

Mike Brennan
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

By post and email to: mike.brennan@economy-ni.gov.uk

24 July 2018

Dear Sir

Re: The Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme
Provision of a Section 21 Notice requiring the provision of 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 already be familiar with the work of the Inquiry and its Terms of Reference from my previous correspondence with you.

The Inquiry is grateful for the evidence you have already provided to it.

There are a number of further matters that the Inquiry would like you to address by way of further witness statement.

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

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 enclosed for your convenience. 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 (which you will find published on the Inquiry website) 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.

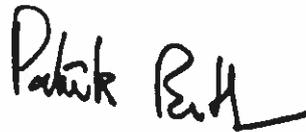
Given the tight time-frame within which the RHI Inquiry must operate, the Chairman of the Inquiry would be grateful if you would comply with the requirements of the Section 21 Notice as soon as possible and, in any event, by the date set out for compliance in the Notice itself.

I should also indicate that just because the Inquiry has asked you to provide a witness statement it does not follow that the Inquiry will also ask you to attend to give further oral evidence. Should the Inquiry wish to hear further from you it will be in touch.

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 black 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 138 of 2018]***July/August 2015*

During July and August 2015 there was contact between the then DETI SpAd, Timothy Cairns, and then then DFP SpAd, Andrew Crawford about potential changes to the RHI Scheme.

This engagement, amongst other things, led the DFP SpAd to engage officials within DFP about the RHI Scheme.

There are a number of individuals with potentially different recollections about this sequence of events including as to who spoke to whom, and when.

What appear to be the different strands of relevant evidence are referred to below:

- On 16 July 2015 at 14.14 the then DETI SpAd, Timothy Cairns, forwarded the then DFP SpAd, Andrew Crawford, an email from DETI Energy Division's head of Energy Efficiency Branch, Stuart Wightman, to the DETI Private Office (DFE-293132), attached to which was a DETI Energy Division ministerial submission of 8 July 2015. The forwarded attachments (which were out of sequence) included:
 - o Annex A to the submission - final 2 issue RHI policy document on CHP and cost control entitled "Response to consultation on phase 2 proposals and final policy on CHP and Cost Control" – DFE-293133 to DFE-293139;
 - o Annex B to the submission - draft SL1 letter to the Assembly ETI Committee – DFE-293140 to DFE-293143;
 - o Annex D to the submission - Lines to take on domestic RHI – DFE-293144
 - o The Submission of 8 July 2015 – DFE-293145 to DFE-293149;
 - o Annex C to the submission - Lines to Take on the proposed changes to the NI Non Dom RHI – DFE-293150; and

- On 20 July 2015 at 21.01 (IND-27555) Andrew Crawford sent an emailed reply to Timothy Cairns which addressed, amongst other things, RHI funding. He indicated that he was going to check the matter out with DFP.
- On the following morning, at 08.30, on 21 July 2015, Andrew Crawford emailed Timothy Cairns again (IND-27966) and asked Timothy Cairns to give him (Andrew Crawford) a call and indicated that "*he had a word with DFP*".
- It may be that this "*word with DFP*" occurred through the telephone call referenced within the first corporate statement of the Department of Finance dated 2 June 2017 at WIT-30050 and WIT-30051. The DoF statement says that Andrew Crawford was informed that there was no certainty that the scheme would be fully funded through AME but that discussions were ongoing. There was also said to have been a brief discussion of a lack of "*approval*" (presumed to be DFP approval) for the scheme, requiring DETI to submit an "*addendum*" (presumed to be a reference to an addendum business case).
- In the first witness statement from Michelle Scott of DoF of 25 September 2017 (WIT-43027), Ms Scott confirms that the telephone call with the DPF SpAd, Andrew Crawford that was referred to in the first DoF corporate statement was with her. Her evidence is that Andrew Crawford asked why DFP had an issue with the RHI scheme; and that, in response to a statement from Andrew Crawford that the RHI Scheme was fully AME funded, she replied that she didn't know that it would be and the situation was being looked into. She goes on to say that she briefly highlighted regularity and value for money concerns, and the resulting need for DETI to submit a business case addendum. Ms Scott says she notified Ms Morelli and yourself about the phone call because, at that time, contact from the Special Advisor was unusual.
- In paragraph 7d of his first witness statement of 1 June 2017 (WIT-21521) Andrew Crawford says that his discussions with DFP during the summer of 2015 involved DFP officials being primarily concerned with a lack of DFP approval for the RHI Scheme, rather than with an overspend coming from the NI DEL budget.

- In paragraph 69 of his second witness statement of 21 March 2015 (WIT-21627), Andrew Crawford suggests that he spoke to *you* about the funding of the RHI Scheme in July 2015; and that you informed him that you were concerned that there was no re-approval as this would result in irregularity. Andrew Crawford asserts that there was no mention during discussions with you, in July 2015, of any concerns about the RHI Scheme impacting the DEL budget (see also the end of paragraph 41 of the same statement at WIT-21608).
- In her first witness statement of 25 September 2017 Ms Morelli said (WIT-43622) that she alerted her line manager (you) to the fact that the DFP SpAd had raised a query with Supply Division about the RHI Scheme. She indicated further in that witness statement (WIT-43642) that the call she alerted you about was between the DFP SpAd and DFP's DETI Supply Officer, Ms Scott. She suggests this was in August 2015.
- In a document dated August 2015 (DOF-03320) (said to be TRIM document DF1/15/599482, [placed into TRIM on 6 August 2015 at 10.32](#)) and entitled "DFP Supply Key Issues", and in a row relating to DETI, it says the SpAd has asked to be kept informed on the position on RHI, and that DETI is still investigating (referring to Michelle, which is assumed to be a reference to Ms Scott).

