



Michelle O'Neill MLA
C/o Pádraig Ó'Muirigh LL.B.
24-26 Springfield Road
BELFAST
BT12 7AG

By email to: padraig@omuirighsolicitors.com
and michelle.oneill@mla.niassembly.gov.uk

26 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 enclose a copy of the RHI Inquiry's Terms of Reference for your information.

As you will no doubt be aware, the RHI Inquiry has been conducting its oral hearing and, although these have largely concluded, the Inquiry continues to seek some further written evidence from witnesses and participants (particularly, although not

exclusively, 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.

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

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

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

In the event that you require or desire access to some documentation, not already in your possession, in order to assist you in preparing your statement, please revert to me.

I also refer you to Restriction Order No 2 made by the Chairman of the RHI Inquiry on 22 June 2017, a copy of which is available on the Inquiry's website. This restriction order prohibits you from publishing any documentation received from the RHI Inquiry (save that you may show it to your legal representative) unless you first obtain the consent in writing of the Inquiry Chairman. In addition to the restriction orders made by the Chairman of the RHI Inquiry, receipt of this correspondence and its enclosures also places you under a duty of confidentiality to the RHI Inquiry in respect of them. You may share the correspondence and the enclosed Notice and documents with your legal representative(s), but neither you nor they may show, communicate the contents of, nor provide this correspondence or the Notice or documents to any other person or organisation without the express permission of the RHI Inquiry. Any breach of this duty of confidentiality is actionable at the suit of the Inquiry Chairman.

You will also find attached to the Section 21 Notice a Guidance Note explaining the nature of a Section 21 Notice and the procedures that the RHI Inquiry has adopted in relation to such a notice. In particular, you are asked to provide your evidence in the form of the template witness statement which is also enclosed with this 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

A handwritten signature in blue ink that reads "Patrick Butler". The signature is written in a cursive style with a long horizontal stroke at the end.

Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE
[No 233 of 2018]

Appointment of Special Advisers

1. Attached to this Notice are copies of the 'Code Governing the Appointment of Special Advisers' as applicable from May 2011 and that applicable from August 2013 (marked **DOF-90138 to DOF-90174** and **DOF-592 to DOF-631** respectively). Please explain in detail, including by reference to the relevant Code, the process by which you appointed your Special Advisers as Department of Agriculture and Rural Development ('DARD') Minister from 2011 and as Health Minister from 2016. Your answer should address, in relation to each Special Adviser appointment made by you, but need not be limited to the following issues:
 - a. Whether, and if so how, you secured compliance with the Code (including matters such as who created the person specification and job description; how a pool of potential candidates was identified; who created the list of candidates suitable for interview and on what criteria; how many candidates were interviewed and by whom; who the successful candidate was; what the reasons were for appointing this candidate);
 - b. Whether, at any point during the process to select and appoint your Special Adviser, you consulted with or received advice or direction from, any other person within Sinn Féin (and, if so, the details and outcome);
 - c. Where the process adopted by you failed to follow or adhere to, or deviated from, the process laid down in the Code Governing the Appointment of Special Advisers at the applicable time, the reasons for the failure or deviation; and

- d. Insofar as it is within your knowledge, whether the approach adopted by you in these appointments was similar to, or different from, other such appointments made by Sinn Féin Ministers and/or Ministers of other parties.

Your involvement in and knowledge of the RHI Scheme

2. Summarise any direct or indirect involvement that you had in the Non Domestic Renewable Heat Incentive (RHI) Scheme in Northern Ireland ('the RHI Scheme') or any aspect of it prior to its suspension at the end of February 2016.
3. Without prejudice to the generality of the foregoing request, please address the following issues in respect of your knowledge of the RHI Scheme:
 - a. Set out the extent of your knowledge, prior to the suspension of the RHI Scheme on 29 February 2016, of the activities of DARD in advertising or promoting the RHI Scheme and/or providing information, education, assistance, guidance or advice regarding the Scheme (including, in particular, in respect of the financial benefits available, and the possible rates of return and/or income that was achievable, under the Scheme);
 - b. Set out when, how, and in what terms you first became aware of any potential risks, flaws, problems, anomalies, loopholes, or other issues regarding the RHI Scheme including in particular, but not limited to, the following:
 - i. that the 20-99kW solid biomass tariff (in p/kWh) payable under the RHI Scheme exceeded (A) the cost of biomass fuel (in p/kWh) and (b) the cost of generating heat with that fuel (in p/kWh) so that there may have existed an economic incentive to waste heat and/or generate unnecessary heat;

