



Northern Ireland  
Assembly

Public Accounts Committee

# OFFICIAL REPORT (Hansard)

Inquiry into the Non-domestic Renewable  
Heat Incentive Scheme: DFE, NIAO, DOF

9 November 2016

## NORTHERN IRELAND ASSEMBLY

## Public Accounts Committee

Inquiry into the Non-domestic Renewable Heat Incentive Scheme: DFE, NIAO, DOF

9 November 2016

**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:**

Ms Heather Cousins	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):** I welcome Dr Andrew McCormick, accounting officer for the Department for the Economy, and Ms Heather Cousins, deputy secretary for higher education and investment in the Department for the Economy. Kieran Donnelly, the Comptroller and Auditor General (C&AG), and Alison Caldwell, the Treasury Officer of Accounts, are also in attendance. Andrew, I believe you want to make a brief opening statement.

**Dr Andrew McCormick (Department for the Economy):** Thank you, Chair. Thank you for the approach that the Committee has taken to the issue so far. I appreciate very much the approach you took four weeks ago when we had the closed session. In correspondence since then, I have said that we are ready to answer questions, whether they are a continuation of those from the original session on 28 September that was not finished, are based on matters arising from the new information that we have sent or follow on from the session with Ofgem. There is one area where we will be limited in the scope of the answers that we can provide, and I will explain that.

The Committee is aware of the fact-finding investigation that is being undertaken on my behalf by PricewaterhouseCoopers (PwC). I initiated that process following the session on 28 September as a result of the information that we discussed in closed session on 12 October. The point is that it is clear that the attention of the Department was drawn to the structural and design problems in the scheme at various times in the period 2013 to 2015 but that information was not acted on in a way that

it was reasonable to expect it to be. We have to express our deep regret that that did not happen and that the appropriate action was not taken.

As I have said in correspondence, the fact-finding investigation continues. Once that has been completed, if the evidence suggests it is appropriate, we will commission an independent HR adviser to consider those facts and advise on whether there are any issues of performance or conduct that need to be addressed in line with the HR handbook in relation to members of staff. I stress that we are not yet in a position to conclude that that will be required, as the fact-finding is not complete. It remains very important, for the reasons that I explained in the closed session on 12 October, that we do not say anything today that would prejudice any such process. I am here ready to acknowledge the mistakes and omissions on behalf of the Department corporately, but we will need to avoid any attribution of failure to individuals. I hope that you will understand that that is necessary at this stage. We certainly want to answer as fully as we can this afternoon.

We have had a lot of additional information to examine over the last few weeks. That has helped us to understand better what went wrong. The scheme had been devised with worthy intentions to increase the use of sustainable energy, but it is clear that the scheme was not fit for purpose. The intention was good, but the execution and design were seriously wrong. There are a few conclusions so far, and I am happy to expand on these or deal with them in the session this afternoon.

I do not have any evidence to suggest that, at the initial design stage, the Department fully understood how the scheme would work in practice. There was a lack of awareness that the design would create a perverse incentive. The Department was aware that there was a need to control costs and should have acted earlier to introduce cost controls of various kinds. That is quite a complex point, but, again, I am happy to expand on that in questioning. When information was brought to the Department's attention that suggested that the scheme was providing returns that were overly generous to recipients, that information was not acted on. The focus in the early years of the scheme, when uptake was low, was on the fact that the budget was being underspent. Then, when demand escalated in 2015, what happened was a response focusing on seeking additional budget cover rather than examining critically why the scheme was becoming so attractive. That is what we should have done and did not do. That was affected partly by the confusion over the budgetary treatment. The mindset in the Department in 2015 was that additional annually managed expenditure (AME) funding would be made available. The fact is that some of that happened; we got additional AME in that financial year. It was not until January 2016 that the implications of the scheme for the resource DEL and hence the opportunity cost for public services finally became crystal clear. It should have been clearer a lot earlier.

Those are just some thoughts that I have bringing together the threads of the whole issue and what is going on. There is lots of detail further emerging. We received the material that the Committee received from Ofgem following its session. I have noticed important points in that already, but I would not claim that we have been through it in full detail. We will need to do further homework on it. Obviously, if there are immediate points that you need to ask us about, we will try to answer them today; if we cannot, we will come back to you in writing or, if you require us to come back, we are happy to do that. As the Committee is aware, there was another whistle-blower case that was referred to us by the C&AG last month. The position on that case is still under review.

I do not think that anything there is other than confirmatory of the lines of questioning that the Committee was on six weeks ago, but I thought that it was helpful just to draw those threads together. I am happy to go into questions at this point, Chair.

**The Chairperson (Mr Swann):** Andrew, thank you again for the honesty in some of your comments. There is some damning criticism of your Department, which is what we got from you the last time. The Department did not fully understand the scheme and did not have the ability to reverse what was going wrong when you were made aware of it. I will give you a couple of comments from a PAC point of view and ask whether you feel that they are fair:

*"On a number of occasions during his evidence to the Committee, the DETI Permanent Secretary stated that he has grave concerns in relation to both his own Department's handling of this project and over aspects of the work of its advisers. This frankness is welcome, but it is only belatedly that the Department appears to have recognised the gravity of what has occurred. ... there were numerous warning signs that there were serious problems with the project. These signs were effectively ignored by DETI and, for far too long, the Department behaved as if nothing was wrong. The Committee is left with the impression that DETI hoped that silence and inaction would make these issues disappear."*

Is that a fair comment?

**Dr McCormick:** That sums it up well. That is very fair. The only point I would make is that towards the end of the scheme there was still a sense that this was a worthy objective and that for Northern Ireland to be contributing a larger proportion of the UK's renewable heat was a good thing. However, that is undermined fundamentally by the fact that we did not realise how much was not being spent well, and we only found out about that definitively through the inspections PwC carried out. As you said, there were warning signals, but they were not acted on as they should have been. We have to accept that.

**The Chairperson (Mr Swann):** I have another comment that I want to read to you:

*"The Committee is very concerned that poor project management and disregard for value for money appear to have been endemic within the Department at that time."*

Fair comment?

**Dr McCormick:** I would not accept "endemic"; lots of other things were going on in the Department. We have been at the Committee often enough on other kinds of cases, and the casework process in place ensures value for money for the vast majority of expenditure. A further lesson from this is that, had the casework conclusions and deliberations in the spring of 2012 been followed through in this case, some of the issues would not have arisen. We have systems that should have worked but went wrong on that point. The casework — our primary governance mechanism to ensure value for money — did not kick in. Commitments were made at casework that were not followed through in this case. Fundamental on the path back towards confidence — we are on a journey to the place where we can give the Committee confidence again that we are on top of things — is our system for implementing and checking the mechanisms, so that there is clarity of responsibility at every level in the Department when a commitment has been given to review, as there was a commitment in this case to review the tariff, which was then not carried out. The casework identified the risk of the scheme being overly generous. That was recorded as a risk but not acted on. We have to make sure that, when we review these things, the checks and balances are effective. That is absolutely fundamental to our job.

**The Chairperson (Mr Swann):** Further comment:

*"It is clear that this case only came under proper scrutiny because of the allegations made by whistleblowers. It is essential that the culture within DETI is changed and the Department must recognise the need to take decisive and prompt action to address problems"*.

Fair comment?

**Dr McCormick:** Fair comment.

**The Chairperson (Mr Swann):** Finally:

*"During the evidence session, the DETI Permanent Secretary openly acknowledged on many occasions that he was unable to provide satisfactory answers to the Committee's questions."*

Fair comment?

**Dr McCormick:** I cannot argue with that.

**The Chairperson (Mr Swann):** Andrew, those four comments are from this Committee's report on Bytel; they are not related to this inquiry. Those are four opening statements from the introduction to the executive summary. That inquiry was completed and reported on by 1 July 2015. Bytel happened between 2003 and 2005. What did the Department learn from Bytel?

**Dr McCormick:** All you have said was there and also the specific lessons in relation to the fact that it was a technical area where we had insufficient grasp of the reasons for the decisions being taken and over-relied on external advice in that case. I am going further than you said, because we have been thinking about the comparison a lot, and we realise that there are far too many similarities. The difference now is that we have a new system coming in to do this governance so that we have to be

sure that we double-check the casework approvals. The key point for us is that we recognise our risks and have more effective project management in these cases. Maybe the biggest lesson is to make sure that we are not taking on things without proper organisational resources. That means looking at what we have internally and —

**The Chairperson (Mr Swann):** But Andrew, exactly what you are saying to me is what the Department should have learned from Bytel before it went down the avenue of the renewable heat incentive (RHI) scheme. Even in your opening statement, you said that the Department did not fully understand. I ask you this again: did the Department learn anything from Bytel in retrospect, when you look at the comments made here on 28 September?

**Dr McCormick:** We thought we had learned quite a lot, but it was clearly not sufficient. There is no denying that lessons had not been internalised. The fact remains that a lot of the things that went wrong with RHI had happened before the Bytel case was heard here. Most of the things that went wrong happened before that report. When it came to attention again, it came up into consciousness for senior level attention following the expansion of the uptake in March 2015. The point, then, is that our response to the issue at that stage was wrong.

**The Chairperson (Mr Swann):** Have you reflected on the answers that you gave in the evidence session here the last time? Have you re-evaluated your answers in light of new information that you have received, as referred to in your letter of 4 October?

**Dr McCormick:** Yes. As you know, the evidence session was affected by the fact that I received the additional information only on the morning of that hearing. I checked very carefully the nature of what was said then. I would definitely acknowledge that, in the course of that session, I was using what is, for me, a familiar line, which is to say that I regard collective failure as more serious and more difficult to manage than individual failure. That was on the understanding — that was the situation I was in while preparing for the session on 28 September — that my summary at that stage would have been that the RHI case was dominated by a series of omissions that were understandable at a level if they had not been drawn to attention.

What changed fundamentally through the new information was the evidence, which we had not been aware of before, that the very issues about the tiered tariff had been drawn to the Department's attention several times in the period in question. That changes my view of that. Because we still have an ongoing process, I do not know where that will lead me in terms of a conclusion, and I am determined not to prejudge that. It changed it from, if you like, a series of collective omissions where nobody was aware of a situation where there was evidence that people were aware. That, to me, is a different kettle of fish.

**The Chairperson (Mr Swann):** With regard to collective misjudgement, do you think that that is an adequate rationale? I do not want you to go down the line of —

**Dr McCormick:** I do not think so, but I would reserve my position on that finally until we have further facts. It does not look like that from where I sit today.

**The Chairperson (Mr Swann):** It does not look like that. Again, I go back to Bytel:

*"DETI takes the view that as responsibility for key decisions on the project involved a number of people, staff actions had amounted to 'collective misjudgement' rather than individual misconduct. The Committee does not accept this argument and is of the view that DETI has used the unsatisfactory concept of 'collective responsibility' as a way of absolving individuals from their responsibilities at that time."*

From what you have said to me, I hope that the Department is moving away from that.

