



Northern Ireland
Assembly

Public Accounts Committee

OFFICIAL REPORT (Hansard)

Inquiry into the Non-domestic Renewable
Heat Incentive Scheme: Department for the
Economy

18 January 2017

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Robin Swann (Chairperson)
Mr Daniel McCrossan (Deputy Chairperson)
Mr Robbie Butler
Mr Trevor Clarke
Mr Gordon Dunne
Mr Alex Easton
Ms Michelle Gildernew
Mr Declan Kearney
Ms Carla Lockhart
Mr Trevor Lunn
Mr Oliver McMullan

Witnesses:

Mr Brendan McCann	Department for the Economy
Dr Andrew McCormick	Department for the Economy
Ms Alison Caldwell	Department of Finance
Mr Kieran Donnelly	Northern Ireland Audit Office

The Chairperson (Mr Swann): Thank you very much for coming along today, Andrew. I know that it was short notice; we asked you only last week. Thank you for coming back for a summary. Brendan, you are very welcome.

Mr Brendan McCann (Department for the Economy): Thank you, Chair.

The Chairperson (Mr Swann): Andrew, would you like to make some brief opening comments?

Dr Andrew McCormick (Department for the Economy): Thank you, Chair. I think that there is maybe a little more attention on this session than on the first one that I had back in September. I want to start this afternoon where I started then, which is to say that the only thing that I can say at the outset of the session is to offer a deep apology on behalf of the Civil Service for the very serious mistakes that have led to this crisis. There is a complex layer of politics on top of it, but the vast majority of what went wrong is down to a small number of Civil Service errors. The consequences are extremely serious, as is now very well known.

That links to the second point that I wanted to make, which is just to remind everyone that we are still in the middle of a fact-finding investigation, which limits some of the answers that I will be able to give this afternoon. As in our last session, in November, I will do everything that I can to answer, but I just

need to offer the protection of process. I think that that is in everybody's interests. It avoids prejudging any process and taking people into a situation where something takes us off course on that. The extra dimension of that is the correspondence that I sent last week with some fresh evidence, and, as everyone is well aware, part of what has been happening is that new information is emerging. That is not normal in investigations by the Committee. We are where we are, and, in dealing with that, we have important linkages to make to the other aspects of questioning that I am sure will come up in the course of the afternoon. I want to be particularly careful about that because it is yet another very significant development in the case and shows that there was an extra level of information in the industry in the summer of 2015 that links to what went wrong. Maybe I will say no more about that but just pause there and allow you to take the questioning as you wish, Chair.

The Chairperson (Mr Swann): Thanks, Andrew. I appreciate your comments from the beginning because I think that one thing that we have found when you have been in front of us is that you have been open and frank with us, as far as we have been aware.

In previous evidence sessions, I think, we have all assumed that you have spoken freely without any ministerial direction or guidance: has that been the case?

Dr McCormick: Yes.

The Chairperson (Mr Swann): Are you able to speak freely today?

Dr McCormick: Yes.

The Chairperson (Mr Swann): On all things. With regard to the new twist today, were you aware that a statement was being released about you to 'The Nolan Show' this morning?

Dr McCormick: Yes.

The Chairperson (Mr Swann): Was it with your consent?

Dr McCormick: I saw it in draft, yes. It was factual. What Ministers choose to say is up to them, but I am satisfied that what was said was factually accurate.

The Chairperson (Mr Swann): OK. The report stated that you believed that a DUP special adviser (SpAd) exerted pressure to keep the uncapped scheme open, although you had no evidence of that. Why do you believe it to be the case?

Dr McCormick: Because it goes to the position in summer 2015. We put advice to the then Minister on 8 July. The document is in the Assembly Library. It is quite obvious on the face of that submission that the date for the reduction in the tariff was changed. That was through a proper process that I will explain as fully as you wish, but the reason for the change was that there was a view from others in the party that the date originally proposed should be extended. We were aware of some of those conversations at the time, through the summer of 2015. I was never clear about exactly who was involved. The person we were mainly dealing with was the SpAd in DETI, Timothy Cairns. He was making it clear to us that it was not his idea, nor was it the Minister's idea. As I recall, in that period between the submission of that advice and the key meeting, I am not sure I saw the Minister in that period because I was on holiday for a while, and he was away, as it was summer. Some degree of delay in decision-making is just down to ordinary, human factors.

There is a clear point — this is where there is clear consistency between what the former Minister has said and what his predecessor as ETI Minister said in her statement in December — that there was influence from outside the Department to delay the reduction in the tariff. It is common ground, it is on the record, and it is in another document that was released at former Minister Bell's request on 19 December.

The Chairperson (Mr Swann): You are referring to the DETI SpAd at that time, who is indicating he is coming under pressure from outside sources: is it another SpAd?

Dr McCormick: That was not clear at the time. I am not sure if the right word is "pressure", only he knows exactly what was happening, but "influence" is at least a fair word.

The Chairperson (Mr Swann): The statement this morning — I have a transcript here — says "exerted pressure", and you have already said you agreed with the draft.

Dr McCormick: Apologies.

The Chairperson (Mr Swann): "Exerted pressure": that is quite specific. If it is not the Minister and it is not the SpAd, who has that influence?

Dr McCormick: Influence comes through force of argument. Yes, there is no question, as has been made clear, that Ministers and only Ministers take decisions, but they listen to a lot of advice. We all live in the real world where there are conversations, there are ideas and they are shared. I have worked with special advisers from the SDLP, UUP and Labour since 1998. It is a normal, straightforward part of business, and it is not surprising for there to be conversations and ideas around.

One very important part of the whole debate is to remember to look at it not through what we know now but knowing what we knew then. In summer 2015, we did not know how bad this was. We did not know the fundamental point that the Audit Office brought out in the report last summer, namely that the cost of fuel was lower than the tariff being paid. That is the fundamental error I was describing in my very first comments. In the Department, nobody knew that in the summer of 2015. The kind of conversations that we are talking about were not perceived as sinister and not perceived as having immense consequences. If we had known the consequences, different things would have happened: we did not know. That is, again, part of why I need to investigate why we did not know, because the consequences have been so significant. But it is very important not to look at the conversations that happened involving Timothy Cairns, the then Minister and the further parties or individuals who are involved through the lens of hindsight. That is unfair on everybody.

The Chairperson (Mr Swann): I am afraid, Andrew, that I agreed with you up to that point. I think that it is very important to where we are now, because we need to establish why that happened. Your phrase was "force of argument": it was that force of argument that allowed and precipitated the spike, which was the bit that really put the scheme over budget. Again, I go back to —

Dr McCormick: If I may, there are quite a few factors affecting the spike, and I will give a longer answer on that when you are ready for me to do so. I would like to draw that out in context. I agree that this point that we are on — the point referred to in what the Minister gave to the BBC last night — is a significant contributory factor to the spike; it is not the whole story. I ask for the opportunity, when you are ready, to give the whole story.

The Chairperson (Mr Swann): I will give you that. It is that force of argument. It is not the DETI SpAd; it is another SpAd who is able to use force of argument to keep the scheme open longer. Whom did they have that forceful argument with?

Dr McCormick: My understanding is that those conversations were with Timothy Cairns. Again, I do not have direct evidence on this point, as the statement says; in a sense, all I have is hearsay. I heard things that were said by Timothy Cairns and by the Minister, but I do not have direct knowledge of who was speaking at the time. I did not know at the time. It was happening, and we were aware that it was happening. There were exchanges, mainly in July, that then led to the decision-making meeting on 24 August.

The Chairperson (Mr Swann): Somebody convinced Timothy Cairns. On 24 August, Timothy Cairns convinced whom?

Dr McCormick: The final decision was taken at one of our routine issues meetings. It was probably the first for a number of weeks, if not a couple of months, because of the summer break. Present, at a minimum, were me, my deputy Chris Stewart, Minister Bell and Timothy Cairns. There was a discussion, and Timothy said that this should stay open until 4 November. That was the date suggested. We were asked whether that was acceptable. We had been expressing significant concerns, including concern about the potential for this to go over budget and the fact that we were already, at this stage, in irregular expenditure. We were very conscious of those things, so there was strong pressure from us to get this dealt with as soon as possible, but, because we were not aware of a number of other things, we were not as forceful in our arguments as, with hindsight, we should have

been. That is why, in one of the documents that were released, I said that, with hindsight I might have sought a ministerial direction. If today I knew only what I knew then, I would take the same decision. I would still acquiesce in Timothy's argument, which I know came not from him but from someone else. I would acquiesce in that argument and say to the Minister, "Yes, that's OK. It is not what we want. We would rather close down sooner. We would rather reduce the tariff sooner, but this is ultimately a judgement". We lived with that judgement, and, as in all such cases, that is why I have the responsibility to account to you, as the PAC, for the consequences. That is not good, but it is what happened.

The Chairperson (Mr Swann): It is a point that I am trying to get to the bottom of. You are very clear that Timothy came to you with instruction from someone else. Where does the accountability lie with regard to SpAds in your Department at that time?

Dr McCormick: SpAds work for the Minister. In some ways, we treat them as an extension of the Minister. They bring the Minister's views, and we normally expect that everything they say is aligned with the Minister's view. That is the working assumption at all times. In practice, not every conversation happens perfectly, but that is the general sense of it. They are the Minister's agent. They work for the Minister. They are accountable to the Minister.

The Chairperson (Mr Swann): The Minister was in that meeting on 24 August: was he of the same mind?

Dr McCormick: He asked whether this was acceptable. Timothy said that it was what was wanted, and we said, "Yes, we can acquiesce in that. We accept that" — I cannot remember the words we used, but we certainly accepted it.

The Chairperson (Mr Swann): Timothy was indicating that it was what was wanted by an external pressure from —

Dr McCormick: That was not said at that meeting, I do not think; again, I do not have perfect recall. I do not remember that point being made at the meeting, but we were aware, especially through July, that he was in discussion with others. Again, that is not such an unusual thing. In the real world, I do not think that would be unique to any party.

The Chairperson (Mr Swann): You believe that there was an external influence. If you believed that to be the case, why did you not highlight it to us before now?

Dr McCormick: I was not asked questions on that point. I apologise to Robbie: he began to ask me about that just before the break in the first session at around 5.00pm on 28 September. Maybe I should have insisted on answering that question. Otherwise, I was not asked a question that took me to that point.

The Chairperson (Mr Swann): I appreciate that.

Now that you have had time to revise a lot of your evidence from previous appearances before the Committee in the light of emerging findings and new evidence, is there anything else that you want to bring to us at this stage? I asked you earlier, and you said that you were free to speak today. Unlike the position then, when you were not asked a specific direct question, is there anything, at this stage, that you think it would be important for us to know?

Dr McCormick: If I may, the most important aspect of the issue is why the spike happened. In perspective, that is where the majority of the excess expenditure arose. The later stages, in January and February, which have also had a lot of attention — not least in television and radio coverage — are significantly less important. They are still important in that a number of applications came in during that period, and the precise detail of how we got to the suspension of the scheme has an importance, but I suggest that the large spike in September, October and November 2015 is most important. Is now the best time to draw out —?

The Chairperson (Mr Swann): I think so.

Dr McCormick: I would emphasise that this is provisional. There is further investigative work for you , for my fact-finding investigation — it is now Sir Malcolm McKibbin's fact-finding investigation — and for a forthcoming inquiry. All of those need to happen.

My provisional view on why the spike happened is fairly clear, and I offer the following reasons. It is important to suggest that, by July/August 2015, there was an awareness among those who had benefited from the scheme and probably among the installers and the wider industry that the tariff was very lucrative. My second main factor in why this went wrong is that we, the Department, did not understand that properly. We should have done so, for a number of reasons. First, it does not take even five minutes to see what is wrong with the scheme if you look at it in the right way. We did not. As a matter of fact, we did not understand the point until the Audit Office report of June 2016. As I think I said on a previous occasion, my understanding from the first phase of PwC's work is that they found no evidence that anybody they interviewed understood that point at the time. That is fundamental to why this happened.

I suggest that the beneficiaries of the scheme must have understood that point, at least some of them. I would suggest there would be, at a minimum, 50 or maybe 100 people benefiting from the scheme or involved with installations who knew and were then able to say, "This is a good thing. Get onto it". That is quite an important aspect of why the spike happened: people knew it was worth it.

A very serious point for me is that we absolutely should have acted on what was raised with us by the concerned citizen through the initial meeting in October 2013 and in the emails that followed. I think you have them all. They came at various stages with great clarity on exactly what we needed to think about. She was not believed, and that is a serious thing against the Civil Service — we did not listen and understand — because, as I say, it is not difficult to work it out.

Aligned with that — a separate but important point — is that there was confusion over the budgetary treatment. Also an aspect of the fact-finding investigation is to understand the emails that Alison Clydesdale talked about at the first session in September. She sent an email. There are other documents. There is quite extensive documentation that shows that we should have understood the budgetary context. We should have known that in no sense, obviously, is there any such thing as free money, if it is public money. That is anathema as a concept, but even, in the parlance of government, to say, "It's only annually managed expenditure (AME). The Treasury will pay. Why not make as much of this as possible?" and for that misunderstanding to have lasted as long as it did and the penalty that arose from overspend to be as misunderstood as it was is, to me, very, very serious. That is why we need to investigate that in the fact-finding work, understand where responsibility lay and ensure that there is fair and proper accountability. That was a factor at the time. It was, as, I think, I have said in a previous session, confused by the fact that, in the monitoring round in July, money appeared unexpectedly in our totals. We were given extra for the AME budget, which reinforced those who thought, "Well, that's what happens", rather than the people who were saying, "Actually, that won't happen". That reinforced the expectation. My understanding is that it was part of the thinking of those who were influencing Timothy Cairns that there was not an opportunity cost to the Executive's budgets and this would be OK. I think that was said in First Minister Foster's statement on 19 December: there was a misconception that this would not have an opportunity cost.

A very serious new point is that, around July, there is evidence of premature information being made available to the industry. Some documents appeared with me anonymously after Christmas, and this needs further investigation. I would prefer not to say too much about these because I do not want to prejudice the investigation, but the consequence is very serious because this shows that there was premature awareness of the potential for the tariff to be reduced and the message within the sector was, "Get in quick".

The Chairperson (Mr Swann): "Premature awareness": you are talking about inside information.

Dr McCormick: Yes. Indeed, it is distinctly possible that there is a linkage that some of the pressure coming through others to Timothy Cairns was because the industry was saying to others in the political class, "We hear something is about to happen: can you do something about it? Can you give us longer?". Again, that is purely inference; I have no evidence for that. It just seems not an unreasonable inference that that might have happened.

At the same time, because degeneration was impacting across the water, the industry and the suppliers were looking for business. We have some awareness of business coming to Northern Ireland from across the water because it was becoming less lucrative there. I am not sure; I suspect that that is the

least important of the factors that I have mentioned. It may not be anything, but it is worth mentioning for completeness.

There are a number of factors, as well as the influence on Timothy Cairns and the decision to delay the introduction of the tariff, that also created a perfect storm, conditions where the opportunity was there, totally understood — well, sorry — at least to a degree understood by the industry as to what was happening and why it was worthwhile; and our blindness — maybe that is a fair word to use — as officials to the fact it that would have these consequences. That is my best summary of all the factors.

The Chairperson (Mr Swann): A number of members want to ask about what you have said, Andrew. Again, it goes back to that industry/political class that you referred to and the pressure coming onto Timothy Cairns as the special adviser. Is that the circle? Is it industry to political class to special adviser? Is it political class to industry to special adviser?

Dr McCormick: I have only given one inference, and I have no direct evidence for those points. I am just saying that it seems that there is reason to believe that there were conversations. I have no direct evidence apart from those emails. Let me be clear that I have not had formal confirmation of their authenticity from the authors, but I think that there is no reason to believe that they are not authentic.

The Chairperson (Mr Swann): In this morning's radio interviews, there was reference to a taped conversation. Are you aware of any such conversations?

Dr McCormick: There is a possibility. The fact of the matter is that former Minister Bell spoke to me on Sunday 11 December, saying that he wanted to exercise his prerogative as a former Minister to review papers. That happened. On the afternoon of 12 December, there was a meeting. I have heard it reported, though no one said this to me directly in a way that I could describe as "evidence", that that meeting was recorded, obviously without my knowledge or consent.

The Chairperson (Mr Swann): Without your knowledge or consent.

Dr McCormick: Yes

The Chairperson (Mr Swann): We are happy enough to put that on the record.

Ms Gildernew: This gets more and more serious as we go on, Andrew, and it feels like a long time since you were first in with us.

You talked about Timothy Cairns and the fact that you felt that pressure was being exerted in the summer of 2015. Did you, at any point, make members of the DUP aware that you were feeling leaned on by the DUP SpAd to keep the scheme open?

Dr McCormick: Straightforwardly, no. It was not perceived as pressure. We were putting pressure on to secure a decision based on the advice that we had given in the submission of 8 July. I was sending emails and having conversations saying, "I am concerned as accounting officer". That is largely consistent with former Minister Bell's interview. The main pressure was coming from us, and there was what I would describe as "resistance". We were aware of resistance to that decision being taken, but we were dealing mainly with Timothy Cairns as the SpAd at the time, and that is perfectly normal, as you will understand. The point I made earlier is that it did not seem untoward because we were not aware of the seriousness of the consequences. This looks incredibly serious now, knowing all we know now; at the time, it did not feel that way. Yes, it was important to get it resolved — we were clear on that — but, in the end, we agreed, we acquiesced, with the decision on 24 August, as confirmed by the Minister on 3 September, and proceeded. There was not much further discussion around it at that time. No, there was no question of going elsewhere with it.

Ms Gildernew: I do not understand that. There was an email from a biomass company to DETI finance branch in May 2014 outlining concerns that the scheme was being abused. This was the summer of 2015, so it was a full year. The finance branch was aware that there were problems with the scheme.

Dr McCormick: It was the energy division.

Ms Gildernew: Was it the energy division or the finance branch?

Dr McCormick: I think it was the energy division.

Ms Gildernew: It was in the ether.

Dr McCormick: Yes.

Ms Gildernew: You talked about the pressure that was coming on you and the resistance from you and the Department: did you talk to Chris Stewart about those concerns?

Dr McCormick: Yes. Most of this was —

Ms Gildernew: When you say "we", you are talking about yourself and Chris.

Dr McCormick: Chris was having more of the conversations directly with Timothy. I was pushing Chris and asking, "Have we got a decision yet?", and Chris was saying to me, "Yes, it's with the SpAd, and we hear that there are other conversations going on". I do not have a full record. I think the Minister was on duty in the last week of July, although I am not sure that he was having meetings in the office much. I think there were a number of visits. I think that he was away from the office for the first part of August, so there was not much opportunity to have direct discussions, as I recall. The culminating point was that key meeting on 24 August.

Ms Gildernew: Did Chris express similar concerns? I know that you were talking to the SpAds and all the rest of it, but surely you felt that the resistance that you had to apply back was unusual.

Dr McCormick: Yes, it was unusual; I agree. That is a fair comment.

Ms Gildernew: We had a conversation at the beginning of this — I think it was in September — and we talked about some of the points. We had asked about paperwork and the things that you had to do to find out if there was anything we could do to mitigate the damage on the scheme. We had — sorry, I had the page marked, but I cannot find it. Can we come back to this, Robin, if other members are coming in? I will find where I am.

The Chairperson (Mr Swann): OK, you can find that.

Mr Easton: Thank you, Andrew, for your evidence so far. You mentioned the possibility of a couple of letters or emails coming your way about potential inside information coming out to the industry. You have not seen them, as yet.

Dr McCormick: No, I have seen them, and I have shared the gist in a letter to the Chair that, I hope, you have.

The Chairperson (Mr Swann): Alex, it was talked about last week, and the Comptroller and Auditor General (C&AG) has them in full.

Dr McCormick: The C&AG has them in full.

Mr Easton: Obviously, we cannot name names because they are part of your investigation, but is there a suggestion that it came from within your Department?

Dr McCormick: Yes.

Mr Easton: Not from any other source.

Dr McCormick: The evidence suggests that some information was being shared prematurely with the industry by departmental officials.

Mr Easton: That is all I wanted to know on that bit.

Mr Kearney: Thank you, Andrew. Andrew, when we had an evidence session with you in November, I asked you if it was possible that there were overriding and aggressive commercial interests at play in orchestrating the spike. You told me then that it was something you were very conscious of and thoughtful about in considering how that happened and explaining how we got to where we were. Then I asked the same question of David Sterling. I asked David Sterling if it was possible that there was at play a dynamic of aggressive commercial exploitation of the scheme. He said that he felt that that was something that needed to be looked at. Now you have advised us that you have seen documentation over the Christmas period to suggest that that may well be the case. I put it to you that, prior to your seeing any documentation, that should have been an active line of investigation being carried out by you.

Dr McCormick: There are a number of investigations going on; indeed, understanding fully what happened in relation to the case is being pursued here. We are bringing all the relevant evidence to you. There is an increasing trickle of more specific allegations in relation to individual cases that may give rise to concern. We will come to those further as we need to. Those are to be investigated by a combination of Ofgem, as it is responsible for the direct accreditation and has access to the detailed information case by case, and my internal auditor, who has a key role in pursuing a number of the allegations that have been received, including through the more generic approach that you suggest, which is absolutely valid. We have been liaising with the Audit Office. We have also had conversations with the PSNI. It is aware of a number of specifics, and, if it comes to pass that there is evidence that reaches some threshold that begins to attract the PSNI's interest, that will be pursued. The undertaking to the Committee is that the aspects of generic or specific allegations in relation to abuse of the scheme from a deliberate and commercial perspective will be pursued.

Mr Kearney: OK. Ofgem told me and the Committee on 26 October that it had had engagement with the PSNI: were you aware of that?

Dr McCormick: I was aware of at least one case where that had come to pass, yes.

Mr Kearney: Why then was the PSNI telling us yesterday that it was only now being made aware of the potential fraud allegations?

Dr McCormick: I am not sure of the context in which that was said. Certainly, I have had correspondence from the PSNI on at least the one case that was mentioned before. That is what I have, and I am sure —

Mr Kearney: Have you engaged directly with the police on the matter?

Dr McCormick: I have had correspondence; I have not had conversations. My internal auditor has, and we will pursue this further, I am sure.

The Chairperson (Mr Swann): Andrew, for clarification, can I ask for the date of that correspondence with the PSNI?

Dr McCormick: It came since Christmas; I do not have the precise date.