1. As to the events referred to in the above material:

- a. Please give an account of any interactions you had with the DFP Special Advisor, and your DFP Supply officials, about the RHI Scheme during July and August 2015.
- b. Both Ms Scott and Ms Morelli appear to be saying that they spoke to you about engagement which the DFP SpAd had with Ms Scott in relation to the RHI Scheme because they regarded it as unusual. Did you regard it as unusual? If so, why? What did you do about it?
- c. In the August 2015 DFP Supply Key Issues document, it is recorded that the SpAd was to be kept informed on the position with RHI. Were you aware

of this intention? How was this done?

- d. Please set out any dates when were you absent from DFP (on holiday or otherwise) during July and August 2015.
- e. It appears that, by 20 July 2015, the DFP SpAd, Andrew Crawford, was aware of the likelihood of a “*massive spike*” in applications arising from the changes DETI were proposing. Did he make you aware of this likelihood, and upon what it was based? If so, what did you do with the information you received? If not, what (if anything) would you, as DFP Budget Director, have done had you been made so aware?

November/December 2015

Andrew Crawford has also said, in his second statement to the RHI Inquiry of 21 March 2018 (see WIT-21627), that he had further discussion(s) with you about the RHI Scheme in November and December 2015.

On 18 December 2015 you sent Andrew Crawford an email (DOF-02272) (copying in the then DFP Permanent Secretary) in response to an RHI update request from Andrew Crawford of 17 December 2015.

2. As to the events referred to in the above material, please give an account of any interactions you had with the DFP Special Advisor, and your DFP Supply officials, about the RHI Scheme during November and December 2015 (or also including September and October 2015 if there are any relevant interactions which took place during those periods that you consider you should bring to the Inquiry’s attention).

January 2016

From the email you sent to Andrew Crawford on 18 December 2015 (DOF-02272) it appears that you had a general understanding of the position which HMT was going to adopt in relation to RHI funding in the 2015 Spending Review settlement for

Northern Ireland. As a result, in that communication you indicated that DETI would need to be advised to take corrective action immediately.

On 12 January 2016 Ms Foster became First Minister of Northern Ireland, and was replaced as DFP Minister by Mervyn Storey. Andrew Crawford continued as the DFP Special Adviser.

On 13 January 2016 the Chief Secretary to the Treasury provided the NI Executive with the 2015 Spending Review settlement letter for Northern Ireland (DOF-42007 to DOF-42012), which dealt with RHI funding at paragraph 13 (on DOF-42009).

On 26 January 2016 at 15.53 (DOF-02295) you sent an email to DFP SpAd Andrew Crawford referring to a discussion with the Minister about the CST letter, about a lack of action from DETI on RHI, and referring to Andrew Crawford having mentioned that he would take forward the issue at a political level. It seems that you drew his attention, in some detail, to the growing worry you had as to the potential for RHI to destabilise 'the Centre' position. You also raised an issue over the financial implications of ROCs.

On 26 January 2016 at 19.29 (DOF-02295) you received a reply from Dr Crawford informing you that the "*DETI Minister is responsible for the policy decisions on both of these matters*", but indicating a willingness to discuss the financial implications with you.

3. As to the discussion that preceded, and was referred to in, your email of 26 January 2016:
 - a. When was the discussion with the Minister and SpAd that preceded your email of the 26 January 2016?
 - b. Who was present during it?
 - c. Please give an account of the discussion as far as it related to RHI (including who was raising what, who was responding to any points raised, what the

outcome of the discussion was, *etc.*).

- d. Were you made aware at that stage (by Andrew Crawford or otherwise) that the clearance by the DETI Minister of a submission to him which related to the closure or suspension of the RHI Scheme had been rescinded and the matter referred to other DUP officials and/or Special Advisers for consideration (see WIT-11770)?

4. In respect of your email of 26 January 2016:

- a. What was the purpose of your email to Andrew Crawford?
- b. What did you understand would be involved in him taking forward the issue at a political level?
- c. Why was it necessary that the matter be taken forward at a "*political level*"?

5. In respect of the replying email you received from Andrew Crawford on 26 January 2016:

- a. Were you surprised by the response you received? Please explain the reasons for your answer.
- b. What response had you been expecting? Please explain the reasons for your answer.
- c. Did you (and DFP generally) consider Dr Crawford's response that the "*DETI Minister is responsible for the policy decisions on both of these matters*" to be correct in light of the nature of the decisions to be made in relation to the RHI Scheme (*i.e.* whether those decisions were cross-cutting, significant or controversial)?
- d. Did you have the discussion Andrew Crawford offered in his email to you? If the answer is 'yes', please give an account of that discussion.

DFP SpAd assisting the DETI SpAd over RHI

6. Andrew Crawford has explained in his first witness statement of 1 June 2017 (see WIT-21517 to WIT-21519) that he, whilst DFP SpAd, gave advice and assistance to Timothy Cairns, the then DETI SpAd, about the RHI Scheme, the course which should be taken, and the proposals which DETI Energy Division were putting to the DETI Minister. As to this:
- a. Were you aware, during any discussions you had in 2015 and/or 2016 with the then DFP SpAd, Andrew Crawford, that he was advising the DETI SpAd about the RHI Scheme (a scheme for which re-approval was required from DFP)?
 - b. If you were not so aware, do you consider that you should have been made so aware? Please explain the basis for your answer.
 - c. Had you been made so aware, would you have acted or proceeded any differently from the way in which you did?