- ii. that there was a significant interest in, and/or a high uptake of, the Scheme amongst sectors with a high demand for heat such as the poultry broiler sector;
 - iii. that the Scheme was facing significant budgetary pressures;
 - iv. that the Scheme was being 'gamed', for example, by the installation in one premises of a number of 20-99kW boilers, each one on a separate heating system, rather than a single heating system with a capacity in excess of 99kW;
 - v. that the Scheme was being abused, for example, by the unnecessary heating of empty buildings.
4. Provide full details of any instances of whistle-blowing to you in relation to the RHI Scheme or any disclosures made to you raising concerns about the RHI Scheme, including details of when such communications occurred and to whom, and by whom, each such communication was made.
5. Provide full details of any instances of lobbying or encouragement of you or, to your knowledge, of other Ministers, Special Advisers, Civil Servants, politicians, political parties, or other persons in relation to the terms of the RHI Scheme and/or the introduction, non-introduction, variation or delay of the introduction of cost controls into the Scheme (including, but not limited to, the amendment of tariffs, tiering, degression and Scheme suspension or closure).
6. Without prejudice to questions 2 to 5 above, the witness statement made on behalf of the Department of Agriculture, the Environment, and Rural Affairs ('DAERA') by Noel Lavery sets out details of a number of interactions you had which are of potential relevance to the RHI Scheme including:
 - a. Attendance at a Practical On Farm Renewable Energy (POFRE) event at CAFRE's Enniskillen Campus in February 2012 (see, in this regard, **WIT-84096** and **WIT-86528 to WIT-86546**);

- b. Receipt of a letter from Jonathan Bell, DETI Minister, in each of November 2015 and February 2016 (see, in this regard, **WIT-84074 to WIT-84075, WIT-85432, and WIT-85436 to WIT-85440**); and
- c. Receipt of a briefing in respect of a meeting with Moy Park personnel in February 2016, which said meeting appears never, in fact, to have taken place (see, in this regard, **WIT-84075 and WIT-85442 to 85454**).

Clarify whether there is any evidence you wish to give about the aforementioned interactions which is of relevance either to the issues raised in questions 2 to 5 above or to any other issues being investigated by the Inquiry under its Terms of Reference.

Scheme closure

- 7. The BBC, in an online news report on 30 January 2017, recorded the following in respect of your response to questions seeking clarification of when you were aware of financial problems with the RHI Scheme: “... *she said Sinn Féin ‘shut it down straight away’ when the issues arose*” (see: <https://www.bbc.co.uk/news/uk-northern-ireland-38794777>). In this regard, please address the following issues:
 - a. Clarify the steps (if any) that you took or caused to be taken to shut down, or assist in shutting down, the RHI Scheme;
 - b. Provide any evidence you can regarding Sinn Féin’s efforts to shut down the said Scheme *but only to the extent that such evidence has not already been provided by the following witnesses*:
 - i. Conor Murphy – **WIT-160201 to 160221**;
 - ii. Aidan McAteer - **WIT-161001 to 161063 and WIT-161064 to 161083**;
 - iii. Máirtín Ó Muilleoir – **WIT-162001 to 162042 and TRA-16232 to 16339**.

- c. Clarify whether you consider the suggestion that Sinn Féin shut the Scheme down "*straight away*" to be consistent with the position that Sinn Féin agreed the additional two weeks' delay to Scheme suspension (from 15 February 2016 to 29 February 2016).

Generally

8. Finally, please provide any additional evidence which you consider to be relevant to the Inquiry's Terms of Reference, or of which you consider it should be aware, bearing in mind that any further material you provide to the Inquiry should constitute evidence of fact as opposed to mere commentary on the evidence of another witness or participant.