The Chairperson (Mr Swann): Before Christmas?

Dr McCormick: No, just after Christmas.

Mr Kearney: Ofgem has had direct engagement with the police.

Dr McCormick: Yes. We are aware of some cases.

Mr Kearney: Are you aware of the nature of that engagement also?

Dr McCormick: Not in detail. The team —

Mr Kearney: Have you consulted Ofgem in relation to that?

Mr B McCann: Ofgem has been keeping us advised of cases that have been referred to the PSNI. Our head of internal audit recently spoke to the PSNI about the cases that it is currently investigating to ensure that all information is being made available to the PSNI. We are trying to facilitate the flow of information to the PSNI so that it can properly consider the cases.

Mr Kearney: Thank you, Brendan.

If you recall, on a previous occasion, when you first came to the Committee, we had a rather unstable hearing. Subsequently, we met you in private, and you explained some matters to us. I asked you then whether it would not have been much more prudent to speak to the Chair of the Committee and the Committee itself at an earlier stage in order to clarify the situation so that we did not have the debacle of the hearing that we had once before. In fairness to you, Andrew, you were very forthcoming.

Dr McCormick: Thank you.

Mr Kearney: I think that we had a more productive evidence session the next time, in November, when I raised the issue of potential aggressive commercial exploitation. Has there been any direct or indirect adverse commercial influence brought to bear on you, and are you aware of any such influence being exerted on any of your top team in the Department with specific responsibility for the scheme?

Dr McCormick: No. I am not aware of any such influence on either me or anyone in the top team.

Mr Kearney: Have you enquired of others whether any external direct or indirect commercial influence has been brought to bear?

Dr McCormick: I have not enquired directly on that point, but I am well aware that, given the acute sensitivity around the case, I would be astonished if anything like that was happening and it had not been brought to my attention.

Mr Kearney: Given the extraordinary situation that we are dealing with, I suggest that you be very cautious about making that assertion. I offer that to you in a spirit of assistance.

Dr McCormick: Thank you. I take it in that spirit.

Mr Kearney: My last question then —

Dr McCormick: I have to say that, as Michelle said, this continues to develop, and I have significant concerns on all the points that have been raised so far. I am acutely sensitive to that. Therefore, I am determined to ensure that all the different processes are invoked and pursued. It is one reason why we are applying ourselves to securing a full and complete inspection regime. I will come to that last point, but, to keep this brief, I take your point totally. We need to make sure that every aspect of this is investigated. As you say, it is a very challenging situation.

Mr Kearney: Can I raise two more quick points?

The Chairperson (Mr Swann): You said that that was your last question, so I will ask you to be brief.

Mr Kearney: OK. When Robbie asked a question in the last evidence session, you explained that you could not get an answer in because we ran out of time.

Dr McCormick: Yes.

Mr Kearney: Is that a factor in relation to how you are presenting further evidence?

Dr McCormick: No, that was in the specific context where a number of questions were started and I think that I answered the final point and gave a broad assurance. That was unique — to give a little bit of context, it was just before the break after three hours. There was no other —

Mr Kearney: Is there any reason for you to believe that the perfect storm that you described is anything more than a coincidence? We have political influences that you are now describing in relation to Timothy Cairns and outside of the Department. There are practices in the Department that we have found to be systemically wrong. We have Alison Clydesdale flagging this in 2011, and we have a concerned citizen raising concerns with the Department from 2013. Now you are telling us about premature awareness in the industry. I suggest to you that none of that is accidental or coincidental; indeed, we have a perfect storm, but it is a perfect storm of convergence of deliberate circumstances.

Dr McCormick: It is certainly open to that construction. On the point that I made about the Department not being aware of how valuable the tariff was, I would argue that that may well have simply been a failure of insight. It is hard to understand how it was missed. If I were focusing on that point, going back to 2012, I think that I would be saying that people did not see the wood for the trees. You heard Mark Cockburn's evidence, in which they acknowledged that they missed it. It should not have been missed, and it is very hard to believe that it was missed purely accidentally. I accept what you say. I do not have the evidence to construct a jigsaw puzzle that says, "Yes, there is the conspiracy". It is not as clear as that. It may never be as clear as that, but I have to acknowledge that it is capable of that construction.

Mr McMullan: Thank you, Mr McCormick. Can I go back to the meeting in August when the decision was taken? Who all was in the meeting?

Dr McCormick: There may have been a number of others. There was definitely a fifth person who I forgot to mention. There was the Minister; Timothy Cairns, the special adviser; me; Chris Stewart; and John Mills, the then head of energy division.

Mr McMullan: John Mills.

Dr McCormick: Yes.

Mr McMullan: What kind of an argument did Timothy Cairns put up that overrode everybody else in the room?

Dr McCormick: I cannot remember the detail of the points that were made, but there was an expression of a desire to provide a longer period before the tariff changes were introduced. I have no detailed memory of the exchanges, to be honest, but, in a way, there was a desire for it to be maintained for a little longer.

Mr McMullan: Are you telling us that Timothy Cairns's argument to extend the programme, and the implications therein, was far superior to your own? Are you saying that you, the Minister and Mr Mills were not aware of the implications of Mr Cairns's argument?

Dr McCormick: The truth is that we were not aware of the full implications. We were aware that it would extend the difficulty we had — there were several serious problems arising, including the irregularity of the expenditure and the presenting budgetary pressure, but the budgetary pressure was not as acute as we know now; we did not know that the spike would go as sharply as it did. It was trending, and we needed to stop that trend. I would not characterise it as an intellectual debate that we lost; it was much more about a force of decision-making; it was simply, "This is the way it needs to be". Because we did not have the clarity of insight into the consequences, we acquiesced. We have to accept responsibility for having acquiesced.

Mr McMullan: Should you not have asked for a ministerial direction?

Dr McCormick: With hindsight —

Mr McMullan: Why did you give in to that argument? You talked about an intellectual argument as opposed to the argument put by Mr Cairns. There has to be a difference between an intellectual argument and one that had profound consequences for the Budget. You were warned at that time by the Treasury not to overstep your budget. Should you not have taken more caution on Mr Cairns's

argument? You tell me that you do not remember the content of his argument, but you told me a minute ago that there were parts of it —

Dr McCormick: It was partly argued on the basis that this would not have very severe consequences. The expenditure was increasing, but it was not as clear as it should have been that the consequences would be severe in budgetary terms. The —

Mr McMullan: So, how did he sell his arguments? I am sorry for interrupting. I can understand it if it is not coming across that there are consequences for the Budget, but how did he sell the argument in the room that day? You all nodded and agreed to go ahead and extend it. What sold it to you all?

Dr McCormick: It was because that was the view that was wanted. It was a determined view, partly driven by the thought that it would maximise our take on funds from London. That was definitely part of the thinking. That was wrong and not acceptable, but —

Mr McMullan: Hold on a minute, now. Your power of thinking was that it would have taken funding from the Treasury in Britain —

Dr McCormick: That was —

Mr McMullan: — after the Treasury telling you —

Dr McCormick: Yes.

Mr McMullan: — not to overstep yourself.

Dr McCormick: Yes, but that had got confused. It should not have got confused. There was still a view that this was AME. There is a Treasury document that says that the penalty for overspend might be of the order of 5%.

Mr McMullan: When was that?

Dr McCormick: That was in a 2011 email. I am introducing that only because we should not even have thought of relying on that document.

Mr McMullan: In 2011, you were told by the Treasury that you were at risk of going 5% over.

Dr McCormick: Yes.

Mr McMullan: Now, this decision was taken in 2015, four years afterwards, and you still went ahead, without taking a ministerial direction, from, I have to say, a very powerful DUP SpAd. What sold it to you from the DUP SpAd that this was a good scheme?

Dr McCormick: Well, there was an element of good about it at the time. Certainly, the advice from energy division was that we were finally making up for lost time having had a very slow start to the scheme and that the aspiration to have a larger proportion of heat from renewable sources was a good thing. It was definitely part of the view in the team — it even persisted into new year 2016 — that there was a lot of this that was good. The extent of the difficulty and the risk of abuse was not in the consciousness of energy division at that time; nor was it in mine. We had some concerns —

Mr McMullan: Hold on a minute, now. It was not in your consciousness at that time. Were you not aware of the whistle-blower telling you the consequences of the boiler scheme? Were you not aware of the boiler suppliers telling you that the tariff would have to be changed so that the boilers could be sold? The way it was going at the start they could not sell their boilers and it needed to change because the tariffs were wrong. You were aware of that.

Dr McCormick: No, as a matter of fact.

Mr McMullan: Were you aware of that?

Dr McCormick: There are two different points there.

Mr McMullan: No, no. Were you aware of those two points?

Dr McCormick: No.

Mr McMullan: You were not.

Dr McCormick: No. Can I just unpack that? There are two importantly different points. I first became aware of the correspondence from the concerned citizen on the morning of the hearing on 28 September; I had not been aware of that at all before that point.

Mr McMullan: 28 September?

Dr McCormick: 28 September last year. That is one reason for having the fact-finding investigation. Why was that not drawn to attention and why was it not acted on? Who got it? Who knew about it? We have, obviously, some primary documentation that shows it. The question that PwC is asking is: was this told to others? As a matter of fact, I did not know it, and it is very serious that she was not listened to. Had we listened to her on any of three or four different opportunities, none of this would have happened.

Mr McMullan: Who are you quite adamant knew that?

Dr McCormick: That is for the fact-finding to investigate.

Mr McMullan: Did the Minister know it?

Dr McCormick: No.

Mr McMullan: The Minister did not know that.

Dr McCormick: Neither the then Minister, Mr Bell, nor his predecessor.

Mr McMullan: But the previous Minister knew that. You have emails.

Dr McCormick: We have some — I could go into the complexities around the initial contact; maybe that is worth drawing out.

Mr McMullan: No, no. I do not want to waste time, because we are —

Dr McCormick: That is quite tricky, but —

Mr McMullan: Could I just go back, Chair —

Dr McCormick: — just to make it clear, I did not know that point. The second point you raised was about concerns from the boiler suppliers and installers. I am not sure what you are referring to there, because I am conscious that, in the consultation in 2011-12, they were saying that the tariff was not good enough and needed to be increased. That is one reason why the tariff changed between the initial proposals in 2011 and the final decision in 2012. I am not aware — I stand to be corrected — of any information coming from the boiler installers or manufacturers about access to that at that stage.

Mr McMullan: OK. I will make my last point very quickly. Was the conversation on 24 August minuted or recorded?

Dr McCormick: Yes, in effect. The way it was recorded was through the track changes that were made to the submission. We decided that the simplest way to record the decisions was to show them as track changes to the submission. That was then initialled by the special adviser on 2 September and signed by the Minister. We got an email from the Minister saying that it was the approved version of the submission on 3 September. The special adviser wrote something to the effect of:

"agreed as discussed at the issues meeting".

The points that were discussed were shown in the submission. That document is in the Assembly Library.

The Chairperson (Mr Swann): It is in the Library.

There are still points arising from your opening comments. You speak of the consultation, which includes installers and all the rest of it. When the witnesses from Cambridge Economic Policy Associates (CEPA) appeared in front of us and were talking about doing their addendum to their initial proposal, they talked about a consultation that had 68 responses but said that they had received only five from the Department. Can you tell me why that happened?

Dr McCormick: I am sorry, but I am not prepared on that point. Apologies. I can find out what I can about that and come back to you.

The Chairperson (Mr Swann): Brendan, would you?

Mr B McCann: No, Chair. Sometimes consultants decide to sample, but, again, I am speculating, so it is something that we would need to determine.

The Chairperson (Mr Swann): No, we were very specific with Cambridge at that stage, and it is well documented in Hansard. I am disappointed that the Department is not prepared for something as serious as that because it was quite an extensive part of the evidence inquiry. The filing down of the 68 consultation responses to the five that were forwarded to Cambridge to make its decision on the tariff and the tiering of tariffs is a considerable step in the retention of information. I would like to know who made that decision, and I want to know that pretty quickly because we are time-bound in what we are doing. That is critical because it possibly goes back to the opening comments on who had the influence in directing how the policy was developed.

Dr McCormick: My apologies on that point.

Mr Lunn: Andrew, I want to go back to the question of the SpAds and the pressure that was put on Mr Cairns, evidently by another SpAd. I think that you said that you could not speculate at present on who that other SpAd would have been because the evidence is circumstantial, it is hearsay and conversations were not recorded. Is it the case that you would have been told, even unofficially, who this person or persons was or were but, because of the lack of evidence, you do not feel able to share it with us? Is it fair to say that?

Dr McCormick: That is not a bad summary. As the statement last night said, I had further discussions recently with the Minister on this point. I have an understanding of the identity, but, again, it is not a direct piece of evidence, and that is why I am reluctant to go further. It is based on what I have heard from others. That is just my suggestion at the moment. I have nothing. I was not there in the conversations that Timothy Cairns had about who was exerting the influence.

Mr Lunn: You say that you had a conversation with the Minister: do you mean the present Minister?

Dr McCormick: Yes, the present Minister: Minister Hamilton.

Mr Lunn: Can you tell us or give us any sort of clue who it could be? The feeling is that this was other SpAds or a SpAd connected with the DUP and probably connected with a Ministry controlled by the DUP or by OFM. Do you want to comment as I go along?

Dr McCormick: My position is that I would rather not go further. On the other hand, if the Committee were to insist —

Mr Lunn: If you are prepared to give us more because I insist, I will certainly insist. Is it somebody who is still in post or somebody who has moved to a different Department? Is it somebody who is no longer a SpAd or somebody who has left the service completely? What can you tell us?

Dr McCormick: I will —

Mr Clarke: Chairman, we are now speculating on hearsay. That is not direct evidence.

Mr Lunn: I am asking the questions. Don't you worry about it.

Mr Clarke: I will worry about it. I am a member of the Committee as well.

Mr Lunn: You are butting in unnecessarily.

Mr Clarke: I am butting in. At the end of the day, if we are putting out somebody's name — I have no issue if Andrew McCormick knows the name or was part of the conversation. We are now feeding the frenzy of putting names in because of hearsay. That is my issue.

The Chairperson (Mr Swann): The points are well made, gentlemen. I made comments in our closed session about how I would chair the session, and I think that we have done well until now. Trevor Lunn has made the point that Andrew has offered, if the Committee insists, to give that information of his own volition, Trevor. Trevor Lunn has insisted —

Mr McCrossan: I support Trevor Lunn.

The Chairperson (Mr Swann): I am not taking votes on it.

Mr McCrossan: I think that it should be —

The Chairperson (Mr Swann): Sorry, Daniel, I do not. It is now over to Andrew. It is your call, taking into consideration that you have offered to provide the information if we insisted. Trevor Lunn said that he does insist, and that is documented for you, if you need it.

Dr McCormick: OK. The understanding that I expressed to Minister Hamilton and his adviser in recent times was that Andrew Crawford had been the person exerting that influence, but, as I have said, I have no direct evidence of that.

Mr Lunn: Sorry, did you say "Andrew Crawford"?

Dr McCormick: Yes.

The Chairperson (Mr Swann): It is on record that you have no direct evidence. Trevor Clarke, your concerns have been noted. Andrew, I thank you for going down that line. Trevor, do you want to continue?

Mr Lunn: I wanted to tidy that up. Can I move on to something else?

The Chairperson (Mr Swann): Yes.

Mr Lunn: I want to ask you about the disclosure of the list of beneficiaries. A wee note has just been passed to me that the Minister has made a statement today saying that he will publish the list of recipients on 25 January. Fancy that: on the day on which the Assembly dissolves, he will publish a list of the recipients of the scheme. "Cynical" does not describe it, but that is by the by.

The Chairperson (Mr Swann): Sorry, was that statement made while we have been in session?

Mr Lunn: It has been made, evidently.

Dr McCormick: Yes.

Mr Lunn: Did you know about the statement, Andrew?

Dr McCormick: Yes.

Mr Lunn: Obviously, yes. That does not stop me asking the questions about disclosure that I wanted to ask anyway, if you do not mind.

Dr McCormick: Sure.

Mr Lunn: The Department and the Minister seem to have hidden behind data protection. I would have said that they had done so quite reasonably, and I have said more than once at the Committee that the Data Protection Act would preclude the giving out of the names of individuals or companies controlled by an individual where the company name would identify the individual. That is fine, and the legal advice that we got sort of backs that up, but there has to be a balance between the legitimate interests of the public and the rights and freedom of individuals. That is OK, but I will read out what the application form that people signed states, which is already on Twitter:

"Details of an accredited installation, including its location, technology type, installation, capacity, accreditation date and payments received will be freely available to the general public."

That is in the privacy section.

Dr McCormick: Yes.

Mr Lunn: Overleaf it says that by agreeing to those terms and conditions:

"you are consenting to the processing of any information ... and to the publication of certain information as set out above."

So what has been the big deal about disclosure? Presumably you were privy to whatever discussions took place. Why has the Minister suddenly decided, in the teeth of dissolution, that it is time to publish the list when he evidently could have done so at any stage?

Dr McCormick: The instruction to us to begin work towards proceeding to release the names was well before Christmas, so there is no new point arising purely from the timing now. That instruction came early and led us to —

Mr Lunn: Sorry, what instruction?

Dr McCormick: To proceed towards the release of the names of all recipients.

The Chairperson (Mr Swann): Andrew, can I stop you and take you back a step? It was the Committee that asked you to do that, and you said that you would consider it, if it was the will of the Committee. A few weeks later, the Minister came out with a statement to make it look as if it was his determination when actually it was a request from the Committee to you initially.

Dr McCormick: Yes, I accept that entirely. You had requested that information be sent to you. I was moving on to talk about the Minister's desire to release the names to the public as well. There are separate strands, and I realise that I owe you a further update now that the Minister has announced what he has announced in the last few minutes.

The Chairperson (Mr Swann): Trevor, do you want to continue?

Mr Lunn: Yes, I do.

The Chairperson (Mr Swann): I have the statement, which I will read to the Committee.

Mr Lunn: Do, please.

Dr McCormick: The process is important because we have to comply with the law. We sought consent through a letter that went out before Christmas. Because of the Christmas period, we gave people until Tuesday of last week — 10 January — to reply. There were significant objections: the largest proportion — over 90% — withheld consent. As you know, if it is judged to be in the public interest to release data, that is not impossible, but it requires a further process under section 10 of the Act. We have now initiated that process. We are considering the objections case by case in the

Department, and the proposition is that we will then write to the individuals. The reason that it takes from today to a further date next week is that we have to complete that process and fulfil our section 10 obligations. We will write to those who objected, saying, "We note your objection. Here is our view of your objection ...". That is done case by case. We have to send a letter to each of the 1,400 businesses giving our response to their objections and our proposals.

In the context of all that, people heard reference to transparency last week. We have had to give an undertaking not to release anything in the meantime, including the information that you talk about under the privacy policy, while we are subject to a pre-action protocol from people who are complaining about our intention to release names. The delay is the consequence not of legal advice but of legal action. That was touched on by the Deputy Chair of the Economy Committee in the Chamber on Monday, as I recall.

Mr Lunn: You have outlined the procedure that you have to observe under the Data Protection Act regulations. However, is that not overridden by the fact that these people all consented to have their details put into the public domain in the application form?

Dr McCormick: Had we moved more quickly, perhaps that would have been possible. The fact of the matter is that we are now embroiled in an ongoing legal action; therefore we cannot do it as of now. There is an argument that, had we proceeded to disclose that information earlier, it might have happened. However, we are where we are; it did not happen.

Mr Lunn: The Department must have discussed whether it was in the public interest or desirable to release the names of the recipients when the first request was made. Did nobody realise then — maybe this is a stupid question — that it was written into the contract that they had already consented?

Dr McCormick: Not names. The other data, yes. The names were subject to the privacy policy. We could have released the other data.

Ms Gildernew: "Freely available to the general public".

Mr Lunn: Sorry, Michelle. In other words, you could have released all the details. It does not say "excluding names"; it says:

"details of an accredited installation, including its location, technology type, installation capacity, accreditation date and payments".

Are you saying that it is short of giving out an individual's name or the name of the company?

Dr McCormick: Yes. The undertaking was not to release the business names.

Mr Lunn: But you could give out the address.

Dr McCormick: No, the location. Just to be aware of customer practice elsewhere, "location" in the Ofgem scheme for the rest of the UK is specified as Scotland, Wales or England.

Mr Lunn: You are going to say that they are all in Northern Ireland.

Dr McCormick: The proposal before the Minister, if we were to proceed down this road, is to use not the full postcode but the first three or four digits of the postcode, which take you to 94 or 95 areas in Northern Ireland. The proposal is to interpret "location" as having that meaning, although it is not settled yet. Certainly, that is not as high-level as across the water. I am just making you aware that "location" is not a precise term.

Mr Lunn: There is a qualification to what I read out. It says that:

"All other information provided to Ofgem, including your account security information (user name and password) will be kept confidential."

Your username or password is not your name or address. I find it incredible that we are going through all this rigmarole asking people to consent to something that they have effectively already consented to. Are the applications available to the public? Are they online?

Dr McCormick: No. The clear position is that anything that identifies an individual, either directly or indirectly, is covered by data protection, and we have a legal obligation to comply with those requirements. We could not release names or anything that would identify individuals without consent or a proper process of consideration of balance of interest between public interest, which is very clearly in favour of transparency, and the concerns that individuals might have expressed. A range of objections has come in.

Mr Lunn: Is that a fairly general type of privacy declaration?

Mr B McCann: We understand so, yes.

Mr Lunn: It seems pretty specific to me. It goes into technology types, capacities, and so on. I am sorry, Chair; I could go on about this all day, but I do not want to. It says to me that when you apply for the scheme, you have to be prepared for your details to be made public. I think that it even goes into payments received, for goodness' sake. Anyway, thanks, Andrew. I will leave it at that.

The Chairperson (Mr Swann): Andrew, you referenced the first four digits of a postcode. Are you saying that you cannot do that?

Dr McCormick: No. We would; that is the proposal.

The Chairperson (Mr Swann): It is already on Twitter; I could read it to you now.

Dr McCormick: That is based on the —

Mr B McCann: It is based on the heat map produced as part of the early work by PricewaterhouseCoopers, we understand.

The Chairperson (Mr Swann): Right. That gives the first digits of postcodes —

Dr McCormick: I think that that was a leak rather than a disclosure. That is my understanding.