**Dr McCormick:** We are pursuing the case, as you know, and I owe you a letter in relation to the follow-up on the Bytel case, both the update on the generality of the memorandum of reply to the Bytel case — that is coming very shortly — and, as the Committee is aware, we pursued recommendation 7, which relates to the point you have just made. I will write separately to you about that. We pursued an issue. It was not possible to bring it to a resolution. I have had a discussion with the Northern Ireland Audit Office (NIAO) about that, because, helpfully, Kieran and colleagues drew my attention to additional considerations in the way that had been handled by individuals. However, the Bytel issue

was a long time ago, and we have had to conclude that there is no actual issue to pursue there. I will explain that fully when I write to you.

**The Chairperson (Mr Swann):** The lessons should have been learned, I think that is —

**Dr McCormick:** Yes. Therefore, it is important that we are much quicker to respond to cases like this. That is an important point, and, again, there is clear contrast, in that this issue is still unfolding in real time, even now. Memories are much more recent than was the case with Bytel, which will make it a different case again.

**The Chairperson (Mr Swann):** Where, I think, the two differ is in their financial implications. The financial costs incurred by this scheme are huge, and mistakes have been made by both the Department and Ofgem, as we witnessed in our last evidence session. They are simply astonishing.

You have been around the Civil Service, according to your biog, for 36 years, Andrew. Would you agree that, in terms of public money, this is the biggest financial scandal in living memory?

**Dr McCormick:** In Northern Ireland, I cannot recall anything that was on this scale in relation to both opportunity costs to public services and poor value for money. I accept that.

**The Chairperson (Mr Swann):** Figures are given in respect of the cost to the Northern Ireland block grant this year and in future years. The estimate in the Northern Ireland Audit Office report was an impact of £32 million on the block grant for 2016-17. Can you tell me what the latest position is on the expected cost to the block grant for 2016-17?

**Dr McCormick:** It is still the best estimate we have. I am sure that it will change, but we have no fresh information on that.

**The Chairperson (Mr Swann):** Has anything been cut from your Department's spend to cover that cost?

**Dr McCormick:** The monitoring rounds are not yet complete for that year. We have had to be ready to transfer savings from other sources, so there is certainly an opportunity cost in our budget and to the wider block. We have not actually had to cut anything, I think.

**Ms Heather Cousins (Department for the Economy):** May I expand on that? I have been involved in all the monitoring round discussions with all the business areas in the Department. In those discussions, we have made it clear that, where there is expenditure that is not already committed, it should not be committed, as we are looking to meet as much as we can of the pressure from our departmental budget.

**The Chairperson (Mr Swann):** Is that an instruction from the Executive or the Department of Finance?

**Ms Cousins:** That is an instruction from the Department of Finance, and it was re-emphasised when we were talking to the business areas. We also had discussions with the Minister on the need for reining in discretionary spend.

**The Chairperson (Mr Swann):** Andrew, you touched on monitoring rounds. Heather, you were previously in the Department for Employment and Learning and are now involved in monitoring rounds. Can you remind the Committee how much was reassigned in the last monitoring round to cover RHI spend?

**Ms Cousins:** There is £20 million set aside centrally, but it has not been allocated to the Department at this point.

**The Chairperson (Mr Swann):** What about the £1.7 million from apprenticeships in the last monitoring round?

**Ms Cousins:** I am not entirely sure about that.

**Dr McCormick:** Let us check the figures, and we will get back to you.

**The Chairperson (Mr Swann):** I am sorry; they were covered in the House. There was £1.7 million from apprenticeships: £600,000 from Assured Skills and another £1.2 million from training schemes.

**Dr McCormick:** Where there have been emerging savings, they have had to go to cover this rather than being used to either expand or refresh skills areas or anything else that would have been possible. The effect is real. Your point stands.

**The Chairperson (Mr Swann):** The fact is that, currently, there is a hypothesis out there that this will cost £1.18 billion, but, at this minute in time, Assured Skills, apprenticeships and the future of some of our young people are being affected by this scheme.

**Ms Cousins:** Where that is the case, those are programmes that, in this financial year, we are not able to spend on, because of a lower demand for those schemes than we had anticipated at the beginning. It is not that we have cut those schemes; it is just that they are not spending against profile and therefore we have been able to gather that funding towards meeting these pressures. The skills schemes and apprenticeship schemes are demand-led. All our skills programmes are demand-led.

**The Chairperson (Mr Swann):** Heather, as the previous Chair of the Committee for Employment and Learning, I remember you in front of me telling me how you would meet those and that you needed more budget to carry out those programmes. I do not want to labour that, but I want to point out clearly to you the concern about the future of some of the young people in this country. Apprenticeships and Assured Skills have been reassigned and re-profiled financially to cover this scheme, and it is still your intention to do that.

**Dr McCormick:** Obviously, we now need to work with the Department of Finance and more widely to get as reasonable an outcome as possible for the rest of this financial year and the years beyond and to minimise the damage. There is no question that there is loss here. As Heather said, it has not been about cutting services, but it certainly has meant not having resource that would otherwise have been available to expand one service or another. We have known that since January/February this year. Even as the final plans were being drawn up for 2016-17, we knew that we had this issue, and, looking ahead, it remains there.

The fundamental action for us is to do everything that we can to reduce the forecast estimates of demand. If there is any way to reduce the flow of funds on the scheme legitimately and reasonably, that is what we need to do. I cannot go into detail on that now, but that is where our active work is as positive as we can make it. We are devoting time, attention and resource to bearing down on the future year cost to get that billion figure down. We always knew that it would be a scheme worth half a billion pounds or £600 million over the period. We knew that it was going to be large. It is far larger than it should have been — that is our problem — but we need to look hard, with a very open mind and as radically as we can, at what can be done to change that. That will include looking at where we might challenge any illegitimate expenditure. That is why the work of PwC was important in exposing some of the areas where the scheme is not operating as intended and maybe, in some cases, operating outside the regulations. We then have to look at what else we can do by way of looking at the legislation and our obligations in this context to get the cost down going forward. We are highly motivated to do that, and our Minister and the Finance Minister are very focused on that point.

**The Chairperson (Mr Swann):** You talk about trying to drive costs down. We want to have the figure clear in our heads. I think you said at the last session that, over the next 20 years, it would cost £660 million to the block grant.

**Dr McCormick:** Yes, that is my recollection, but, again, things partly depend on the budget share that we get from London. This depends partly on what happens going forward with Treasury and what is now the Department for Business, Energy and Industrial Strategy. Looking at its budget and our Barnett consequential of that, the larger that is, the smaller the pressure on the Executive's block grant. That needs looking at, and we then need to do what we can to bear down on cost.

**The Chairperson (Mr Swann):** Still a complete project cost of £1.18 billion.

**Dr McCormick:** As we stand today, that is what we are working on.

**Ms Cousins:** If we did nothing, that is what it would cost, but we do not intend to do that. That is the worst-case scenario, and that is what we are working towards.

**The Chairperson (Mr Swann):** What is your best-case scenario, Heather? What have you?

**Ms Cousins:** It is hard to speculate. It depends on the options that we have available to us legally, and we are taking legal advice on what we can do.

**The Chairperson (Mr Swann):** Andrew, you referred to a whistle-blower and how that is being dealt with. Correspondence that the Committee has received from a whistle-blower — a concerned member of the public — shows that there were clear warnings to the Departments in relation to tiering and the wasteful use of heat as far back as October 2013. Why was that not acted on?

**Dr McCormick:** The context in October 2013 was that the consultation was current in relation to phase 2 of RHI, which was twofold. It was introducing the domestic scheme and then a number of aspects of expansion and revision of the non-domestic scheme. Yes, at that point in time there was a meeting with an individual who had approached the then ETI Minister, where the point was made that the scheme was not operating as intended. It seems, on the face of it from that, a clear signal to act and to at least ask the question, "What does she mean? What does this person mean?" and "How can this be?".

What is said in the email that followed in May, as you know, is that the reaction at the meeting was that the officials did not believe what they were being told. That is in the emails you have seen. The person makes the point and is not believed. I find that a cause for great concern and ask myself this question: "What was so difficult about trying to understand what she was saying? If the scheme is too generous, in what sense is it too generous?". In mitigation, at that time there were many voices, in the context of the consultation, saying that the tariff was too low. There was a lot of other stuff going on. I do not find that complete and satisfactory, but we are still looking at the detail of all of this. To me, that was the first clear opportunity for the point that the tariff was too generous to be identified and understood; as a matter of fact, it was not. I hesitate to criticise, because you always have to put yourself in the context of what someone does at the time. It is never as simple as it appears, but the point looks very fundamental.

**The Chairperson (Mr Swann):** From what you have told the Committee, the then ETI Minister — now the First Minister — was informed.

**Dr McCormick:** The person raised a concern, and what the then ETI Minister did was entirely appropriate. She said, "You need to go and see my officials", and that happened.

**The Chairperson (Mr Swann):** Were the officials not concerned or overly worried about the fact that this had been raised by their Minister? As at an earlier session on 28 September you seemed to intimate that it was being kept at a lower level in the Department and had not got the length of the permanent secretary, but surely, if it was at ministerial level, would there not have been a —

**Dr McCormick:** I do not know exactly who knew every detail of that. I would not expect, if this was one of many conversations — not every conversation will be shared with everybody in the Department. The responsibility and the clear right thing to happen was for the initial approach at ministerial level to be followed up by officials, and it was. Where it went wrong is in the follow-up to that meeting.

**Mr Clarke:** On the same point — I am not asking for anyone's name — is the person who looked at that in terms of the whistle-blower part of any of the disciplinary stuff that is going on?

**Dr McCormick:** There is no disciplinary stuff going on.

**Mr Clarke:** Sorry, what?

**Dr McCormick:** There is no disciplinary exercise going on. There is a fact-finding exercise.

**Mr Clarke:** OK.



**Dr McCormick:** If and only if that leads to a consideration of conduct or performance, those decisions lie ahead, and I will not prejudge them. What I would say is that, self-evidently, those are the very things that the fact-finding exercise is focusing on. It is specifically to help us understand, in a fair and proper context, what the individuals concerned did or did not do with the information at that time.

**Mr Clarke:** That is fair enough. What grade was the person the whistle-blower was directed to?

**Dr McCormick:** My understanding is that the meeting in October 2013 involved people at several grades. It involved three individuals, including someone from the Senior Civil Service (SCS).

**Ms Alison Caldwell (Department of Finance):** In that respect, I ask the Committee to be careful about the guidance in the 'Guide to the Scrutiny of Public Expenditure' and the issues around ongoing fact-finding.

**The Chairperson (Mr Swann):** That was covered in a closed session.

**Mr Clarke:** I appreciate that, Chair, but I am not asking for anybody to be identified; I have asked for the grade.

**The Chairperson (Mr Swann):** As long as you are finished at that.

**Mr Clarke:** If I can find out the grade. Am I entitled to find that out?

**Dr McCormick:** As I said, there was an SCS member of staff at that meeting with the whistle-blower.

**The Chairperson (Mr Swann):** A senior civil servant.

**Mr Kearney:** Andrew, twice in this session, in mitigation for people not getting a grip on the situation at an earlier stage, you have referenced that a lot was going on. How many staff are there in the Department?