NOTE:

It is important for the efficiency of the RHI Inquiry that the issues identified above are addressed as fully as possible and by reference, where available, to the dates and locations of specific incidents to which reference is made. The statement should be broken down into paragraphs, which should be numbered sequentially from '1' to the end. The use of appropriate section headings or sub-headings is also encouraged. A template witness statement is provided with this Notice for your assistance and should be used as the format for your response.



INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 233 of 2018

DATE:

Witness Statement of:

I, Michelle O'Neill, will say as follows: -

Appointment of Special Advisers

1. Attached to this Notice are copies of the 'Code Governing the Appointment of Special Advisers' as applicable from May 2011 and that applicable from August 2013 (marked **DOF-90138 to DOF-90174** and **DOF-592 to DOF-631** respectively). Please explain in detail, including by reference to the relevant Code, the process by which you appointed your Special Advisers as Department of Agriculture and Rural Development ('DARD') Minister from 2011 and as Health Minister from 2016. Your answer should address, in relation to each Special Adviser appointment made by you, but need not be limited to the following issues:
 - a. Whether, and if so how, you secured compliance with the Code (including matters such as who created the person specification and job description; how a pool of potential candidates was identified; who created the list of candidates suitable for interview and on what criteria; how many candidates were interviewed and by whom; who the successful candidate was; what the reasons were for appointing this candidate);



As DARD Minister I appointed two Special Advisors – Conor Heaney in 2012 and Liam Lappin in 2014.

In all cases I complied with the Code Governing the Appointment of Special Advisors that applied at the time.

Conor Heaney: *I used the job description from the Model Contract. As a first-time Minister I wanted someone who had previous experience of working as an Advisor, and was committed to the values and politics I wanted to bring to the Department. Having considered a number of potential candidates I interviewed Conor Heaney for the role and appointed him as he best met the job specification in my opinion. He accepted the appointment.*

Liam Lappin: *For this appointment I again used the job description from the Model Contract. The job specification was the same as that pertaining to Conor Heaney's appointment with one exception. On this occasion I removed the need for the candidate to demonstrate previous experience in the role of Advisor. The reason for removing this requirement was that I now felt sufficiently confident to guide the appointee in relation to my requirements and by removing the requirement to demonstrate previous experience I expanded the field and accordingly the diversity of candidates. Having served as a Minister I knew how the system operated and did not require this of my Advisor. I considered a number of candidates and appointed Liam Lappin as he best met the job specification in my opinion.*

Ciaran O'Connor: *As Health Minister I appointed Ciaran O'Connor. For this appointment I used the job description from the Model Contract and the job specification from my previous appointment. I considered a number of candidates and decided that Ciaran O'Connor best met the job specification in my opinion. He accepted the appointment.*

- b. Whether, at any point during the process to select and appoint your Special Adviser, you consulted with or received advice or direction from, any other person within Sinn Féin (and, if so, the details and outcome);



On each occasion that I appointed an Advisor I consulted and received advice from Martin McGuinness, the then Deputy First Minister and Leader of Sinn Fein at the Assembly and, for the latter two appointments Aidan McAteer, who was responsible for co-ordinating the work of the Sinn Fein Executive Team at the Assembly on a daily basis. I was never directed by anyone at any time to appoint any particular advisor. All of the appointments were made by me in accordance with the Code Governing the Appointment of Special Advisers.

- c. Where the process adopted by you failed to follow or adhere to, or deviated from, the process laid down in the Code Governing the Appointment of Special Advisers at the applicable time, the reasons for the failure or deviation; and

I believe I adhered to the process laid down in the Code Governing the Appointment of Special Advisers

- d. Insofar as it is within your knowledge, whether the approach adopted by you in these appointments was similar to, or different from, other such appointments made by Sinn Féin Ministers and/or Ministers of other parties.

To my knowledge this was the process followed by other Sinn Féin Ministers.