The Chairperson (Mr Swann): It is already out there anyway, so —

Dr McCormick: What is possible, but for the legal action that we face, would be to disclose, line by line, the location, installation type, date of application — that, of course, is of great significance, given the spike — and amounts paid. That would be much more detailed than what is already in the public domain.

The Chairperson (Mr Swann): I am sure that somebody from the Department is listening. They can accept my extreme frustration that the press release was put out at 2.10 pm when the Committee started at 2.00 pm. That is something that we have been asking for as part of our inquiry. It shows disregard for the Committee and its work when that is how it has been handled.

I want to question you on the Minister's last line. He states:

"I anticipate that the process will be conducted by the beginning of next week and it would be my intention to publish RHI recipient details on Wednesday 25 January."

Taking into consideration legal challenge or process, if that is delayed by a day — it is 26 January, and we are into purdah — I assume that the documentation will not be released.

Dr McCormick: I think that it depends entirely on what happens in the courts. Maybe I should apologise to the Minister in this session, because I probably held up the issuing of that press release by maybe half an hour because I was checking with the lawyer. If I have done, I apologise.

The Chairperson (Mr Swann): You were in here at that stage, Andrew.

Dr McCormick: I was making phone calls about it just before the hearing, so apologies for that.

The Chairperson (Mr Swann): OK. Daniel is next.

Mr McCrossan: Thank you, Chair.

The Chairperson (Mr Swann): Sorry; it is Trevor. My apologies.

Mr Clarke: Thank you, Chair. I have another question that I want to ask, but I just want to follow on from a question that I asked way back before Trevor Lunn started. It is worth putting on the record that I share your frustration about the names, Chairman. We have all consistently wanted them; I have no issue with that. However, our legal advice was that private individuals would have been excluded from that, so, regardless of what it says there, Trevor, the legal advice that the Committee obtained separately does not agree with whatever Trevor just read out. That is by the by. I am making a point about the Committee's independent legal advice, but, as I say, that is by the by.

I want to take you back about half an hour ago to when we started to get into supplementary questions. We are talking about July 2015. We are talking about an email or something that alerted the Department to whatever was happening to the spike or about whatever was happening with the tariff. Is that right? Was it an email or a letter? What was it?

Dr McCormick: What I was referring to carefully —

Mr Clarke: Was it a phone call?

Dr McCormick: — here were emails that I received after Christmas that showed that, in that period, there was some premature disclosure of information to the industry.

Mr Clarke: Right. This is where I want to be clear: was the origin of the email the industry? Was it from a SpAd? Was it from a Minister? Who was it?

Dr McCormick: These are emails from industry players to other industry players; there are no official emails, addresses, either of departmental officials, SpAds, or Ministers, involved in these at all.

Mr Clarke: So, this is in July 2015.

Dr McCormick: July 2015. That is correct.

Mr Clarke: On Monday of this week, former Minister Bell referred — I will read it into the record, Chair, if that is OK — to

"the very first piece of information given to me in a ministerial office by the DUP party officer who was appointed as a special adviser, Timothy Cairns, which was that I would not be allowed to reduce the tariff on the scheme because Timothy Johnston, the special adviser to the then First Minister, and John Robinson, at that time the DUP director of communications and now the special adviser to the Economy Minister, had such extensive interests in the poultry industry that it was not allowed to be on my ministerial agenda." — [Official Report (Hansard), 16 January 2017, p65, col 2].

That is what was read into the record. Can you remember when Minister Bell was appointed?

Dr McCormick: It was —

Mr Clarke: I will remind you: it was 11 May. If Minister Bell was appointed on 11 May but industry officials came to you or wrote to you in July, how likely is it that that statement that Mr Bell read out in the House was accurate?

Dr McCormick: I have no knowledge of the conversations between him and Timothy Cairns. What I can say is that I was not aware of a problem with the RHI until a number of days after 11 May. This

was caricatured in a 'Spotlight' programme with taxis and dead ends, if I recall, just before I went to a meeting in the Department of Energy and Climate Change (DECC). It was on the 20-something of May, if I recall. I then briefed the Minister of the problem emerging, I think, in the first week of June 2015. That was the first I made him aware of there being an issue.

I have not had the opportunity this morning to check the Minister's first day brief, but I would be very surprised if there was anything memorable about RHI in the first day brief because there certainly was not in mine when I arrived in the Department in July 2014. Therefore I cannot comment directly on what was a private conversation between the Minister and the special adviser, but my first alarm bell to Minister Bell would have been around the time of — I should have dates. Maybe I have some dates; forgive me. My first discussion was on 28 May 2015. I briefed the Minister on the issue in the week of 8 June just ahead of his meeting with Secretary of State Rudd, which was in relation to the Northern Ireland renewables obligation (NIRO), on 10 June 2015. That is the very clear record, as far as I am concerned, of those conversations.

Mr Clarke: OK. I want to jump back to the consultations. There were some points covered in relation to the 68 consultations, although it was so long ago that some of us find it hard to remember exactly what was said. There certainly was a suggestion from those who viewed those consultations, but, given that we are working on hearsay today, who is most likely to filter those consultations for the energy sector to look at?

Dr McCormick: This would have been in the consultation of 2012. That is the one that led to the change in tariff.

The Chairperson (Mr Swann): It was the consultation to the amendment.

Dr McCormick: That would have been undertaken by the energy division at the time. Therefore, if there is an issue with this and it is a cause for concern — I sense from what you are saying that it is, and I apologise again for not being better prepared on this point — that would be subject to the fact-finding, and I would prefer not to name names.

Mr Clarke: That is OK, but it is an issue of concern for the Committee that there were 68 consultations, and those were filtered down to single numbers. What I am trying to establish is not who the individual was, but would it have been a Department? Would it have been a Minister? Would it have been a SpAd, or would some of your officials be the most likely candidates to have filtered this?

Dr McCormick: I am clear and confident that that is a matter that departmental officials would have dealt with. I will check that, and, if it is anything other than that, I will get back to you straight away, but I do not see how it would have been anything other than that.

The Chairperson (Mr Swann): Andrew, you referred to first day briefs and matters arising from the RHI. You have supplied your first day brief. The only thing of note that I see in your first day brief of July 14, when you took over from David Sterling, is in regard to funding issues:

"Funding stream for grant payments is Annually Managed Expenditure (AME) directly from HMT with no separate bidding process. Administration costs must be found within DETI's normal budget streams."

Even in that first day brief, the Department was not acknowledging that this was anything but money from London.

Dr McCormick: To me, that is disturbing in the light of what we know now and, therefore, it is important to investigate that. I do not think that it was the biggest contributory factor in the spike, but I think it was a contributory factor.

The Chairperson (Mr Swann): Daniel, my apologies.

Mr McCrossan: Thank you, Andrew, for your answers to the many questions. The surprising thing is that, even as we find ourselves in this particular situation, the details still do not fail to shock us. There is so much that comes out, day and daily. In relation to political interference, mainly by the DUP,

when would you say that you first became aware or suspicious that the scheme had been corrupted by political interference on the part of SpAds or other officials from within the DUP?

Dr McCormick: I hesitate to go with the word "corruption", because —

Mr McCrossan: "Corrupted".

Dr McCormick: OK, "corrupted". I do not think that what we experienced in the summer of 2015 felt at all of that nature, for reasons that I explained. We were not aware of the damage being done, not aware of the vulnerability — the fact that we had set out with such a vulnerable scheme, so open to abuse. Clarity of the level of abuse was confirmed only in the PwC report, which you have seen, in the autumn of 2016. The concern about abuse and the potential link between abuse and political behaviour — the main allegations of abuse came in January to the then First Minister and were investigated through the PwC work. There was at that time no emerging evidence of any link between that abuse and anything political. It was only in the autumn, as this has become more politically controversial, that that emerged. Certainly, in line with some of the questions that Declan asked in previous times, we have had to think about this in terms of much more serious situations and see what linkages might be there. That is an investigative process that is mainly ahead, so the short answer is that it is not something that presented at all obviously in the early stage of the process.

Mr McCrossan: We will take the party out of it. Regardless of the party or any party, you had no suspicions in your role that there was any form of political interference in the earlier stage?

Dr McCormick: In the earlier stages, no. That was not the case.

Mr McCrossan: Another point that you made earlier, Andrew, was in relation to suppliers. I and, I am sure, many members of the Committee have spoken to suppliers of the boilers and everything in the last few weeks and months. Everyone I have spoken to has said that it was too good to be true. To quote one individual without naming him, a complete idiot would have realised that it was too good to be true. At the very earliest stages, they realised that the scheme was wide open to corruption. I cannot understand how we even sit here on this date and we still run around in circles in relation to how it was not noticed at the earliest of stages. That is the point of anger in the community and in communities across the North. Did you say that there were 50 suppliers? There is bound to have been more than 50.

Dr McCormick: It is a very conservative figure.

Mr McCrossan: It is. I would say that every supplier would have known about that. Anyone who took time to read what was there would have been aware that it was open to corruption. One final point —

Dr McCormick: Yes, open to abuse, I would suggest. Corruption —

Mr McCrossan: I would say "corruption".

Dr McCormick: "Corruption" implies deception. I think it was Trevor who, at an earlier stage, pointed out that deception was not necessary to abuse the scheme; that was the problem.

The Chairperson (Mr Swann): Your last point.

Mr McCrossan: Just one point. It all depends on how the scheme was set up, to answer that point you are making. There has been no clarification of why the controls and mechanisms around tiering were taken out. Some 90% of the legislation had been adapted. There are still huge questions around that process, which is why there are continued questions coming forward in relation to potential or alleged corruption, or whatever word people want to choose.

Dr McCormick: You make an entirely understandable line of reasoning. As I said in my previous evidence to the Committee, we missed it and it was a mistake. That is consistent with what was said in the NIAO report. There is a reference to a footnote being thoughtlessly transferred from one document to the business case, and that is hard to understand. I try to imagine myself in that situation. The benign or most low-key interpretation of what happened is that people could not see the

wood for the trees. They were so immersed in the detail of designing a model that they never stood back and asked, "What's going on in the real world?"

I have said that a major lesson that we take out of this is the need to improve the commercial skills of the Civil Service. I characterise that as putting yourself in the context. Ask, "If I wanted to rip this scheme off, how would I go about it?"; to actually put that hat on and think in those terms. The people who met the concerned citizen, the first time, said, "People wouldn't do that". We need to say, "If I was a crook, what would I do?" or "Even if I just wanted to make money out of this, how would I go about it?". We have to think in those terms, and there is no evidence that we did so in this case. I am still on the benign interpretation.

A lot has been said about the legislation and why the legislation was different from the GB legislation. The point that I want to make on that, and tried to make in the Economy Committee on Monday morning, is that it is a horse and cart analogy: legislation follows policy. The policy was got wrong. The policy and advice were that tiering was not needed, so the instructions were to write legislation that did not introduce tiering. The legislation followed from the policy. There is nothing sinister, new or novel about looking at the legislation. In a way, that is a red herring. The point that went wrong was the policy. It is absolutely clear on the record that that was based on advice to the Minister. So the same footnote that is in the business case, which was picked up by the Audit Office, is also in the main submission that went to Minister Foster. She was advised that tiering was not needed. That has the characteristics of a mistake. It is a very serious mistake indeed, given the consequences that have flowed from it, and the evidence so far suggests that this was a mistake. I accept that it is open to other interpretations. I have not seen any evidence that takes you towards any other interpretation, although we continue to be surprised.

Mr McCrossan: It was a disastrous mistake. I have a quick question for you, Andrew. In your time in your role, have you come under any pressure from any political party or those in a political party in relation to the scheme? Are you aware of anyone at a similar level to you who has been?

Dr McCormick: No.

The Chairperson (Mr Swann): Andrew, I want to pick up one point regarding the design of the scheme. You talked about the detail and not seeing the wood for the trees. At that time, the energy team was also looking at the domestic scheme. Is there a potential that that is why this detail was missed?

Dr McCormick: I do not think so, because they were not doing the detailed work, as I understand it, on the domestic scheme at the same time as the key design features of the non-domestic scheme were being determined. I do not think those points overlap in time. I am sure of that.

Mr B McCann: That is also my understanding, Chair.

The Chairperson (Mr Swann): Do you have access to the minutes of the DETI casework meeting on 21 October 2015?

Dr McCormick: I have seen that document. Yes, I know of it.

The Chairperson (Mr Swann): Point nine is an inquiry about trigger points which are not implemented in 2013 and whether they should have not been implemented for the non-domestic scheme. It is actually said that it was a ministerial decision to look at the domestic scheme, rather than pushing through the trigger points on the non-domestic scheme, which would have significantly delayed the implementation of the domestic scheme. Is that not indicating —

Dr McCormick: Yes, that is at the implementation stage rather than the design stage. My previous answer was on the design stage. I am aware of the reference you have quoted from the casework committee, and I am not in any doubt that there was a ministerial priority to proceed with the introduction of the domestic scheme. It was a familiar point made to me by officials after I arrived in DETI. It is a clear and straightforward point, and part of what Ministers are there for is to set priorities. That did not take away one iota from our obligation as civil servants to manage the risks arising.

The trigger points should have been risk managed. There is a clear discussion from earlier sessions about the project management, the risk management, the issues log and all the procedures that would

have flagged this up and required us to address this more fully, which did not happen. It is part of the failing that I have acknowledged in previous sessions, and part of what we need to pursue in the investigative process.

Mr Lunn: On the back of Daniel's point—

The Chairperson (Mr Swann): I have quite a number of Members wanting in for the first time before I start going around again. Folks, can you turn your phones off, please, as it interferes with the recording of this meeting for Hansard?

Mr Dunne: Thank you for coming in again, gentlemen. Picking up on that point, Andrew, it is one that I have raised a number of times. It is difficult to understand how a multi-million-pound project of this scale within a Government Department did not have the principles of project management in place. My understanding is that if they had been in place, there would have been a continuous review of what went on, and there would have been processes for authorisation, amendment, final sign off and so on. I refer to the business case put forward by DETI in 2012 to DFP — I just found this in your documents recently. Under 7.53 it talks about reviews and states:

"there will be scheduled reviews in-built into the Northern Ireland RHI, this will allow the progress of the scheme to be monitored, assessed and, if necessary, changes implemented. The reviews will consider all aspects of the scheme including eligible technologies, tariff levels, fuel prices, banding, rates of return etc. This will allow the scheme to remain fit for purpose and new innovative technologies added and other established technologies, that may no longer need an incentive, be removed from the table of tariffs."

Point 7.54 says:

"The first review is scheduled to start in 2014 with any changes or revisions implemented by 2015."

This was included in the business case. It also talks about degression:

"Degression is a policy instrument used in some existing renewable electricity incentive schemes, including ... in GB."

I do not have it here, but it does mention that in this case degression was not to be introduced. That was the DETI business case in 2012, laying out the terms and conditions of how the project would be managed. Is that basically fair?

Dr McCormick: Yes.

Mr Dunne: I do not fully understand how the procedure works, but that is my understanding.

Dr McCormick: Yes.

Mr Dunne: It is fundamental. It would probably be signed off by the Minister, or would it be? A business case? It was a DETI business case.

Dr McCormick: It was a DETI business case, and it will have gone to Finance as well, given its scale. I am not sure if the business case itself went to the Minister.

Mr Dunne: It also says — and I do not want to bore everyone, but it is fundamental:

"The main risk of the RHI is that the tariff levels are not sufficient to encourage uptake or that they are too generous"

— and then it says, in brackets, "very unlikely" —

"and hence uptake is such that there is insufficient budget. Ofgem will provide regular management reports which will enable uptake to be carefully monitored and forecast expenditure. The RHI will be reviewed in 2014 (and at regular intervals thereafter) and tariff levels may be adjusted, for new installations, if appropriate."

The first question I would ask on that is this: why was that not fully implemented within the procedures of the Civil Service to manage the project?

Dr McCormick: I have said in response to questions in previous sessions that there is no good answer to that. It should have been. There is no question —

Mr Dunne: It should have been.

Dr McCormick: It absolutely should have been. I think that David Sterling accepted that in his evidence as well. The only additional point to make is that there were other things happening. There was a desire to pursue the domestic scheme. I do not accept that as in any way taking away from the obligation to fulfil those requirements; they were accepted in the casework. The context is that the uptake was slow. The initial uptake of the scheme was relatively low, so people were not so concerned about it. I think that misses the dual responsibility that we have not only to live within budget but also to secure value for money, regularity and propriety. I am clear that, as the initial applications began to come in to the scheme, that would have begun to demonstrate that the usage, boiler size and a number of other factors were not in line with the assumptions in the business case.

It was not that the budget started to be under pressure; that did not happen until probably March 2015. The early applications started to come through in August 2013 and into the autumn of 2013. I have seen some of the printouts; they were coming in at a level that was clearly differentiated and higher than the assumptions in the model at the centre of the business case. The trigger to review was there.

Mr Dunne: It was there. Was it implemented?

Dr McCormick: It should have been reviewed. There is no question about that.

Mr Dunne: Exactly. The other point is about risk management. Was there a clear list of risks identified for the project at the start, and were those managed throughout the scheme, especially financial risk? I am no financial expert, but surely financial risk would have been number one when it comes to the list of risks. The projected overrun should have been looked at and managed accordingly throughout the project. Coming from a government background, I find it totally unbelievable that this multimillion-pound project was going rudderless. It was travelling along rudderless at risk and was not being managed and monitored in the way that it should have been. Is that fair?

Dr McCormick: The risks were identified — you read out the key risks from the business case — at the outset and confirmed in the minutes of the casework meeting in 2012, but they were not, as they should have been, monitored systematically in a proper project management process. That did not happen, and it should have happened.

Mr Dunne: It should have happened.

Dr McCormick: It absolutely should have happened.

Mr Dunne: The Minister in charge was Mrs Foster at the time. Was that information ever reflected back to the Minister about how poorly the project was monitored — or not monitored — and how it was drifting along rudderless?

Dr McCormick: Given that the evidence suggests that there was not sufficient awareness and sensitivity in the team on those points, the corollary of that is no. If they were not focusing on the risks, they would not have been bringing them to the Minister's attention. I am clear that those concerns were not brought to the Minister's attention.

Mr Dunne: You are clear on that, Andrew.

Dr McCormick: Yes, I am clear.

Mr Dunne: So they were not managing the risks.

This is my last point. You mentioned earlier that the civil servants did not fully understand the scheme until the auditor's report of about June 2016. Is it a fair assumption that the civil servants who are reasonably well paid to do a professional job and head up that Department did not fully understand how the scheme worked until it was highlighted in the auditor's report?

Dr McCormick: I came to this session less certain of my knowledge about it than I was on 28 September, because so much has come through that is surprising. I was very surprised when the point about the tariff being higher than the cost of the fuel came to my attention through the good work of the Audit Office in June 2016. My colleague Chris Stewart highlighted it to me, and we were astonished when the penny dropped. I do not know when the penny dropped with anybody else, but it dropped with me in June 2016. The behaviour is consistent with people not having understood it and therefore not having been alarmed and still advising me that it was a good scheme. They were saying, "This is fantastic. We're getting renewable heat. It's finally taking off. It's tremendous." That behaviour is consistent with them not understanding how badly it was going wrong.

Mr Dunne: Have you looked at —

Dr McCormick: There are other possible interpretations.

Mr Dunne: Have you looked at any internal audits in relation to the period that we have just talked about on the management of the scheme?

Dr McCormick: Yes. Again, the report by my head of internal audit on the non-domestic scheme has, I think, been shared with NIAO. It was a difficult piece of work; it exposed some quite significant management issues. That, as I recall, was carried out in the first part of last year, which was after the suspension of the scheme; it was not in time to impact —

Mr Dunne: Was there no evidence of ongoing internal audit in relation to the management of the scheme? Was there no evidence of it?

Dr McCormick: The key point is that the audit risk assessment depends on risk assessment. Risk assessment, in turn, depends on management assessment of the prioritisation of risk. You can keep me right, Brendan. Of course, we need to have an override whereby there is scope for internal audit to go anywhere. Test drilling and other concepts need to apply so that we do not solely rely on, if you like, circular intelligence — "Oh, that's not risky; let's not bother investigating it." We cannot ever rely on that assumption. There has to be some schedule or cycle that ensures that every area is investigated —

Mr Dunne: The planned —

Dr McCormick: — from time to time.

The Chairperson (Mr Swann): Gordon, can I bring you —

Dr McCormick: However, this was not —

Mr Dunne: The planned audit.

Dr McCormick: Yes —

Mr Dunne: There should have been an internal plan for auditing. It should have looked at that project.

Mr B McCann: Yes, but it took its lead from the management and the risk assessment process. Because it was not identified clearly on the risk register, the head of internal audit was not picking it up as a priority area. That is based on current Treasury guidance. When I was head of audit, the head of internal audit did his own risk assessment. He looked at the volume and value of transactions, the complexity of schemes and so on, and came up with a plan that was generated by the head of audit. Now, the move has been to place more reliance on the risk management process that is generated by management. If it is not on that plan, there is then a weakness, and internal audit will not pick it up as part of its review cycle.

Mr Dunne: So it was not on the plan.

Mr B McCann: It was not on the plan.

Dr McCormick: There is a potential important learning point from the point that you have made.

The Chairperson (Mr Swann): You are saying that, basically, if the Comptroller and Auditor General had not done his report, you would never have been notified of the risk.

Dr McCormick: It had gone right down the agenda. In fairness, the reason for the short piece of work that was done by the Audit Office was that we had had a catastrophe. The thing had gone over budget and had to be shut down as a matter of urgency. That is what led to the irregularity. It was also aligned to the arrival of the allegations of abuse. That is how it came about.

Mr Butler: Thank you, Andrew, for your frank answers today under what must be the biggest spotlight in the country at the moment. I will pick up on what Gordon was saying and look back on the conversation that we had in November. I was well documented as picking up on the fact that there was no good project management; it was a significant weakness in what happened. I really hope that the investigation that you are having at the moment gets to the bottom of that.

There are two distinct problems here. We have the failure of a Department of the Civil Service to manage a project of such a scale. That is separate from some of the other issues that have emerged. In the discussion that we had, Andrew, you mentioned that, in 2014, some members of the team discussed depression and thought that it would be implemented. They did not push hard enough.

Dr McCormick: On cost control, yes.

Mr Butler: Yes, it was not implemented. They did not push hard enough. Sadly, it has come out that, in 2015, there were those who were pushing hard to keep the scheme open for a certain amount of time. Some people were putting an awful lot of effort into keeping an opportunity open, and there were very few people putting their shoulder to the wheel to bring in cost-control measures. We established early on that there was a turnaround of personnel both in the project and politically. Are there any persons, should they be SpAds, civil servants or Ministers, who were involved in this from 2012 until 2015 and would have had sight of the scheme throughout the journey?

