

Renewable Heat Incentive Inquiry

Submissions on behalf of Jonathan Bell

These Submissions are filed on behalf of Mr Bell by his legal representatives

Counsel:

Finbar Lavery BL and Ronan Lavery QC.

Solicitors:

Donnelly and Wall.

Introduction:

1. These Submissions are intended to address those parts of the findings which the inquiry might make which concern the role of Mr Bell in the following specific matters:
 - (a) The tiering process and;
 - (b) The closure of the Scheme.
2. The Submissions will be confined to those parts of the terms of reference which directly bear upon the role of Mr Bell. At paragraph 1(b) of the Purpose and Scope of these terms the inquiry is to “examine the role of Ministers, Special Advisors, Civil Servants and any others involved in the RHI Scheme (including external consultants) and whether their actions and/or advice met appropriate professional standards, were ethical, within the law and compliant with standards in public life including in particular the Nolan Principles, the Ministerial Code of Conduct, the Civil Service Code of Conduct, the Code of Conduct for Special Advisors and conditions of employment.
3. Sub paragraphs (e), (f), (g), (h), (i), (j), (k) and (l) are all directly relevant.
4. It is the contention of Mr Bell that had he not decided to make it known to the general public his knowledge of those parts of the Scheme which are set out above and to be examined by this Inquiry, that no Inquiry would have been held.
5. Moreover it is his contention that all of the disclosures which he made at the outset have, by the work of this Inquiry, been shown to be accurate. At enormous personal expense he decided to make these disclosures and call for a full public inquiry into these matters. As a result he was targeted by smear campaigns which sought and continued to seek to attack him personally in order to discredit his incontrovertible testimony.
6. In the course of attacks targeted at Mr Bell he has been accused of violence, drunkenness, incompetence, being “a monster that had to be put to sleep” and even in the evidence of Arlene Foster for being personally responsible for the collapse of government in Northern Ireland. Nobody has actually sought to undermine the truth of his evidence. Indeed in written evidence by Lord Morrow to the Inquiry he has stated and confirmed that no complaint was ever made against Mr Bell (WIT-150010).

Background:

7. Jonathan Bell was born on the 5th day of March 1970 and educated at Belmont Primary, Strandtown Primary and Sullivan Upper. He holds a BA(Hons) Degree in Psychology (1991 QUB) as well as a Masters in Social Work (1996 QUB) and a Diploma in Social Work (1996 CCETSW). Between 1989 to 1991 he was employed as a residential Social Worker at Marmion Children's Home in Holywood. Between 1991 and 1997 he was employed as a Residential Social Worker on a full-time basis which included a secondment to a Masters Degree in Social Work and professional diploma in social work on a full-time basis at Queen's University Belfast between 1994 and 1996.
8. During the period 1989 to February 1992 he was based at Marmion Children's Home in Holywood and between 1992 and 1997 he was based at Coneywarren Children's Home in Omagh. Between 1997 and 2010 he was a field Social Worker based at James Street Family Resource Centre in Newtownards. During this period he worked in the Family and Child Care Programme holding positions of Social Worker, acting Senior Practitioner, acting Senior Social Worker and Senior Social Work Practitioner in addition to serving on the out of hours emergency social work team.
9. In 2010 to 2011 he was co-opted to the Northern Ireland Assembly to represent the constituency of Strangford where he was the Vice Chair of the Department of Employment and Learning Committee and served on the Northern Ireland Policing Board before being appointed to the new justice committee. In May 2011 he was elected to the Northern Ireland Assembly and appointed Junior Minister to the First Minister. He served in this role between May 2011 and May 2015.
10. In May 2015 he was appointed Minister for the Department of Enterprise, Trade and Investment (DETI) and remained in post until May 2016. In May 2016 he was re-elected to represent the constituency of Strangford and was appointed by Arlene Foster MLA as the single Democratic Unionist party representative on the Northern Ireland Assembly Business Trust.
11. He sat as a Councillor on Craigavon Borough Council between 1997 and 2005 including holding the position of Mayor and Deputy Mayor and both serving on and chairing the Craigavon District Policing Partnership. He sat as a councillor on Ards Borough Council from 2005 until 2011 where he also served on the local District Policing Partnership. Jonathan Bell served on the Southern Education and Library Board from 1997 – 2005 in addition to serving on the Board of Governors of Magheralin Primary School, Lurgan Junior High School and Craigavon Senior High School. When serving on Ards Borough Council he was a member of the Board of Governors of Regent House School in addition to a period serving on the Board of Governors of Portaferry Integrated Primary School and Donaghadee Primary School.