Your involvement in and knowledge of the RHI Scheme

2. Summarise any direct or indirect involvement that you had in the Non Domestic Renewable Heat Incentive (RHI) Scheme in Northern Ireland ('the RHI Scheme') or any aspect of it prior to its suspension at the end of February 2016.



I had no direct involvement in the RHI as it was the responsibility of the ETI Minister. As an Executive Minister I may have received correspondence from ETI Ministers Foster and Bell, accompanied by advice from my officials. I do not have ready access to these documents but am happy to obtain and review these if required. I am confident none of these submissions raised any concerns or flaws in relation to RHI until the closure of the scheme in February 2016.

3. Without prejudice to the generality of the foregoing request, please address the following issues in respect of your knowledge of the RHI Scheme:
 - a. Set out the extent of your knowledge, prior to the suspension of the RHI Scheme on 29 February 2016, of the activities of DARD in advertising or promoting the RHI Scheme and/or providing information, education, assistance, guidance or advice regarding the Scheme (including, in particular, in respect of the financial benefits available, and the possible rates of return and/or income that was achievable, under the Scheme);

My Department had a responsibility to raise awareness of government initiatives relevant to farmers and the wider rural community including initiatives developed and overseen by other departments. It was for the DETI Minister and Department to ensure the scheme was fit for purpose and value for money. It is not the role of a Minister or Department to scrutinise the work of another Minister or Department. Such an approach would be impractical and necessitate the duplication of expertise across all government departments. The reality is that the specialisation and expertise was available in the sponsoring department. Scrutiny of the Department is the role of the Assembly Committees.

*The European Union's Renewable Energy Directive (2009) targeted an 80% reduction in carbon emissions by 2050 (compared to the 1990 level) and included an interim objective of at least **15% of energy from renewable sources by 2020.***

In line with our responsibility to achieve this target, the Executive Programme

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for Government 2011-15 aimed for 20% of electricity consumption from renewable sources and 4% of heat from renewable sources by 2015.

My Department and I therefore had a specific responsibility to raise awareness of government initiatives promoting the use of sustainable energy. On the basis that it was presented by DETI as a bona fide renewable energy scheme, I would have expected my Department to encourage and promote the use of renewable and sustainable energy schemes including the RHI Scheme. I did not know of any difficulties with the scheme before February 2016 when the deputy First Minister moved immediately to have the scheme closed down.

As one of many schemes relevant to farmers I would have been broadly aware of the scheme's existence and, on the basis that it was presented by DETI as a bona fide renewable energy scheme, I would have expected my Department to advertise it. I did not know of any flaws in the scheme and no concerns were brought to my attention before February 2016.

- b. Set out when, how, and in what terms you first became aware of any potential risks, flaws, problems, anomalies, loopholes, or other issues regarding the RHI Scheme including in particular, but not limited to, the following:
 - i. that the 20-99kW solid biomass tariff (in p/kWh) payable under the RHI Scheme exceeded (A) the cost of biomass fuel (in p/kWh) and (b) the cost of generating heat with that fuel (in p/kWh) so that there may have existed an economic incentive to waste heat and/or generate unnecessary heat;

I became aware of the budgetary pressures in early February when the Deputy First Minister informed me that immediately after a briefing from HOCS he instructed that the RHI scheme be shut down as quickly as possible. I was then copied in to Minister Bell's urgent procedure request

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to close the RHI scheme due to budgetary pressures. I learned that the scheme may have been open to abuse upon reading the content of the Audit Office Report and from reading subsequent press publications and listening to broadcast media reports.

- ii. that there was a significant interest in, and/or a high uptake of, the Scheme amongst sectors with a high demand for heat such as the poultry broiler sector;

I note from the evidence provided by the Inquiry that in February 2016 my officials prepared a briefing for a planned meeting with Moy Park. That meeting did not take place. The briefing stated that the agriculture and forestry sector made up 51.6% of RHI applicants. There was no suggestion within the briefing that there was anything untoward about any agricultural sector's involvement in the scheme, including the poultry broiler sector. The only difficulty highlighted was the budgetary over-commitment.

- iii. that the Scheme was facing significant budgetary pressures;

Please see 3b (i) above.