Dr McCormick: No. I think that there has been a changeover in all the people concerned, at every level. Actually, too many of them changed at the same time, which is undoubtedly part of the issue. Part of what happened also relates to handover information, some of which you have seen and some of which was what gave rise to my need to initiate the fact-finding. Handover information was made available but not acted on.

Brendan has informed me that, in the finance team, there were grade 5 and grade 7 staff who were there from 2011-12 until the departmental reorganisation in May 2016. They would not have had direct and very detailed knowledge of the scheme, but, yes, they were in post throughout the period.

Mr Butler: In 2014, what was the make-up of the team that would have been having the discussion in and around their expectation of depression?

Dr McCormick: The point that I was trying to make was that there was quite a significant turnover in the initial team between the start in November or December 2013 and the completion in about May or June 2014. At permanent secretary level, I took over from David in July 2014. In that period, there were changes right the way through the team. There was an expectation among some of those who were leaving the roles that cost-control action would be taken, given that it featured in the consultation in 2013. The point stands that it was not given priority. It was not highlighted and, certainly, at no point was advice given to the Minister — it was Minister Foster throughout that period — that we really needed to get cost controls in. That mainly stands because, throughout that period, uptake was low, and there would not have been an alarm bell ringing. There should have been an alarm bell ringing about value for money, based on some of the points that I made earlier, but there was no concern. Again, this is part of what we need to understand more fully through the investigative process, but it should have happened.

Mr Butler: I accept that, Andrew, but I see that there were significant failings in the concept of this scheme: with how it was set up; how it was managed; and the transfer of information. I would go as far as to say that there was no legacy plan, and you can imagine that the handover happened over a desk. However, what staggers me is that it got little attention until there was an opportunity. Then, in September 2015, it was like a frenzy. There have been phrases used in here such as "legalised fraud" and "fiscal opportunism". I think that it is moral bankruptcy from anybody who saw in what should have been a scheme for the environment and to help businesses a way of going over and above that. We really need to get to the bottom of that and fish out those who pushed the message out.

Dr McCormick: That stands with what the concerned citizen said. She was saying that one of our policies as a Department was energy efficiency but what she was saying was getting no traction, because people did not need to be energy efficient because of this scheme. To me, that is very serious and needs fully investigated.

Ms Lockhart: Thank you, Andrew, for your answers thus far. There are couple of things that I want to pick up on. I think that Daniel's words were that a "complete idiot" would have noted the problems. Can you again take us right through the process for drafting regulations and forming legislation?

Dr McCormick: OK. The message that the people who work on the drafting of legislation always give us is, "This will work only if the policy is clear". The clearer the policy, the better the legislation. The sequence of events is for there to be an assessment of policy. That goes to the process for primary legislation as well as something that is done, as this was, as subordinate legislation. The principles all remain the same. Therefore, clarity of policy and clarity of intent, and the intentions behind the scheme were to find a way in which to incentivise renewable heat. We designed a scheme, designed tariffs and then —

Ms Lockhart: I know that you are in full flow, but may I interrupt you for one wee second? Where was the European influence on this, and at what point was it? In the process of explaining the draft regulations, can you clarify that as well? How would we have been penalised?

Dr McCormick: Part of the policy was to fulfil an obligation under European directives. There was a policy driver coming from Europe. At that stage, under the coalition Government across the water, the then Secretary of State for Energy would have been pushing the agenda of renewable heat and renewable energy. There were obligations for the UK, as a member state, to fulfil. The question for us was to translate that into detail, work it out and draw up the design of a scheme. Various options were considered, including grant schemes. The incentive that we had was then looked at and appraised, partly as a parallel to what was happening across the water. There were other ways in which it could have been done, but that then went forward to the then Minister as a summary of the policy options, and a way forward was recommended. That was all done. The next step was then to send instructions to the solicitors to say, "We now have a fixed policy. Please give us regulations that will deliver that". That is why I said earlier that cart follows horse. Policy drives legislation. Again, to counter a point that was made on Monday, it is very clear that what is wrong with this is mistakes in implementation, not mistakes in intent. There was never an intention that this would be an overly generous scheme. How could there possibly be an intention to have something that is wasting money? The flaws are fundamentally with the design, and the key point, as identified in the Audit Office report, is the missed recognition that the tariff was too generous.

Ms Lockhart: For clarification, who designed the scheme that you are talking about, which was mis-designed in the first place? Was it the consultants with Ofgem?

Dr McCormick: The design was put into the Department's business case on the advice of CEPA. CEPA and its associates provided advice on the design. The responsibility for turning that design into policy was for the departmental officials, and then, for the policy to turn into regulations, that was done through the solicitors who were instructed by the Department.

Ms Lockhart: OK. You have taken me to the point at which the scheme is ready to go into legislation. Obviously, after that is the point at which it hits the process.

Dr McCormick: There was an obligation to seek European Commission approval on state aid, so that, again, was part of the process. Before it was possible to proceed to take the legislation to the Assembly, it was necessary to secure state-aid approval. I do not have the timeline for all those events, but I think that that was secured in 2012 as well. In fact, if I recall correctly, the key decisions

were taken in the spring of 2012. There was then the state-aid approval process, followed by implementation later in 2012. That is the timeline as best I can remember.

Ms Lockhart: To clarify again, it went through all of the rigorous checks, including Committee checks. I return to the point that we are having some political point-scoring on this Committee today. It has been said that a complete idiot would have seen it, but everyone who sat in the Assembly at that time had an opportunity to scrutinise the scheme, look at the contents of the policy and the regulations and then approve them in the Assembly.

Dr McCormick: Yes. I will say this: business such as this is complex, and, yes, of course, anybody and everybody can read it. It is transparent, and there is a degree of understanding. I say that Ministers have the right to expect that civil servants will get this sort of thing right and that the detail is presented to them in a way that they can accept. I have to trust a team to deliver for me. There are a lot of things that I sign because I know the person who is doing it, and I will sign because I know that it will be good enough. Do I understand and read to the nth degree every detail of what I do? I could not possibly do that. None of us could do that. There has to be trust in a system, and we have to exercise that judgement very carefully. Yes, anybody could have spotted this —

Ms Lockhart: To confirm, you are saying that it is normal practice that a Minister acts on the advice of those educated, well-read officials who bring things forward. At all times during the time that Mrs Foster was Minister of Enterprise, Trade and Investment, did she follow the officials' advice? I assume that you can confirm that with a yes or no answer.

Dr McCormick: Yes.

Ms Lockhart: You can stand over that.

Dr McCormick: Yes.

Ms Lockhart: OK. Thank you for that.

Earlier, you talked about the point at which this was going wrong. Would it be natural for a Minister to ask or to enquire after a scheme? Even as an MLA, you are involved in lots of different initiatives, and, once they start, you might let them take their course. Is it normal practice that a Minister would ask after a scheme or ask how a scheme was progressing?

Dr McCormick: That would vary from case to case. It depends on what is happening with it, the degree of public attention and the proportionality of the Minister's postbag. It is not unusual for something like this to take over, and I think that the key point that stands here is that uptake was low, so nobody was getting excited. If anything, officials would have been noticing that, thus prompting the question, "Is there anything that we can do?" For example, was there anything else that the Minister could do to get more attention on to the scheme in order to improve the uptake? That was the concern in that period, as I understand it.

Ms Lockhart: So it would not be normal that the Minister should just know that there is something wrong; a Minister would expect officials to bring that up.

Dr McCormick: In this case, the only thing that people thought was wrong with it in the early days was underspend. The sign of other difficulties first presented in three ways. The first was the one that began the process of change, which was that uptake began to accelerate in March 2015, but that did not get to my level before the change of Ministers in May 2015. The wider set of problems emerged later — by definition, after the change of Ministers — and the third way was, of course, the intervention of the concerned citizen, which began in October 2013. That could have and, with hindsight, clearly should have led to advice to the Minister at that time but did not. All that I have is what the concerned citizen said. I do not have the full evidence, but what the concerned citizen said was that the officials did not believe her, saying that people would not do that.

The Chairperson (Mr Swann): Carla, I ask you to conclude, unless you have something else to ask.

Ms Lockhart: Yes. Thank you for that. It is helpful.

I want to touch quickly on the bank letter that has been bandied about. It has been put forward that the letters suggest that the Minister knew and understood just how generous the scheme was. What would you say about that? How did that occur?

Dr McCormick: This is an incentive. If it is not attractive, people will not take it up. The intention was to produce something that would provide a rate of return of 12%. That was based on what you would interpret as reasonable market behaviour. If you have money to invest, you look for that kind of return. You are not likely to make a big investment unless you get that kind of return. The underlying assumption throughout that period was that a rate of return of that order is what would happen. Therefore, drawing attention to the scheme in that way through the letter to the banks was a totally reasonable thing to do.

At that stage, the understanding of the overgenerosity of the scheme was not there. There is no evidence whatever that anybody at that stage knew of the fundamental flaw in the scheme's design. The focus from the economists and other officials on the team was that that was what was to be expected. We were trying to understand why people were not applying. Therefore, to draw attention to the scheme, it was reasonable to advertise it. Given that mindset and that understanding, it was reasonable. We did not know then what we know now.

The Chairperson (Mr Swann): Would sending that letter that Carla mentioned be normal practice?

Dr McCormick: That kind of thing happens. It would not be unusual. The question that you ask yourself is this: this is not working, so what can we do about it and who might encourage it? There was probably a wider perspective in that period, which was 2012-13. That was still in the period in which there was a wider piece of work going on with the banks on access to finance. Access to finance was a theme post recession. It was about trying to ensure that there was a good attitude from the banks to facilitate economic development. That is, after all, what we are there for as a Department. We are there to promote economic development, and if there is market reluctance in the banks to invest — clearly, there was massive behavioural change by the banks post 2008 — to throw encouragement towards them in that context was a perfectly normal and reasonable thing to do.

The Chairperson (Mr Swann): OK. I cannot remember the wording of the letter, nor do I have it here. However, concerns were raised about the legal implications. The last phrase was, I think, that there would be no changes made to the level of subsidy. Would that be a normal statement to make?

Dr McCormick: I go back to the fact that part of the design of the scheme is an attempt to incentivise a change of behaviour. We do not start to introduce a scheme on such a scale unless the market is not going to do it. The barriers to entry, change and promotion of renewables were high: the cost of boilers, hassle and unfamiliarity. Therefore, part of the design of the scheme — this is in the business case, and it has been quoted — was to give assurance. It was reasonable to give assurance. The assurance was given in the context of a very clear statement of the expected returns that would come from that investment. It is a case of, "We will incentivise you. If you invest, we will provide a basis on which you can expect to get a rate of return of around 12%, in that order, and we will give you" —

The Chairperson (Mr Swann): In the letter, it does not specify 12%. There is no specification of the level of return or expected return, just that there will be a guarantee.

Dr McCormick: Certainly, at the outset of the scheme, in both public statements and Hansard reports, that is there. I am not talking solely, or even specifically, about the banks. The general context is that that was the expectation raised. Therefore, to say that we would underscore a tariff was the right thing to do, but it was always in the context of that level of expectation. There was never people saying, "If it turns into a bonanza, that is fine". There was no expectation of a bonanza.

The Chairperson (Mr Swann): The worked example in the Comptroller and Auditor General's report — example 2 — shows a return of 82%, with a payback period of 1.7 years. That expectation may have been there for some, if they had sat down and done their own sums.

Dr McCormick: Because the mistake was made, yes. That is where it all went wrong. The modelling was based on an assumed load factor and an assumed size of boiler. If you looked at that, it looked OK, but that is not what happened in the real world.

The Chairperson (Mr Swann): Folks, I am going around again for your questions on Andrew's opening comments, so I want you to be brief. Michelle, you were looking your place. We are still on opening comments, by the way.

Ms Gildernew: OK. I want to ask about the bit that I could not find earlier. Andrew, we talked back in November about the email trail. You said that your concern was to establish, as best you could, why the emails were not acted on once this became known. Who was told, and why was it not acted on?

Dr McCormick: You are asking about the concerned citizen's emails.

Ms Gildernew: Yes. You said that you were pursuing the evidence on that, that it was of the deepest concern and you would be doing an analysis. Where is that work at at the moment?

Dr McCormick: It is work in progress. At that stage, I was saying that PricewaterhouseCoopers had completed the initial phase of fact-finding. I have that report from 31 October. It established that there was a significant need to undertake some further analysis. To be honest, we have a lot of other things to be doing on the issue, and we need to scope that work carefully. We are now on a more extended timeline, so the next pieces of work will include pursuing some further interviews with individuals to establish evidence and also substantial analysis of departmental records. A data-mining exercise will be undertaken in the next few weeks. That will also be undertaken by PricewaterhouseCoopers, which will have access to our own technical experts. It will allow keyword searches and that kind of thing to be done to make sure that anything that is of possible relevance to the topic will be identified. That is good practice in an investigative process: to make sure that we do not go through a lot of interview processes and find that, towards the very end, something pops up that we did not know about. We cannot rule out that happening, but we can manage the risk, and that is under way. It will take most of February to complete the fact-finding. The key decision that lies ahead after that is to determine whether there are individuals whose performance or conduct should be subject to consideration by a HR adviser and whether issues need to be addressed substantively through the HR handbook. That lies ahead, so there is no prejudgement. We are in fact-finding mode.

Ms Gildernew: I understand Carla's motivation in her line of questioning, but I would like to think that, if you were a Minister, you would be on top of your brief. The thing that concerns me most around the gaps in all this is that the Minister at the time was notified by a whistle-blower in an email in August or September 2013 and yet the litany of disasters still followed. That is of great concern.

Did you hear Jonathan Bell's comments in the Assembly about DUP SpAds having a conflict of interest in the scheme? Do you know whether that is true?

Dr McCormick: Do you mean in Monday's debate?

Ms Gildernew: Yes, former Minister Jonathan Bell said that there was a conflict of interest around DUP SpAds. Has your investigation brought any light to that?

Dr McCormick: Our investigation is about permanent officials. The wider process that is now being overseen by the head of the Civil Service does not address the issues in relation to SpAds. Those can be addressed only through a wider process such as an inquiry. I have had that discussion with the advisers who were involved in designing and looking at the work on the inquiry.

Ms Gildernew: You said, Andrew, that you were aware of the flaws in the scheme in May 2015. When was the head of the Civil Service made aware of those flaws?

Dr McCormick: It was certainly very firmly in his attention in January 2016; when the allegations of abuse were brought to the First Minister's attention, she passed them to him. He sent me a detailed note asking me to pursue that set of issues. What I was aware of in May 2015 was a budgetary problem. I do not think that what presented in May 2015 was such that I had detailed discussions with the head of the Civil Service at that stage. I do not think that I escalated it in that sense; it would have been on the departmental list of issues to manage. I certainly paid it very serious attention.

Part of this goes back to what I said earlier: we did not realise how bad it was. That is part of the reason why this is so difficult.

Ms Gildernew: Is it your belief that conflicts of interest may have been involved in the spike in the scheme through business, family or political connections?

Dr McCormick: I have no evidence on that point. The allegations that have been made have not been investigated. There have been responses from the individuals named, but there has not been an investigative process.

Ms Gildernew: When the scheme was devised, who was the ETI Minister's SpAd in that 2012-13 period?

Dr McCormick: In the 2012-13 period, the Minister's SpAd was Andrew Crawford.

Ms Gildernew: In November 2015, when the Treasury advised DFP and then formally confirmed in December that all RHI overspending, including in future years, would have to be met from resource DEL — AME was not covering it — who was the Minister in DFP at that stage? Do you remember?

Dr McCormick: Minister Foster.

Ms Gildernew: Who was her SpAd at that stage?

Dr McCormick: Andrew Crawford.

Ms Gildernew: When the First Minister was advised in January 2016 that this was an issue, Andrew had moved on and was Michelle McIlveen's SpAd in DAERA.

Dr McCormick: He moved to DAERA when the Departments were reorganised in May last year. I honestly cannot remember who —

Ms Gildernew: But he was a SpAd —

Dr McCormick: I think that he was in the SpAd team in OFMDFM in January or February 2016. I am sorry; I am struggling to be clear on that.

Ms Gildernew: We are clear, however, that Andrew was the SpAd. Somebody asked earlier whether there was an individual throughout a number of elements of the scheme. It seems — it is fairly obvious — that there might be an answer to that question.

Dr McCormick: You have drawn out his role factually.

Ms Gildernew: It has been in the media that there are family business connections to the scheme.

Dr McCormick: As I said, the only bit missing is whether he was with Minister Storey when Minister Foster became First Minister. There would have been a full team in existence in OFMDFM, but my memory —

Ms Gildernew: He has been around and has had sight of papers for the past three, four or five years on this issue. He probably has as broad a knowledge of the scheme and its failings as a whole lot of people — maybe more than most.

Dr McCormick: I have limited direct evidence on that. When the issues that were causing us concern arose in May 2015, he was not in the Department; he had moved to the Department of Finance and Personnel. Obviously, I do not know what further discussions about the concerns happened in that period. Again, because there was not crystal clarity on the AME/DEL issue, which was a big problem that finally crystallised in January 2016 —

Ms Gildernew: Was it not November? I have it that —

Dr McCormick: It certainly was beginning to emerge in November and December 2015.

Ms Gildernew: The Treasury formally confirmed on 22 December 2015 that —

Dr McCormick: True. I was thinking of the letter that came from the Chief Secretary to the Treasury in January. That is a fair point.

Ms Gildernew: Andrew Crawford was the SpAd then.

Dr McCormick: Yes.

Ms Gildernew: OK. It seems unbelievable that there would not have been conversations between him and the First Minister even before January, because he had gone from DETI to DFP. There seems to be a common denominator throughout.

Dr McCormick: Again, I have no evidence on that point, but I understand the inference that you make.

The Chairperson (Mr Swann): Andrew, you mentioned state aid. At the last session you were at, there was talk about de minimis payments that you promised to come back on. On the application form that was sent to Ofgem, there was a de minimis decision, which was removed and brought back into the Department. The only part of the application that was approved was whether there was de minimis funding. At that stage, there was the Carbon Trust 0% loans administered by DETI, and there were a number of applicants to that scheme to buy boilers. There was a change in the legislation. At the time that that went through the House, there was comment that the scheme was a great success. I asked you whether there was anyone in the Department who would have the knowledge to put de minimis and DETI/Carbon Trust interest-free loans together with RHI schemes to see whether there was a funding stream to get more money. You said that you would look into that and get back to us.

Dr McCormick: I did, I have not and I am sorry. I have not fully grasped the detail of that point. I have had advice from colleagues that there was nothing material in it. That is not satisfactory from your point of view —

The Chairperson (Mr Swann): It is not, Andrew.

Dr McCormick: I know; I am very sorry.

The Chairperson (Mr Swann): That is twice today.

Dr McCormick: I know. I can only apologise. I cannot answer that point. I am very sorry, and I recognise that that is twice that I have done that at this Committee. I apologise.

The Chairperson (Mr Swann): It is about a very specific issue. The point that Ofgem made at that stage was that the decision-making power on whether the de minimis was a reason for not funding an application was brought back in-house. They commented that the decision to do so was made at a very senior level. That is why I asked you who made that decision

Dr McCormick: I know you did. I am very sorry, but I do not have that information.

The Chairperson (Mr Swann): You have responded in part to that query but not as to why it came back to that level. Given where we started and where we are going, it is part of the jigsaw that you talked about. Maybe it is more of a critical piece than you realise.

Dr McCormick: Maybe that is true. If so, I apologise.

The Chairperson (Mr Swann): Oliver, very briefly on this.

Mr McMullan: Very briefly. We talked about assumptions, and the whole business case was put together on assumptions. You would agree with that.

Dr McCormick: Yes.

Mr McMullan: There was nothing concrete; it was all assumptions.

Dr McCormick: There could only be.

Mr McMullan: Regular reviews were put into that business case were.

Dr McCormick: That is right.

Mr McMullan: This case was unique, because it was the only one that was time bound that came out of DFP.

Dr McCormick: Yes.

Mr McMullan: How many reviews were done from 2012 to 2015?

Dr McCormick: There were not any.

Mr McMullan: There were none at all.

Dr McCormick: That is the problem.

Mr McMullan: A safeguard was built in that there would be reviews, and nothing was done about it. It was all done on assumptions.

Dr McCormick: Yes, that is fair comment.

Mr McMullan: Right. How then did you see the weaknesses in the scheme? Who signed off on that business case in 2012?

Dr McCormick: The business case was drawn together by energy division and was then subject to the casework process in DETI. The minutes of the casework show that the team that scrutinised it identified some of the risks and recorded its conditions of approval.

Mr McMullan: Who signed off on it?

Dr McCormick: As I recall, the casework committee was chaired by the then finance director, Trevor Cooper. There were other members of the casework committee, but —

Mr McMullan: Did that go back to the Minister? Would that have been on the Minister's desk?

Dr McCormick: We are now in 2012, in Minister Foster's time. Once the thing had casework approval, that would have led it to be subject to a submission to the Minister. She would not see the full business case in detail, but she would get a summary that gave the relevant information to provide a basis for a policy decision to proceed or not.

Mr McMullan: Right, OK. Who was the Minister?

Dr McCormick: This was 2012, and it was Minister Foster.

Mr McMullan: Right, it was Minister Foster. Built into that business case was an incentive scheme, and something was also built in in case the tariffs were too low or too high.

Dr McCormick: Yes, that is true.

Mr McMullan: You said that it was a regular thing for the Minister to write to the banks, basically saying that this was OK. The tariffs came in at the start, in 2012. When did they change?

Dr McCormick: The only change before the November 2015 amending regulations will have been a routine inflationary increase.

Mr McMullan: When did the Minister write to the bank?

Dr McCormick: That was 2013.

Mr McMullan: Asking for this.

Dr McCormick: Encouraging support.

Mr McMullan: Have we any correspondence from the banks or bank?

Mr B McCann: Not that we are aware of, but that will be looked at as part of the data-mining exercise. That gives us the best opportunity to find the trail of documents for that correspondence.

Mr McMullan: At the start, when the scheme came out, was there a tiered process for people in the scheme?

Dr McCormick: There was no tiering.

Mr McMullan: No, there was no tiering, so the people who came in at the start are on the same payments as the people who came in on the spike.

