement). So, until October 2016, the importance of the handover note was not in my consciousness as an "issue". I do not recall issues around handover being raised by Mr Woods (which might have jogged my memory) and this would appear to be supported by his testimony (TRA-16081) where he says he did not raise handover.

27 At TRA-16080 Mr Woods says it would have been absolutely clear that his investigation was to look at material handed on from previous officials (even though a few sentences later he says he did not raise this). He says that it would have been clear because he describes Energy Division staff as saying, "We can't answer some of this. Go and talk to the previous people." But this is not true. As I say above, Mr Woods is referring to my response to him of 23 March 2016 which says, "Given the issues raised should our predecessors in Energy Division not be given a chance to comment?" This statement does not have the connotations that Mr Woods places upon it.

28 I left DETI/DfE in early May 2016 and so, do not believe I had any involvement in preparing for the 2016 PAC investigation into the RHI.

RENEWABLE HEAT INCENTIVE INQUIRY

Please set out any response you wish to make to the evidence of Mr Woods to the extent (a) that the said issues have not already been addressed in your existing oral and written evidence and (b) that the further material you wish to provide constitutes evidence of fact as opposed to mere commentary on the evidence of another witness or participant which would be more appropriate for submissions.

29 I believe this is set out above.

DfE corporate statement No 12 of 26 October 2018

d. You are also referred to the recently provided supplementary corporate statement provided by Mr Brendan McCann on behalf of the Department for the Economy dated 26 October 2018 (DfE Corporate statement No 12, found at WIT-03560 to WIT-03576), the contents of which are said to relate to "the management and control of the Scheme from mid-2014" and respond, inter alia, to written and/or oral evidence you have provided to the Inquiry.

30 I have found it difficult to respond to Mr McCann's statement for a number of reasons.

31 Firstly, it does not appear to be his "evidence" but a "critique" which (in his statement) he puts forward as the "corporate view" of the Department. I would contest this. Energy Division is/was part of DETI/DfE, but the statement does **not** reflect any views from Energy Division. Rather, it seeks to focus **only** on the failings of Energy Division.

32 Thus Mr McCann's statement is not impartial and consists of "submissions" rather than "evidence". I consider any such views should only have been contained in a "submission"; it is the function of the Inquiry to assess what went wrong.

33 Secondly, Mr McCann does not even appear to be the author of the statement which was, in document metadata, recorded as being Dr McCormick. I do not understand why if the views were those of Dr McCormick – he did not write the statement and submit himself for cross-examination about its contents.

34 As regards its actual contents, I would state as follows.

35 At paragraph 42, Mr McCann cites Mr Cooper's (unsubstantiated) assertion that action on RHI was delayed because I directed Mr Wightman to work on "Energywise". As I explained in paragraph 7 (of my statement of 16 October 2018) the factual basis for this wrong - as I did not manage Mr Wightman's work on Energywise.

36 As a matter of fact, Mr Wightman did have to deal with several other items of work beside the non-domestic RHI scheme. Like others in Energy Division – he had a mixed and demanding workload. This may have caused delay, but none of this was deliberate and the real problem was a wholly unrealistic allocation of resources to RHI. I took a number of actions to bolster staffing in Mr Wightman's area. I can see now that these were insufficient to bridge the gap between what was realistically needed but I only had Energy Division resources at my disposal and flexibility was limited by other pressures. It perhaps says something about the culture in DETI that, if I had said that there were resource pressures on Mr Wightman, it did not occur to Mr Cooper to suggest getting some additional help for him. As Mr McCann quotes Mr Cooper with apparent approval the same criticism can be levelled against him. His statement does not say, for example, "options for drafting in extra resources in the face of this resource pressure do not appear to have been considered".

37 Therefore, I object to Mr McCann's criticism because its inclusion is plainly wrong. He has made no attempt to remove it or provide balance, despite having a chance to read my statement. (His statement post-dates mine by nearly two weeks). This is why I consider his statement is biased – seeking to blame Energy Division - and minimising failures which could be attributed to the Department's corporate governance function (including Finance and the Accounting Officer role).

Paragraph 8

38 This makes the obvious point that despite the domestic scheme being the priority when new staff arrived in June 2014, the non-domestic scheme was still part of their job. This is self-evident. Nonetheless, a lesson that the Department could usefully learn, is that its procedures – particularly around the casework processes – are so onerous that everyone involved in RHI in Energy Division were drawn into dealing with the domestic scheme casework meeting during June 2014 and its follow-up. The imposition of the casework bureaucratic process was not "free". It came at the expense of other work on RHI in summer 2014 e.g. reading into background papers on the non-domestic scheme. If the casework process had resulted in appreciation of the inherent flaws and contradictions in RHI it might have been worthwhile. But, it did not. Therefore, I consider it was a waste of time, and, perhaps a costly one.