**Dr McCormick:** I do not recall the exact number in DETI at that time, but the number of people involved in the policy work on energy totalled 20 or 30. In renewable energy, that number was a half a dozen, and that included those whose job it was to manage the renewable heat premium payment scheme. There was an operational function as well. A very small number of people were involved in the policy work.

**Mr Kearney:** And how many of that number had management oversight?

**Dr McCormick:** It depends how you define —

**Mr Kearney:** A helicopter view.

**Dr McCormick:** We are talking about four or five people who had the time and attention for that kind of policy and design in relation to the operation of the scheme.

**Mr Kearney:** OK. How many people in the Department have an overall helicopter responsibility for knowing about everything that goes on in the Department?

**Dr McCormick:** At that time we had one permanent secretary. We also had two deputy secretaries, one whose role related to policy work, including energy. The core of the other person's job was related to finance and corporate services, so their role would have been what Heather does for me, which is to help make sure that the governance and financial decisions are appropriate. Three of those individuals carried governance responsibilities in relation to all kinds of operations by the Department, including this scheme. You then had a single energy division headed by a senior civil servant. Does that give a reasonable overview?

**Mr Kearney:** That is roughly 10 people in the Department who would have the helicopter view, who would have the responsibility and should know everything that is going on.

**Dr McCormick:** Yes, at a strategic level.

**Mr Kearney:** And at an operational level. Are you telling us that they were not talking to each other?

**Dr McCormick:** They were talking to each other a lot. Whether they specifically talked about the approach from that individual — thinking about how that works in the real world, I doubt that that would have happened, because it would have been one of many conversations. Part of the point is that, because it was not understood, it was not seen as important.

**Mr Kearney:** Do you accept —

**Dr McCormick:** That is where it all goes wrong.

**Mr Kearney:** I infer from the reference to a lot going on that you were very busy and were doing all sorts of things, you were distracted in different directions and there was lots of work happening. Do you accept that that is really not an observation or mitigation that should be shared with the Committee to explain why —

**Dr McCormick:** I do not think it is anything like a sufficient explanation of what has gone wrong here. I just want to record it as a matter of fact that the people in the energy division had a lot of other things going on and a lot of other voices coming to their attention. This was one of many voices. If it had been the only voice they had heard, there would have been a different perspective, but there were others; people were writing to them and phoning them, saying they had too low a tariff.

**Mr Kearney:** The difference in the case that Robin just referenced is that it was brought to the attention of the Minister, who then commissioned the structures to deal with the matter being brought forward, and then there was radio silence. It just falls into the bog.

**Dr McCormick:** Yes, and, again, I don't know how —

**Mr Kearney:** You see, what I do not get is this: if it goes to the Minister, who then commences a process, and it goes to the tier in the organisation that should have a helicopter view and overall responsibility — you indicated that it could be as many as 10 in this division, this section and then overall departmental responsibility — somehow or other, the ball gets dropped.

**Dr McCormick:** The only point I can make is that the significance was not clear; it should have been, but it was not.

**Mr Kearney:** Is the Minister not significant enough?

**Dr McCormick:** Of course, but what she had asked to happen had happened. Then we had a situation where the team — as was recorded in the email — did not believe what it was told. They did not identify the issue and — I am guessing here — with the number of conversations that may have happened and the number of other things that were going on, there would not have been an explicit obligation to go back to the Minister and say, "We've now met that individual". I do not know exactly how it arose, but there is no standing obligation in that sense. If it had it been known that it was significant and if the Minister had said it was — I do not think the substance of the point was explicit in the conversation, but there is no evidence to support it. To me, this is understandable in the real world.

**Mr Kearney:** In parallel to that, we established at the last hearing that lower members of the Department became very clearly aware that there was something wrong. On the one hand, we had lower members of the organisation becoming aware that there was something wrong and attempting to do something about it, and over here, in parallel, we have a situation where the Minister has initiated departmental members' attention to deal with a complaint or information that has come in to the Department and it goes nowhere. If there were two parallel processes, I find it inconceivable that more senior people would not have copped on to there being a problem at an earlier stage.

**Dr McCormick:** Again, I do not think they were parallel; the two points you make were at different times. The approach to the Minister and the meeting with the person happened in October 2013, and

the evidence of concern at a more junior level comes, as you said, in the handover note in May 2014. It was the same person, but the events were at different points in time.

**Mr Kearney:** OK. Let us take all of it back into the system. I want to pick up on a point that was left off by Robin earlier about this being an endemic problem. Dealing with the system, I find it inconceivable that more senior members of the Department would not have become attentive to and acted on a situation. I just find it inconceivable.

**Dr McCormick:** What you say is entirely reasonable.

**Mr Kearney:** Do you find it inconceivable? We have agreed that "a lot going on" does not stand up as an explanation and mitigation of why they would not.

**Dr McCormick:** Looking at it, you have to consider what it was like in the real world as people were doing this and other things. Part of the work that I am doing at present is seeking to establish, as clearly as we can, to whose attention the issue was later drawn. In May 2014, there were references to things requiring urgent attention and urgent follow-up; that is recorded in those documents. Who knew about those? The fact is that, at that point, not only was there a handover from two individuals who were leaving, but there was a handover to someone who was temporarily involved and then a further handover. At that point, things were not good in terms of transfer of information and responsibility, but the question stands: what information was known at a senior level? We are getting close to the substance of the fact-finding, so I want to be very careful, because it goes right to the heart of the issue.

**Mr Kearney:** That is OK, but it suggests to me that there are systemic problems.

**Dr McCormick:** I understand.

**Mr Kearney:** I would like to make three quick points to take this on a wee bit. You disputed that the problem was endemic, and you made the comment that collective responsibility is much more difficult to manage. I agree, but for me collective responsibility is also much more significant. When you move into the territory of collective responsibility, that speaks to culture, attitude and mindsets. What I put to you is that, when all of that is flawed or defective, it impacts then directly on systems. If the culture is flawed and people's mindsets are distracted or not connected up, you do not have effective systems, and, when systems are wrong, there is an endemic problem. I do not think that you can separate your astute observation about collective responsibility from systemic and endemic difficulties arising from a mindset and a culture that, I suspect, were the backdrop to what went wrong with Bytel, and that is where you find the connecting thread right through to RHI. I put that to you.

**Dr McCormick:** That is a cogent summary and accords with exactly the kind of case study that a good business school would use to show why organisations go wrong. I can think of parallels where people have drawn out that analysis. Applying the thought to the organisation in the period 2013-14 through 2015 until now, we are aware of the issue. There are several things I would say to that. I developed a line of thinking when I was in the Department of Health — the Health Department is full of difficult risks to manage — and my line to the chief executives was, "I expect you to manage risks, but, if you have a risk that you cannot manage, you have the right and responsibility to tell me as principal accounting officer". I use the example of the Ulster Hospital. John Compton, who was chief executive of the trust, told me that there was an issue that needed to be managed, and as a result of that we re-prioritised the capital programme. He said that there was a risk that needed to be sorted, and we acted on that. That is the best example I can give of it working positively. It did not work in this case. People knew that a risk existed and did not escalate it.

Is that an issue in relation to internal culture? It probably is, and the responsibility on us as leaders is to say, "Challenge". Everybody has to have permission to challenge. Everybody has to have permission to raise issues that disrespect authority. Governance only works when every member of staff has the right to say to the most senior, experienced, intimidating senior officer, "You are doing that wrong". We as senior officers have to be prepared to take that, listen and be provoked to think. That is absolutely vital if these things are to work, and in this case it did not work.

I would still argue that the problems that we are talking about here are not endemic, because there are aspects of the Department's work where lessons have been learned in other contexts and we have established systems and procedures. So, yes, it goes, exactly as you said, to systems. We have to

have effective systems. The solution to this kind of risk management challenge will be in having effective systems and the right people in the right positions, people with the training and the mindset. Culture and attitude are fundamental, and there has to be an inquisitive and challenging attitude in everything that we do. I was taught when I was in the Department of Finance in the 1980s that you need only two words in your vocabulary. The first word is "why", and you keep asking, "Why?". If someone says, "I want to do this", you keep asking "Why?" until you are fully convinced. In this case, the question was not sufficiently asked. We need to work on that.

**The Chairperson (Mr Swann):** Was it ever asked?

**Dr McCormick:** No.

**Mr Kearney:** I have an observation and one quick question.

**The Chairperson (Mr Swann):** Very quick.

**Mr Kearney:** It is a yes-or-no question. My observation is that I find it deeply alarming that we are having this conversation about the direction of travel of the Department within our institutions that is meant to act as the powerhouse of economic innovation, economic policy, growth, productivity, investment and the development of skills. To add to that, it is some 18 or 19 years after we have had a transfer of powers to the local Executive.

**Dr McCormick:** That is why I say that there are a large number of areas where the appropriate approaches to governance and systems are effective and working. There are some similarities between the Bytel case and this case that I am well aware of. We need to pay some serious further attention to those. The need to learn the lessons of this case is acute and extreme for us. I really acknowledge the force and gravity of what you have said, but I do not think that it applies to the wider generality of functions. We are also in a process of bringing together the established methods in DEL as a Department where, again, attention has been given to governance and governance practice, and we are still bringing that together.

This whole episode has been a major blow. It has given us more pause for thought than anything that I can remember. However, I reassure you that there are lots of things that work in our governance systems, partly because we have been through the learning processes from cases as far back as the 1980s that are still remembered as learning cases in relation to aspects of investment in the economy and innovation. We know how to do lots of cases and we continue to do them well, but this one went very badly wrong.

**Mr Kearney:** This is my last question, Andrew, and I hope that it will get a yes-or-no answer. Thanks for your indulgence, Robin. In your last presentation, Andrew, apart from references to a lot of stuff that was going on, much of what was offered by way of explanation came in the form of design flaws, misunderstandings, assumptions, weakness and thoughtlessness. Do you think that that is an acceptable explanation for the public when the financial implications of this scheme start to impact on departmental budgets and our overall block grant?

**Dr McCormick:** No, and therefore we need to do an awful lot more about it.

**The Chairperson (Mr Swann):** The figures that I mentioned earlier are £1.4 million from apprenticeships, £600,000 from Assured Skills and £1.7 million from Invest NI to meet a £3.7 million transfer across to RHI.

**Dr McCormick:** Those will be savings that have been redistributed, not cuts. They are opportunity costs, so the point that you make stands.

**The Chairperson (Mr Swann):** Members, there are a lot of people looking to ask questions here. Can I have questions? I am happy to take threads of questions, but I do not want statements.

**Mr McMullan:** I have three very quick ones. In the meeting with the whistle-blower, did the whistle-blower state that any particular application was wrong?

**Dr McCormick:** Not that I am aware of. I do not think so.

**Mr McMullan:** Are there minutes of that meeting?

**Dr McCormick:** There is not a detailed record of it.

**Mr McMullan:** Are there minutes of that meeting?

**Dr McCormick:** No.

**Mr McMullan:** No. There are no minutes of that meeting. I am astounded. I am sitting here listening, and you keep talking about the real world. I put this to you: are you in the real world? I say that in the nicest possible way. You keep telling us of lessons learned; lessons should not be learned here at all when working with a programme of this magnitude. You keep saying that you asked the question, "Why?". We have no minutes, and it was the same the last time with Ofgem: no minutes. You did not go back to the Minister with an answer. You did not believe the whistle-blower. How, all of a sudden, when the programme changed, was there such a big influx of applications at that one time — at that one time, in the real world?