Dr McCormick: Yes. The same tariff applied from the start of the scheme to the first intervention to reduce the incentive, which took effect in November 2015. That is correct.

Mr McMullan: In the time that it was extended, there was this spike, so everybody who was in at the start was in on the high money.

Dr McCormick: That is right.

Mr McMullan: Where were the reviews in your case?

Dr McCormick: They did not happen.

Mr McMullan: They did not happen.

Dr McCormick: They did not happen. They should have happened, and that is part of the —

Mr McMullan: There was a systemic failure from the top of the Civil Service right to the bottom. You said that you spoke to the head of the Civil Service. Who was that?

Dr McCormick: Malcolm McKibbin.

Mr McMullan: How much did he know about the whole scheme?

Dr McCormick: He will have had very limited involvement, and that is entirely normal and routine in the context of all that time, up until it got to high-level attention in January 2016. At that point, when there was the change of tariff in November 2015 and all that we have talked about in relation to the summer of 2015, we were not aware of how bad it was. It was a serious issue but was not on such a scale that I needed to bring it to the attention of the head of the Civil Service.

Mr McMullan: You did not know how bad it was. We have reviews by your supply teams built into the business case. You have all that built in. All the safety valves were there, and not once was a red flag raised from any Department, any person or anybody else. The Minister signed that off. The Finance Minister signed it off, knowing that this was going to go up and was possibly going to have an effect on the funding from the Treasury.

Dr McCormick: The hope was that it would accelerate to some degree. There was no expectation that it would accelerate to the degree that it did.

Mr McMullan: The hope?

Dr McCormick: It was an incentive. You wanted people to buy into it and to try to encourage people to invest in a different technology.

Mr McMullan: You were hoping that there would be money there when you were told by the Treasury in 2011 or 2012 that that money would not be there if you went over.

Dr McCormick: The people at the time thought that they had designed a scheme that would make the best possible use of the £25 million that was available for the four- or five-year period up to the end of March 2015.

Mr McMullan: Lastly, you talked about the Carbon Trust giving out funding in interest-free loans. Am I right that that money came from Invest NI?

Dr McCormick: I am sorry. I have not researched that aspect of it. I apologise.

Mr McMullan: That money came from Invest NI. Why did it come from Invest NI to the Carbon Trust for it to give out interest-free loans when there was an earlier query about a de minimis irregularity whereby one client was being funded twice? From a high level in government or wherever, it was said, "OK, move on". Why was that money coming from Invest NI to the Carbon Trust and then given out as interest-free loans?

Dr McCormick: I am sorry. I have not researched that point. I apologise, Oliver. We should have had that prepared. We will get a response on that to the Committee as fast as we can.

Mr McMullan: Could we get that?

Dr McCormick: We will do our very best on that, and I apologise.

Mr McMullan: Could we also get the exact number who availed themselves of that to see if that was de minimis aid? Nowhere else in the whole thing was that ever mentioned — only that once.

Mr Lunn: I would like a couple of clarifications, Andrew, if you do not mind. You may have answered this to Michelle. At the point when pressure came on Timothy Cairns and the Department to maintain the scheme, allegedly from Andrew Crawford, what was his position?

Dr McCormick: At that stage, he was in the Department of Finance and Personnel.

Mr Lunn: OK. Who was the Minister of Finance at that stage?

Dr McCormick: Minister Foster.

Mr Lunn: Minister Foster. So, evidently, you had pressure coming from Minister Foster's Department about the scheme that she was responsible for when it was set up from a SpAd who apparently had more clout than the SpAd for the Department of the economy at that time. I know that I will be accused of being party political here, but it is fairly obvious that this all centres around DUP personnel. In answering Daniel's point — a long time ago now — about whether you feel that you or the Department came under political pressure, you quite categorically said no. Would you not consider pressure from DUP SpAds, which evidently came from a DUP Minister who not only was the architect of the scheme but was in charge of the SpAd who brought the pressure, to be political pressure?

Dr McCormick: As I said, I did not know precisely where the pressure was coming from at the time.

Mr Lunn: And now.

Dr McCormick: The scheme is now suspended and there is no pressure in relation to it. I have explained what I have been told. It is not evidence. It is my understanding of the situation. The clear position was that, in the summer of 2015, there was an influence to maintain the tariff at the higher level. We were pushing for an early decision to secure the reduction in the tariff as the right thing to do on value for money and for budgetary reasons, and especially to get back towards regularity. That

was the dynamic that was happening. If that needs to be described as political pressure, then, in a sense, it was, but it did not feel like that. I go back to the fact that we did not know how bad it was, so it did not feel like a sinister pressure in any way at that time.

Mr Lunn: OK, but it was at the time that you wanted to get the scheme closed down.

Dr McCormick: We needed to get the tariff reduced and to get it back under control.

Mr Lunn: To get it regularised at least.

Dr McCormick: At that stage, it did not feel so much like unusual business. As I say, I have worked with special advisers since 1998. Government as we know it could not function without them. It is part of the norm. It is not so unusual to have a lot of conversations with SpAds. Again, we always make the assumption that they are acting on behalf of their Minister and that it is all legitimate, and there was no sign at the meeting on 24 August that there was anything that was at all uncomfortable from the point of view of the Minister who was present, as in Minister Bell. If that had manifested itself, it would have felt like something different. This felt like relatively normal business.

Mr Lunn: Let me sum it up in one sentence, Chair. Through her SpAd, the Minister of Finance at the time, who was the Minister who had set up the scheme with the same SpAd in place at that time — correct me if I am wrong —

Dr McCormick: I have not said anything — not a hint — about any of the influence coming from Andrew Crawford coming at the Minister's instigation. That is not even hearsay. I have not heard anybody say that. That is not even hearsay.

Mr Lunn: Treat it as speculation then. The Minister of Finance of the day, through her SpAd, brought pressure on the Minister responsible for the scheme at the time not to close the scheme, which she had set up and that had already been proven to be a disaster. That was done with the assistance of the SpAd, who was the same SpAd who subsequently brought the pressure to bear. This is all a bit in-house, frankly. It is disgraceful.

Dr McCormick: As I said, there is quite a lot that I did not hear said.

Mr Lunn: All right. OK.

The Chairperson (Mr Swann): Andrew, you said — I think that it has been accepted here — that the Civil Service accepts a SpAd as the extension of the Minister.

Dr McCormick: Normally. That is right, yes.

The Chairperson (Mr Swann): You would not have any reason to question the fact that a SpAd was not operating under any other instruction or influence other than that of their Minister?

Dr McCormick: Yes. Again, to be clear, I did not know who was exerting the influence on Timothy Cairns at that time, so I had no basis for inferring anything in relation to any Minister at that time. The issue about the identity of the individual, I have heard said more recently.

The Chairperson (Mr Swann): OK, but there is enough influence and enough pressure coming on both Timothy Cairns as a special adviser and the then Minister of Enterprise from somewhere external to influence them to go in a certain direction.

Dr McCormick: It was a strong enough influence to counterbalance pressure that we were putting on to secure an early decision on the reduction in the tariff.

The Chairperson (Mr Swann): So, irrespective of policy —

Dr McCormick: In Newtonian terms, there was a force and an equal and opposite force.

The Chairperson (Mr Swann): And you are going only in one direction.

Dr McCormick: Exactly.

The Chairperson (Mr Swann): In your earlier conversations, Minister Foster only followed officials' advice. In this case, the external pressure made the then ETI Minister follow political advice rather than Civil Service advice.

Dr McCormick: Ministers follow political advice quite a lot in my experience. It is quite normal. That applies to every Minister I have worked with from whatever party. Some people are SpAds — get over it.

The Chairperson (Mr Swann): It is just a counter to some of the things that you said earlier about Ministers only following Civil Service advice. In some instances, they do take on political advice.

Dr McCormick: Almost every decision that is taken has a political dimension. None of us is an innocent in this world we live in. This is — I am sorry; I have gone beyond my brief there.

The Chairperson (Mr Swann): I understand. Declan can ask a very short supplementary and then we will take a 15-minute comfort break. We will come back in and see where we are with the rest of that line of questioning.

Mr Kearney: You said, Andrew, that it did not seem unusual at that time. Does it seem unusual now?

Dr McCormick: Yes.

Mr Kearney: In your reference to political dimensions, you talked in your opening remarks about discussions within the party. What party?

Dr McCormick: The DUP.

Mr Kearney: Have you had discussions with Malcolm McKibbin and David Sterling at your level about this unfolding crisis?

Dr McCormick: Yes.

Mr Kearney: Can you tell me what you discussed?

Dr McCormick: We have had a number of discussions in recent times. We have had to work together on a number of aspects of this, including issues around the fact-finding exercise, because that affects a number of Departments and David has responsibility for aspects of Civil Service management. We have had to look at the emerging proposals on the regulations that are before the Assembly for —

Mr Kearney: Let me cut to the chase. In any of those discussions, have any of the three of you agreed to approach members of the DUP under the radar outside the context of the institutions in relation to addressing the issue?

Dr McCormick: No.

Mr Kearney: Not at all. Neither you, Malcolm McKibbin nor David Sterling.

Dr McCormick: Not to my knowledge.

Mr Kearney: Finally, has there been any discussion at that level about the connection between the spike and business interests, business sectors, family interests or political relationships and how they may intersect?

Dr McCormick: No.

Mr Kearney: Not at all.

Dr McCormick: No. There has been no —

Mr Kearney: I will ask you one more time. At any stage, have you had those discussions with Malcolm McKibbin or with David Sterling or have all three of you had those discussions, and have you agreed any course of action at your level of management in the Civil Service in respect of the issues that I have just pointed up to you: the convergence of the spike with business, sectoral interests, family interests and political relationships?

Dr McCormick: No, not on those issues. I have been involved in a number of discussions involving Malcolm on the need for an inquiry and an open and transparent process that investigates all these issues. I have been involved in some discussions with Malcolm, representatives of both the then FM and DFM and legal advisers on the need for an inquiry, which implicitly addresses the need to examine fully and transparently by one mechanism or another everything that went wrong in this case.

Mr Kearney: In relation to your point about political dimensions, none of the three of you has at any stage spoken directly with representatives of the DUP about how to address and manage the situation.

Dr McCormick: I just want to be totally clear that I understand what you are getting at.

Mr Kearney: When you answered Robin's last point, you spoke about the political dimensions of all this and the political context.

Dr McCormick: Yes, sorry. That was in response to the point that Ministers regularly — everything that we do has a political dimension, so it is totally normal for a Minister to take account of political considerations.

Mr Kearney: Outside the ministerial sphere, have you had any of that type of conversation?

Dr McCormick: On the point you are on, no. I am very clear about that point.

The Chairperson (Mr Swann): I do not want to labour the point, but you said that a SpAd is seen as an extension of the Minister. In that case, would you take direct instruction from a SpAd without having received it from the Minister?

Dr McCormick: On many occasions, it is not practical or timely to double-check and get a direct instruction. That would not happen on matters of strategic direction, but, on practical day-to-day work, very often there is a quick discussion and then we get on with it. That is perfectly normal business, and there is nothing remotely unusual about it. That is applied to special advisers from every party that I have worked under.

The Chairperson (Mr Swann): What about in regard to RHI?

Dr McCormick: In regard to RHI, all the principal decisions were subject to full and proper process. There is a host of day-to-day tactical judgements, such as clearing press releases or whatever, where the pace moves more quickly. There is nothing remotely untoward about that.

The Chairperson (Mr Swann): You mentioned press releases. Just another angle —

Dr McCormick: I was just using that as an example.

The Chairperson (Mr Swann): Would a special adviser have any input into either the release, holding or drafting of freedom of information requests on RHI?

Dr McCormick: Everything that civil servants do is by statute under the direction and control of Ministers. We work on that basis. Clearance of what goes out has to take account of obligations under the Freedom of Information Act and the fact that we are responsible to Ministers. The clue is in our job title: civil servants.

The Chairperson (Mr Swann): So a Minister or a SpAd could withhold —

Dr McCormick: They have to fulfil their obligations under the law.

The Chairperson (Mr Swann): They are answerable only to the Information Commissioner.

Dr McCormick: Ultimately, yes. That is the way the constitution works.

The Chairperson (Mr Swann): OK, members. I am calling a 15-minute recess.

The Committee suspended at 4.55 pm and resumed at 5.18 pm.

The Chairperson (Mr Swann): Andrew, you have sought clarification on the de minimis query that we had just before we suspended the meeting. Do you want to update the Committee?

Dr McCormick: As you drew out, Chair, the problem was the interaction of grant under RHI: the payments under the RHI incentive interacting with Carbon Trust loans. This was taking a number of people over the threshold for de minimis aid. Over a three-year fiscal period, the ceiling is €200,000. This interaction was causing a problem. The solution across the water was that the recipients of loans could repay and therefore make themselves eligible by staying beneath the state aid threshold. This was not a problem across the water, but the position in Northern Ireland was that the legislation did not facilitate the paying back of those loans. We therefore had a risk of people getting more state aid than was permissible, and this was causing a problem for Ofgem. The way in which this was sorted out was through an amendment. When the domestic regulations were going through, they included a provision in relation to this aspect of the non-domestic scheme. This enabled applicants to repay the Carbon Trust loan and therefore make sure that their total cumulative aid over the period was within the de minimis threshold. That solved the problem, and, because there had been a change of procedure, it was agreed at the time that the change went through that Ofgem would refer any such cases to the Department to make sure that this was happening properly and that the state aid rules were being observed. So far, 35 cases have come through, 32 of which have been approved. The advice that I have is that this is now regularised — there is a way of working. It was causing a concern to Ofgem, as you said, because the way that Ofgem was familiar with working with it across the water could not be applied. It now can be applied, and the applicants can work within state aid approvals. That was a current issue at the time of the handover. We have some continuity of staffing, and my state aid expert, who is mentioned in this document, is still my state aid expert. I have just spoken to him, and his advice is that this is now, basically, a solved problem.

The Chairperson (Mr Swann): Andrew, part of my line of questioning was on where the tie-in came in. Who was able to say, "Let's take a DETI-sponsored interest-free loan to buy a boiler and then start to put the whole thing together"? Was that done by the Carbon Trust? Was it done by Invest NI? Was it done by an installer? Was it just one of those perfect storms when someone caught on that it could be done?

Dr McCormick: I am catching up with this as we speak, Chair. In 2013, an applicant came forward with an RHI application, but, because they had previously received a Carbon Trust loan towards the installation costs, Ofgem refused. In that sense, the system worked: there was a risk of double funding, but the double funding was identified by Ofgem and stopped. However, people were then being precluded from access to the RHI because they had a Carbon Trust loan, and they were saying, "I've got this loan, and that is stopping me from availing myself of the scheme. Can we solve that problem?". It appears that we did.

The Chairperson (Mr Swann): We did that with legislation.

Dr McCormick: By an amendment to the regulations, yes.

The Chairperson (Mr Swann): At that stage, the query and conflict over that would have been well known in the Department, so that detail would have been evident to anybody who was involved.

Dr McCormick: I assume that Ofgem would have drawn it to energy division's attention at the time, yes.

The Chairperson (Mr Swann): Why did the Department not keep the decision-making process with Ofgem rather than bringing it back in-house?

Dr McCormick: I am catching up with this now as well, and, if I need to correct this, I will. I am inferring from the material in front of me that, because we were dealing with things in a slightly different way from Ofgem's stock and trade in its normal role in GB, it was felt better to have that additional check in the Department. I cannot see anything further that helps on that question, I am afraid.

The Chairperson (Mr Swann): I am concerned because I remember that we were paying Ofgem a considerable amount to administer this scheme. I cannot understand why the Department could not have left the full decision-making processes, as it did the application form, with Ofgem and why it saw the need to bring that one part back in-house.

Dr McCormick: I agree. I cannot see an obvious reason for that. Let us check it out and come back to you. That is where my understanding fails at this point, I am afraid. Sorry.

The Chairperson (Mr Swann): Members, I want to move on to our remaining questions. If you have other supplementaries, please keep them within that context.

Mr Butler: The next series of questions is on the inspections, particularly those by PwC. First, what progress has been made in the investigations into the 19 applications that, under the review by PwC, were in the most serious category, namely category 4? These were installations that were predominantly for domestic heating or were creating heat solely for the purpose of collecting the RHI grant. How many of those have had their payments suspended?

Mr B McCann: Thirteen of those have had their payment suspended. They are being investigated by Ofgem at present. I understand that there is a variety of reasons for the suspensions. Suspension can be for up to six months, but Ofgem hopes to conclude its investigations as quickly as possible. That is an active situation.

Mr Butler: No problem. I appreciate that. Thank you.

In addition, the PwC review identified 28 applicants as category 3 and 110 as category 2. These included installations for parasitic woodchip drying, use of multiple smaller boilers and where there was significant heat wastage. Is any work under way in relation to those category 3 and category 2 applicants?

Mr B McCann: Yes, there have also been a number of suspensions in categories 2 and 3. We are meeting with Ofgem next Tuesday to work through the detail of the remaining cases and to agree what action can be taken on those. That, too, is being actively pursued.

Mr Butler: Have you any idea of the volume of suspensions within that —

Mr B McCann: I understand that, in categories 2 and 3, eight have been suspended, and Ofgem is looking at the possibility of suspending more. There are, of course, issues that we need to discuss and agree.

Mr Butler: That is ongoing.

The Chairperson (Mr Swann): Excuse me for coming in. Brendan, Robbie's question referred to parasitic wood burning, which is the running of a boiler to heat more wood —

Mr B McCann: Category 4.

The Chairperson (Mr Swann): Are they being suspended?

Mr B McCann: A number of them have been suspended, yes.

The Chairperson (Mr Swann): As a general rule of thumb or as individual cases?

Mr B McCann: I think that it is a general rule of thumb, but I would need to confirm that by looking at each individual case.

Dr McCormick: Is it not the case that, in principle, Ofgem has to look at each case on its merits? It cannot just suspend because one case looks like another. Is that fair?

Mr B McCann: Yes, that is a fair point.

Dr McCormick: There needs to be some individual assessment as part of the process. That is only natural justice.

The Chairperson (Mr Swann): Yes, but have installations that are for wood-drying purposes or woodchip drying been identified as a higher-risk category?

Mr B McCann: They were identified as a higher-risk category, and that is why they were picked for inspection as part of the PwC review. However, a number of those that have been suspended relate particularly to drying woodchip and parasitic burning.

Mr Butler: I would like to close that out: is that at variance with the conditions of the scheme? Was such production allowed and in the remit of the scheme? Is that a change to the conditions?

Mr B McCann: There have been no changes to the conditions of the scheme, because that would require changes to go through. The regulations are being looked at to see how they can be applied rigorously and to ensure that people demonstrate compliance.

Mr Butler: I believe that, at this stage, no participant has been permanently excluded from the scheme. Are there likely to be any cases that will lead to full exclusion?

Mr B McCann: We cannot comment on an ongoing investigation, but they are being actively pursued by Ofgem.

Mr Easton: Is one of those cases the shed in Fermanagh with eight boilers?

Mr B McCann: That is being investigated by Ofgem, yes.

Mr Easton: Is it being investigated by the police as well?

Mr B McCann: Not yet.

Mr Easton: Is there any indication of any links —

Dr McCormick: There is no reason to take that to the police at present, and there may never be. We have to be very careful here. The threshold for a police investigation is having some prima facie evidence of deception. We are currently fact-finding.

Mr McMullan: How do you define deception in the case of the RHI scheme? Can you very quickly tell me what you deem deception in categories 2, 3 and 4?

Dr McCormick: Deception is when someone has knowingly applied and offered material to support an application that is not valid: for example, if the photographs are fraudulent or something like that. The first question is to detect something that presents as reasonable evidence, and that is not straightforward by any means. This is not easy to get at, but it is very important that we put expertise behind that. That is partly why there is a proposal — the current Minister has talked about this — on securing the right experts to give us a test of eligibility, a test to identify all abuse and potential fraud as rigorously as we can.

Mr McMullan: Was that test not there when the business case was put together?

Dr McCormick: Ofgem has a fraud policy in relation to RHI. The deficiency was the absence of a tailored fraud policy in relation to the Northern Ireland context. That was missed. This came up at one

of the previous evidence sessions, as I recall. We need to tighten up on this. The plan is to do all that we can with Ofgem in the current period and then move towards procuring a consortium that will undertake inspection, analysis and enforcement for us. The Minister has talked about that, at least at the Economy Committee, if not in his speech on the regulations on Monday.

Mr McMullan: If anything in this scheme is domestic, is it automatically and by default deception?

Dr McCormick: The regulations could be better. The regulations quite legitimately provide for some heat to be used for domestic purposes if the main purpose is a business or a non-domestic purpose. Some use for domestic purposes is not automatically excluded. We have had discussions with Ofgem on where the right threshold is, and we have also had discussions with our lawyers. It is not fully resolved. We are pushing very hard to get clarity on this point.

Mr McMullan: I will finish with this. Do we have a non-domestic renewable heat incentive scheme? That is the only question that I will put to you on the back of what you said, Andrew, and I appreciate what you have said. Can you put your hand on your heart and tell me that we have a non-domestic renewable heating scheme?

Dr McCormick: We have. The problem is that there is some evidence of abuse, which includes it being used for domestic purposes solely or predominantly. The question is this: where exactly is the right line?

Mr McMullan: I appreciate that. Thank you, Chair.

The Chairperson (Mr Swann): I think that there was a line of questioning during which clarification was given by Ofgem that even up to 99% of the heat being used to heat domestic premises would still be within —

Dr McCormick: If the Assembly and you as legislators had intended that to be the case, why would you have approved a domestic scheme? That is what I would argue.

The Chairperson (Mr Swann): Exactly. That is the question about the two states of policy.

Mr Butler: Andrew or Brendan, thinking about the suspensions, it is my understanding that no cases have been referred to the PSNI yet.

Dr McCormick: Not formal referrals. There have been some discussions.

Mr Butler: We are at the —

Dr McCormick: Yes, we are exploring.

Mr Butler: You are having informal discussions.

Dr McCormick: Yes. The threshold for identifying fraud is challenging, but we are on the case and are determined to pursue this as rigorously as we can.

Mr Butler: Thank you for that, Andrew. It has been reported in the media that, of the 63 installations inspected by Ofgem, subsidy payments have been suspended in 33 cases, for a number of reasons, including technical issues. When were those inspections carried out?

Mr B McCann: I do not have the detail of that, but I am happy to get it from Ofgem. That was reported in the media last Friday. I will get the details, Chair, and reply to you.