- iv. that the Scheme was being 'gamed', for example, by the installation in one premises of a number of 20-99kW boilers, each one on a separate heating system, rather than a single heating system with a capacity in excess of 99kW;

I learned of the flaws in the scheme from the Audit Office report.

- v. that the Scheme was being abused, for example, by the unnecessary heating of empty buildings.

I learned that the scheme was being abused from the Audit Office report and



subsequent press investigations.

4. Provide full details of any instances of whistle-blowing to you in relation to the RHI Scheme or any disclosures made to you raising concerns about the RHI Scheme, including details of when such communications occurred and to whom, and by whom, each such communication was made.

I did not receive any whistleblowing allegations.

5. Provide full details of any instances of lobbying or encouragement of you or, to your knowledge, of other Ministers, Special Advisers, Civil Servants, politicians, political parties, or other persons in relation to the terms of the RHI Scheme and/or the introduction, non-introduction, variation or delay of the introduction of cost controls into the Scheme (including, but not limited to, the amendment of tariffs, tiering, degression and Scheme suspension or closure).

I was aware that MLAs from all parties were being lobbied not to close the scheme. The lobbying was something of which I was generally aware. At this remove I cannot remember the names of individual MLAs who may have told me about instances when they were lobbied or the precise detail. The height of what I can say at this time is that I was generally aware that MLAs were being lobbied not to close the scheme or to delay closure to allow existing applications to be processed.

6. Without prejudice to questions 2 to 5 above, the witness statement made on behalf of the Department of Agriculture, the Environment, and Rural Affairs ('DAERA') by Noel Lavery sets out details of a number of interactions you had which are of potential relevance to the RHI Scheme including:
 - a. Attendance at a Practical On Farm Renewable Energy (POFRE) event at CAFRE's Enniskillen Campus in February 2012 (see, in this regard, **WIT-84096** and **WIT-86528 to WIT-86546**);

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My Department had a responsibility to raise awareness of government initiatives, particularly those promoting the use of sustainable energy. On the basis that it was presented by DETI as a bona fide renewable energy scheme, I would have expected my Department to advertise it. I did not know of any flaws in the scheme and no concerns were brought to my attention before February 2016.

- b. Receipt of a letter from Jonathan Bell, DETI Minister, in each of November 2015 and February 2016 (see, in this regard, **WIT-84074 to WIT-84075**, **WIT-85432**, and **WIT-85436 to WIT-85440**); and

These letters were routinely copied to all Ministers for information purposes. They did not require action on my part. The November 9th 2015 letter from Minister Bell to Ministerial colleagues presented RHI as a positive, contributing to Programme for Government commitments.

- c. Receipt of a briefing in respect of a meeting with Moy Park personnel in February 2016, which said meeting appears never, in fact, to have taken place (see, in this regard, **WIT-84075** and **WIT-85442 to 85454**).

See answer provided at 3(b)(ii) above.

Clarify whether there is any evidence you wish to give about the aforementioned interactions which is of relevance either to the issues raised in questions 2 to 5 above or to any other issues being investigated by the Inquiry under its Terms of Reference.

I have nothing to add in relation to those interactions that is relevant to the Inquiry Terms of Reference.

Scheme closure



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7. The BBC, in an online news report on 30 January 2017, recorded the following in respect of your response to questions seeking clarification of when you were aware of financial problems with the RHI Scheme: “... she said Sinn Féin ‘shut it down straight away’ when the issues arose” (see: <https://www.bbc.co.uk/news/uk-northern-ireland-38794777>). In this regard, please address the following issues:

a. Clarify the steps (if any) that you took or caused to be taken to shut down, or assist in shutting down, the RHI Scheme;

I had no personal involvement in shutting down the Scheme. I became aware of the budgetary pressures in early February when the Deputy First Minister informed me that immediately after a briefing from HOCS he instructed that the RHI scheme be shut down as quickly as possible. I was then copied in to Minister Bell's urgent procedure request to close the RHI scheme due to budgetary pressures. I took no steps and I did not cause any steps to be taken to shut down or assist in shutting down the scheme. Nor did I ever suggest that I did.

b. Provide any evidence you can regarding Sinn Féin's efforts to shut down the said Scheme *but only to the extent that such evidence has not already been provided by the following witnesses:*

- i. Conor Murphy – **WIT-160201 to 160221**;
- ii. Aidan McAteer - **WIT-161001 to 161063** and **WIT-161064 to 161083**;
- iii. Máirtín Ó Muilleoir – **WIT-162001 to 162042** and **TRA-16232 to 16339**.