39 I also consider that it is a salient feature of DETI's checks that none of them worked. If Mr Hutchinson got it wrong; everybody got it wrong. The extent of the "accountability bureaucracy" fostered a culture of "jumping hurdles" i.e. of having to get through the process, rather than a collective assessment of an issue. In part this reflects an over-confidence in DETI's Casework process. This was skewed towards financial checks and holding business units to account. This contrasts (I consider) with the more balanced and collaborative approach which is engendered by project management.

Paragraph 9

40 This alleges that the decision to defer Phase II work on the non-domestic scheme, was taken without full analysis and documentation. Ideally, full analysis etc., should have been done but Energy Division (and the Civil Service in general) has a great many targets and actions on which to concentrate, and there are inevitable "slippages" when new priorities are set. . For example, to the best of my knowledge, the review of the 2010 Strategic Energy Framework (SEF) commenced in 2015 has still not been completed. I am not sure if consistent slippage on the SEF review has been documented.

41 During 2014, the time needed to implement the domestic scheme kept pushing back the Phase II work - so there was not a particularly clear break point. I should also highlight (again) that the decision to prioritise work on the domestic

scheme was taken prior to my arrival in Energy Division. I raised deferral of Phase II with Mr Stewart (my Grade 3). I agree with his description of what the exchange would have been (he cannot recall it directly) – which was given in his oral evidence (page 51 of Mr Stewart's evidence on day 80 of the Inquiry).

Paragraphs 10 and 11

42 Mr McCann criticises Energy Division's RHI Branch for insufficient familiarisation with relevant material on their arrival. This may be a valid criticism for the Inquiry to make or not but I do not consider it is a valid criticism for the Department to make.

43 Energy Division did (at least) produce extensive induction packs. However, as I have already explained, I received my induction one month before I even joined the Division and when I was unfamiliar with its demands (and terminology). When I started work – like everybody else – I was swamped with information about numerous topics - each with competing terminologies, "targets" and demands.

44 By June 2014, I gave a presentation to the Division on its overall work – because there had been such a significant change over of staff during that month. Therefore, I tried to help everyone understand the demands and proities of the Division.

45 By contrast, I am not aware that the Department provides any induction for new staff joining it.

46 As regards the "handover" (dealt with in paragraph 11), as a matter of fact I arranged for temporary measures to cover the gap between the "departing" and "incoming" RHI staff (in particular, by the temporary promotion of Ms Davina McCay). I also asked Peter Hutchinson to prepare a handover note.

47 No such arrangements/assistance had been put in place at Departmental level to bridge the gap between Ms Hepper and myself.

48 Lastly, when it became apparent that new staff would not overlap directly with Mr Hutchinson I did not received support from Personnel in my attempts to delay his departure. I only managed to obtain an extra couple of weeks.

Paragraph 12

49 This paragraph acknowledges that failing, "to implement robust project management principles was a key failing" but a failure to review background information by officials also meant that problems with the scheme were not recognised. To be clear on the factual position: it was not that robust project management was lacking, RHI was simply not treated as a project: i.e. it was not treated as a distinct process which needed to be managed to achieve a specific end.

50 By the time I started work in the Division RHI was being managed as "business as usual" i.e. as an ongoing part of Energy Division's work. In short, it was simply a "historical fact" that the non-domestic scheme had been put in place and there was no emphasis on having to continue to manage or review it.

51 I consider that, had project management been applied, the situation would have been different. It would have highlighted that RHI was an inchoate process which still needed work – such as putting in place evaluation criteria. Instead, the situation I inherited was that the non-domestic scheme was already implemented with OFGEM running it and that the implementation of other modules such as the domestic scheme and new non-domestic technologies were the next priorities.

52 Neither, do I consider Mr McCann draws the right inferences from the lack of project structures. His criticism is along the line of "oops, we missed project management, but if the new people had only read the previous papers it would have fixed things". For the reasons I have already stated in my earlier statements (and oral evidence) there was simply not time for me (nor was it a normal practice) to "reassess" legislation which had already been put in place.

53 I would also add that -despite the scale of the funding involved in the RHI scheme - the Department had put no arrangements in place to manage RHI going forward - beyond leaving it to a handful of staff in Energy Division. There were no structures or checks in place whereby the Department would assess when reviews had been conducted or how the funding of the project was progressing.