Dr McCormick: It is possible to say that a large proportion of those were on foot of PwC inspections.

Mr B McCann: There is an overlap with the PwC inspections. The 33 cases referred to by the media include the 13 cases referred from PwC.

The Chairperson (Mr Swann): Let us step back from that, Brendan. Is this a separate inspection by Ofgem of 300 installations or is it a double accounting of the PwC inspections that have already taken place?

Mr B McCann: I think that it refers to a total number of suspensions, which includes the 13 from PwC.

Dr McCormick: It has been carrying out its own inspections. There always has been —

The Chairperson (Mr Swann): These are on top of those. How many inspections did PwC complete?

Mr B McCann: PwC looked at around 300 installations on around 80 sites.

The Chairperson (Mr Swann): How many has Ofgem inspected separately?

Mr B McCann: I would have to get the detail of that.

Dr McCormick: It is a significantly smaller number.

The Chairperson (Mr Swann): A significantly smaller number?

Mr B McCann: Yes.

The Chairperson (Mr Swann): Is it outside or above the percentage that it is meant to inspect anyway?

Dr McCormick: It was slow to inspect, partly because the expenditure went up more rapidly than the inspection programme. That is a fair summary of how that came together. For a while, therefore, there was a significant gap between the percentage of applications coming in and the percentage of inspections. That is not fully sorted out. We have to recognise that Ofgem has a range of challenges, and we need to continue to work with it as best as possible in the short term because, at present, given that the PwC contract for this work is finished, Ofgem is our only source of inspections for the time being. The plan is to take to procurement a project that will involve 100% inspection. That is planned. It will take some months to put together, but we have determined to do that.

The Chairperson (Mr Swann): I appreciate that. PwC was employed for a specific piece of work, which was the 300 installations that it has already inspected.

Dr McCormick: Yes. That was to assess the allegations —

The Chairperson (Mr Swann): Ofgem's inspection rate is 0.86%, which is not even 1% of the applications —

Dr McCormick: That is because of the lag, yes.

The Chairperson (Mr Swann): So, in the field, inspecting these facilities at this stage, we are relying on Ofgem operating at a 0.86% inspection rate. That is the only piece of work that is out there at the moment.

Mr B McCann: Ofgem has been increasing the number of inspections, but —

The Chairperson (Mr Swann): Brendan, the only piece of work out there at the moment is what Ofgem is contractually entitled to do.

Mr B McCann: Yes, that is right.

The Chairperson (Mr Swann): Which is less than 1%.

Dr McCormick: I am not sure about that number.

The Chairperson (Mr Swann): We were promised 100% inspection.

Mr B McCann: Yes, the promise of 100% inspection is being progressed through a separate procurement exercise. That will go to the market over the next month. It will be an EU procurement, and we will bring in consultants who will carry out the 100% inspection in line with our specification.

The Chairperson (Mr Swann): When will the first inspector be on the ground?

Mr B McCann: That will follow the EU procurement.

The Chairperson (Mr Swann): Will that be in three months' or four months' time?

Dr McCormick: We are talking about April or May for the fully fledged programme to start. We have to go through an EU-wide procurement.

The Chairperson (Mr Swann): So, until then —

Dr McCormick: We have been talking daily about this in the team. In the interim, we need to make sure that Ofgem delivers its obligations in terms of the percentage level of inspections in the short term. If we can find a means to secure some additional inspections, especially where there may be individual presenting cases that have caused concern, Ofgem will work with us on that to improve the percentage. We have no other means, and we have to act to protect public money.

The Chairperson (Mr Swann): That level of inspection does not even take them outside double figures for a year.

Dr McCormick: That is a fair point.

Mr Lunn: For clarification, I want to ask about parasitic woodchip drying. I am not sure what to infer from the use of "parasitic", but I take it to mean that it improves the efficiency of the woodchip when it is eventually burned to produce heat, because it burns more efficiently when it is dry than when wet.

Dr McCormick: Yes. However, I think that we are using the pejorative term "parasitic" because this practice either crosses the line into or is close to being activity that is only for the sake of securing the tariff — in other words, if there is no actual business reason for drying the wood. If it is done only to put it into the boiler, that is illegitimate.

Mr Lunn: OK. This is in the public realm because it was on TV a couple of weeks ago: a business up around Limavady grows willow, harvests it, turns it into woodchip, dries it and then sells it on to users —

Dr McCormick: That is a commercial activity.

Mr Lunn: So that is perfectly OK. I asked in order to get that explanation on the record.

Dr McCormick: That is a business. If it is purely within the installation, however, that is parasitic.

Mr B McCann: One boiler feeding another.

Mr Lunn: OK. Fair enough.

Mr Dunne: I want to draw you out a bit more on the inspections. They were carried out on behalf of DETI by Ofgem. Is that not correct? Ofgem was tasked to carry out the inspections or audits. The point has been made by the Chair that the number of those is relatively low. With hindsight, do you agree that that was wrong, considering the likely risk in this project?

Dr McCormick: Yes, clearly. The risk assessment — the risk management process — was inadequate, and, had there been greater awareness of the risk, a more extensive inspection programme would have been right. However, the better thing to do would have been to deal with the tariff problem, which was the root cause of the problem.

Mr Dunne: Correct. I think that we all fully agree on that. I understand that Ofgem had no representative based in Northern Ireland either. It probably still does not have a representative based here. It relies on contractors. Is it likely that there is a risk there as well, in engaging contractors to carry out the work?

Dr McCormick: Given that Ofgem has a remit across the UK, I would be surprised if there were not other geographical areas of the scale of Northern Ireland where it does not have representatives. It does not necessarily need them permanently positioned in every part of the country. It is for Ofgem to judge whether it is fulfilling its responsibilities, and it is for us to check. I suspect that this did not receive the level of oversight and attention that it should have done in the early days. That is a further finding against the allegations in the PwC report. I do not think that the solution is, necessarily, a permanent position in Northern Ireland. If it is being managed effectively, by one means or another, that is fine. The problem is that it was not.

Mr Dunne: We also established that there was a difference between the standard of inspections carried out by PwC and those carried out by Ofgem. You can see that the PwC report is much more detailed. It looked at many more aspects. Perhaps the remit that was given to Ofgem was rather limited and did not meet the requirements fully.

Dr McCormick: Maybe the root cause issue here is a false assumption that the scheme is similar, and, therefore, the approach can be similar to that across the water. If only that had been the case.

Mr Dunne: OK. Thank you.

Mr Easton: Thank you, Mr McCormick. Bear with me. We have established a lot of information, and I am trying to get my head round it and understand it. I suspect that there are few people who have a better understanding of the exact truth behind what went wrong with the RHI scheme. Having considered all the material that you have had the opportunity to review, have you seen any evidence whatsoever of wrongdoing by the former First Minister?

Dr McCormick: No.

Mr Easton: Absolutely none?

Dr McCormick: No.

Mr Easton: OK. Mr McCormick, you will have heard various allegations made by former Minister Jonathan Bell in relation to the scheme. With reference to those that you have a direct knowledge of, what would you say about the general consistency of his account, or is his account inconsistent with your belief about what happened?

Dr McCormick: There are important overlaps where the position was consistent. In fairness, I have access to records, and, while he came and saw a number of the papers, he does not have continuous access. I think the greatest difference between my recollection and my evidence and what was said in the interview would probably be in the January/February 2016 period, when the sequence of events was quite fast and confusing. There are quite important differences there, but I was not privy to all the discussions he had. There were things he was talking about that I had no knowledge of whatever. There are some overlaps and some complexity. I am happy to expand as the Committee might wish me to.

Mr Easton: Accepting that the formal responsibility for the Department rests with the Minister in relation to the start-up of the scheme, have you been able to form any view on where the burden of blame actually lies?

Dr McCormick: I very much hesitate to comment on that for several reasons. First, I absolutely do not want to prejudice the role of the Committee. My job is to give evidence, not to form conclusions. That is your responsibility, and I hope I am providing some help to you in that. Secondly, we have the fact-finding investigation, which, while there is no decision yet on where it is going, could lead to action on the conduct or performance of civil servants. I need to be careful about that. Furthermore, there is the desire in many parts to have a full-scale inquiry. So I prefer not to reach a conclusion on that point. There are very significant issues here.

The Chairperson (Mr Swann): I think that is a fair point.

Mr Easton: At any time, did Mrs Foster, that you are aware of, in relation to the scheme, seek to overrule or influence the advice she was given by any officials?

Dr McCormick: I have no evidence of that. What I see from the record is advice being accepted. Not having been present in conversations, I cannot comment further.

Mr Easton: Do you have any evidence whatsoever that, at the time Mrs Foster was ETI Minister, she was warned by officials that there was likely to be an overspend?

Dr McCormick: The clear evidence is that, in that period, there was an underspend and there was concern about underspend. The risk, as Gordon brought out, had been identified and not acted on, but, because of the points that were made earlier, it would not have been drawn to her attention, so, no.

Mr Easton: Am I right to say that, at no time in Mrs Foster's tenure as ETI Minister, there was an overspend in the scheme?

Dr McCormick: Yes. The problem was underspend in that period. That is factual.

Mr Easton: So, to be clear, Mrs Foster followed the advice she was given, was never warned of actual problems in the scheme and no overspend was incurred during her time as Minister.

Dr McCormick: Yes, those points are true.

The Chairperson (Mr Swann): There was a whistle-blower during that period.

Dr McCormick: Again, if I may, I will say a little about that, because this was something that was not a satisfactory handling at the end of the day. When I commented previously on what happened with the concerned citizen, the only piece of evidence I had in front of me at that stage was the email you have seen. As you know, the email says the individual had spoken to the then Minister, and the suggestion had been to have a follow-up meeting with officials.

I then heard the individual's interview on 'The Nolan Show' where she did not say that. What she said instead was that she had written to the then ETI Minister and received a response. She actually said she was quite surprised to receive a response. That happened on a Thursday. I immediately said, "I'm sorry; that is not my understanding. I thought there was a conversation or a meeting. If there is a paper trail, we will find it". So, I asked the team to search. It did, and it found the email the concerned citizen sent in. It found advice and a draft reply — that is conventional handling — and then a response issued, which was immediately followed by an email back from the individual to the secretary to the head of energy division, which led to the meeting being arranged. So, the sequence of events, again, still looked clear. The difference was that there was no reference to concerns in the email that was found in departmental records.

The Chairperson (Mr Swann): Andrew, annex B of your correspondence is the email from the whistle-blower. It states:

"I am not sure whether you recall this, but I met with you and the RHI team in autumn last year. I had spoken to Minister Foster about my concerns back then."

Dr McCormick: Yes, that is right. When I said the Minister had behaved entirely appropriately, the only evidence I had in front of me was that email. On the face of it, that was the appropriate thing for her to have done. The conversation happened, the concerns were expressed, and she said, "Take those up with —".

The Chairperson (Mr Swann): I think the line we were going down there was that no concern was raised, and I just wanted to get —

Dr McCormick: Sorry, the fact of the matter is that the email we found on the system did not raise a concern. What we knew subsequently was that there was a further email sent to the Minister's private account that raised concerns. In fairness to the concerned citizen, I think we need to be very careful in being fair to her that she did raise a concern. Still the consequence was a meeting with officials; that happened. It was not precisely as I had understood it the last time I was giving evidence. I just wanted to make sure I was only being factual in what I said. There are facts over and above what I knew at the point I previously gave evidence. It is slightly complicated, and it was certainly slightly unfortunate. The credit remains with her, as an individual, for having raised the concerns and persisting. As she said in her second interview with 'The Nolan Show', she was unhappy with the way that was handled, and we have to accept our role in that. What I can say is that the meetings with officials happened, as recorded, and she was not believed. That, to me, is a big cause for concern in the context of all this work.

Mr Easton: Are you content that Ofgem's decision-making on the eligibility of the installations has been appropriate in all cases?

Dr McCormick: I have concerns about that. In fairness, Ofgem works within regulations and has clear and defined responsibilities under our arrangements with it. We have a number of discussions that are ongoing. I would not want to say what the final conclusion will be on that, but we need to be tight and we need to be rigorous. The situation is that the flaws in the scheme here are not replicated in the scheme across the water. There is a very important difference, and that is the fundamental point about tiering. So, the design of the scheme does not have that fundamental flaw in GB, and that may have affected its way of going about the work. But we are continuing to do our best to work with it on that.

Mr B McCann: I will just add to that, Chair, and say that Ofgem has advised that it has rejected a number of applicants and that around 3% of applications did not proceed. They were either rejected or withdrawn following further inquiries by Ofgem. So, there is an element of rigour to its scrutiny of applications, and I think that is important to note.

The Chairperson (Mr Swann): Also important to note, Brendan — you can clarify this with me as well — is that the final decision still rests with the Department on whether an application is accepted or not. I think Ofgem told us that, to exclude, the final decision rests —

Dr McCormick: The decision to exclude?

Mr B McCann: The decision to exclude, yes.

The Chairperson (Mr Swann): — rests solely with the Department as the final arbiter.

Mr B McCann: Yes, but I will have to again check that it has referred back to us.

Dr McCormick: Thank you, Chair. It is important we check that point.

Mr Lunn: I want to pursue slightly the whistle-blower — the concerned citizen situation. Correct me if I am wrong, again. The whistle-blower was in touch with the Minister at least twice. One of her contacts may have gone to the Minister's personal server, and one went to the more official one; that is fine. The Minister passed the concerns on to the Department or her officials in some way. Would it not be normal practice, when she does that, that she would receive a report back if there were concerns that backed up what the whistle-blower had said? By that stage, you would have thought that anybody who investigated the whistle-blower's concerns could have seen quite easily, as you said earlier —

Dr McCormick: It should have happened.

Mr Lunn: — that you could drive a horse and cart through this scheme. Was a report given back to the Minister?

Dr McCormick: Again, this is important, because it draws out the distinction between the email the Department saw, which was the one that did not express the concerns. I have seen the original

incoming email from, I think, 2 September, and the advice going up and then the reply issuing on 5 September, I think it was. Because that did not have any reference to concerns about the scheme, in that official paper trail, there was not anything to follow up. However, the concerned citizen had made clear, and we were aware from the other email, that concerns were expressed in the email sent to the private account. That did not come to the Department. Therefore, on that strict basis, there was nothing for us to report to the Minister on, in those terms. If she had been believed, yes, of course officials would have acted, but the problem is that officials did not believe her. I think that is where the problem lies.

Mr Lunn: On the official email that came to the Department, we would have a difference of opinion on whether it expressed concerns or not. My recollection is that it did. You could perhaps say it was slightly business-based, but it was pointing out that it was more beneficial for people not to insulate and preserve their heat in a way the whistle-blower's company could have provided. She was being told, "Why should we do this when we are getting paid to burn heat?". That was the gist of it. It was not just something you could reject out of hand, I would think. I am really surprised there is not some kind of report that went back to the Minister at this stage that we have not seen.

Mr B McCann: Again, this is part of the PwC fact-finding investigation, where it is trying to understand what the thinking was on the email, the meeting with the individual and, indeed, the record kept or lack of it. That is something we are trying to understand better.

Mr Lunn: The email was not a business plug; it was an expression of concern. It clearly was.

Ms Gildernew: Robin, my question is a supplementary.

The Chairperson (Mr Swann): It is, but Oliver also wants to ask a supplementary. Gentlemen, have either of you been in contact with the concerned citizen?

Mr B McCann: Yes, I have.

Dr McCormick: I asked Brendan to make contact, yes.

The Chairperson (Mr Swann): In what regard and on the basis of which email?

Dr McCormick: As I said, after the first interview, I asked people to search for it. It was found. We wanted to establish answers to two questions. Was there any other contact? Had she made contact in any way other than by the email, which we found in the departmental records? Secondly, was she willing to see it released? Then there was some degree of breakdown in communication. I want to be very respectful to the individual, because she has attempted to do us a very big favour over three years and has not been treated well. She has then not wanted to pursue contact. She is very clear that she does not, and I want to respect that and recognise that we owe her very significant respect. Brendan made the phone call on my behalf. Some degree of misunderstanding has crept in, which has made her unhappy. We have to recognise that if she is unhappy, we have to accept our responsibility for that. This was at my instigation. I would like to leave it on that point, if that is OK, Chair. Some misunderstanding crept into our communication, and we need to recognise that.

The Chairperson (Mr Swann): It was at the request of the Department that the contact was made.

Dr McCormick: Obviously, as you know, the email that appeared not to raise concerns was released in a way that was not sensitive to her, which she then, the next day on 'The Nolan Show', took exception to. That is unfortunate and was not a good thing to have happened. We need to acknowledge our part in that.

The Chairperson (Mr Swann): Andrew, you say we owe her a debt of gratitude. If she had been listened to, we would have over £490 million.

Dr McCormick: That is exactly what I am trying to say — yes. We really, really should have listened to her. There is no question about that.

Mr McMullan: On the emails from the whistle-blower to the officials, there was one, and the other one, you say, may have been to the Minister's private server.

Dr McCormick: That is my understanding.

Mr McMullan: How did the whistle-blower get the Minister's email? Was it not the view that it was given to her by the officials or that the officials passed it on to the Minister and the Minister replied to the whistle-blower and that, therefore, that is how the private server came into it?

Dr McCormick: I do not think the time sequence would bear that out. My understanding is that the email to the private server was sent around the same time as the advice that went to the Minister, so the officials would not have —

Mr McMullan: There was a day in it.

Dr McCormick: Yes. Officials would not have had any contact with the individual.

Mr McMullan: How did she get the email?

Dr McCormick: I do not know.

Mr McMullan: I think that is something that needs to be looked into. Where did that private server message come from? If my mind is right, it lays that out in the emails we have seen. Either way, it ties the Minister in with the whistle-blower.

Dr McCormick: There is a connection.

Mr McMullan: There is not a connection; it ties the Minister completely in with the whistle-blower. The Minister says she has never spoken to whistle-blower, but you have your tie-in there. Am I correct?

Dr McCormick: I cannot say I am clear on exactly what happened in this case.

Mr McMullan: Would you say that is a fair assumption?

Dr McCormick: I can see what you are saying, yes.

Mr McMullan: Yes, and I think that needs to come to the table.

Mr Easton: I do not believe that was ever said by the then First Minister.

The Chairperson (Mr Swann): I missed what was —

Mr McMullan: Sorry, Chair. I am just making the assumption that, given that there is a private email going about — we know that the private one is the Minister's private one — and given that the whistle-blower either contacted the private server herself or the officials did so on her behalf, either way, there is tie-in with the Minister.

Mr Easton: That is not quite what was said, but fair enough.

The Chairperson (Mr Swann): Yes, but given where your points were going, Alex, I can see the point in that.

Mr McMullan: I think that, when you read the emails that we have seen already, you will see that.

Ms Gildernew: The first email was sent to officials on 26 August.

Dr McCormick: That is my birthday.

Ms Gildernew: The second one was sent eight days later to the Minister's private email on 3 September. What bothers me — I think this bothers all of us and anybody who is looking at the credibility of the institutions — is that the Minister did an interview for the programme that featured

former Minister Jonathan Bell. The First Minister categorically denied that a whistle-blower had contacted her. Yet we saw proof before Christmas that that email was sent in September 2013. Yes, the first email was very similar, but there was definitely a line in there saying that potential abuse could be identified. The Minister went on TV and on the record the same night as we had our last PAC meeting before Christmas and said she had never been contacted by a whistle-blower. That needs to be looked into as well.

The Chairperson (Mr Swann): As Andrew said, that is outside the departmental emails, but I think your point is made, Michelle, and is on the record.

Mr Dunne: Chair, just on that, it is important to clarify that the whistle-blower had a business interest. Is that fair?

Dr McCormick: Yes.

Mr Dunne: I think it is important we bring that out. That person — I am not going to name her — had clear business interests. It has to be accepted that the Minister obviously had to take that into account.

Mr Butler: I am not sure I am happy with that.

Mr Dunne: It is my understanding that it did not mention that she was making a complaint as a whistle-blower in the email. She made various points.

The Chairperson (Mr Swann): She was raising concerns, Gordon.

Mr Dunne: Yes, she raised concerns. In fact, the first email we have — I probably have it here — gave her business name and her business address. In that email, she talked about the fact that her business was involved in energy-type conservation work.

The Chairperson (Mr Swann): Gordon, at that stage, she was raising concerns.

Mr Dunne: Yes.

The Chairperson (Mr Swann): We have made it clear that it is not within the Department's scope at this minute in time. I am allowing a wee bit of latitude.

Mr Dunne: To be fair, it was not that she was making the points as a whistle-blower; she was passing on the various points.

The Chairperson (Mr Swann): As a concerned citizen, I think is —

Mr Dunne: No, the email was from her business address. It gave the name of the business and the address.

The Chairperson (Mr Swann): I really do not want to expand on —

Mr Dunne: We have all been given that email, Chairman.

The Chairperson (Mr Swann): Yes, we have all had it, and I think we have had a fair discussion. We met her.

Mr Clarke: I am not following up on that. I want to get back to where this all started with what Alex said. I want to put on the record —

The Chairperson (Mr Swann): A number of members are down to speak. I will come back to you, Trevor.

Mr Clarke: You let others in on the same point, Chair.

The Chairperson (Mr Swann): Yes, and I have a list of other members to come in on this point.

Mr Kearney: I want to pick up on Gordon's point. We discussed that issue at length. At no stage before has there been a suggestion that the concerned citizen acted out of anything other than genuine concern. At no stage did any of us suggest she was acting for commercial advantage. I read nothing into the fact that it was sent from a business address, and I think she acted entirely in good faith. I want to put the point on the record that I do not think that we should get into the business here of in any way casting aspersions.

The Chairperson (Mr Swann): No, and I do not want to expand on this any more. There was representation from —

Mr Kearney: Yes, but I am exercising —

The Chairperson (Mr Swann): Declan, a representation from this Committee met her about that and had the conversation. We came here and fed back that there was a genuine concern.

Mr Kearney: If I could just come back on to the point. You said, Andrew, that the handling of the concerned citizen was down to a terrible misunderstanding, which attributes a benign basis to misunderstanding.

Dr McCormick: I was referring to our communication, which is all I can talk about, really. There was a degree of misunderstanding that left her unhappy, and we need to recognise that that happened. In fairness to Brendan —

Mr Kearney: I am not speaking about Brendan, but, on how other officials treated those representatives, is your fact-finding exercise in any way addressing the potential for political interference with the approach that was taken by the Civil Service towards those original representations by the concerned citizen?