12. In 2015 he was invited by the DUP to be the candidate to be Member of Parliament for South Belfast. At 2 major events which were well attended, one of which was the launch of Mr Bell as the Westminster candidate for South Belfast with the then First Minister Peter Robinson, the then DETI Minister Arlene Foster MLA was a guest speaker extolling Jonathan Bell's skills and abilities and detailing why he should be a Member of Parliament for South Belfast. This was in addition to undertaking door to door canvassing with him recommending Jonathan Bell to the electorate of South Belfast.
13. He was appointed to the Northern Ireland Human Rights Commission as a commissioner between 2005 and 2010 which included a re-appointment by the Northern Ireland Office. In addition to a range of responsibilities Mr Bell served as a rapporteur at an International United Nations Conference in South Africa.
14. As can be seen from the above Mr Bell has impressive academic qualifications, considerable professional experience in the difficult area of children's social work (an area involving critical decision making skills, independence and integrity), extensive political experience as an elected representative in local government and in the Assembly. Mr Bell in the 20 years of his political life held all of the senior positions in elected local government and all senior positions in Devolved Government with the exception of First and Deputy First Minister. His appointment as DETI Minister (a high profile and complex role) was made on the basis of his proven ability as Junior Minister and the other elected and non-elected roles for which he had earned his reputation.

Appointment as DETI Minister:

15. Mr Bell replaced Arlene Foster who was the previous DETI Minister. At the time of his appointment she had preceded over the inception and subsequent management of the RHI Scheme.
16. On his appointment as Minister Mr Bell was involved in the process of the appointment of a Special Advisor. He was candid in his evidence to the Inquiry about that process. He revealed that the appointment of Special Advisors was the decision of the First Minister (TRA-12279). He indicated that a letter in which he purported to write that Mr Cairns was "by far the most qualified candidate available" was in fact written by somebody else and put before him to sign. The letter was drafted by the private office. This has implications for the role of the Civil Service and political parties in the appointment of Special Advisors which appears contrary to the appropriate codes.

Delay in introducing a tiered tariff:

17. Much has been made about the relationship between Mr Bell and his Special Advisor Timothy Cairns. While it is accepted that there was a fractious episode which took place in London in June 2015, there was no strain in the relationship after that date. As set out in his Witness Statements Mr Bell regarded the matter as closed and continued to have a good working relationship with Mr Cairns.
18. It was with surprise and considerable disappointment that he learned through the disclosures made to this Inquiry that from June 2015 Mr Cairns was sending text messages

such as: "My goal now is that he has one year max and done. If I get a chance I am going to film him drunk and talking shit and show it to TJ." (IND-25375)

19. Also in December 2016 after the Nolan Show broadcast he wrote: "My view is JB needs to be exposed. I can't expose my part without putting my boot into PR... I have said to you Arlene and TJ that I will fit my story in with the party narrative and what is best for party. ... I am happy to release it everyone's hands around timing and also would need an assurance party will fully support me in any ensuing action." (IND-31974)
20. While it is apparent from these texts that Timothy Cairns bore personal animosity towards Mr Bell from the June incident and offered to do whatever it took to fit his story with the party narrative, his attempts to discredit him by alleging that he had tried to break his finger turned out, on his own admission, to be completely false. Mr Bell does not believe that any difficulties in his personal relationship with Mr Cairns had any impact upon the delay in the tiering process.
21. The delay was a direct result of the involvement of the Special Advisors. It is clear from the documentation and email correspondence that Mr Bell did not receive the Submission until the 3rd of September 2015. This was a failure on the part of the Special Advisors who it seems were intent on withholding this information from him and it was a failure on the part of the Civil Service which ought to have informed him of this urgent matter. This was acknowledged by Doctor Andrew McCormick in his evidence to the Inquiry.
22. Accounts which were given which attempted to convey that he was not available during this period were shown to be false. This was a convenient foil for the truth which was that the process was being manipulated and abused by the Special Advisors. As Doctor Andrew McCormick stated in his evidence:

"The reality of what we'd got used to was that they were in charge (SPAD'S)." (26th October 2018). (TRA - 16681)

Delay in suspension/closure of the RHI Schemes:

23. Mr Bell in all of his dealings with the suspension and closure of the Schemes acted upon the advice given to him by the Civil Service and their legal advisors. The Permanent Secretary was aware that his view as Minister was to close as soon as could be practically done within the Department.
24. During this period the conduct of the Special Advisors and the degree of control which they exercised was demonstrated by their ability to recall the approval of the 19th of January 2016 submission which he made on 22nd of January 2016. Any notification to Mr Bell about this was not an attempt to secure his agreement but rather to simply notify him that it had been done.
25. When Mr Bell first approved that the decision to suspend/close would have to be in March. This was because of the legal advice given to him that a consultation exercise would have to be carried out. Again, it was his intention at all times to close the Scheme as soon as he possibly could.

26. His decision to close the Scheme was an unpopular one but one which he took in order to try to abate the already colossal cost, the true and significantly larger extent of which was not even known at that time.
27. For some reason his Special Advisor attempted to remove a reference to the Office of First Minister and Deputy First Minister from the Submission document. The reason for this is not clear but it certainly was not, as was suggested by Timothy Johnston, who suggested that it was so that Mr Bell could be given all of the credit. It appears that something completely to the contrary was already in play at this stage.
28. Mr Bell announced the closure of the Scheme on the 5th of February 2016. From that point he came under enormous pressure to change his position. This culminated in a very heated meeting between him and the First Minister, Arlene Foster, on 9th of February 2016. In that meeting he was ordered by the First Minister to keep the Scheme open. No date for closure was suggested. It was not until a meeting later that day that an extension of two weeks was suggested. Mr Bell agreed to this short extension only upon seeking advice from his Permanent Secretary. It is clear that this was not his preferred option.
29. It is clear that Mr Bell wanted to close the Scheme as soon as practicably possible. It has now emerged that the extension cost the taxpayer a further ninety-one million pounds. Had it not been for Mr Bell's insistence that any delay to the closure of the Scheme be limited the cost would have been obviously higher.

Conclusion:

30. Mr Bell's decision to reveal the truth of these matters to the media was motivated by two objectives. Firstly to ensure that the costs of the Scheme would be reduced and that money would be returned to the public purse for essential public services and secondly to ensure via a call for a public inquiry that such an episode could ever happen again.
31. His own personal requirement to "act justly" was the pre-eminent consideration of the Former Minister. At considerable personal and professional cost he revealed what he knew and called for this public inquiry.
32. For telling the truth he has been disparaged and demonised.
33. He assumed his office in good faith. Within ten months of assuming responsibility for this flawed Scheme and despite being excluded from comprehensive and accurate information, he closed the Scheme.
34. Mr Bell had no vested interest in this Scheme. He had no family members who owned eligible boilers. The public's vested interest is all that was guiding him.
35. He accepted the criticism from the Chairman of the Inquiry that he had chosen to record conversations. While he still accepts that criticism the context is important. At that time he was being told by his Permanent Secretary that records had been expunged. Furthermore he had been advised in discussion with journalists that secondary sources were important for validation purposes.

36. He called for this Inquiry. The Inquiry has revealed the truth of what occurred. The truth is that there is nothing that Mr Bell could have done to bring about a more speedy tariff reduction and closure of this Scheme. All of his attempts were hampered by the interference and manipulation of the Special Advisors.
37. Few other people in the position of Mr Bell would have exposed themselves to the inevitable end of a political career, and disparaging and untruthful smear campaign, isolation and personal distress with no vested interest in the outcome other than the public good.