**Dr McCormick:** In the real world, that was because we had created exactly the conditions that would give rise to that.

**Mr McMullan:** In what time frame?

**Dr McCormick:** The change was announced in early September 2015 — the decision to introduce tiered tariffs. That did not take effect until the middle of November 2015, so there was an ideal time period for a rush of applications to come in. We had not understood that risk in August 2015.

**Mr McMullan:** You did not understand that risk, going from what you had to open season in eight weeks. We are talking about eight weeks. When you put that out to the public, what was the volume of applications?

**Dr McCormick:** Have you got the figures, Heather? When the spike of applications happened —

**The Chairperson (Mr Swann):** It is 8 September 2015.

**Dr McCormick:** There were several hundred applications. The total of the installations that were applied for before November 2015 was 1,800, and nearly half of those came in the last few months because there was such a rush.

**Mr McMullan:** Yes, such a rush. Nobody in your office at the high grades — the ones that Declan talked about — who oversaw it all worked that out before you did that?

**Dr McCormick:** There was no understanding of why there was such a rush of applications, because the tariff point still had not fallen into place. We knew that there would be some, but the sheer scale was not anticipated. In fact, it was not anticipated when we had discussions in July, August and September. Certainly, if we had known then what we know now, the advice would have been to close the scheme down much more quickly. There is no question about that.

**Mr McMullan:** Where did the order come from to close the scheme down?

**Dr McCormick:** It became clear in June/July 2015 that there was a major issue, that the budget had been exceeded and we had to do something. We put the advice to the Minister, we had discussions with the Minister and we proposed urgent action to close it off.

**Mr McMullan:** Who proposed it?

**Dr McCormick:** That was put forward by officials.

**Mr McMullan:** By officials at the meeting?

**Dr McCormick:** In discussion and in a formal submission to the Minister in July 2015.

**Mr McMullan:** Was that minuted?

**Dr McCormick:** Yes. There is a formal submission to the Minister.

**Mr McMullan:** Can the minutes of that meeting be seen?

**Dr McCormick:** There is not a formal minute of the meeting with the Minister; there is a record of the decision taken. The record is very clear as to what happened. There is no question about what happened in the period during June/July through to September 2015. The difficult point for us is that, even at that stage, there was a gradual trend of increase in applications, but there was nothing that would have given us the expectation of the very rapid increase in applications that happened after the announcement.

**Mr McMullan:** Was anybody who took the decision not to believe the whistle-blower involved in the decision to close the scheme?

**Dr McCormick:** There had been a complete change of personnel between those two times, so no one was directly involved.

**Mr McMullan:** Nobody was involved with the whistle-blower who was also involved in closing the scheme down.

**Dr McCormick:** No one who had met them in October 2013. Again, I am being careful here. The documentary trail shows that the same individual sent further emails. There is an email of May 2014 and a further email of March 2015, by which stage the people in post today were in post. That further correspondence from the individual came in but was not drawn to attention. I did not become aware of it until a few weeks ago.

**The Chairperson (Mr Swann):** OK, Oliver.

**Mr McMullan:** I appreciate that. Thanks, Chairperson.

**Ms Gildernew:** My question is along the same lines. You are very welcome, Andrew and Heather. I find it hard to understand it all. I am looking at an email that is dated October 2013 and a follow-up email from June 2014. We have heard from you today that demand escalated in 2015 and that you sought budgetary cover rather than try to find out why, when the reasons why were very clear and were shared with a small team. I cannot understand that.

I accept, Andrew, that you did not come into the Department until 2014. A small team was dealing with this, and points were made that very clearly said why, yet, when the demand escalated, there were shrugs of shoulders and people saying that they did not know why demand had escalated but they would seek budgetary cover for it.

I want to ask you, Andrew, about the ongoing fact-finding investigation. As part of that, are you looking at how the scheme was marketed and how the information was put out there? You said that half of the applications, or thereabouts, came in one spike. Where did the people who applied during that period hear about the scheme? How did they hear about it? Who was selling it? We have asked a number of times for information that has not been given to us. How many of those applications during the spike — the ones that we are now worried about and that are having a major impact on the budget — were for five boilers when one would have done? Some of them might be going to domestic installations. How many of them involve windows open and empty sheds? If I was looking at anything, I would be looking at the spike, where the issues were generated and why the budget that we have now for a considerable period has been so heavily impacted by this scheme.

**Dr McCormick:** We do not have details of the extent of those issues because what we have from PricewaterhouseCoopers is a sample. You could extrapolate from that, and what it found was that around half of the inspections that it carried out had one problem or another in categories 2, 3 and 4, as in their report. However, that is from a sample, so we cannot know how that applies to the generality of the 2,000 installations. I do not think we have precise detail as to which of those were in the late applications. The figures are, of course, in the Audit Office report, so there were 485 in

October and November 2015. That was the spike. It is not as much as half, as I said, but it is still a very large number.

Again, we do not have tracking of the precise cost of those going forward. We can try to produce some further analysis of that for you, and we are happy to do so. All that shows is that, going back to the email trail, the point was made, and it was very clear and very straightforwardly put in those emails as to what was going wrong. My concern is to establish as best I can why that was not acted on once it became known, who was told and why it was not acted on. I am pursuing the evidence on that, and that is of the deepest concern from my point of view.

**Ms Gildernew:** We may come back to this later.

**Mr McCrossan:** I have a few thoughts on this. First of all, the more I listen to this, the more nothing ever seems to add up. We are going round in circles, and some of the questions that have been posed by other members show that we are going round in circles and still not getting to what exactly went wrong. No matter who presents before the Committee, it is the same thing. To go back slightly, when did the Minister flag up with the Department the concerns about the scheme, or did the Department flag them up with the Minister? I just want to clarify a few things about those concerns. Did the Minister flag up with the Department that she had concerns as a result of someone bringing it to her attention? Is that right?

**Dr McCormick:** No, the individual approached the Minister in October 2013. I have no detail as to the nature of that conversation, but the right thing happened in that, as soon as possible after that — I think that it took a month — there was a meeting with officials. That was one major opportunity for the concerns to have been identified and addressed. The longer-term perspective is that the focus came on to this much more fully when the extent of applications began to increase such that the budget came under pressure in March 2015, and that is when people had an issue that had to be acted upon. It should have been acted upon earlier.

**The Chairperson (Mr Swann):** Daniel, the point about the Minister and the whistle-blower has been addressed in previous packs.

**Mr McCrossan:** Just for the sake of openness, if that was identified in 2013, someone saw the train coming down the track very clearly. The Minister met with, and brought it to the attention of, senior officials. I am sorry for covering old ground, but it is important to highlight that. They were people in very high-ranking positions, as Trevor highlighted, and no one got back to the Minister after that. Are we right in saying that?

**Dr McCormick:** I —

**Mr McCrossan:** Just a second, Andrew; this is very important.

I am looking at various things and listening to what you are saying about living in the real world. Again, Oliver touched on that. I do not think that anyone in the Department is in the real world at the minute about what exactly happened and about what is an unprecedented scandal. It is beyond belief. I cannot understand how no one got back to the Minister about this.

The other thing is that "fact-finding" is a very loose term. I could give a few hard facts across the table that you would not want to hear, but the public are clearly stating their complete disgust at what has happened. The credibility of this institution has been damaged as a result of the incompetence of the Minister, the Department, Ofgem or others. Why have no disciplinary procedures been put in place? If this was a private organisation —

**The Chairperson (Mr Swann):** Sorry, Daniel, the point about disciplinary issues and where that is at this stage was covered in closed session. I know that you were only here for the open session. We had a closed session earlier, and we covered that. This is what we can cover and what we can talk about.

**Mr McCrossan:** It is still important, Chair, to ask why. Whether it is in open session or closed session, the public deserve to know why no one has been held to account for this disaster.

**The Chairperson (Mr Swann):** It was covered in Andrew's opening statement as well.

**Dr McCormick:** It is in my correspondence. My letter of 4 November explains that.

**Mr McCrossan:** I was at a prior Committee meeting, so I apologise for being late.

**The Chairperson (Mr Swann):** The letter covering all that is in there.

**Mr Butler:** Thank you, Andrew and Heather. I want to pick up on the term "endemic", which was used by the Chair and Declan. I have been thinking about this since our first sessions. I will ask a question without making a statement. How significantly does the turnover of Department staff at all levels weaken the Department's ability to design, install and manage schemes of such significance as the RHI programme, given that, a couple of minutes ago, you indicated that there had been a complete change of personnel? If I was running a business, I certainly could not sustain such a turnover of staff and, to my mind, there would be a weakness in that corporate memory. That is one question. To finish that point, it has also been stated, Andrew, that there was no formal project-management system in place to do this, which is unforgivable. There was no senior reporting officer, and that, I think, answers some of our questions officially. If there was no senior reporting officer, who had the responsibility for appointing one for a scheme of such significance?

**Dr McCormick:** I acknowledge completely that there is a risk to corporate memory when there is discontinuity in staffing. That is a known risk. Everywhere I have worked throughout the years, the risk to business continuity through personnel is high on the list. It was undoubtedly a factor in what has gone wrong here. I would infer that some of the material came to our attention because an effort was made to transfer information at the time of a handover, so that is what was at the heart of that documentation. What we have learnt is that that did not work. It should have worked; it should have been a way of compensating for the fact that there was such a significant change. Not all the changes were simultaneous, and there was scope for some further discussion, so I do not think that it is an adequate explanation; but it is something that we know of as a risk. For example, when we were making the changes to create the Department for the Economy in this past May, we had a lot of changes and some people were retiring or leaving the service under the voluntary exit scheme. It was an acute challenge for us, as senior managers, to make sure that, in each and every part of the organisation, there was at least some degree of business continuity. Also, we said to people: just because you have moved to a new job does not mean that your former colleagues might not need your memory. "Be available" was part of our consistent leadership message at the time of the departmental reorganisation. I cannot guarantee that that has been 100% effective, but we had to try to manage that risk. The point you make about discontinuity is very important.

Sorry, can you remind me of your second thread?

**Mr Butler:** To my recollection, it had been intimated that there was no SRO, and you certainly accepted that there was no formal project-management system or principal in place. My question was, whose responsibility would it have been to appoint an SRO to a scheme of such significance?

**Dr McCormick:** If we had this to do over again, it would be my responsibility to make sure that, for something of this scale, there was a senior responsible owner (SRO) of the project. Some aspects were informally owned by the energy division at that time, in the early days. There was certainly some detailed involvement, but we do not have the kind of process, record and system, including a risk register, an issues log, and all the good practice of Projects In Controlled Environments (PRINCE) 2 methodology are not visible in the record. That was not done, and it should have been done; but it is the sort of thing that we really need to take out of this and do right in the future.

**Mr Clarke:** I return to Michelle's line of thought about the whistle-blower. I am not sure whether I am permitted to ask this — I take your guidance on that, Chair. I am picking up that the whistle-blower was within the Department. If so, what grade was the whistle-blower?