54 Lots of "promises" were made about reviews and monitoring, but there were no arrangements in place **to ensure** that these were followed through. The change of staff exacerbated these vulnerabilities, but those vulnerabilities could have been avoided if proper management systems were in place. Instead by the time I joined

Energy Division, Energy Division's "new priority" was the domestic scheme. I assumed this was valid, and followed it through.

55 Finally, on the same theme (in paragraph 12) Mr McCann says "Arguably" the Energy Efficiency Branch may not have had the resources to address implementing project management.

56 This is his (or the Department's) sole reference to resources - yet I and others highlighted resource issues repeatedly, in our evidence. It is an incontrovertible fact that DETI was trying to deal with RHI during this period with 70 odd fewer staff than DECC; **now**, there are 30 + staff dealing with RHI and four posts at my grade covering energy. We had the resources of "one and half people". Therefore, stating that "arguably" the Division was under-resourced, seems a comically inadequate description.

57 This is why I consider (again) that the statement of Mr McCann is biased. His statement commences by stating that he wishes "to assist the inquiry in clarifying issues which the Department perceives arise from the witness statements [of myself and others]" (paragraph 3). He adds that, "the Department remains fully committed to providing evidence in a fair and balanced manner" (paragraph 4). Yet the issue of resources is "skirted over" when this, and workload, had a major influence on events.

Paragraph 13

58 This points to the Assurance Statement in which I raised the risks of lack of clarity around RHI funding and resource problems. It cites some of the tick box entries and says this reflects lack of due diligence in relation to RHI. More relevance is attached to comments that the tick boxes in these exercises. But on the ones quoted: approvals being in place – non-domestic RHI was not recorded in the Divisional spreadsheet because, as a statutory scheme set up on a permanent basis, it was assumed that it was not time limited. This was a mistake but at least Energy Division had something in place in contrast to the Department. Projects are properly managed – non-domestic RHI wasn't treated as a project by my time in Energy Division. The other two entries concern roles and responsibilities – I'm not sure this is really the issue. I knew I was responsible for Energy Division.

Paragraphs 17 and 18

59 This says that the monitoring of boiler size and usage against CEPA assumptions should have been carried out. I agree. It should. However, this should have been set up as evaluation criteria from the outset and reported through project/programme structures. This was not in place as part of the scheme's establishment.

60 Mr McCann says the need to do this is in the scheme's Regulatory Impact Assessment. This was a "historic" document to me and I would not have had time to go back and check that actions from it or the myriad of other RHI documents were in place. Ofgem did send relevant reports. I became aware of these in late 2017 as part of the Inquiry.

Paragraphs 19 and 20

61 I was not familiar with the level of detail discussed here.

Paragraph 21

62 This is a very confused criticism. It seems to say that Energy Division contemplated reducing tariffs in early 2015 but "under the tiered tariff structure, introduced later in 2015" the tariff, "was based on the previous single tier tariff". There is then a non sequitur that Energy Division (but not all the other people involved?) knew that tariffs were too high but said that this still represented value for money.

63 Firstly, as is set out in the 8 July 2015 submission (paragraph 8(3); WIT 117150) for example, the reason the tariff reduction was rejected, was because it would have taken too long. In support of this, I have provided evidence of the similar tariff changes in the NIRO scheme which took over 18 months. So, had the same timeline applied, the tariff reductions could only have been brought in from the end of 2016.

64 Secondly, Mr McCann appears confused about the relationship between the introduction of tiering and the tariff levels – as if tiering involved a re-setting of tariffs and we chose one that was too high. This is not the case. The existing tariff simply carried on because we did not change it. We did not change it (i) to avoid the "consultation" period and (ii) we could not risk changing it because of fear of a legal

challenge (as a result of not consulting) which may have resulted in the higher payments been available over a much longer period.

65 Thirdly, I believed that tiering would bring the scheme back within its parameters. It may be that the Inquiry consider the addendum business case was completely flawed but all of us in the Division believed it was the correct approach at that time.

66 Fourthly, the problem that we were attempting to address in mind-2015 was primarily a budgetary one. The issue was that the scheme had (possibly because we were unsure of the budget), become more expensive than we could afford. The widespread questions of abuse of the scheme and its fundamentally flawed nature were not known then. The total non-domestic RHI bill was, crudely, a multiple of the number of installations x by the tariff level x by the usage. Affecting any one of these elements would have the effecting of reducing the overall bill. So there was a sense, in my mind, that it did not matter which factor you affected - as a short term measure to get the scheme expenditure under control. I regarded the absence of tiering as a mistake and that bringing the scheme in line with GB would address the scheme's affordability.