February 2016

7. From information provided to the Inquiry it appears that, on 2 February 2016, DFP responded to DETI to suggest changes to an Executive Paper to be sent to OFMDFM by the DETI Minister seeking Executive approval to close the RHI Scheme. DFP suggested a number amendments to the Paper (see WIT-11818). The Permanent Secretary of DETI, Dr McCormick, asked Chris Stewart (the Head of Policy Group in DETI) to look at DFP's suggested amendments (see WIT-11816). Mr Stewart was content with most of the changes but didn't see any reason for the suggested removal of text at paragraph 5 of the draft (see WIT-11820, showing the suggested changes tracked). In particular, it appears that DFP wished there to be a removal of reference to the poultry sector. As to that:
- a. Please explain your involvement (if any) in the process of commenting upon, or suggesting amendments to, this (or other) draft DETI communications

- with the Executive Committee or OFMDFM in relation to the RHI schemes.
- b. Please explain, insofar as you can, the rationale behind the suggested amendment referred to above.
 - c. Please identify, to your knowledge or belief, who requested that the suggested amendment referred to above be made.
8. A further draft of the Executive Paper was received by DETI from DFP on 3 February 2016, with further suggested changes (see WIT-11825). Significantly, this version now suggested that consultation on the proposed closure of the Scheme should be dropped (see, in particular, the relevant change at paragraphs 15-16 on WIT-11829). It further appears to the Inquiry that this was suggested to you by Dr Crawford (see WIT-11826). As to this:
- a. Please explain how and why the proposal came to be made to DETI that consultation in relation to the proposed closure of the RHI schemes should be abandoned.
 - b. Insofar as not addressed in your response to the above, please provide details of:
 - i. any conversations or discussions within DFP in relation to this proposal;
 - ii. any further conversations or considerations of which you are aware which gave rise to this approach;
 - iii. what, if any, legal advice was taken in relation to the proposal that public consultation should be dropped; and
 - iv. Dr Crawford's rationale for suggesting this course (if, indeed, he did so) and any information he provided to you as to whether, and if so in what manner, this course had been suggested or agreed by others.
9. Further to Executive approval of the DETI Minister's decision to close the RHI Scheme (by means of the urgent procedure) on 5 February 2016, it appears that a

subsequent decision was taken on or around 9 February 2016 that the closure or suspension of the RHI schemes (which, immediately prior to this decision, appears to have been due to take effect on or around 16 February 2016) should be delayed for a further period to allow additional applications to the schemes to be made. In the event, the period of additional delay was around two weeks, resulting in suspension of applications to the schemes from 29 February 2016. In relation to this, it appears that you raised with Mr Rooney of DETI a concern as to whether the 11 February announcement in this regard was consistent with what the Executive had agreed (see DFE-294194). As to this:

- a. Please set out your understanding of how the additional delay in relation to the closure/suspension of the RHI schemes arose.
- b. Explain what concerns you had about whether the announcement of this further period of time within which applications to the schemes might be made was consistent with what the Executive had agreed.
- c. Set out what steps, if any, other than raising this matter with Mr Rooney, you took in relation to these concerns (including to whom else, if anyone, you communicated them).
- d. Explain whether, and if so how, you were satisfied that your concerns had been met or assuaged.

10. At the same time (again, see DFE-294194) you also expressed concern about *“the additional budget implication above the Executive’s agreed position on immediate closure of the scheme, and whether the Executive has agreed budget cover for the additional amount – and do we have an estimate?”*. As to this:

- a. Please set out your concerns about the *“additional budget implication”* of the course which had been adopted.
- b. Set out what steps, if any, other than raising this matter with Mr Rooney, you took in relation to these concerns (including to whom else, if anyone,

- you communicated them).
- c. Explain whether, and if so how, you were satisfied that your concerns had been met or assuaged.
 - d. What conclusion, if any, did you come to (or have you since come to, if different) in relation to whether the Executive (i) had agreed cover for the additional amount which would be incurred as a result of the delay in closure of the RHI schemes and (ii) had any estimate in relation to this additional amount?
 - e. Do you consider that sufficient steps were taken to seek to assess (and budget for) the financial implications of the decision which was taken at this time to provide an additional period of time to prospective applicants to the RHI schemes before they were closed? Please explain your answer.

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 138 of 2018****DATE: 30 August 2018**

Witness Statement of: Mike Brennan

I, Mike Brennan, will say as follows: -

July/August 2015

During July and August 2015 there was contact between the then DETI SpAd, Timothy Cairns, and then then DFP SpAd, Andrew Crawford about potential changes to the RHI Scheme.

This engagement, amongst other things, led the DFP SpAd to engage officials within DFP about the RHI Scheme.

There are a number of individuals with potentially different recollections about this sequence of events including as to who spoke to whom, and when.

What appear to be the different strands of relevant evidence are referred to below:

- **On 16 July 2015 at 14.14 the then DETI SpAd, Timothy Cairns, forwarded the then DFP SpAd, Andrew Crawford, an email from DETI Energy Division's head of Energy Efficiency Branch, Stuart Wightman, to the DETI Private Office (DFE-293132), attached to which was a DETI Energy Division ministerial submission of 8 July 2015. The forwarded attachments (which were out of sequence) included:**