**Ms Cousins:** No.

**Mr Clarke:** The whistle-blower was not in the Department? OK, sorry. I picked that up wrongly.

**Dr McCormick:** It was not, strictly speaking, a whistle-blower; it was an external source who is to be commended for having come forward.



**The Chairperson (Mr Swann):** I return to Robbie's point about the SRO. Was it common practice in the Department at the time to appoint one?

**Dr McCormick:** I do not know exactly. I think there were a number of aspects where there were projects of that type. Let me check that and come back to you on that point.

**The Chairperson (Mr Swann):** If there are, can you let us know what was the value?

**Dr McCormick:** The value of the projects? Yes.

**The Chairperson (Mr Swann):** What value does a project have to be for someone in the Department to deem that an SRO is necessary; they thought that this one was not.

Andrew, I come back to Declan's point. There was a lot going on, and you have used that reason, excuse or whatever you want to call it. You keep mentioning the domestic renewable heat incentive. What is the value of the domestic scheme?

**Dr McCormick:** It is a small fraction of the value of the non-domestic scheme. Bear with me.

**Ms Cousins:** The value for the domestic scheme is £3 million a year.

**The Chairperson (Mr Swann):** Over 20 years?

**Ms Cousins:** No, seven. The domestic scheme is only seven.

**The Chairperson (Mr Swann):** So a complete scheme worth £21 million was a bigger distraction than a scheme that could potentially cost £1.18 billion. That was taking up more officials' time. Is that because it was simpler and easier to understand?

**Dr McCormick:** We were behind our counterparts across the water in introducing both schemes, and there was a strong desire — it was a ministerial priority — to get the domestic scheme in place, and that is understandable. Ministers have the right to expect that what they ask us to do is done and done properly. There was a strong priority to do that. The context was that the problem with the non-domestic scheme at that time, up to March 2015, was that it was not working. Nobody was applying, so it was necessary — Sorry, I did not come back on the point about advertising. Advertising was being done to try to improve take-up.

The situation was that £25 million had been specially allocated by the Treasury and we were not spending it. As officials, we get plenty of criticism for failing to spend money and handing it back to the Treasury. Our attitude was that we had the domestic scheme that needed to be brought in so that people could benefit, we could pursue that aspect of renewable heat, and, if anything, we needed to find a way of getting that wretched non-domestic scheme to happen — we questioned why it was not happening. We had an advertising campaign. Most of the advertising money was spent on the domestic scheme rather than non-domestic scheme, but I think that something in the order of £40,000 or £50,000 was spent on advertising the non-domestic scheme, and that improved uptake. That was —

**The Chairperson (Mr Swann):** On the non-domestic scheme or the domestic scheme?

**Dr McCormick:** — going on at the time. The view and the concern were about why it was not working, and we questioned whether the tariff was not good enough. That was seriously the thought. It is unbelievable to say that now, but the observation was that we had introduced the scheme in 2013 and had a trickle of applications. Not much was happening, and we asked why it was not working. Very wrong conclusions were drawn, but they were drawn.

**The Chairperson (Mr Swann):** In some of your earlier comments, you mentioned that there were other voices at the time as the domestic scheme. Expand on that.

**Dr McCormick:** The consultation on phase 2 of the RHI covered the introduction of the domestic scheme and some development and refinement of the non-domestic scheme; it was quite a large consultation document. Some of the comment at that stage was that the tariff was not large enough.

The renewables industry was arguing that it needed more help to get it moving. One voice said, "Here is what is wrong" — that was the person who was saying exactly the right thing and to whom we should have listened — but at the same time others said that it was not good enough and asked why they could not have the English tariff, which, at that time, appeared more generous.

**Mr Kearney:** Andrew, it is possible that, at any stage in the middle of what you described, a commercial interest began to drive the scheme and that it was, in fact, compromised as a result of overriding commercial interests that sought to profit an advantage as a result of the spike and the increased expenditure? Is that an issue that you have considered?

**Dr McCormick:** Yes, it is an issue that we are very conscious of and thoughtful about in considering how it happened and in explaining how we got to where we are. It is also a point that we are very thoughtful about in considering the options going forward. There are some very good aspects and some in which business models for commercial activity are very effective. It works well in some respects. Then, on the other hand, there are aspects where, as PwC drew out in its report, the commercial activity appears to be dubious to say the least. We have to look at all those and be thoughtful — a bit more streetwise — about what goes on, and then think very carefully about the right thing to do going forward.

I am clear that there were aspects where an opportunity was taken because we had not understood what was so attractive about the tariff. The simple point that the tariff was higher than the cost of fuel had not been recognised and understood in the Department; it should have been. I am in no doubt that a large number of commercial entities were very well aware of it and were, therefore, highly motivated to maximise their access to the business.

**Mr Kearney:** Are you focused on the potential for that motivation being driven as a result of some of what I consider to be systemic or endemic difficulties in the Department? Are you looking at that flank?

**Dr McCormick:** Yes, we are looking very hard to make sure that this vulnerability does not apply anywhere else. We designed this vulnerability pretty perfectly, and we are now looking at everything else that might be of a similar nature to make sure that the inherent design flaws in non-domestic RHI are not there. We have asked those questions of every other major scheme that has any flow of funding and have checked and assured ourselves. The domestic scheme is not perfect, but it does not have anything like this vulnerability. There is nothing else that we are doing that has this kind of vulnerability. We are very conscious of that point. It is one that the Minister puts to us and puts us over, as you would expect.

**Mr Kearney:** I will finish on this point. You may not be able to answer today, so I invite you, if necessary, to engage with the Committee on this at a later stage. I, and other members of the Committee, find it extraordinary that this spike took place. I find it impossible to believe that it has not been driven, and that there is not some kind of commercial or profit imperative acting as a driving dynamic. I find that concerning. If that did happen, it is important that the Committee is satisfied that you have got to the bottom of it; if not, then it is important that we have a very clear explanation of how the spike took place. It did not happen by accident or by osmosis.

**Dr McCormick:** I am afraid I have to say that it also did not happen illegitimately. We had created a legitimate opportunity for people to apply, and if some organisations saw that opportunity, met the deadline and fulfilled the conditions, that was legal. In fact, we were obliged to pay. I say that, knowing that it makes it all the more serious in relation to our role and difficulty in that context. You cannot blame a commercial organisation for making the most of an opportunity that we created. I think that your point stands, as a matter of fact.

**Mr McMullan:** Did anybody argue against it?

**Dr McCormick:** Against?

**Mr McMullan:** Doing what you did, advertising it to change the whole dynamics.

**Dr McCormick:** No, and, in the context, there would not have been a reason to do so, because at the time it was happening the thing was not working. We were saying that we have introduced the

scheme; gone through all the fuss; got access to quite a good budget, but it is not happening. It was totally rational to advertise in that context.

**Mr McMullan:** Even when whistle-blowers told you that this was going on, nobody took that into consideration. Was Ofgem party to all this?

**Dr McCormick:** Again, Ofgem was aware of the pattern of what was going on. Part of what set me on the course of initiating the fact-finding exercise was the further factor of the evidence that had emerged that Ofgem had drawn attention to the risk of over-incentivising or that the tariff was too generous. Ofgem had drawn attention to the fact that if we had wanted to introduce tiering, it could have done so. So, credit — genuine credit — to Ofgem in relation to the information it drew to our attention in the period in early 2014.

**Mr McMullan:** So, —

**The Chairperson (Mr Swann):** Oliver, we have a section on Ofgem coming up, just before you go down that road. Is that all right?

The discussion winded up after we started to talk about whistle-blowers. You mentioned in your opening statement about another whistle-blower. Where has that case reached at the minute?

**Dr McCormick:** It is still under consideration. As to the detail of that, we have discussed the principles affecting that case, and a number of other cases in the PwC report, with our lawyers and with Ofgem. There is not a full meeting of minds as to exactly the right way to see it, so we are looking at further legal advice being required as to whether what happened in that individual case is legitimate.

Again, it is important that we apply to that individual, as to all the others who have been inspected by PwC — sorry, that individual was not inspected by PwC, but by Ofgem — totally fair and objective processes. If there is an opportunity to claw back money or constrain something, we should do so, but we have to act fairly and properly in relation to every individual.

**The Chairperson (Mr Swann):** It is not the same case that is referred to in the PwC report.

**Dr McCormick:** No. The whistle-blower case came entirely separately. It was drawn to Ofgem's attention separately in June, before the PwC exercise even began.

**The Chairperson (Mr Swann):** As regards Ofgem and whistle-blowers, we had quite a contracted conversation. When Ofgem seemed to be investigating them, it did not call them whistle-blowers, it had another phrase. Is there any duty on Ofgem to report to the Department if it has concerns regarding any application?

**Dr McCormick:** The administrative agreement with Ofgem implies that it should be bringing any such case to our attention. We are a bit disappointed that that did not happen. We are aware of the exchange that you had with Ofgem last time, but the cases that it was describing had not been drawn to our attention. Do you have the chapter and verse, Heather?

**Ms Cousins:** I have, indeed. The administrative agreement states:

*"Ofgem shall notify DETI immediately in writing if any financial irregularity in relation to the NIRHI is suspected, and indicate steps being taken in response."*

There has been no correspondence with us on any of the 10 cases that it has been investigating.

**The Chairperson (Mr Swann):** So, who is at fault?

**Ms Cousins:** We need to explore with Ofgem as to why it did not fulfil it. There is fault on the Department's side in not having properly monitored compliance with the administrative agreement. I think that the view was that it was a partnership between the Department and Ofgem, and that is how it was handled, as opposed to a more formal, contractual-type agreement.

Improving governance is a high priority for us. That is also reflected in the recommendations from PwC, which we have accepted in their entirety. We have said that governance between the Department and Ofgem will be improved by 30 November 2016; so we intend, by the end of this month, to have the governance between ourselves and Ofgem put on a more regular and normal footing.

**The Chairperson (Mr Swann):** You paid Ofgem £1.5 million to administer the scheme, and it has not been telling you of suspected fraud.

**Ms Cousins:** That is something we will have to discuss with Ofgem. We have just recently found that it has not informed us of these cases.

**The Chairperson (Mr Swann):** In your meetings with Ofgem, and I know they have started to be minuted only recently, and we went into great detail on that with Ofgem, did nobody from the Department ask, "Have you had any concerns raised? Are there any fraud investigations going on?"

**Dr McCormick:** It would appear not.

**Mr McMullan:** Will you go over that arrangement again with Ofgem? You said that it was more of a partnership than a formal arrangement. Will you elaborate on that?

**Ms Cousins:** There is a document called the administrative agreement. There is a written document setting out what each side should provide and their roles and responsibilities.

**The Chairperson (Mr Swann):** Oliver, it is in the pack.

**Ms Cousins:** It had not necessarily been tabled at each meeting. There were no key performance indicators drawn up. It has not been managed formally; it has been informal. As you saw in the previous evidence sessions, there were discussions and they were not minuted. All that has to change and this has to be managed as if it were a contract.

**Mr McMullan:** I understand — with minutes etc.

**Ms Lockhart:** There does not seem to have been any cognisance taken of the consultation that we mentioned on the first day. I know that it was commissioned by the Department. At what point was the consultation commissioned? There were no outworkings of it and no recommendations came forward from it, but I assume that the consultation was to try and drill down into these issues.