67 Mr McCann has the benefit of hindsight, which we did not have then. The reasoning may have been flawed but it is what I honestly thought at the time and it seemed logical. Therefore I resent the implication of deliberate deceit at paragraph 21 of Mr McCann's statement, which is wrong.

68 The above summary, concerns the tiered tariffs. Justifying the "un-tiered" tariff from April to November 2015, was based on an assessment that there was a net benefit to the expenditure of the scheme.

69 Any change resulting in the lowering of incentives for any scheme can be portrayed as questioning the value for money of whatever level preceded the change (otherwise why make the change?). Thus, there were a number of reductions in NIRO ROC levels which called into question the value of the preceding level. The argument advanced to defend this position is that Government needed to pay higher rates to incentivise uptake of a new and unfamiliar technology at the start of a scheme.

70 There was not an attempt to conceal evidence of over-compensation. The business case addendum openly conceded at paragraph 4.15 (DFE-284854) that the rate of return of the existing tariff was too high. However, because of the way the scheme was established, we considered we were "stuck" with this situation. However, we still tried to explore the possibility of retrospective action to reduce existing tariffs. This was a high risk option from a legal perspective – therefore we were not going to try this - before we had safely introduced tiering.

Paragraphs 24-29

71 This deals with the need for reviews and monitoring. Paragraph 25 says that the people setting up the scheme intended that there be reviews and monitoring. If this was intended, then this should have been set up at the time the scheme was introduced i.e. plans for the reviews, what were the reviews "measuring"? How would the scheme be closed if the demand exceeded the available monies for the scheme etc. In the absence of these measures having been taken, I would describe the requirement for "reviews and monitoring" as nothing more than "good intentions" with nothing having been done to ensure they were delivered. My earlier evidence refers.

72 Paragraph 23 says that lack of dialogue with GB officials in 2015 was a weakness. I agree that, ordinarily, this is always good policy. However, by mid-2015 it was really too late. The important points that needed to be taken on board from the GB legislation dated back to its enactment i.e. the inclusion of tiering and the power of suspension. I had also tried to ascertain about the funding of the scheme, but to no avail.

73 Paragraphs 26 -29 points out that information was being provided by OFGEM about usage and other relevant factors on weekly basis and, it is claimed, relevant trends could have been identified as early 2013. This is contrasted with comments in my first statement that, during early 2014 it was too early for a meaningful tariff review (paragraph 25 – WIT-03568).

74 The point made is correct. However, as I have stated (in commenting on paragraphs 17 & 18 above) I only saw these reports in late 2017 after my initial statement had been made.

75 The point about the much higher costs of average annual payments was only highlighted by Mr Wightman's work in 2015. Prior to that I had too narrow a focus on number of applicants and costs – information I received through Energy Division Finance Branch. Effectively, this was budget monitoring rather than monitoring expenditure.

Paragraphs 30-31

76 As I have already stated, unfortunately Ms O'Hagan's communications were unknown to me until the date of the PWC investigation.

Paragraphs 32-38

77 These paragraphs cover the period around June 2015 when I attempted to escalate RHI matters to Departmental level. The account echoes the criticisms made in, for example, Mr Cooper's recent statement. However, it also ignores my response to his statement.

78 Again, I consider it is for the Inquiry to form their conclusions on any difference in accounts between myself and Mr Cooper.

79 My objection to Mr McCann's statement is to his "partial" views being presented as "impartial" Departmental views.

80 The view presented is that individuals were arguing on various courses of action but these courses were, "discounted on the basis of Energy Division's representation of the legal position" (paragraph 35 – WIT 03572). Legal advice provided on 25 June 2015 at DFE 284753 stated that the Department could not suspend the scheme without amending the legislation (at DFE 284754) and that it would have to consult before doing so (at DFE 284756).

81 Closing the scheme was one such course that is cited. I do not recall discussion of its closure and it is not recorded in Dr McCormick's notes of the meeting (WIT-10599) or the record of action points from the meeting (DFE-146864). The criticisms require a significant level of hindsight. At the time when these decisions were actually been considered: we had not had any "spike" in demand; we did not know that the funding was not being treated as "standard AME"; we did not know that details of the anticipated closure of the scheme would be "leaked"; that the scheme would be subject to widespread abuse nor of its fundamental flaws.