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 - **Annex C to the submission - Lines to Take on the proposed changes to the NI Non Dom RHI – DFE-293150; and**
- **On 20 July 2015 at 21.01 (IND-27555) Andrew Crawford sent an emailed reply to Timothy Cairns which addressed, amongst other things, RHI funding. He indicated that he was going to check the matter out with DFP.**
 - **On the following morning, at 08.30, on 21 July 2015, Andrew Crawford emailed Timothy Cairns again (IND-27966) and asked Timothy Cairns to give him (Andrew Crawford) a call and indicated that “*he had a word with DFP*”.**
 - **It may be that this “*word with DFP*” occurred through the telephone call referenced within the first corporate statement of the Department of Finance dated 2 June 2017 at WIT-30050 and WIT-30051. The DoF statement says that Andrew Crawford was informed that there was no certainty that the scheme would be fully funded through AME but that discussions were ongoing. There was also said to have been a brief discussion of a lack of “*approval*” (presumed to be DFP approval) for the scheme, requiring DETI to submit an “*addendum*” (presumed to be a reference to an addendum business case).**
 - **In the first witness statement from Michelle Scott of DoF of 25 September 2017 (WIT-43027), Ms Scott confirms that the telephone call with the DFP SpAd, Andrew Crawford that was referred to in the first DoF corporate statement was with her. Her evidence is that Andrew Crawford asked why**

DFP had an issue with the RHI scheme; and that, in response to a statement from Andrew Crawford that the RHI Scheme was fully AME funded, she replied that she didn't know that it would be and the situation was being looked into. She goes on to say that she briefly highlighted regularity and value for money concerns, and the resulting need for DETI to submit a business case addendum. Ms Scott says she notified Ms Morelli and yourself about the phone call because, at that time, contact from the Special Advisor was unusual.

- In paragraph 7d of his first witness statement of 1 June 2017 (WIT-21521) Andrew Crawford says that his discussions with DFP during the summer of 2015 involved DFP officials being primarily concerned with a lack of DFP approval for the RHI Scheme, rather than with an overspend coming from the NI DEL budget.
- In paragraph 69 of his second witness statement of 21 March 2015 (WIT-21627), Andrew Crawford suggests that he spoke to *you* about the funding of the RHI Scheme in July 2015; and that you informed him that you were concerned that there was no re-approval as this would result in irregularity. Andrew Crawford asserts that there was no mention during discussions with you, in July 2015, of any concerns about the RHI Scheme impacting the DEL budget (see also the end of paragraph 41 of the same statement at WIT-21608).
- In her first witness statement of 25 September 2017 Ms Morelli said (WIT-43622) that she alerted her line manager (you) to the fact that the DFP SpAd had raised a query with Supply Division about the RHI Scheme. She indicated further in that witness statement (WIT-43642) that the call she alerted you about was between the DFP SpAd and DFP's DETI Supply Officer, Ms Scott. She suggests this was in August 2015.
- In a document dated August 2015 (DOF-03320) (said to be TRIM document DF1/15/599482, placed into TRIM on 6 August 2015 at 10.32) and entitled "DFP Supply Key Issues", and in a row relating to DETI, it says the SpAd has asked to be kept informed on the position on RHI, and that DETI is still



investigating (referring to Michelle, which is assumed to be a reference to Ms Scott).

1. As to the events referred to in the above material:

- a. Please give an account of any interactions you had with DFP Special Advisor, and your DFP Supply officials, about the RHI Scheme during July and August 2015.**

I do not recall a specific conversation with Andrew Crawford on the RHI issue during Summer 2015. As to the interactions I had with DFP Supply officials, see my response to sub-paragraph b. below.

- b. Both Ms Scott and Ms Morelli appear to be saying that they spoke to you about engagement which the DFP SpAd had with Ms Scott in relation to the RHI Scheme because they regarded it as unusual. Did you regard it as unusual? If so, why? What did you do about it?**

My first witness statement to the Inquiry, WIT 43215, advised that I was aware of the RHI issue during the Summer of 2015:-

“I first became aware of problems with the RHI scheme in the summer of 2015. This was when the Supply team alerted me to two problems – DETI failing to review the scheme approval ... and a potential financial pressure that could impact upon the Executive’s Departmental Expenditure Level DEL.”

I do recollect Ms Scott and / or Ms Morelli informing me that the DFP SpAd, Andrew Crawford, had made contact to discuss the RHI Scheme, I do not, however, remember the specific date nor any specific details. Whilst I cannot say with any certainty why Ms Morelli and Ms Scott considered the interaction to be unusual, I considered the above-mentioned interaction between the SpAd and a Supply Officer (either at Grade 7 or Grade 5) to be unusual in that a DFP SpAd normally made initial contact with me on a public



expenditure issue, (the email at IND 27555, dated 21 July 2015, served on me by this s.21 Notice, reinforces that the reason for seeking contact with DFP was a public expenditure query). I should add that in the Budget Director post I have had frequent discussions with DFP SpAds over the years on such issues. In addition, in DFP, whilst engagement with SpAds and Supply Officials did occur occasionally, this was more likely when the SpAd had met initially with that Supply officer at a previous meeting or engagement concerning the matter etc. Contact, typically, was also between a SpAd and an official of the senior civil service (Grade 5 and above). It is therefore fair to say that interaction between a SpAd and Grade 7 Supply Officer was not a regular occurrence, something more unusual than usual.

I do not recollect taking any specific action on being informed of the SpAd engagement.

- c. **In the August 2015 DFP Supply Key Issues document, it is recorded that the SpAd was to be kept informed on the position with RHI. Were you aware of this intention? How was this done?**

I do not recall seeing this document but a DFP SpAd asking to be kept informed of developments on a specific issue was not unusual.

- d. **Please set out any dates when you were absent from DFP (on holiday or otherwise) during July and August 2015.**

HR records show that I was on annual leave on 3 July 2015 and over the 28 July to 15 August period.