**Dr McCormick:** There were several consultations in the history of the scheme, focusing on the consultation in 2013 when the Department wanted to move forward with phase 2 of RHI. The next step after the introduction of the non-domestic scheme was twofold. It was to introduce the domestic scheme and then to look at some expansions and refinement of the non-domestic scheme. So, that consultation happened, and the approach from the external party, if I may use that phrase rather than "whistle-blower", happened during that period. The follow-up was to proceed with the introduction of the domestic scheme. So, all the attention post-consultation was on the introduction of the domestic scheme. In fact, some aspects of the consultation on non-domestic were used in the new crisis that emerged in the autumn of 2015.

I have seen a number of references to the Department continuing to plan to pursue the aspects of the non-domestic scheme, which had been the subject of consultation in 2013, but, in fact, nothing happened. The point of concern there is that that covered aspects of cost control. So, cost control was consulted on after things went wrong and after we reached the stage where, in practice, it was impossible to recover. We made use of that in not needing to consult on the introduction of the tiered tariff that came in in November 2015. So, we got some advantage out of it, but that was not a normal or proper process. What you are saying is absolutely right. There was not a normal follow-up to that consultation on the non-domestic side.

**Ms Lockhart:** So, again, it is another —

**Dr McCormick:** It was a missed opportunity. There is no question of that.

**The Chairperson (Mr Swann):** Before we go into some of the other sessions, why did the whistle-blower in the PwC report — the initial one — go to OFMDFM?

**Dr McCormick:** I do not know. I do not know who that person is. They remain anonymous as far as we are concerned. We have the document that was passed to us by the First Minister's office through the head of the Civil Service in January.

**The Chairperson (Mr Swann):** Is that normal practice?

**Dr McCormick:** It happens. You never know. I do not think that it is unreasonable to infer that people felt that the Department was not listening. I do not know. I can only speculate.

**Mr Clarke:** On that one and the other one, you refer to Ofgem. Albeit we have not had sight of them, what were those whistle-blowers claiming? The Department should be at an advanced stage in its knowledge of what was going on; so, what are the latest whistle-blowers claiming?

**Dr McCormick:** The January 2016 whistle-blower made a series of six allegations. That led us to have the investigation, which PwC began and reported on in September. That is "anonymous to First Minister". In January 2016, there was a separate approach, first to Ofgem in June 2016 and subsequently to the C&AG in early October, if I recall.

**Mr Kieran Donnelly (Northern Ireland Audit Office):** Last month.

**Dr McCormick:** That is the individual case that is still under investigation.

**Mr Clarke:** What is the content of that?

**Dr McCormick:** It concerns alleged abuse of the scheme. Then, there are the cases that Ofgem had been dealing with and which we were not aware of.

**Mr Clarke:** Is the alleged abuse of the scheme being investigated?

**Dr McCormick:** Yes. It turned out that, because the allegation had come to Ofgem several months before coming to us, Ofgem had already looked at it and received further information from the individual concerned. It remains subject to further consideration, as I explained earlier.

**Ms Gildernew:** Can I just make a quick observation, please?

**The Chairperson (Mr Swann):** Yes. Go ahead.

**Ms Gildernew:** Ofgem has not covered itself in glory in this. I am not sure that it is qualified to investigate anything.

**The Chairperson (Mr Swann):** Following our previous evidence session, Andrew, that is a very fair point.

**Dr McCormick:** Be assured that we are reviewing and considering the right thing to do in all of these things. In fact today, we have no alternative capacity. It is not as if we could turn something on — like a switch — and, all of a sudden, we would have the capacity to do the things that Ofgem currently does on our behalf. Even if we took the most extreme and negative view, we would not have a quick alternative. We have to look at all of the options. We have to be fair to Ofgem with regard to what it has done and reflect carefully on the limitations of what has been happening. We have great concern about the fact that these cases were not drawn to our attention.

**Mr Clarke:** If you get more spurious — not necessarily spurious — enquiries, how will you deal with them? Given that there has been much in the media about abuse of the scheme, perceived or otherwise, how will you handle those enquiries?

**Dr McCormick:** The main line of investigation has been that in January 2016, the whistle-blower to the First Minister led to the PwC report, which fundamentally upheld most of the allegations that that

person made. The final version came to you, subsequent to my last appearance here, and included an assessment of the limitations in the oversight arrangements that we had had with Ofgem. So, this is a whole body of work for us to consider and advise the Minister on the right things to do in response to all of that work and on how we go forward. The scheme is closed, so there is nothing more to be done in that sense.

**Mr Clarke:** Sorry, I am not concerned about the scheme closing. You said "abuse of the scheme". If I want to allege, anonymously as a whistle-blower, that someone was abusing the scheme, what are you doing with that allegation?

**Dr McCormick:** If we receive any further allegations, then, depending on their nature, they would probably require an inspection, which is what happened. It happened with the individual case that we have talked about a little bit. Certainly, any time we had particular intelligence during the PwC work, we got an unannounced inspection carried out; that is the right approach to this kind of thing. We need to either gear up so that Ofgem does things exactly as we want it to do, and in a sufficient way to protect all the governance considerations that we have now, or, we need to find an alternative. We are currently looking at all this. It is current, real-time work for us to say what is the right thing to do here. In the meantime, the standing arrangements are available to us. If something comes in and we need something done, we could get Ofgem to do it.

**Mr Clarke:** Just a last point; there are many cranks out there — our offices are inundated with them — who will jump on the bandwagon and want to perceive their own version of events. I am worried that if you are going to respond to every crank who writes to you, given that PwC has taken an interest and has done the cases. At what stage do you start to dismiss cranks?

**Dr McCormick:** You have to look at allegations on their merits and whether there is something credible about them. It is a matter of judgement, and we would —

**The Chairperson (Mr Swann):** Trevor, I think that it is unfair to label everybody as cranks.

**Mr Clarke:** I did not say that everybody is a crank. The PwC has investigated what has been done. We are inundated with people coming to our offices with various things and, whether you want to be associated with calling them cranks, I am happy to call them cranks in some cases. My issue here is —

**The Chairperson (Mr Swann):** Trevor, sorry. Some people have come forward with evidence. I am being careful. I do not want to put people off if they have genuine concerns.

**Mr Clarke:** They might have concerns, and that is where I want to go with this. At what stage do you decide that you will stop continuing to investigate? The next thing will be that we will be talking about a legacy investigation for the RHI.

What I want to contend is that PwC, an independent body, was brought in to investigate all this. People may want to sit at home, as fireside solicitors and everything else, and draw their own conclusions or make spurious claims about individuals. At what stage do we stop spending money following up those claims, given that PwC, which is an independent organisation, has reviewed the scheme and produced a very damning report on it?

**Dr McCormick:** It reviewed a scheme and a sample of cases that were, at least and to some extent, based on a risk stratification. We identified where the most damage might be done if the allegations received in January were true. That is a completed exercise; that is finished and we have no ability to re-engage unless we go back to some kind of new contract. What we do have is the standing arrangement with Ofgem and the standing obligation on Ofgem to investigate allegations. That has to be done on the basis of the assessment of validity. If someone just throws mud, I think it will be possible to recognise that. If they give details, for example a name, address or function that you can relate to the RHI register — the list of applications — then maybe something could be followed up.

What we have to do more fully is to make the decision — it is a big decision for us — on what further inspection regime is needed. Business-as-usual would not mean that, over the 20-year period, you would expect all 2,000 installations to be inspected. A period of 20 years is a bit too late in the nature of the concerns we now face, but we also do not want to overreact. Trevor's point is important: we must not overdo it. Finding the balance is an issue of judgement.

**Mr Kearney:** Ofgem told us that the Department had the same information in May as it had in 2013. It said that it proposed a data-sharing protocol with you in April 2014, and you confirmed that were minuted meetings from November 2015. When Ofgem was asked whether the Department was happy with its audit regime, it said that the Department was happy. Do you agree with that statement?

**Dr McCormick:** It may be that, at that point in time, Ofgem was told that the Department was happy, but we are not happy today and should not have been at any stage. The key point in the initial arrangements set up with Ofgem was a recognition that the Northern Ireland scheme had some important differences from the GB scheme. There was a clear obligation in the arrangements with Ofgem to do a separate risk analysis, including the analysis of fraud risk. It was up to the Department to initiate that, but it is also absolutely clear that Ofgem had an obligation to do that and it was never done. We may have said that it was OK, and there may have been a relationship, including informal and other meetings, that allowed everyone to think that it was. It was never OK. There was a clear obligation to produce a separate risk analysis of the Northern Ireland scheme. That was never carried out and it should have been. It is another of the very bad aspects of this scheme. Would that have prevented everything that has happened? I would not argue that, but it might have helped.

**Mr McMullan:** You put teams out to inspect.

**Dr McCormick:** Yes, we did through PwC.

**Mr McMullan:** Looking at any application today, can you say that it is properly fulfilling its original obligation?

**Dr McCormick:** No. There are so many deep concerns with this. One of our deepest concerns is the evidence from PwC that a very substantial proportion of those it inspected did not fulfil the intentions and obligations of the scheme.

Our obligation now is to assess what we do about that. Do we pursue the remainder of the 2000 and inspect everybody so that we get cast-iron information on each and every case? What else do we do? How do we find a way to deal with this situation? At present, we do not know the extent of non-compliance, and we have to find the right, proportionate and appropriate way to do that. The evidence is that there are some sectors in which everyone inspected was in line with the scheme and fulfilling all the obligations. Maybe there are some aspects where it is OK, but we have quite a lot of unknowns, and we have to find a proportionate and appropriate response to that.

**Mr McMullan:** We know now that a big proportion of them are non-compliant, so why do we not have a team, or teams, out checking them? In one day, a couple of men in a van could drive round and check whether those schemes are compliant. You could do that without a lot of bother and without spending a lot of time wondering what way to check them. That is simplistic, but it could work like that.

**Dr McCormick:** Given that Ofgem requires detailed schematic descriptions and had a degree of back and forward with applicants, the question will be whether they are conforming with what they said they were doing: does the actual installation match what is there? The truth is that effective inspections take a bit of time, and the cost of each inspection is about £1000. It is quite a tall order. We accept the obligation to do the right and effective thing on this point.

**Mr McMullan:** I appreciate that, but the information is widely known — it is public knowledge. We have to be careful: empty sheds are being heated; and houses are being heated. It would not take a £1000 investigation to look at that. That is the point that I am making. I appreciate what you are saying about in-depth investigations.

**Dr McCormick:** That is a fair point.

**The Chairperson (Mr Swann):** Members, I will open it up to other sections.

**Mr Easton:** At the last session, Ofgem outlined to us how the accreditation process worked. Ofgem is based in Glasgow and had no presence here in Northern Ireland. It had no local firm to undertake site visits in Northern Ireland to physically inspect installations. At the accreditation stage, Ofgem had no local intelligence. The whole accreditation process was based on purely desk-based evidence. Why did the Department think that this approach was adequate to approve applications for a scheme that will pay out more than £1 billion over the next 20 years?