Dr McCormick: It is not the primary scope; however, if someone in that fact-finding investigation wanted or needed to indicate they were coming under any kind of undue influence, they would have the right and the responsibility to draw it to the attention of those undertaking the fact-finding work.

Mr Kearney: I accept you are saying that contemporaneously. Can you give me an assurance that anyone who was involved at that time would retrospectively be in a position to say with confidence if, in fact, they were nobbled or leaned on at that particular time?

Dr McCormick: I would think that, in the context, they would recognise the distinction between routine enquiry and pressure. I have to say that my understanding of this issue is that the responsibility for failing to act on the information received from the concerned citizen lies fundamentally and primarily with officials. If there is a layer of politics on top of that, that may come out in the fact-finding, and I surely want to make sure that everyone is free, as I have been today, to speak without any let or hindrance.

Mr Kearney: Thank you for being so candid — both of you — but I think that is an important consideration that needs to be factored in. Can I finish on this point, Robin, please? Have you been prevented from doing media, Andrew, by the Minister for the Economy? Have you been given a direction not to do media?

Dr McCormick: No. The consistent line on every media enquiry that we have had about me has been that my responsibility is to answer to this Committee.

Mr Kearney: Are you saying the issue has not come up in conversation between you and the Minister?

Dr McCormick: There was an issue around Christmas about the follow-up to the Jonathan Bell interview. We had several discussions in that period. My clear preference, as expressed, was to give primacy to this Committee. There was one stage when we had to think further about that, but the judgement that was reached — the Minister was entirely happy with this conclusion — was to continue to give primacy to this Committee.

Mr Kearney: That is your personal, professional preference.

Dr McCormick: That is my responsibility; yes.

Mr Clarke: Chairman, this is only a supplementary. I do not want to pursue what Gordon said; this is more to draw us back to where we were. I, like others, am not trying to infer anything about the whistle-blower, but the key for me in all this — Andrew said this, but I think it has been missed — is that the Department did not act on the original email that went to it. For me, that is the key. People who are trying to draw their own conclusions —

Dr McCormick: It is; that is right.

Mr Clarke: Are you content, Andrew, that your departmental officials did not act appropriately regarding the content of that email from the said person?

Dr McCormick: It was received at 1.20 pm on 28 September — just before the session. We had the discussion, as Declan said, about what I should have done with it. It was a shock, it was a game changer, and it remains of great significance.

Mr Clarke: Andrew McCormick can defend himself, but the other thing, Chair, for clarity, is that Oliver was maybe suggesting that the Department sent the email address of the then First Minister to the whistle-blower. As I have sat here, I have looked up the contact details. They are there in the public domain for anyone to search. So, I do not think anyone would have to pass the contact details of someone who was the leader of the country at that time, given that they were in the public domain.

Ms Lockhart: Very quickly — this will be super-quick — was there ever a conversation between the whistle-blower and the then Minister?

Dr McCormick: I do not know. This is where the evidence appears to be contradictory. One email says, "I had spoken to the Minister". When the Minister came on the radio, she said she had written. There are clearly two people who know the answer to that question: I am not one of them.

Mr McMullan: Why I brought that up, quickly, was —

The Chairperson (Mr Swann): Quickly. This is the last on this issue.

Mr McMullan: I am not arguing with Trevor on this, but it was said it was "private". "Private" implies private. I understand you can get the email addresses out there, but when you say "private" it implies a different scenario altogether. That is where I was coming from on that — the word "private".

The Chairperson (Mr Swann): We will move on. Alex, are you complete on questions nine and 10?

Mr Easton: I have done those.

The Chairperson (Mr Swann): Robbie, have you finished?

Mr Butler: Yes.

The Chairperson (Mr Swann): Gordon, we have come to questions 11 and 12.

Mr Dunne: I think we have covered it. The 100% inspections are in progress.

Mr B McCann: They are in progress.

Dr McCormick: The preparations for procurement are in process.

Mr Dunne: It is important we try to move that on as quickly as possible, because it has been some time since we went there on that.

The Chairperson (Mr Swann): Question 16, Gordon.

Mr Dunne: The PwC fact-finding investigation was initiated by you, following our first meeting, a long time ago, on 28 September. At our meeting in October, you told us you felt it could be completed relatively quickly. Can you explain why more than three months have gone by and it has not been completed?

Dr McCormick: Yes. In fairness, I was over-optimistic at the outset. In the initial appraisal of it, I thought we could keep a very narrow focus on access to the three documents: the first email from the concerned citizen; the handover note within DETI; and the Alison Clydesdale email. As that work was initiated and they went through the first phase, it became clear there were further ramifications. So much more has come to our attention that, even if you exclude all to do with special advisers and Ministers and if the fact-finding work is limited to the work of the departmental officials, it has turned out that we require a more extended timeline. So, the scope would be extended from the beginning to the end of the scheme. If this is party to securing public confidence, as well as ensuring fair accountability of all concerned, then it would be better to do it thoroughly. We can still press on, and we are determined to reach conclusions soon. There have been a few logistical issues to sort out and a need to organise the data mining that I talked about earlier. That will take some time. The present expected timeline is for the fact-finding to run through February and, if the HR adviser is commissioned, he would have 20 days to give us further advice on whether action should be taken.

Mr Dunne: Chair, could I make a couple of other points? They are important.

The Chairperson (Mr Swann): Before you move on, Gordon, I want to ask a question. You indicated in your opening comments, Andrew — I want to come back to it specifically in regard to what you spoke about — that the investigation is now in the hands of the head of the service, Malcolm McKibbin. At what stage did that happen?

Dr McCormick: That was resolved, I think, last month.

The Chairperson (Mr Swann): One of the earlier sessions we had with you was about what would happen if disciplinary action was necessary in the Civil Service and the individual had moved outside. I take it, because that investigation is now being headed up by Malcolm McKibbin, that it will be possible.

Dr McCormick: The way it works is that responsibility for discipline lies with the permanent secretary of each Department. There are staff involved in this process who are former DETI staff and who are now in a number of other Departments. Malcolm is overseeing the fact-finding investigation in totality, but, assuming that it shows that there is a case to answer in some shape or fashion — that is not resolved — only the employers, as in the permanent secretaries of the Departments concerned, can decide whether to proceed. Part of the reason for having a single HR adviser in position to advise all of us is to ensure transparency and consistency. We are looking at an individual from outside the jurisdiction with considerable experience in financial probity investigations. An individual has been identified to us by the Cabinet Office and he has a long track record of dealing with this kind of thing. He has no connection with the Northern Ireland Civil Service. In fact, his only involvement with government is in the Scottish Government as a non-executive. His career has been in banking. He will give us consistent advice. Regarding the responsibility for decisions, we cannot fetter our discussion in that sense. He will give us advice and recommendations but we, as permanent secretaries, will have to exercise the responsibility of deciding whether to proceed. We will have a consistent evidence base and, of course, Malcolm will have his access to information in relation to David Sterling and me.

The Chairperson (Mr Swann): Hypothetically, if a permanent secretary needed to be disciplined, it would be done by the head of the service.

Dr McCormick: Yes, that is for Malcolm. That is right.

The Chairperson (Mr Swann): OK. Gordon, you can go back to your additional points.

Mr Dunne: They are extremely important. They are about the allegations made by former Minister Jonathan Bell. I appreciate that we are jumping around a bit, Andrew, but you have handled the broad

scope very well. Is it right to assume that you saw the recent TV programme and are familiar with the account given by Mr Bell?

Dr McCormick: Yes.

Mr Dunne: Could I take you through, in detail, some of the points that were made? Is it fair to say that you believe that all of Mr Bell's allegations were accurate?

Dr McCormick: No.

Mr Dunne: No. Maybe we will look at them in detail, if you do not mind. First, Mr Bell maintains that he introduced the cost-control measures at the earliest possible date. On the programme, he said:

"Yes and my signature at the earliest possible date I believe is on a document currently with the Department of the Economy signed by me at the most immediate point I can, the most immediately practical point."

Am I right to say that you are familiar with the evidence from Mr Bell?

Dr McCormick: Yes.

Mr Dunne: You are. When was a formal recommendation made to Mr Bell to introduce cost control measures in the form of a submission to the Minister?

Dr McCormick: 8 July 2015.

Mr Dunne: At what date did the Minister sign off that recommendation? To be fair, I think that you have covered some of this.

Dr McCormick: Yes.

Mr Dunne: I think that it is important.

The Chairperson (Mr Swann): That is the documentation that was made available in the Assembly Library.

Mr Dunne: What was the date, sorry?

Dr McCormick: It was 3 September 2015. It is in the Assembly Library.

Mr Dunne: So, there was a considerable gap —

The Chairperson (Mr Swann): — which Andrew touched on earlier, Gordon.

Mr Dunne: You would not regard that as the earliest possible opportunity.

Dr McCormick: No.

Mr Dunne: Almost eight weeks had passed, then. Is it reasonable to conclude that Mr Bell was wrong when he said he acted at the earliest opportunity?

Dr McCormick: The evidence is there.

Mr Dunne: It would appear that Mr Bell tried to suggest that he acted quickly to introduce cost controls when, in fact, he signed them off almost two months later. Is that fair?

The Chairperson (Mr Swann): This is not Andrew's assessment. As long as you are content to answer, Andrew —

Dr McCormick: Well, it not really what I am here for or what the Committee is here for.

Mr Clarke: Sorry, Chair, it is actually key, because we are talking about the chain of events — whether stuff is signed off quickly and appropriately, whether things were done in the right manner or not. There is evidence out there. We hear all this talk about trial by media. These are pertinent questions.

The Chairperson (Mr Swann): I am not saying that they are not. I am just confirming that Andrew is comfortable answering them.

Mr Easton: He was asked earlier if he was comfortable answering the questions.

Dr McCormick: I am here to respond to the questions. You ask the questions, and I will give you the answers.

The Chairperson (Mr Swann): We can see the purpose of the question, so I am just checking with Andrew, as I have done a number of times, that he is content to answer it.

Mr Dunne: Mr Bell claimed that after he signed off the cost controls in September 2015 he was not allowed to introduce them because other SpAds became involved in the process. He mentions that:

"I was then informed by my special adviser in the Department that other DUP Spads were not allowing this scheme to be closed."

The interviewer said that that was a "big allegation". Mr Bell said, "It is a fact". Have you any evidence that, after Mr Bell signed off on the submission of 8 July, SpAds did not allow the cost control measures to be introduced?

Dr McCormick: No. I have explained that I have no direct evidence. This was covered fully in the earlier part of the session when I explained that we were pressing for an early decision. There was pressure back which was attributed by Timothy Cairns, when explaining it to me, as coming from others in the party. I did not know their identity at that stage. We talked about that earlier. I do not think that I have anything to add to what I said earlier on that point.

Mr Dunne: Is it fair to say, then, that the delay from 4 November, when Mr Bell signed off, to the 17 November had nothing to do with any political intervention?

Dr McCormick: The additional fortnight was down to practical considerations. There were a whole series of circumstances. I could give you a long explanation, but I am not sure that it would add any value.

Mr Dunne: What was it roughly — just people being on leave and so on?

Dr McCormick: In that fortnight, we had to give priority in drafting regulations for the closure of the Northern Ireland renewables obligation.

Mr Dunne: I remember that, yes.

Dr McCormick: That happened. Also, the period of September and October was affected by the resignations and reappointments of Ministers, as you recall. So, there was just a series of practical delays. Again, I make the point that we were not conscious of how bad the scheme was in that period. Had we known how bad it was, it could have been given more priority and some of that fortnight might have been squeezed down, but, in practical terms, probably not.

Mr Dunne: So, when Mr Bell says that it was a fact, it was not actually a fact. I think you have covered that. Have you any recollection of Mr Bell raising concerns about the need for early action to change the tariff?

Dr McCormick: No.

Mr Dunne: Thanks, Andrew.

The Chairperson (Mr Swann): Folks, I am trying to work out where we are now. Are we at question 17 or question 18, Trevor?

Mr Lunn: I will just move straight to the next one, Chair.

The Chairperson (Mr Swann): Fine, yes.

Mr Lunn: I want to ask about the list of applicants which is now, allegedly, about to be revealed. Has the Department conducted its own analysis of the list of applicants, which it can now scrutinise, and is there anything on that list that caused you concern?

Dr McCormick: We have looked at the list and there are a number of ways you can look at it. I would not want to comment on that because to go further on that would be to move towards disclosure, and I think it would be wrong to do that at this stage in the process.

Mr Lunn: I would not want to pre-empt the inquiry. You must have, at least, looked at the list. Did anything jump off the page as being outstandingly dubious?

Dr McCormick: It is quite interesting, yes.

Mr B McCann: I think that, factually, PricewaterhouseCoopers looked at the list of applicants when it was doing its inspection and took a risk-based approach. PwC assessed the number of businesses that had applied and the sectors that they came from. A detailed analysis was done to inform the site selection process. PwC did that on behalf of the Department, so I think that the record should reflect that.

Mr Lunn: Fair enough. They were looking at the high-risk cases first. Thank you very much.

The Chairperson (Mr Swann): As regards that application rate and some media comment about meetings that have taken place; what meetings took place back then between Moy Park and Balcas as regards the RHI scheme? Were there any?

Dr McCormick: I remember meeting Moy Park after the suspension of the scheme, which provided some insight into the nature of the business model. Recently, it had some concerns about the interpretation of the projected figures and I have been able to clarify a few of those points. There is nothing of any great substance in any of those points.

The Chairperson (Mr Swann): There were no meetings, prior to that, between departmental officials and either Moy Park or Balcas —

Dr McCormick: Sorry. There may well have been. Any kind of job in this context would include meeting the stakeholders. Moy Park and Balcas are both significant stakeholders. I do not have full records of those. I mentioned the few meetings that I was involved in personally. There would be nothing unusual about energy division having good and regular contact with organisations like that. That is part of our job.

The Chairperson (Mr Swann): Is the Department still a shareholder in Balcas?

Dr McCormick: Not the Department; Invest NI.

The Chairperson (Mr Swann): Invest NI is an arm's-length body. Is there any concern there about duplication —

Dr McCormick: No, there is no concern about that. That is something that goes back a long time.

The Chairperson (Mr Swann): Specifically, with regard to this scheme, there is no concern in the Department and no risk has been identified?

Dr McCormick: No.

Mr McMullan: Just very quickly, you talk about Moy Park being one of the main people. What was the conversation about?

Dr McCormick: It is undoubtedly the case both here and across the water that the heat model for poultry that is possible through the renewable heat incentive is significantly helpful. It is a very good form of heat. It is helpful to animal health. I have had several discussions at a high level with Moy Park where that has been made clear to me. That is a very good thing. The success of the poultry sector has been enhanced by access to the scheme, both here and in other parts of the UK. That is just normal business.

One part of where there was helpful engagement was that, in looking at the tariff changes that came in November 2015, those were informed by the business model. Of course, people talk about 24/7. The poultry business model does not involve needing to keep heating on 24/7 and certainly not 365 days a year. Yes, it is extensive and, yes, there is a need, especially when the chicks are small. I have no great farming connections, but it was worked out. The College of Agriculture, Food and Rural Enterprise produced a paper which helped us to judge what to do about the changes so that they would continue to facilitate the business model. If you want to incentivise non-domestic heat, this is a good thing to do. It was quite reasonable for Moy Park to be engaged with us in discussions of that nature to ensure that the business model was working. The incentive, both as amended in November 2015 and as proposed looking ahead, still retains a good and worthwhile subsidy to help to ensure that the fundamental objective of the whole idea — that is to promote renewable heat — can, in some measure, still be fulfilled.

Mr McMullan: Was any advice offered on the business model to the scheme?

Dr McCormick: There was an explanation of the business model to us. I do not think that there was anything in terms of advice. They would have their ideas about how it would work best, but that was only one of many business models. It is the largest: the most significant beneficiaries of the scheme in numbers are in poultry farming. The question for us is to devise a scheme that is fair, objective and based on evidence for all concerned.

Ms Gildernew: I will carry on where Oliver has left off. Did Moy Park ever discuss the competitive advantage that the farmers who were on the scheme were having over people who had not bought into it?

Dr McCormick: No. I do not recall that point being made in any discussion with me, no.

Ms Gildernew: You are right: the chickens in the chicken houses that were heated through the renewable heat scheme thrived a lot better than those in gas-heated chicken houses. Is it true that Moy Park pays a levy to its farmers and that the levy was still paid even though they were making a considerable amount of money?

Dr McCormick: I do not know. I do not know how that works.

Ms Gildernew: That is my understanding, but I do not whether it has been confirmed.

On a different tack; I suppose that the budget pressures and excessive generosity of the scheme have been known to the Department since at least June 2016 or even back into November 2015. Why has it taken so long for you to come forward with a plan to reduce the costs of the scheme and has the Minister been exercised about this with regard to his responsibilities, budget pressures and all the rest? Is this a priority for the Department?

Dr McCormick: Absolutely. He asked us to initiate work in the summer. We were examining a range of options in September and October. It was important to have the information coming through from PwC to understand what was going wrong and to therefore ensure that our corrective action was as well judged as it could be. A number of models were being considered.

In early November, a further idea emerged, which was to actually see whether the scheme could be closed down completely rather than tinker with it. Speaking from an accounting officer's point of view, this had a lot of attractions, because any system that involves a continuation, even the one that is currently proposed before the Assembly, leaves a degree of risk. The change that is now proposed

obviously makes the risk more manageable, but it seemed to me, as accounting officer, that the option of closing it down completely was very attractive indeed. For me, it was the preferred option through November and December, to the extent that I went to Brussels, had a meeting with the European Commission and established, had we proceeded with that option, that because it would have involved closing the scheme and providing a compensation payment, there would have been no state-aid issue and it therefore could have been done relatively quickly. However, it would still have required a process of consideration and consultation. That closure option became known publicly before Christmas, and there was considerable reaction to it, such that, after further discussions, the judgement was to adopt a different preferred option.

We are getting very close to recent times. In the process of engagement, there was some degree of exchange of information and briefing of the Department of Finance in the autumn period. That may not have been as extensive as they would have liked, but we were working on it as a priority. It remains a priority, and I would go as far as saying that we have a good option to pursue. It is very important for me as accounting officer. I was asked at the Economy Committee on Monday whether I was content with it and whether I was doing it only under ministerial direction. On the contrary, a ministerial direction might be appropriate if we were not doing something like this. It is imperative to put a tourniquet on the flow of money; we have something happening that is absolutely not acceptable. With hindsight, maybe there were some chances to do things more quickly, but, in good faith, work has been done throughout the autumn period, including specific and detailed consideration of the closure option, which, as I said, for me was a very attractive option in the November/December period?

Ms Gildernew: Why did the Minister only ask for that piece of work to be done in the summer?

Dr McCormick: He only arrived in the summer.

Ms Gildernew: Concerns had been raised long before that. There is £85,000 a day being spent, and it seems to be a wee bit tardy that —

Dr McCormick: Yes. In honesty, for quite a long time we probably had the view that it was not possible to do very much about it. The Chair mentioned some of the language that was used about the durability of the tariff, and the original papers carried the impression that the incentive would be adopted only if the tariff was guaranteed for the 20-year period. So, I suspect that, for a while, the mindset was that we were stuck with it. Thankfully, through a combination of ministerial and official discussions, that was challenged, and we have been working very hard to adopt the right option in the more recent period.

Ms Gildernew: There is a cap on the scheme in Britain. What if we were to do a cut-and-paste job on that?

Dr McCormick: It is not possible to pull across digression, because digression, as a system, only works when you have got a live scheme of applications and can divide the cake up in the way that was described.

Ms Gildernew: I am sorry to interrupt you, Andrew. If the scheme is haemorrhaging money at a rate of knots, which it is, could a cap be put on the kilowatts? In that way, there would be no incentive for the people who are using far too much energy, because once they get to a certain point the money stops. The cap could have been put in over 12 months, which would have meant that there was an incentive to stop burning unnecessarily. If it had been introduced, we would have saved an awful lot of money. The chances are that anybody who was likely to take umbrage at the cap was abusing the system.

Dr McCormick: What is in front of the Assembly is not far from that, in the sense that a cap — 400,000 kWh — is part of the proposal. The other merit of that option is that it is making consistent the treatment of the pre-November 2015 and post-November 2015 categories. We have been through that in great detail with legal advisers and the Department of Finance, and the business case has been put together. We also got some independent quality assurance on it.

We have looked at a range of options, and I am clear that we now have a very good option that is probably the best available in the short term. It is a one-year option, which is very important, because it makes it legitimate and reasonable to introduce it quickly and buys us time to develop, reopen and

consider all the options and go through a fuller process, including state-aid approval, between now and April 2018. That is the intention.

It is part of a two-stage or three-stage process. The first thing has to be to stop the haemorrhage. My position as accounting officer is that this is really essential and anything that can be done to bring this through in the resumed debate will be very important from my point of view. It satisfies my accounting officer responsibilities in improving value for money and in moving towards regularity, on which I look, ultimately and hopefully, across to the Audit Office, because there is a long journey to be undertaken in that regard. If there are any issues around propriety as well, it is helpful in every aspect and very supportive of the proposal.

The Chairperson (Mr Swann): Just as a matter of clarity, Andrew, I want to ask you about the regulations that the Assembly has been asked to consider. Is there a big difference between those that were not put in and those that were already in the GB model?

Dr McCormick: I am sorry —

The Chairperson (Mr Swann): One of the problems that we had with the tiering and the capping was because regulations were removed from the GB RHI legislation. There is a train of thought that they were taken out when we copied the legislation across. Is there a big difference between the regulations we are putting in now and the ones that were theoretically taken out?

Dr McCormick: They will maybe reach a similar destination but by a different route. The outcome will be there but as I was explaining during Carla's questions earlier, legislation is not an independent process. There is no question that anything went wrong in the work on the regulations originally. The mistake was in the fundamental design of the system, especially the absence of tiering. That was the official-level mistake, and the legislation was a consequence of that mistake. It is not a separate process. There is a bit of misunderstanding, and I have seen a lot of important journalism on the subject, but that is one that was a red herring, to be blunt about it.

Mr Kearney: Andrew, does the proposed plan stack up, financially, only if the inspection regime is robust and effective?