- e. **It appears that, by 20 July 2015, the DFP SpAd, Andrew Crawford, was aware of the likelihood of a “massive spike” in applications arising from the changes DETI were proposing. Did he make you aware of this likelihood and upon what it was based? If so, what did you do with the information you received? If not, what (if anything) would you as DFP Budget Director, have done had you been made so aware?**



My Solicitor has shown me an email dated 31 July 2015 sent from Andrew Crawford to Timothy Cairns at 21:04. I can see in that email Andrew Crawford warns Timothy Cairns:- There is going to be a massive spike in applications before 1 October. There is currently a shortage of the necessary pipework required to install boilers.” It can be seen that in his email dated 20th July 2015, (IND 27555), he also warns Timothy Cairns of a massive spike. I do not recollect seeing either email before now nor do I recollect Andrew Crawford making me aware of a “massive spike” in applications circa 20 July or 31 July 2015. As Budget Director I would have been concerned about the funding implications of such a spike and its affordability and in that context I would have sought to increase the issue profile with my Permanent Secretary.

November/December 2015

Andrew Crawford has also said, in his second statement to the RHI Inquiry of 21 March 2018 (see WIT-21627), that he had further discussion(s) with you about the RHI Scheme in November and December 2015.

On 18 December 2015 you sent Andrew Crawford an email (DOF-02272) (copying in the then DFP Permanent Secretary) in response to an RHI update request from Andrew Crawford of 17 December 2015.

- 2. As to the events referred to in the above material, please give an account of any instructions you had with the DFP Special Advisor, and your DFP Supply officials, about the RHI Scheme during November and December 2015 (or also including September and October 2015 if there are any relevant interactions which took place during those periods that you consider you should bring to the Inquiry’s attention).**

As to this:



(a) I became more involved in the RHI issue in Autumn 2015. As advised in my first statement to the Inquiry,

“...in discussions with HMT officials in autumn 2015 there was an explicit reference to the fact that there was no 2015-16 Scheme limit because there was no UK Spending Review in place.” WIT 43219 refers.

(b) On 8 December 2015 I chaired a meeting with HMT. A number of issues were discussed at the meeting including RHI. Michelle Scott from Supply attended that meeting at my request. As advised in my first statement to the Inquiry, HMT clarified how 2015-16 funding would be provided. This information was relayed to DETI by the Supply team, WIT 43219 refers.

(c) I am also aware that there was further engagement with HMT after this meeting as to the funding model for RHI going forward. Given the passage of time I do not recall the exact sequence or detail of this engagement but I do recall that it was in advance of the HMT Settlement Letter, which was received on 13th January 2016.

(d) On 18 December 2015, a HMT official (Jon Donaghy) advised me by telephone that, having discussed the issue with other relevant HMT officials, no additional monies would be available for NI RHI Scheme over and above the population share, 3%, of the DECC RHI Budget, and that contrary to previous advice given to DFP from DETI, DECC had never factored in the increased contribution from NI to the wider UK target on renewables’.

(e) During this period I had many engagements with Andrew Crawford on a wide range of finance issues. In that context I have no recollection of any specific RHI engagement with him during this time or him issuing instructions to me. The documents provided to me by the Inquiry show that I updated David Sterling and the SpAd of the RHI position, DOF 02272 demonstrates that Andrew Crawford specifically asked for an “update on RHI yesterday” . It is likely that I kept both Andrew Crawford and the DFP Permanent Secretary informed pursuant to any request, but also voluntarily, as Supply officials were keeping me informed on DETI AME forecasts for 2015-16 and beyond which had increased significantly



and it was not clear if sufficient monies would be made available from 2016-17 onwards through the AME funding model to meet these pressures.

- (f) My approach to the DFP Permanent Secretary and SpAd was in line with the established way of working between myself as Budget Director, my direct line manager and the DFP SpAd.
- (g) In and around this time, 18 December 2015, evidence with which I have been presented shows that I appear to have provided Andrew Crawford with a copy of Supply's draft letter to DETI, (declining its request for retrospective approval for installations under the RHI Scheme from April to November 2015)(DOF 04722/3). I have no distinct recollection of this action but I presume that I did so because the action of declining retrospective approval was a step of considerable importance and one about which the Minister of my Department, the DFP Minister, should be alerted. This letter was subsequently issued without amendment to DETI on 21 December 2015, (DFE 152933/36).

January 2016

From the email you sent to Andrew Crawford on 18 December 2015 (DOF-02272) it appears that you had a general understanding of the position which HMT was going to adopt in relation to RHI funding in the 2015 Spending Review settlement for Northern Ireland. As a result, in that communication you indicated that DETI would need to be advised to take corrective action immediately.

On 12 January 2016 Ms Foster became First Minister of Northern Ireland, and was replaced as DFP Minister by Mervyn Storey. Andrew Crawford continued as the DFP Special Adviser.

On 13 January 2016 the Chief Secretary to the Treasury provided the NI Executive with the 2015 Spending Review settlement letter for Northern Ireland (DOF-42007 to DOF-42012), which dealt with RHI funding at paragraph 13 (on DOF-42009).



On 26 January 2016 at 15.53 (DOF-02295) you sent an email to DFP SpAd Andrew Crawford referring to a discussion with the Minister about the CST letter, about a lack of action from DETI on RHI, and referring to Andrew Crawford having mentioned that he would take forward the issue at a political level. It seems that you drew his attention, in some detail, to the growing worry you had as to the potential for RHI to destabilise ‘the Centre’ position. You also raised an issue over the financial implications of ROCs.

On 26 January 2016 at 19.29 (DOF-02295) you received a reply from Dr Crawford informing you that the “*DETI Minister is responsible for the policy decisions on both of these matters*”, but indicating a willingness to discuss the financial implications with you.

3. As to the discussion that preceded, and was referred to in, your email of 26 January 2016:

a. When was the discussion with the Minister and SpAd that preceded your email of the 26 January 2016?