**Dr McCormick:** We are still reviewing exactly what the right thing to do about all of this is now. The fundamental point is that Ofgem was in place as the operator of the GB scheme. There was, therefore, every reason to expect that it would have the technical ability, resources and systems to operate the scheme effectively. Local presence is not perhaps the most important issue: Ofgem does not have a local presence in every subregion of GB that is of the same scale as Northern Ireland, and it is not realistic to ask it to do that.

I come back to the point that I made a short time ago, which is that what was of most concern to us was that our scheme was a bit different, and Ofgem tended to operate as though all the procedures for accreditation that applied to the rest of the UK could work fine here. We are clearly now not satisfied. We should have been more concerned at an earlier stage. That is the real problem with all of this. I would not say that the accreditation process is the worst aspect of this. There are clearly some concerns, as has come out in the previous discussions, but, in fairness, they require information exchange and supporting evidence. As was drawn out in an earlier session, it could have been more effective, but we now have to re-examine this and see what is best going forward. Is there anything that you want to add, Heather?

**Ms Cousins:** There was a degree, albeit small, of pre-accreditation checks. When PwC was doing the inspections, it did not use a local firm of inspectors either. At the time, Ofgem was selected and continued in the role because of the experience that it had, which was not available here or elsewhere.

**Mr Easton:** You mentioned a small number of accreditations. Would you not expect the main operator to do some inspections?

**Ms Cousins:** It was doing inspections.

**Mr Easton:** Not very many.

**Ms Cousins:** No. It was doing inspections on the basis of a proportion of installations.

**Mr Easton:** Which it did not meet, is that right?

**The Chairperson (Mr Swann):** Yes.

**Ms Cousins:** It was not satisfactory, but it was not that there was nothing.

**Mr Easton:** It was not satisfactory. Did the Department raise with Ofgem that it was not satisfactory?

**Ms Cousins:** At the time, the Department did not. I think that there was a recognition before that that there needed to be more inspections, and we had been planning to have an additional scheme of inspections ourselves.

**Mr Easton:** The Department did not raise it with Ofgem.

**Ms Cousins:** That is correct.

**Mr Easton:** That is very poor, is it not?

**Dr McCormick:** It is very poor. We accept that this was part of the pattern: concerns that could have been identified earlier were not acted on, and that includes pursuing an inspection regime. There was a long discussion, I remember, on the numbers here. The fact of the matter is that there will always be planning in advance to allocate resources according to the proportion of applications in Northern Ireland. Prospectively, they will have planned a certain number for 2015-16. If they had planned for 3% and then, all of a sudden, the number of applications goes up, by definition, the proportion will go down. The figure of 0.8%, which was a focus of attention in your discussions with Ofgem, was partly a consequence of a time lag. We still probably should have been intervening to say, "Because we now have a higher rate of applications, we need you to accelerate and expand your inspection regime". That is a delay, but the numbers are just a consequence of what happened in those terms.

**The Chairperson (Mr Swann):** Was the Department aware that Ofgem was not meeting its target?



**Dr McCormick:** I think that —

**The Chairperson (Mr Swann):** Yes or no, Andrew.

**Dr McCormick:** No, I do not think so, because, in the period of the spike, as a team, we were dealing with the emerging budgetary consequences and then closing down the scheme.

**The Chairperson (Mr Swann):** The period of the spike was very specific: 2014-15. In the two previous years, were you aware?

**Dr McCormick:** If my memory serves, the proportion of inspections in that period was around the 3% mark. It may have been a bit lower and not exactly 3%. The low percentage, I think, relates to the spike year.

**The Chairperson (Mr Swann):** I want to clarify something that Ofgem was a bit dubious about. You seem to indicate that the level of inspection is 3% of applications.

**Dr McCormick:** Yes.

**The Chairperson (Mr Swann):** Can you check with Ofgem? It seemed to indicate that it was cost of inspection against cost of scheme, which is not a direct correlation.

**Dr McCormick:** We will check that point. I am sorry if I have not followed that carefully enough. It is a fair point.

**Mr Easton:** Ofgem told us that, between 2012 and 2016, it carried out 57 random site inspections, which were the accreditation ones. While it identified problems at almost all the sites, none has been suspended from payment. Do you have any concerns that Ofgem has not been sufficiently rigorous in its site inspections? Did it make you aware that nearly all the sites had issues?

**Dr McCormick:** There is a genuine concern about the extent of information and feedback from Ofgem to us about what it was finding. When the problems began to emerge and we first asked about this, we were told that it had not found anything material. That is recorded in the Audit Office report.

**Mr Easton:** It told you that, of the 57, there was not —

**Dr McCormick:** There was not much to worry about. Again, that —

**Mr Easton:** That is awful.

**Dr McCormick:** That shows to me that the process was not working. When you set that beside what was found by PwC, it is not unreasonable to infer that one possible factor is that all of its inspections had been previously announced. Partly because of the way in which it was working, it would have contacted the applicant and said, "We're going to come and inspect you". As you know from another part of the forest, unannounced inspections matter. What PwC did was unannounced.

**Mr Easton:** Remind me, Chair: did Ofgem say that it made the Department aware of the problems?

**The Chairperson (Mr Swann):** Ofgem said that it made you aware of the problems and concerns, Andrew. You are saying that it did not.

**Dr McCormick:** There was some information coming through. The real point is that there was no big alarm bell being sounded. The information being fed back was not saying, "Oh, we've found a big problem". That never happened because it did not find a big problem. It found some relatively small problems, and I think that there was a degree of awareness of that. However, it was not a big issue in the perception because it did not find —

**The Chairperson (Mr Swann):** In whose perception?

**Dr McCormick:** In either ours or Ofgem's. Ofgem did not find any big problems.

**Mr Easton:** Did it clarify what those —

**Ms Cousins:** When the inspections found problems, Ofgem went back to its system internally, and more information was sought from the applicant. Part of the problem was that, when that information was provided, Ofgem very readily accepted the explanation.

**Mr Easton:** I am trying to get this correct in my head, which can be difficult at times. Ofgem identified problems on almost all of the 57 random sites, which are the accreditation ones. It did not make you aware of any major problems; it made you aware of issues, but it did not really expand on what those were. Is it fair to say that you are not really aware of what those issues were?

**Dr McCormick:** Yes. That is a fair summary, to be honest.

**Mr Easton:** Did the Department not want to clarify what the issues were, or was it happy enough because it was assured by Ofgem that they were not —

**Dr McCormick:** Looking at it in the context of those times, it was not on the radar as a big problem, so there would not have been a pressing reason to pursue and ask a lot more questions. Knowing what we know now, that looks bad.

**Mr Easton:** Do you agree that, because of the small number of inspections, the likelihood of someone being inspected by Ofgem over the lifetime of their claim is relatively small and that, even at that, the regulations are so weak that, if problems are identified, no action will be taken?

**Dr McCormick:** There are a couple of different points there. The expectation is that all sites would be inspected at some stage in the 20-year life of the scheme, but, if you find a problem in year 20, it will not do you much good. Everything, ultimately, should be looked at. As for action and intervention, we have clearly identified that as an aspect of the problem, and it is part of how we definitely could have handled the whole thing better in our relationship with Ofgem.

**Mr Easton:** Is it fair to say that you feel the Department should have been a bit tougher about the inspections?

**Dr McCormick:** It would need to be thought about case by case. Every individual applying has the right to do their best to fulfil their obligations under the scheme, and I think that it is wrong to presume that everyone is either misleading, evading or whatever. There will be a lot of very straightforward cases. We do have a concern about Ofgem enforcing the regulations. Part of what we are doing now, and part of the discussions with the lawyers, is to see what is the right thing to do now: what is fair, what is appropriate and what is proper management of public money here. Now that we know, we can see the thing in such a different way.

**Mr Easton:** A number of cases have been passed to Ofgem from the PwC review. Given the weakness in the regulations and Ofgem's past performance, how confident are you that strong action will be taken?

**Dr McCormick:** A key difference now is that, because this is much more out in the open, and because we are devoting resource and attention from the Department to it, we do not want Ofgem to sign off and resolve cases on a business-as-usual basis. Business as usual is over in that sense. Part of the discussion that I had with Chris Poulton directly on that point is that we now have to engage in assessing the issues and making sure that the assessment of the cases that PwC has drawn to its attention and any conclusions reached are informed by discussion with us. In turn, our view of it will be informed by discussion with our lawyers. We now absolutely need to bear down as effectively as we can, while still being absolutely fair to each individual applicant. There is no prejudice or pre-emptive action here, but we have to make sure that where it becomes clear that an applicant either misled Ofgem in their application in some way or is not fulfilling their obligations — the obligations include the obligation to use heat efficiently, and the obligation that there is an economic value in the heat — we need to continue to pursue them.

**Mr Easton:** Are they being pursued as we talk here?

**Dr McCormick:** Absolutely. That is what we need to do.

**Mr Easton:** Are you aware of any cases in which there has been abuse of the contract?

**Dr McCormick:** There are a number of cases in which there is potential evidence of that. We are pursuing those, including pursuing fuller and more detailed information. It is absolutely right that we do that.

**Ms Cousins:** There are a number of cases in which payments have been suspended pending that.

**Mr Easton:** Are we allowed to get a rough number at the moment?

**Dr McCormick:** We can provide that, for sure.

**Ms Cousins:** We are working through category 4 and then category 2 and category 3. Chair, I wish to clarify that the number of inspections was based on 3% of the number of GB inspections. So, if there had been 100 GB audits, there would have been only three Northern Ireland audits. All the funding was based on 3% of the GB scheme.

**The Chairperson (Mr Swann):** If there were very few audits in GB, would we have had even fewer?

**Ms Cousins:** Yes.

**The Chairperson (Mr Swann):** Who set the GB level of audit?

**Ms Cousins:** Presumably, DECC set it.

**Dr McCormick:** I assume so.

**Mr Dunne:** Surely that should be based on risk.

**Ms Cousins:** We accept entirely that it should be based on risk.

**Mr Dunne:** That is where the whole thing went wrong. You talk about risk surveillance, and the surveillance of a project is based on risk. It works on the history: if a problem comes up, you reassess your procedure, and, on the basis of the risk, you step up your inspection system. You said earlier, Andrew, that everything should be looked at. I hope that you are not saying that every one of them will be looked at. There is no need to look at every one. Look at the system and procedure and work on a sample basis. Through statistics you can assess how efficient or otherwise the scheme is. Obviously, it has not been managed properly.

**Dr McCormick:** The hard fact is that there was not a proper assessment of the risk. Nobody had seen the risk arising from the absence of a tiered tariff — we had an overly generous tariff — so our risk assessment was fundamentally flawed. That is where this went wrong. The second phase of site inspections, which PwC did, was very much based on risk stratification. That is exactly what we did.

**Mr Dunne:** We got this last time. The inspection standards were different for PwC and Ofgem. Everybody should work to the same quality standard. The standards seemed to be different for Ofgem, although the fellows from Ofgem seem to think that they had done a reasonable job against what they had been tasked to do. There was evidence that they had not met all their targets — a lot of auditors do not — but they seemed to think that they met the limited specifications that were set. However, the PwC standards were a lot broader. Do you accept that they were working to different standards, Andrew?