Dr McCormick: It is very close, anyway. We are, again, making assumptions and modelling as to the costs that lie ahead, looking at the 2017-18 financial year only, because that is the scope of those regulations. The estimates are that costs in the 2017-18 financial year were to be about £25 million, which is a little bit north of the AME budget that is available. In a way, the answer to your question is yes —

Mr Kearney: That did not sound like a yes. *[Laughter.]*

Dr McCormick: I apologise.

Mr B McCann: It was a definite maybe.

Mr Kearney: What we need is certainty.

Dr McCormick: The intention is to drive forward the inspection programme. I do not think it is possible to give you certainty on that point. However, there is a confidence that some further savings will be secured through dealing with abuse. Getting the inspection programme is an essential element of the comprehensive plan that is coming together to solve this problem.

Mr Kearney: Finally, you mentioned earlier that we need to put this through the European process to find an agency that would carry out the inspections. Given that we now have another protracted period before we identify a contractor that will carry out the inspections, who is going to set the terms of reference and the scope for the execution of those inspections? Is it you, or will it be part of the contract that it becomes part of the tender process? Are you in a position now to reassure us that the inspection process, when it is finally triggered, will be effective and robust?

Dr McCormick: It is absolutely our responsibility to get that right.

Mr Kearney: The tender process has not been triggered, and we do not have an agency in place. Are you in a position to tell us that you can have absolute faith in the quality and robustness of the inspection process at this stage, given that it is clearly a pillar of your plan?

Dr McCormick: No, not yet. We need to work on that to make sure that we deliver exactly what you are saying. We will deliver a specification that goes out to the Official Journal of the European Union (OJEU) for the procurement that gets us rigorous and robust inspection and enforcement. It is a combination. We need heating engineers to go on site and look at what is going on. We need business analysts to ask whether the heating is worthwhile. We need lawyers to ensure enforcement. We need some financial expertise. It looks like a consortium to me.

Mr Kearney: We have a tourniquet, but we have not worked out the quality of the nurse who will apply the tourniquet.

Dr McCormick: No, I would not —

Mr Kearney: Just to borrow your analogy.

Dr McCormick: We have a tourniquet that will go on. Taking through the regulations applies a tourniquet; it stops the flow. On top of that, we need a surgeon to cut off the things that are wrong. That is a different skill set and a different procurement —

Mr Kearney: But the plan is conditional on the robustness and quality of the inspection process.

Dr McCormick: To get right down to the AME envelope, yes. If the latter part were not to succeed, the level of risk is £2 million to £3 million. What was said was that the cost to the Northern Ireland DEL would be, effectively, zero over the 20-year period. The poetic licence, if the Minister will forgive me for using that phrase — I have used it now, so I am sorry about that — is in the order of £2 million or thereabouts. If you look at it on scale and proportion, that is eliminating the £490 million, and maybe there is a residual £2 million or £3 million in one financial year. We have great confidence that we can do well on the inspection and enforcement regime and eliminate a substantial proportion, if not all, of that. I remain optimistic, but I cannot give you certainty —

Mr Kearney: Subject to EU approval, which we still do not have.

Dr McCormick: We need EU approval for the regulations. I am confident in that regard because we are seeking approval to have less state aid, just as I was seeking DFP approval to spend less money. It is slightly unusual; you do not normally go for a reduction, but it has to be done. The Commission will treat the state aid with great seriousness. I have had a number of informal discussions. We need to respect its role. That is why the regulations are drafted to say that the commencement date is 1 April or after approval is received. We are hopeful that we can get approval quickly, but I cannot commit to that because it is the Commission's call.

Ms Lockhart: I appreciate you sticking with us, Andrew. I have a few questions. The media ponder whether changes — it goes back to a point that we were talking about just a few minutes ago — to the GB regulations were instigated by Mrs Foster, her adviser or officials acting on their instincts. Can you shed any light on that?

Dr McCormick: I think that I mentioned that already in dealing with the point that legislation follows from policy. The policy was approved. The advice to the Minister was that tiering was not required. That advice was accepted, acted on and turned into instructions to the legislative solicitors who drafted the regulations. The regulations looked different because the policy was different not because of any particular additional political process. It is very straightforward.

Ms Lockhart: As a matter of interest, when did the Department finally realise that there was an incentive to overuse the heat? Will you confirm that again?

Dr McCormick: The absolute clarity was when the Audit Office reported. As, I think, I said before, my internal auditor was getting close, through the secret-shopper questions that he was asking. It was clear from January 2016 that something was very seriously wrong. The action to suspend the scheme

stopped the worst of it — the spike — and the applications continuing. The absolute clarity was only in June 2016.

Ms Lockhart: June 2016. Thank you. You are a lot longer in the tooth than I am; I think that you are probably one of the longest-serving permanent secretaries at the minute. *[Laughter.]*

The Chairperson (Mr Swann): Come on, now. You are prejudging something there.

Ms Lockhart: Obviously, you are much longer in the tooth than I am, you are probably currently one of the longest-serving permanent secretaries. You are very long in the tooth — *[Laughter.]* You are experienced compared with us young whippersnappers. I am giving you a compliment as you are long-serving.

On the basis of the information provided to Mrs Foster, how likely is it that any Minister you have worked for would have identified the flaw in the original scheme? Did the advice provided put her in a position to take action?

Dr McCormick: As I have said before, I have not seen anything quite like this in 36 years in the Civil Service.

Ms Lockhart: I am only 32.

Dr McCormick: The Ministers have the right to expect us to get this sort of thing right and to rely on us for accurate advice and not to make mistakes of this severity. Whether there was anything else going on, I do not know; I was not there at the time. I cannot comment on whether there are any other conversations, but there is no evidence whatever that this was anything other than based on a major mistake that was made by the Civil Service.

Ms Lockhart: OK. Finally, what would you say to those who suggest that Mrs Foster should have asked about the operation of the scheme and should have known that it was going wrong during her time in office?

Dr McCormick: As I said before, at that time it was underspending, and the position was understandable, but that is all I can say.

Ms Lockhart: Thank you.

The Chairperson (Mr Swann): Andrew, what would you say about the position that a Minister carries ultimate responsibility for their Department?

Dr McCormick: Absolutely, that is the case.

Ms Lockhart: Apologies for coming back in, but on that point, what do you see as the distinction between the roles of civil servants and those of Ministers for responsibilities of this kind?

Dr McCormick: I could talk about that for hours.

Ms Lockhart: Briefly?

Dr McCormick: Briefly, we provide evidence-based analysis and support, which supplements the policy decision-making, but we do not have a monopoly on policy advice. The policy can come from other sources including party sources, which is absolutely fine. Our job is to provide advice, analysis and evidence to allow for informed decision-making. The function of the Civil Service is to provide advice and analysis. Our role has to be based on objectivity, impartiality, fairness and then there is political judgement. Forgive me if some of my earlier comments were trite, and I do apologise. We all live in a political world where lots of complex things happen for political reasons, and, to me, that is absolutely OK. I would rather have the complexity and awkwardness that arises in these devolved institutions because this is authentic democracy. It is awkward, and it is messy, and lots of things go wrong, but it is the real world, and I like it.

Ms Lockhart: On that —

The Chairperson (Mr Swann): It is valid comment you are making Andrew.

Ms Lockhart: What would you say to those who have characterised the handling of RHI as incompetence on the part of Mrs Foster?

Dr McCormick: I would never dream of making any comment about the competence of Ministers. I work for Ministers. I have no responsibility to comment on that at all.

Mr Clarke: Andrew, I will go back to the events pertaining to the closure of the scheme. On 'The Nolan Show', Mr Bell stated that the matter was brought to his attention in January 2016 and that he wanted to close the scheme immediately. Is it right that the proposal Mr Bell agreed to would not have seen the scheme close immediately but in mid-March 2016?

Dr McCormick: The events of January and February were fast-moving and complex, and I think there is a degree of misunderstanding and misremembering, and I find it hard to put together with all the documents in front of me. The truth is that we, as officials, made a very conventional recommendation to Minister Bell. It was on a Friday early in January; the submission was cleared on a Friday before he went across to the US for a trade mission. One point that is different between the process in the summer of 2015 and January and February 2016, which is very important, is that, in January or February 2016, all the papers were clear that the issue had to go to the Executive. Entirely appropriately, there was a need for the involvement of OFMDFM and DFP at that time. DFP was involved in approving the changes in 2015, but there was no formal involvement of OFMDFM. There were a number of stages where there was entirely reasonable interaction with FM and dFM SpAds in that process in January and February.

The precise timeline was quite complicated. There were a number of different judgements informed by the issues. The choice on the risk was conventional process, which would keep you out of court, or urgent process to stop the flow of money. The view of that changed in successive stages of decision-making, and Minister Bell was not involved in all of those. There were some times when, quite legitimately, that was being taken at FM and dFM level because this was now a crisis. We had the letter from the Treasury. We were in a very serious budgetary crisis. It was highly complex and highly fraught. I was not party to all the conversations, but there were at least three stages where the timeline changed as to when to go ahead.

This is something that I could spend a long time unpacking. I have detailed notes. I could unpack every detail of it for you if you need me to. The absolutely key point is that this was not the most important stage of the process. We were dealing with a scheme for which tiering had been brought in. Therefore, the degree of risk attached to whether it was kept open for a week or more or a month or more was much less. Yes, there was a small spike of applications towards the end, but all the people who applied after November 2015 were only getting the tiered tariff, so this was actually much less important —

Mr Clarke: On the question, Andrew —

Dr McCormick: I am trying to say that this period did not matter half as much as the summer of 2015.

Mr Clarke: But, in the programme that night, the previous Minister Bell said that he wanted to close the scheme immediately in January. Is that true or not?

Dr McCormick: The recommendation that we approved on the Friday before we travelled to California was our conventional recommendation, which would have involved consultation in Committee and would have taken until March.

Mr Clarke: Is it not the case that there was an intervention made by the First Minister and deputy First Minister for it be closed earlier?

Dr McCormick: Simply, yes; that is right.

Mr Clarke: One of the serious allegations made by Mr Bell was that documentation was tampered with. Are you familiar with that allegation?

Dr McCormick: Yes, and that has been dealt with fully in a paper that was prepared by my colleague Chris Stewart. To the extent that I had been party to the conversations, I was happy with what Chris wrote. That was released to the media on the evening of 18 December.

Mr Clarke: OK, so am I right in saying —

Dr McCormick: That dealt with that issue fully. Yes, there was an awkwardness and some sharp conversations around that, but these things happen; this is the real world.

Mr Clarke: And we see the consequences in the real world. Am I right in saying that the issues relate to an incident in 2016 and the closure of the scheme and not to 2015 and the introduction of the cost controls as was implied by Mr Bell on 'The Nolan Show'?

Dr McCormick: Yes. I watched that programme, and there was an important stage where there was something that was very clearly misleading. That was a statement that something could be proved in relation to the summer of 2015 by reference to a conversation that happened in 2016. I said, "That is very misleading". I wondered what had happened and if it was down to editing, but something was very unclear indeed on the timing and sequence of events.

Mr Clarke: Am I right to say that Mr Bell's account does not reflect what actually happened?

Dr McCormick: It is a highly complex field. As I said, I have the privilege of access to papers, and that makes it easier for me to keep myself right. He had sight of a number of papers for a short time, and he was not allowed to take them away.

Mr Clarke: Am I also right in saying that there was no evidence whatever that SpAds from outside the Department asked for references to Arlene Foster and the Department of Finance to be removed?

Dr McCormick: I am not aware of any evidence in relation to anybody from outside the Department. There was a change to documentation. In the end, the change was of no consequence whatever.

Ms Gildernew: You have asked that already, Trevor. Jesus, move on. There is no evidence, but that is not to say that it did not happen.

Mr Clarke: There is no evidence of some other things that have been suggested today, and that does not mean that they did not happen either, of course. However —

The Chairperson (Mr Swann): Listen. I think that we have managed up until now, Trevor. If you have a list of questions, please keep going.

Mr Clarke: Thank you, Chair.

The Chairperson (Mr Swann): Have you many left?

Mr Clarke: About another 50. Is that OK? *[Laughter.]*

The Chairperson (Mr Swann): No. I am afraid not. We know what we allow, and it is obvious what you are trying to get into the record.

Mr Clarke: I am entitled. The permanent secretary is here to give evidence in relation to RHI. I am as entitled as anyone else and have been patient while others asked the same questions.

Andrew, am I right in saying that the amendment to the document that we talked about a few moments ago actually put Mr Bell in a better light, given subsequent events?

Dr McCormick: That is a matter of interpretation. It is not a matter of fact or evidence. This is complicated. The point of the submission did not have any consequence in the real world. What was removed was a reference to the involvement of OFMDFM, but the fact of the matter is that there had been involvement by OFMDFM. There was no reason to remove it, but it did not actually matter. Yes,

it could be argued that that then made the decision appear to be — There was a way in which it could have been giving him credit for a decision, but, in the context, the consequences were of no great importance. As I said, at that stage of the process, it was entirely right and proper for there to be full and detailed involvement of FM and dFM in the decision-making process.

Mr Clarke: Just for the record, what was their input again?

Dr McCormick: As I said earlier, the choice was between a long, safe process and an urgent process that would have stopped the flow of money sooner. The initial decision, announced before the Minister's second visit to North America in that period, was to go as quickly as possible. While he was away, there was a very serious reaction to that, and the judgement was revised, quite reasonably, to give another two weeks. That was just a different balance of judgement between the two considerations that I mentioned. It was entirely reasonable.

Mr Clarke: It was FM and dFM.

Dr McCormick: Yes, both sides were involved in the process.

Mr Lunn: This is just a general question. Am I right in thinking that, without any equivocation, whether under the ministerial code or just by convention, protocol or practice, a Minister is responsible for the actions of a special adviser, whether or not the actions are authorised?

Dr McCormick: Yes. *[Inaudible.]*

Mr Lunn: That is what I wanted to hear: ministerial responsibility extends to the actions of SpAds, whether authorised or not.

Dr McCormick: Yes.

Mr McMullan: I want to go back to this meeting on 24 August 2015. What did this gentleman argue that beat you all?

Dr McCormick: I am sorry: I have no detailed memory of the meeting, to be honest.

Mr McMullan: Andrew, your memory has been pretty good all day. *[Laughter.]* I do not know whether 7.00 pm is getting to you. What did this man argue that beat you all and put this back into the frame?

Dr McCormick: I guess that it was along the lines of, "Here is something that is a good thing. Why not keep it at this level for a bit longer, especially as Treasury is paying?"

Mr McMullan: It is a good thing?

Dr McCormick: I am conscious that Treasury might well tune into this. Of course, that is a totally unacceptable argument because it is all public money, and we have to secure value for money from all public money. This was an area where, in the early days, not that many months into a change of Minister, we, as officials, were still getting used to working with a new team and understanding the dynamic. It was quite a complex dynamic among those individuals at that time. There have been a few other times of awkwardness in the period. Maybe three times out of 10, I would have sought a ministerial direction in that context, knowing what I knew then, but it is one of those things where it is hard to make a judgement. One of the hardest things about this job is when to stand up to a Minister and say, "This is really important. I need you to take a different view" and when not to. I am sure that others can relate to this. This goes back to what you asked earlier, Carla, about how these things work out. We have a responsibility to offer advice, even if it is not what Ministers want to hear. We need to continue and persist with that and not back off. Maybe if I had known the situation better and if I had known the individuals better, I might have held out longer, but there was very strong pressure coming to keep the scheme open. That is part of what happened.

Mr McMullan: And the pressure was coming from the special adviser.

Dr McCormick: The visible manifestation of it to us was through Timothy Cairns. He also said to us that he was totally indifferent to the scheme. He had no personal —

Mr McMullan: So who was he speaking on behalf of?

Dr McCormick: He was speaking on behalf of others in the party. That is what I knew at the time.

Mr McMullan: Who were the others in the party who he was speaking on behalf of?

Dr McCormick: I have already answered that question.

Mr McMullan: You have only said one. When you say "others" —

Dr McCormick: The phrase "others in the party" is what I was comfortable with using at the time. More recently, through a number of other conversations, as I have said, it was the individual I mentioned earlier.

Mr McMullan: Do you have any indication that, if it was coming from others in the party, the other was a SpAd as well. Is there any indication that this was coming from the Minister's office?

Dr McCormick: No.

Mr McMullan: None. So, this one man was fit to tell you all what way to run the scheme, and this was in 2015. Did you not have an idea of the scheme by 2015?

Dr McCormick: As I said, we should have. As a matter of fact, we did not have a clear enough understanding of what was wrong with the scheme in 2015, for the reasons that I elaborated on earlier.

Mr McMullan: OK. Thank you.

Ms Gildernew: Just very quickly, Andrew Crawford has responded to the discussion that we had earlier today, and he has said that he offered informal advice on the RHI and did not do so on behalf of Arlene Foster or her party. So, he has come out on the record this evening. I just wanted to let you know that he has responded to that.

A Member: That was good of him.

Mr Lunn: That just backs up the point that I have just made, that the Minister has absolute responsibility, even if he did not bounce it off the Minister.

Ms Gildernew: I have had to give a ministerial directive, and anybody who has been in ministerial office may have had to be on the receiving end of it. The buck stops with the Minister regardless of what Department it is.

Mr Clarke: I am trying to think what Trevor's point is.

Mr Lunn: The Minister is responsible for the actions of their SpAd, whether authorised or not. That is the point that I just made, 10 minutes ago.

The Chairperson (Mr Swann): And it is the point that has been accepted.

Mr McMullan: I have just one last question to ask.

The Chairperson (Mr Swann): Just one last question, Oliver.

Mr McMullan: When we look at all the different things in the scheme, we are going to release the names of all the people in the scheme on this date.

Dr McCormick: Subject to *[Inaudible.]*

Mr McMullan: When can we get a list of the installers?

Mr B McCann: We will have to look at that.

Mr McMullan: They are not covered by data protection.

Dr McCormick: It is not readily available.

Mr B McCann: No, it is not readily available to us.

Dr McCormick: Let us look at this and come back to you.

Mr McMullan: When you look at the list of installers, will you find out if any are related to any SpAds in the DUP?

Mr Clarke: Why only the DUP? What about Sinn Féin, the Ulster Unionist Party, SDLP and Alliance?

Mr Butler: I agree with you on that, Trevor.

The Chairperson (Mr Swann): Any political connections.

Mr Clarke: It just shows that it is a witch hunt coming from Sinn Féin.

Ms Gildernew: Robin, just on a point of information, if you would. If this information is being released, the PAC has been asking for it for months and months. Will we get it at the same time as the public, or will we get access to that information beforehand?

Mr McMullan: I would like to get it before 'The Nolan Show' gets it.

Dr McCormick: We have to fulfil our legal obligations in that process. Our advice is that disclosure to you is disclosure. Therefore, we have to go through our process on those terms.

The Chairperson (Mr Swann): Michelle's point is valid, and if it is possible, we want it.

Dr McCormick: We take that point entirely.

Mr McMullan: Andrew, roughly how many cases came in during that spike at the very end?

The Chairperson (Mr Swann): There were 800-odd.

Mr McMullan: Is that 800 in a matter of two or three weeks?

Dr McCormick: Yes, that is right.

Mr McMullan: Is it physically possible to install 800 boilers in three weeks? How many of these boilers were installed before the applications came in?

Dr McCormick: They all have to be installed before the application. The point of significance in what you are asking is that the industry had time, certainly, between the announcement of the change, which was in early September, and the closing date, which turned out to be 17 November, to organise and get installations in place. If they had prior information, even in July, which was legitimate, the industry had time to get it going.

Mr McMullan: I thank you for that answer. My point in asking that is this: is it possible that those in the industry were behind getting this scheme extended because they had laid out so much money on boilers and, if it was closed, they would not get paid? Was this the driving force behind some of the robust lobbying that went on and we heard of today?

Dr McCormick: You are asking me to speculate, in a certain sense. Sorry, I had a thought in my head, and it has just disappeared. It has been a long day.

Mr McMullan: We were speculating that the installers and the industry had laid out all of this money.

Dr McCormick: Oh yes, it is back. The change proposed in that period was a reduction in tariff. The reduction in tariff would still have given a good rate of return, so there was no reason for people not to proceed with installations and apply to the scheme. Even post-November 2015, the scheme was offering a good rate of return. So, the reason that they were pressing was that they were losing the opportunity to take an excessive level of profit, and that shows the attitude. A number of colleagues made the point earlier today that there is something distinctly wrong with wanting more than is reasonably on offer. That is what is right; there was an article on Boxing Day which made this point very well.

Mr McMullan: That is one of the most telling things to come out today. The fact was that this was not about heat incentive; this was about money. It is worth getting it out to the public that the 800 in this spike were not new applications. These boilers were already installed —

Dr McCormick: They had to be installed before they could —

Mr McMullan: That has to get out to the public. These were not installed during that time; they were already installed before the applications.

Dr McCormick: Some would have been, again we cannot —

Mr Butler: You cannot categorise everybody in this, Oliver.

Mr McMullan: I am talking about the spike.

The Chairperson (Mr Swann): OK. Trevor can come in. This is the last supplementary —

Mr McMullan: I am not categorising anybody; I am too long in the tooth for that. The fact is that it was a cleverly thought-out scheme. Can anybody tell me of any scheme — any grant scheme — where you are allowed to go ahead, buy materials, install it and then apply for the grant? You cannot do it. You are told not to do it until you are told to carry on. This scheme was the other way round, that is the point that I am making.

Mr Clarke: Following on from one of the points that Oliver made about the industry wanting to keep the scheme open. There has been an awful lot of inference and, obviously, there is a witch-hunt against the DUP today. Is it not true that almost every political party, without exception, made representation to keep the scheme open longer? Certainly, the Chair of the ETI Committee, Mr Patsy McGlone from the SDLP, did.

The Chairperson (Mr Swann): The point is on record, Andrew.

Dr McCormick: What stage are you referring to?

Mr Clarke: At the closure of the scheme, is it not true that most political parties involved, if not all, asked for the extension of the scheme rather than the closure of the scheme?

Dr McCormick: In February 2016?

Mr Clarke: Yes.

Dr McCormick: That is a whole different situation. The need then was to get the budget back under control, and there was a very strong reason to do that.

Mr Clarke: No, the question I am asking you, Andrew, is this: was there not representation made by almost every political party to keep it open?

Dr McCormick: That is a matter of record.

Mr Clarke: That is yes, then.

Dr McCormick: The record will show exactly what was there.

The Chairperson (Mr Swann): If the whole lot of us had known then what we know now, we would be in a very different place.

Andrew and Brendan, thank you very much for another long session. We appreciate the input that you have given us.