To the best of my recollection, there was a number of meetings with the Minister and SpAd over this period on a wide range of issues and at one of these meetings there was a discussion on the outcome of the 2016 Spending Review letter but I cannot recall the specific date. This discussion/meeting was normal practice when receiving Spending Review letters and it would not have been exclusive to RHI. The discussion/meeting would have discussed key issues which were ultimately included in the DFP submission to the DFP Minister dated 25 January 2016, (See DOF 38764).

b. Who was present during it?

I do not recall who attended the meeting to discuss the 2016 Spending Review letter but it is likely that there were others in attendance. Usually DFP officials who occupied particular DFP posts, such as Head of CED and Head of Supply, attended. In addition, the DFP SpAd, the Private Secretary



to the DFP Minister and sometimes the DFP Permanent Secretary attended such discussions. I raised the issue of RHI during the course of that meeting as the treatment of the issue from 2016-17 onwards meant that there was a significant pressure on the DETI budget. As stated above, if DETI could not manage this budget from within its own DEL allocation, the pressure would fall to the Centre to manage and become cross-cutting. The potential cross-cutting nature of the issue meant that it fell within the purview of the Finance Minister and wider Executive.

- c. **Please given an account of the discussion as far as it related to RHI, (including who was raising what, who was responding to any points raised, what the outcome of the discussion was, etc.).**

To the best of my recollection, it is likely that I raised the issue. As budget Director I was aware of the unfunded RHI pressure facing DETI and I was concerned by the fact that DETI had still not closed the Scheme. The reference to Andrew Crawford taking forward the issue at a political level was in keeping with his role as DFP SpAd which was to engage across the wider Executive with other SpAd's and Ministers on issues which were cross cutting or had the potential to be, as in this case.

- d. **Were you made aware at that stage (by Andrew Crawford or otherwise) that the clearance by the DETI Minister of a submission to him which related to the closure or suspension of the RHI Scheme had been rescinded and the matter referred to other DUP officials and/or Special Advisors for consideration (See WIT 11770).**

I was not made aware of this.

4. In respect of your email of 26 January 2016:

- a. **What was the purpose of your email to Andrew Crawford?**

I sent the email, in line with my established working practice, to provide a formal record of my concerns and to alert the copy list to the detail of the



position.

- b. What did you understand would be involved in him taking forward the issue at a political level?**

My understanding of Andrew Crawford “taking forward the issue at a political level” would be his engagement with the DETI Minister and / or SpAd.

- c. Why was it necessary that the matter be taken forward at a “political level”?**

It was necessary to take forward at a political level as DFP officials could not progress a solution any further without political involvement.

- 5. In respect of the replying email you received from Andrew Crawford on 26 January 2016:**

- a. Were you surprised by the response you received? Please explain the reasons for your answer.**

I was surprised only in the sense that I was already aware that the issue was the responsibility of the DETI Minister but I had hoped for some greater insight into how the matter might be resolved.

- b. What response had you been expecting? Please explain the reasons for your answer.**

I wasn't expecting a specific response more a general indication of how matters should progress.

- c. Did you and (DFP generally) consider Dr Crawford's response that the “DETI Minister is responsible for the policy decisions on both of these matters” to be correct in light of the nature of the decisions to be made in relation to the RHI Scheme (i.e. whether those decisions were cross-cutting, significant or controversial)?**



The DETI Minister was indeed responsible for the policy decisions in relation to the RHI scheme, in this respect Dr Crawford was correct. My concern, however, as set out in my email dated 26 January 2016, DOF 02295, was that DETI could not contain the financial consequences within its budget allocation and it would therefore need additional financial support from the Executive thus making it a cross-cutting issue.

- d. **Did you have the discussion Andrew Crawford offered in his email to you? If the answer is 'yes' please give an account of that discussion.**

I do not recall a specific meeting with Andrew Crawford as a consequence of this email, but given that we were meeting / telephoning on a daily basis, on a wide range of budgetary issues, I do believe that I raised this specific concern several times during that period.

DFP SpAd assisting the DETI SpAd over RHI

6. **Andrew Crawford has explained in his first witness statement of 1 June 2017 (see WIT-21517 to WIT-21519) that he, whilst DFP SpAd, gave advice and assistance to Timothy Cairns, the then DETI SpAd, about the RHI Scheme, the course which should be taken, and the proposals which DETI Energy Division were putting to the DETI Minister. As to this:**

- a. **Were you aware, during any discussions you had in 2015 and/ or 2016 with the then DFP SpAd, Andrew Crawford, that he was advising the DETI SpAd about the RHI Scheme (a scheme for which re-approval was required from DFP)?**

I was not aware of the nature of the particular relationship that existed between the DFP SpAd and the DETI SpAd in relation to the RHI Scheme. I was, however, aware that they engaged with each other. Engagement between SpAds occurred on many issues and across political party lines.



- b. If you were not so aware, do you consider you should have been made so aware? Please explain the basis for your answer.**

Being aware of this particular relationship between the DFP SpAd and the then DETI SpAd in relation to the RHI Scheme would have helped me and my colleagues in DFP in our engagements with DETI officials. We would have had a better appreciation of the political environment, the political impasse, that DETI was operating in and within which it had to address RHI matters.

- c. Had you been made so aware, would you have acted or proceeded any differently from the way in which you did?**

If I had been made so aware, I would probably have raised the particular relationship with my line manager.