I have no further evidence to provide on this issue to the Inquiry.

c. Clarify whether you consider the suggestion that Sinn Féin shut the Scheme down “*straight away*” to be consistent with the position that Sinn

RENEWABLE HEAT
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Féin agreed the additional two weeks' delay to Scheme suspension (from 15 February 2016 to 29 February 2016).

Yes, I do.

Generally

8. Finally, please provide any additional evidence which you consider to be relevant to the Inquiry's Terms of Reference, or of which you consider it should be aware, bearing in mind that any further material you provide to the Inquiry should constitute evidence of fact as opposed to mere commentary on the evidence of another witness or participant.

I would like to address one point that have been raised during the course of the Inquiry. Firstly, the Head of the Civil Service, David Sterling, gave evidence to the Inquiry as follows:

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

Note-taking and record keeping was the responsibility of department officials, and in my experience, was carried out diligently - most often by my private office staff. I did not instruct, suggest or imply that proper records of meetings I was involved in should not be kept. I subsequently wrote to Mr Sterling asking him

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to clarify his remarks. I am attaching to this statement my letter to him and his response to me in which he states clearly;

“You will note that I did not say that ministers asked or directed that notes of meetings should not be taken. Indeed, I am happy to state for the record that no minister who I served in any of the departments in which I worked during the period from May 2007 until the present day ever issued any general or specific instruction to me not to record meetings between officials and ministers.”

Statement of Truth

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

Signed: 

Dated: 7.12.2018

**Oifig an Leas-Uachtaráin | Office of the Vice-President**

16 March 2018

Mr. David Sterling
Interim Head of the Civil Service
Stormont Castle
Stormont estate
Belfast
BT4 3XX

Dear David,

I write to formally put on record my concerns which relate to parts of your oral evidence which you presented to the independent public inquiry into the Non-domestic Renewable Heat Incentive Scheme on 13 March 2018, which was subsequently reported widely in the local media.

The sum total of what was reported from your evidence included:

- That the practice of taking minutes had lapsed after devolution when engagement between civil servants and local ministers became much more regular.
- That by not taking minutes was also an attempt to frustrate Freedom of Information requests.
- That minister's liked to have a safe space where they could think the unthinkable and not necessarily have it all recorded.
- That the DUP and Sinn Féin were sensitive to criticism and in that context, senior civil servants had got into the habit of not recording all meetings.
- That this was done on the basis that it was sometimes safer not to have a record which might be released under Freedom of Information.

My understanding is that since devolution was restored in 2007 you have only ever served for two brief periods under a Sinn Féin Minister, in both the Department for Regional Development and the Department for Finance, and that at no time ever, was the practice or approach to minute taking/recording of any meetings, or attempts to frustrate freedom of information requests ever discussed with you by any of my Sinn Fein colleagues.

Your assertion in referencing the Sinn Féin party in such public statements therefore ignores inconvenient facts and lacks objectivity.



Oifig an Leas-Uachtaráin | Office of the Vice-President

For our part, the Ministerial Code sets out the rules and procedures for the exercise of the duties and responsibilities of Ministers and junior Ministers as specified in the Good Friday Agreement and the legislation which underpins it - the NI Act 1998, the St Andrews Agreement and the NI (St Andrews Agreement) Act 2006.

I wish to assure you that Sinn Féin takes very seriously our obligations, duties and lawful responsibilities under the Ministerial Code, and believe that our record in this regard speaks for itself.

The Civil Service as you know is also guided by the NICS Code of Ethics and the Nolan Principles of Public Life which makes clear your responsibilities.