82 The manner in which we agreed to proceed (as recorded in the Minute of 17 June) was a collective one – some of which I didn't personally agree with. I resent now the inference that it was mine alone and demonstrably wrong

83 My own input to those debates was to emphasise the need to take action as quickly as possible to staunch the flow of RHI costs. Tiering seemed to be the quickest way to do this.

84 It could well be considered now, that it would have been better to stop and conduct a thorough analysis of the RHI scheme. However, we considered then that this would have left the scheme open at the un-tiered level for a longer period of time. Suggestions for a review or reassessing state aid (or whatever else), were not actually going to reduce scheme spending. Only legislation, with its attendant Assembly processes, legal drafting and political handling, could do that. At the time I felt that my (largely financial) colleagues didn't appreciate this.

Paragraphs 39-44

85 This section deals with confusion around the nature of the RHI budget. It says staff in Energy Division failed to understand or spot obvious indications about the nature of the budget.

86 It is incomprehensible to me that Mr McCann can put his name to this account and claim (per paragraph 4) that his statement is "fair and balanced".

87 I have disagreed with elements of Mr Cooper's statements. We have differing views on some matters. I respect that. I do not respect individuals using the Departmental name to claim an impartial view when what is being presented is far from that.

88 Wishing to avoid pointless repetition I will summarise the finance issue during 2015/16. Energy Division was unclear about funding. So we asked for help in March 2015. When that was not forthcoming I made sure the issue was escalated to Departmental level in May. In the face of ongoing uncertainty within DETI I pushed to raise the matter with DFP and Treasury in summer 2015 – to little avail. The questions that Energy Division raised were, effectively, pushed back on to Energy Division to answer. Treasury finally provided a definitive answer on 21 December 2015

89 The Inquiry has received statements to the effect that, "the truth was out there" and could and should have been discovered or realised by Energy Division staff in post in 2015. Perhaps so – that is a matter for the Inquiry. However, my impression at the time was that *nobody* knew. There was no definitive documentation to provide an unequivocal answer; no precedent or rules for this type of arrangement.

90 Once the financial situation became clear in December 2015 I can recall a number of people saying we should have known the true nature of the funding earlier in 2015. I can recall one such conversation with Dr McCormick. I remember replying (along the lines of) "if you say you know now (in 2016) that the budget was limited in 2015 - how do you answer the question of why you didn't say so in 2015?" I did not get an answer then, and I do not see one suggested in Dr McCormick's evidence to the Inquiry. It appears it is easier to blame staff in Energy Division, rather than trying to "learn lessons" which may be useful to the Inquiry. Sometimes the evidence of Dr McCormick (who would appear to be the true author of the "Departmental" statement) gives the impression that he was a "disinterested spectator" rather than being involved in the decisions.

91 On a point of factual representation of the evidence, paragraph 43 of Mr McCann's statement claims that an email from Ms Brankin of 24 August 2015 highlighted the potential for DEL penalties but that Energy Division continued to "incorrectly describe" the nature of the funding. However, Mr McCann doesn't say what the "incorrect description" actually is. I'm assuming he means – as AME as it is commonly understood.

92 That being the case, it is extraordinary that Mr McCann neglects to mention that Ms Brankin's email primarily conveys information that DETI's bid for AME funding to cover increased RHI expenditure had been successfully met, as if it was "normal" AME. That is, as of August 2015, the shortfall in budgetary cover for RHI was zero. Budget had been obtained to cover increased RHI expenditure and the Department's financial exposure was nil.

93 This fact seems to have been underplayed to me in following the narrative of RHI. It doesn't quite fit the inevitability of impending catastrophe that is imparted by hindsight.

94 This explains why, in later submission (Mr McCann cites my submission of 31 December) I refer to a change in Treasury approach to RHI funding (paragraph 44 of Mr McCann's statement). If, in August 2015, Ms Brankin assured me that Treasury has met all of DETI's RHI AME requirements but, by December, has decided to meet none of them, am I not entitled to represent this as a change in policy? We now know that Ms Brankin's advice was not accurate, or misleading if I adopt Mr McCann's or Mr Wood's standards in describing mistakes.

Please set out any response you wish to make to the matters addressed in that witness statement to the extent (a) that the said issues have not already been addressed in your existing oral and written evidence and (b) that the further material you wish to provide constitutes evidence of fact as opposed to mere commentary on the evidence of another witness or participant which would be more appropriate for submissions.

Statement of Truth

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

RENEWABLE HEAT INCENTIVE INQUIRY

Signed: _____ _____

Dated: _____14 November 2018_____