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- 7. From information provided to the Inquiry it appears that, on 2 February 2016, DFP responded to DETI to suggest changes to an Executive Paper to be sent to OFMDFM by the DETI Minister seeking Executive approval to close the RHI Scheme. DFP suggested a number amendments to the Paper (see WIT-11818).**

The Permanent Secretary of DETI, Dr McCormick, asked Chris Stewart (the Head of Policy Group in DETI) to look at DFP's suggested amendments (see WIT-11816). Mr Stewart was content with most of the changes but didn't see any reason for the suggested removal of text at paragraph 5 of the draft (see WIT-11820, showing the suggested changes tracked). In particular, it appears that DFP wished there to be a removal of reference to the poultry sector. As to that:

- a. Please explain your involvement (if any) on the process of commenting upon or suggesting amendments to, this (or other) draft DETI**

Communications with the Executive Committee or OFMDFM in relation to the RHI Scheme.

The DFP Private Office issued a draft of DETI's Executive paper to me for review and advice to the DFP Minister on 1 February 2016. David Sterling, (then DFP Permanent Secretary), and Emer Morelli, (DFP Head of Supply), were copied into that request, (DoF-42128 refers). It was a common occurrence for Departments intent on submitting finance related papers to the Executive to first share - in draft - with DFP to ensure that DFP was content with the paper being tabled.

I responded to Private Office's request advising that "we have significant concerns about this DETI draft", (see DOF 02296 at 09:55). The "we" refers to the Public Spending Directorate within DFP. Private Office subsequently forwarded my email to Andrew Crawford for information, (see again DOF 02296 at 10:30).

As a direct consequence of receiving the DETI submission in DFP, DFP in turn prepared a Submission to the DFP Minister and SpAd, in accordance with standard procedure, (see DOF 17979/81) . That DFP Submission was sent by Michelle Scott to Glynis Aiken at 11.23 (DoF 17973). The DFP Submission attached a tracked change version, tracked by DFP, of DETI's Draft Urgent Procedure paper, (DOF 17975/78). The DFP Submission included, at paragraph 7, the following recommendation to the DFP Minister :-

"It is recommended that you respond to Minister Bell proposing the attached changes to his Urgent Procedures paper."

At that stage, as can be seen from DOF 17975/78, the tracked changes did not omit from paragraph 5 references to the poultry industry. Paragraph 5 of the DETI Urgent Procedure paper, as tracked by DFP, read:-

"After a slow start during the first two years, non domestic scheme



uptake increased steadily during 2015. During the Autumn of 2015 there was an unprecedented surge in applications. This increase relates to one particular technology – biomass and has been attributed to one particular industry’s wholesale uptake of the scheme. This is the poultry industry’s use of RHI for broiler houses”.

b. Please explain, insofar as you can, the rationale behind the suggested amendment referred to above.

From the evidence provided to me by the Inquiry, it appears that on receipt of the DETI Submission, I subsequently discussed it with Minister Storey and the SpAd and was asked by one of them (although I am unable to recall who specifically) to remove the reference to poultry industry at paragraph 5. I have no recollection of the detail of this discussion, given the passage of time, but the documentary evidence shows that I submitted a revised draft of the submission to Minister and Andrew Crawford on 1 February 2016 at 15:30, (see DOF 02300/05), “RHI Urgent Procedure paper revised as discussed”. It appears that this version was submitted to DETI, via David Sterling to Andrew McCormick on 2 February at 12.38, (WIT 11816/17).

c. Please identify, to your knowledge or belief, who requested that the suggested amendment referred to above be made?

My response at sub-paragraph b. above refers. From information provided to me by my Solicitor, I am also aware that Andrew McCormick emailed David Sterling on 2 February 2016 at 14.20 (DOF 36771/75), and included the revised draft of the RHI Urgent Procedure paper, mentioned above, as an attachment. On that revised draft there were draft notes, (DN), prepared by DETI. One such draft note was that at paragraph 5, advising that the reference to the poultry industry should be reinstated. The draft note read:- “factual and informative – keep in”. I was copied into that email correspondence.

On 2 February, (DOF 36771), I replied to David Sterling and Andrew Crawford highlighting three specific points of note, including:-

“Paragraph 5 – he wants to re-insert the specific reference to the poultry industry which we removed yesterday.”

d. David Sterling subsequently responded to Andrew McCormick (DOF 42172 at 15.21) advising, inter alia, that:-

“...paragraph 5 should stay as we amended it...”.

By this, it was meant that the reference to the poultry industry should not be reinstated.

e. The amended Executive paper, with the references to the Poultry Industry removed, was sent by David Sterling to the DoF Private Office on 2 February at 16:00 advising that the paper had yet to be cleared by the DETI Minister, (see DoF 42162).

8. A further draft of the Executive Paper was received by DETI from DFP on 3 February 2016, with further suggested changes (see WIT-11825). Significantly, this version now suggested that consultation on the proposed closure of the Scheme should be dropped (see, in particular, the relevant change at paragraphs 15-16 on WIT-11829). It further appears to the Inquiry that this was suggested to you by Dr Crawford (see WIT-11826). As to this:

(a) Please explain how and why the proposal came to be made to DETI that consultation in relation to the proposed closure of the RHI Schemes should be abandoned?

On 3 February 2016 at 10:05 I sent an email to David Sterling, copied to Andrew Crawford, Michelle Scott and Emer Morelli advising that “Andrew C asked me to amend the paper to make clear the scheme would close asap (post Committee approval) with no consultation” (DOF 36776). I have no recollection of the exact discussions that took place at this time but this correspondence suggests that the suggestion to close the scheme without consultation came from Andrew Crawford, (DoF 02320).

I subsequently emailed Andrew McCormick (DOF 36776 at 11:40) to advise that the Executive paper had been amended to drop consultation references.

I am sighted on the subsequent email exchange between Andrew Crawford, Timothy Johnston and Aidan McAteer (deputy Frist Minister SpAd) dated 3 February 2016 at 12.29 (DOF 02320) which states 'See attached an amended paper following last night's discussions'. I was not party to, nor am I aware of the content of, those discussions, which appear to have taken place on 2 February.