The first point in the Code of Ethics states that, "The Civil Service supports Ministers in developing and implementing their policies, and in delivering public services. Civil servants are accountable to Ministers."

You served as permanent secretary in the sponsoring Department of the Renewable Heat Incentive scheme from 2009-2014, and were accountable to DUP Ministers only. This is because Sinn Féin has never held the Department of Enterprise, Trade and Investment, or its successor, the Department of Economy.

I believe that you have made an error in this part of your evidence by associating Sinn Féin with the type of practices which you described.

I also feel that you should consider correcting any errors as soon as possible.

I look forward to hearing from you shortly.

Yours sincerely,

A handwritten signature in black ink that reads "Michelle O'Neill".

Michelle O'Neill MLA
Deputy Leader
Sinn Féin



David Sterling
Head of the Civil Service
Room FD.34, Stormont Castle
Stormont Estate, Belfast
BT4 3TT, Northern Ireland
Tel: 028 9037 8133
E-mail: hocs@executiveoffice-ni.gov.uk

Michelle O'Neill MLA
Sinn Fein
sinnfeinnorthernleader@gmail.com

Our Ref: COR63/18

By e-mail only

11 April 2018

Dear Michelle

Comments made at RHI Inquiry

Thank you for your letter of 16 March in which you raised a number of issues in regard to the oral evidence I recently gave to the RHI Inquiry.

At the Oral Hearing on 13 March I was asked why in relation to a particular circumstance no minute had been taken of a meeting between DETI officials and the DETI Minister. The Inquiry Counsel noted that this appeared to be at odds with DETI internal guidance issued in 2008 which directed that, for all internal and external meetings involving officials and ministers, a note of the discussion, decision taken and action agreed should be taken and kept.

This gave rise to a lengthy discussion which is recorded in detail on pages 61 to 79 of the transcript of the oral evidence taken on 13 March ([please see link to transcript](#)).

In answer to this question I advised that the practice of minuting all meetings between ministers and officials had lapsed in DETI and, to the best of my knowledge, in many other departments (though I did note that this did not mean that minutes of meetings were never taken).

By way of explanation I said that the pace at which business was conducted in departments had accelerated considerably with the passage of time and the re-introduction of devolved government in 2007. I also noted that under devolved government there was much more frequent and often informal contact between



officials, special advisers and ministers which meant that there would often be many meetings involving ministers, advisers and officials before a policy decision was reached.

Taken together I explained that that these factors meant it was not always practicable to prepare timely, relevant and useful minutes of all meetings.

I also said:

“Ministers like to have space, safe space, where they can consider difficult things, think the unthinkable and not necessarily have it all recorded. A feature of the devolved administration here has been that the two main parties have been sensitive to criticism, and I think it’s in that context that, as a Senior Civil Service, we got into the habit of not recording all meetings on the basis that it is safer sometimes not to have a record that, for example, might be released under freedom of information which shows that things that might have been considered unpopular were being considered”. [page 65].

You will note that I did not say that ministers asked or directed that notes of meetings should not be taken. Indeed, I am happy to state for the record that no minister who I served in any of the departments in which I worked during the period from May 2007 until the present day ever issued any general or specific instruction to me not to record meetings between officials and ministers.

Crucially, I assured the Inquiry that even in circumstances where discussions had not been recorded it was still incumbent on officials to ensure there was a clear record of the basis on which ministerial decisions were ultimately taken. I said, based on my experience, that this would usually be evident in a final ministerial submission or a file note. Indeed, you will note from the transcript that I spent a considerable amount of time reassuring the Inquiry that, even in circumstances where all meetings were not formally recorded, I was satisfied that in my experience there would have been a good audit trail (usually in the form of ministerial submissions) to show what decisions were taken and why they were taken.

Lastly, I advised the Inquiry that the Executive Office has prepared draft guidance on the minuting of meetings which would be introduced in all departments subject to the agreement of a new NI Executive.

I trust this clarifies the position satisfactorily.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D Sterling', written in a cursive style.

DAVID STERLING
Head of the Northern Ireland Civil Service