(b) Insofar as not addressed in your response to the above, please provide details of:-

(i) any conversations or discussion within DFP in relation to this proposal;

Not applicable, see the email exchange at DOF 36776 at 10.05, which outlines the contemporaneous communication with DFP officials.

(ii) any further conversations or considerations of which you are aware which give rise to this approach.

I am not aware of further conversations or considerations which gave rise to this approach. I have seen, as a consequence of DoF 02320, that Andrew Crawford was engaging with other SpAds on this matter.

(iii) what, if any, legal advice was taken in relation to the proposal that public consultation should be dropped;

From recollection, I believe that DETI had taken legal advice on a number of RHI closure issues including closure without consultation. I was not however involved in the discussions on this point between the special advisers referred to above.

(iv) Dr Crawford's rationale for suggesting this course (if, indeed, he did so) and any information he provided to you as to whether, and if so in what manner, this course had been suggested or agreed by others.

I recollect Andrew Crawford stating that the Scheme needed closing immediately, I cannot date that recollection, it is however likely that it was on the morning of 3 February 2016, hence my email to Emer Morelli and Michelle Scott on 3 February 2016 at 10.05, (see DOF 36776). Andrew Crawford did not however provide me with any information on how this point was discussed or agreed in the political engagement that was taking place.

9. Further to Executive approval of the DETI Minister's decision to close the RHI Scheme (by means of the urgent procedure) on 5 February 2016, it appears that a subsequent decision was taken on or around 9 February 2016 that the closure or suspension of the RHI schemes (which, immediately prior to this decision, appears to have been due to take effect on or around 16 February 2016) should be delayed for a further period to allow additional applications to the schemes to be made. In the event, the period of additional delay was around two weeks, resulting in suspension of applications to the schemes from 29 February 2016. In relation to this, it appears that you raised with Mr Rooney of DETI a concern as to whether the 11 February announcement in this regard was consistent with what the Executive had agreed (see DFE-294194). As to this:

a. Please set out your understanding of how the additional delay in relation to the closure/suspension of the RHI schemes arose.

To the best of my recollection I was informed of the delay by the DFP Private Office and my understanding was that it resulted from political interactions/discussions to which I was not a party.

b. Explain what concerns you had about whether the announcement of



this further period of time within which applications to the schemes might be made was consistent with what the Executive had agreed.

I was concerned that each week of scheme continuance was increasing the financial exposure of the NI Block.

- c. Set out what steps, if any, other than raising this matter with Mr Rooney, you took in relation to these concerns (including to whom else, if anyone, you communicated them).**

I recollect raising my concerns with David Sterling many times during this period.

- d. Explain whether, and if so how, you were satisfied that your concerns had been met or assuaged.**

I was satisfied that David Sterling and Malcolm McKibbin were fully aware of, and seized of the problems and the urgent need to resolve same. As Budget Director, however, I nonetheless remained concerned about the Scheme's continuation impacting on the Executive's budget position.

10. At the same time (again, see DFE-294194) you also expressed concern about *“the additional budget implication above the Executive's agreed position on immediate closure of the scheme, and whether the Executive has agreed budget cover for the additional amount – and do we have an estimate?”*. As to this:

- a. Please set out your concerns about *“the additional budget implication”* of the course which had been adopted.**

As Budget Director I wanted to understand if DETI had agreed to meet the emerging pressure from within its own allocation or whether the Executive had agreed that the pressure would be met from the Centre. If the latter, then monies would have to be identified, either from other Departmental budgets or



from reduced requirements surrendered as part of the in-year monitoring process.

- b. Set out what steps, if any, other than raising this matter with Mr Rooney, you took in relation to these concerns (including to whom else, if anyone, you communicated them).**

As stated above, I recollect raising my concerns with David Sterling and Malcolm McKibbin via telephone conversations and in person. I am also aware that the issue, at that point, was a common point of discussion and concern amongst the PSD officials including Joanne McBurney, Emer Morelli, Michelle Scott (DETI Supply officer) and myself.

- c. Explain whether, and if so how, you were satisfied that your concerns had been met or assuaged.**

Looking back I do not believe that the Executive ever did reach an agreed position on budget cover for DETI's additional RHI costs. I cannot say that I was "satisfied" that my concerns had been met or assuaged. I believe that my concerns were fully reciprocated by all officials involved but the Executive found itself in an unprecedented position and the scale of the financial challenge was beyond the reach of political compromise and agreement.

- d. What conclusion, if any, did you come to (or have you come to, if different) in relation to whether the Executive (i) had agreed cover for the additional amount which would be incurred as a result of the delay in closure of the RHI Schemes and (ii) had any estimate in relation to this additional amount?**

As stated above, I do not believe that the Executive did ever reach an agreed position on budget cover for DETI's additional RHI costs

- e. Do you consider that sufficient steps were taken to seek to assess (and budget for) the financial implications of the decision which was taken**



at this time to provide an additional period of time to prospective applicants to the RHI schemes before they were closed? Please explain your answer.

I am not clear on exactly what steps were taken in DETI and elsewhere to assess and budget for the financial implications of this decision. As stated above, this was an unprecedented problem that the Executive had to confront. There was a lack of certainty in the Scheme financial costings provided by DETI and in the remedial plans being put forward. Furthermore it wasn't clear to what extent the cost overruns would be met from within the DETI DEL or the wider Executive central budget.

From a PSD perspective, all the directorate could do was provide advice on how the RHI Scheme costings would likely impact on the Executive's budget position.

Statement of Truth

I believe that the facts stated in this 21 page witness statement are true.

Signed: *Michael Brennan*

Dated: 30 August 2018