**Dr McCormick:** We commissioned PwC because we had the allegations, and they made us focus very hard on the scope and nature of the work that we were asking it to do. For that reason, the standards were tougher and stronger than in the business-as-usual approach that had been applied by Ofgem. That is what happened. It goes back to the fact that the right thing to have happened from the beginning would have been a formal risk assessment, including of fraud risk, by Ofgem. That

should have happened at the inception of the scheme and been built in from the beginning. That might have meant our having to pay for and secure a more extensive inspection regime from the outset. That is probably what should have happened, but it did not.

**Mr Easton:** Ofgem told us that it raised the issue of cost control and tiering at the beginning, in its feasibility study, and, in particular, at a meeting in January 2014, when it started to see some high usage. Have you any record of those issues being raised, and, if so, can you explain why the Department failed to act? Did the Department see this feasibility study?

**Dr McCormick:** The Department did, yes. It has not been established to me that it included specific identification of the risk arising from the absence of a tiered tariff, but I am open to correction on that.

**Mr Easton:** Will you look into that and let us know?

**Dr McCormick:** Absolutely. I will look into that directly. I acknowledge that there was a discussion in 2014, as they said. It was recorded in the handover note that, as part of the fact-finding exercise, there were discussions with Ofgem in the period when the risk of over-compensation and the consequences for the behaviour of applicants were drawn to the Department's attention. Yes, Ofgem did that, which is to its credit. There is no question about that.

**Mr Easton:** You will look into the feasibility study.

**Dr McCormick:** I will do that.

**Mr McMullan:** You said that the inspections were expensive, but, last week, Ofgem said that the cost of inspections ranged from £100 to £900. You quoted a figure of £1,000.

**Ms Cousins:** We were talking about the inspections that were done as part of the PwC work, which we have acknowledged were more extensive than the Ofgem ones.

**Mr McMullan:** Would you say that the inspections done by Ofgem were not up to standard?

**Dr McCormick:** It is possible to infer that. Maybe, if the scheme had not had the deep vulnerability of the acute value-for-money risk arising from the tariff — vulnerability that does not exist across the water — a £100 inspection would be sufficient, or it could be more a case of business as usual in a more benign context. I am not sure it is inherently wrong, but I will say that our experience at present is that, to get to the bottom of the issues, it is more about going to the higher level. Again, we need to do more, so if we can find a way to do more fully effective inspections at a lower cost, that is what we should try to do.

**Ms Cousins:** It is our intention to procure the inspections directly ourselves so that we know we will get value for money.

**Mr McMullan:** You said there are a number of cases where payments have been suspended. Was that suspension done by you or Ofgem?

**Ms Cousins:** Ofgem.

**Mr McMullan:** Ofgem. So, they are still sitting out there, and Ofgem suspended them. Have they been inspected? If Ofgem's inspections were not up to standard, and it has suspended payments, it is sort of —

**Dr McCormick:** Those suspensions are consequential on PwC inspections. Where PwC has inspected as part of our work and has fed the information across to Ofgem, Ofgem has looked at the evidence from PwC and said, "There is a point to answer there" and has, therefore, suspended payments. So, they are a consequence of the PwC inspections.

**Mr McMullan:** Have any of Ofgem's suspensions been overruled?

**Dr McCormick:** Not to my knowledge, no.

**Mr McMullan:** So some of its suspensions are still there.

**Dr McCormick:** Yes.

**Mr McMullan:** Before PwC?

**Dr McCormick:** Oh, sorry —

**Ms Cousins:** No, these are all PwC.

**Mr McMullan:** These are all PwC.

**Ms Cousins:** Yes.

**Mr McMullan:** OK. Are there many figures?

**Ms Cousins:** We will get you the figures.

**Mr McMullan:** Thank you.

**Ms Gildernew:** Following on from that, does the money from the suspensions come out of the money you are trying to find in monitoring rounds and things like that, or does it come out of the British Treasury's contribution to the scheme? If the money is suspended, who benefits from that: us or them?

**Dr McCormick:** It will be part of our budget, but it is not of a material scale. These are relatively small numbers. We are talking about tens of thousands, I would guess, rather than millions. Part of our determination is to extend this process so that if the scale of gaming or misuse of the scheme is as extensive as the proportion would indicate, you would be starting to get at large amounts of money. But we are not there yet, and we need to take it step by step, because what we do not want to do is take steps that end up losing in court. We have got to do this right and quickly.

**Ms Cousins:** There is a two-pronged attack on this problem. There is the enforcement action as a result of what we have found or what we might find if we extend the inspections. We do not anticipate that is going to resolve our budgetary issues, so the other aspect of it has to be what we can do to bear down on the overall costs of the scheme. That is the bit where we will need very clear and strong legal advice and where we will need to look at all the options and go out to consultation. We cannot, at this moment in time, go into detail on what those might be, because we cannot predetermine the outcome of that consultation.

**Ms Gildernew:** While I accept that, some of these cases may be fraudulent. If you are looking at it from the point of view of finding a way of reducing the cost, the fraudulent ones are the ones that should be looked at. There needs to be a way of finding the people who entered into the scheme to try to make money out of it and those who entered into it according to the ethics by which it was set up, which were about renewable energy, using fewer fossil fuels and finding a way to keep their businesses going in a more sustainable way. I think it is really important that we differentiate between those two sets of people.

I know we touched on this earlier, but can I ask again, Andrew and Heather, for an explanation on discussions and meetings with Ofgem? They were not recorded until November 2015. What initiated them being recorded at that stage? What was the issue that resulted in the meetings being recorded?

**Dr McCormick:** The answer is not a good one. It was because, by that stage, we knew we were in a crisis. Before then, things were ticking over and the issues were not so acute. I think that is just a matter of fact. The recognition of the need for greater formality was in a context where, by that stage, we were having to deal with an emerging and very serious issue.

**Ms Gildernew:** At that stage, did you ask whether it had recorded previous meetings? Presumably, you had done the trawl in the Department, but did it have any notes or any discussions?

**Dr McCormick:** I am not sure whether that question was asked, and it would not have helped us out of the crisis all that much. It is important to pursue it, and we are pursuing it, to get as full an understanding as possible of how we got to where we are, but, in managing the difficulty, that would not have been the top priority, if you understand.

**Ms Gildernew:** Ofgem told us that, after the data-sharing protocol was put in place in April 2014, there were no data-sharing difficulties, but the Department then apparently told the Audit Office earlier this year that you did not have the names of applicants and that that was for data protection reasons. It then took three months for that information to be provided from Ofgem. That does not sound right either.

**Dr McCormick:** I know we have the names as a matter of fact now. I guess that, most of the time, we would not have had a functional need for the specific identification of companies or individuals benefiting from the scheme. That was not part of the perceived role in that period. We have had to acquire more data, partly from the point of view of modelling the possible implications of change and so on in the way Heather is describing. The flow of information from Ofgem was not as sharp as it should have been. That goes back to the fact that, for so much of the time, the scheme was seen as underperforming, and that would not have been that kind of issue.

**Ms Gildernew:** I know we have asked a number of times for the information on the names of applicants. I am still very much of the view that we need to see that. This is the Public Accounts Committee, and any papers we get are all identified. If they are leaked, we will know where they are leaked from. I still think we need to get a handle on the names of those that benefited from the scheme.

**Dr McCormick:** As I have said in correspondence, we are willing to pursue that route, and we have explained how we could pursue it. It would involve seeking the agreement of each individual to release their names to you. If that is what you want us to do, we will gladly do it.

**Ms Gildernew:** That in itself might be a good indicator of where the problems are.

**The Chairperson (Mr Swann):** Andrew, to be clear, you cited data protection as a reason why you could not share. I will just inform you that the Committee has taken legal advice about whether that can be shared, because we are aware that single farm payments and all the rest of it are processed online. I think that the collective view of this Committee is that we see no reason why there is a data protection issue over RHI payment compared with single farm payment.

**Mr McMullan:** Chairman, you can openly find out the payments made under single farm payment. It is not under data protection.

**The Chairperson (Mr Swann):** That is right. Michelle did it when she was Minister.

**Ms Gildernew:** I have data protection in my office because I am dealing with the public. We are all grown-ups around this table, and we all know — I mean anybody who is at the table anyway — the issues. There are issues on data protection that we deal with on a daily basis.

In the last session, Andrew, Ofgem told us that, even if 99% of the heat generated was used to heat a private house, it could still be acceptable for the scheme to fall within the regulations of non-domestic RHI and receive the subsidy for all the heat generated. Do you think that is within the intention of the scheme, and is it acceptable?

**Dr McCormick:** I think it is not within the intention of the scheme. I think its argument is that it is within the letter of the scheme. This is a very active point for our discussions with it and with our lawyers at this present time, because it seems to me that the Assembly created a domestic scheme, and, if the intention was to heat houses, you do that through the domestic scheme. It is a very live point for us.

**Ms Gildernew:** Yes, but the rates were not anywhere near as lucrative in the domestic scheme. You mentioned my time in DARD a few minutes ago. When I was there, we had the farm nutrient management scheme. It was a massive scheme, and it paid out a lot of money. Farmers would come up to me and complain everywhere that they saw me, whether that was at the filling station or at a funeral. They would say, "We can't get the money. We've paid out all this money and have had

contractors in. We've been out a major amount of money to do this scheme. The Department is holding off on payment". When I went back and challenged the Department, it said that, until the final inspection was done and every box ticked, it would not pay out. To me, that was not anywhere near the same output of the scheme. We have learnt that the average payment to every participant in the RHI non-domestic scheme will be around £1 million over those 20 years. That is a huge amount of money. Surely within the definition of the scheme, an inspection regime should have been costed into that so that we could be sure public money was being spent properly. The Department has now paid over £1.5 million to Ofgem since 2012. Do you think that is good value for money?

**Dr McCormick:** It is tricky at this point in time. As I explained, and given the nature of the arrangement, we were paying its costs. That was the agreement we entered into. We have a concern now. At the time it happened, there was an appraisal of that option. Very few options were available within the statutory provisions for who could run the scheme. It does not look good now. We have to make sure that, going forward, we take the right decisions on what to do in the future. Either we have very rigorously enforced arrangements with Ofgem, or we have a different arrangement going forward. There are clearly aspects of this that have not been satisfactory. I think that, in fairness, a lot of the onus is on the Department where it was not requiring the right things of Ofgem, pursuing recordings of meetings or access to information. It was just not working from our side. I think that is part of the reason why it then emerged as unsatisfactory on Ofgem's side. I think we have to accept our share of that responsibility.

**Ms Gildernew:** Andrew, has there been any discussions with, for example, the permanent secretary in DAERA to identify other options? You talked about alternatives. If the PwC bill for an inspection is the guts of a grand and the Ofgem bill is £100, is there capacity within the Civil Service for another Department to take on and do these inspections to find a more cost-effective way of inspecting to the point where we are saving major money?

**Dr McCormick:** No, we have not done that, as a matter of fact. That would be absolutely the right thing to do.

**Ms Cousins:** The only thing is that we discussed it with the construction side in the Department of Finance, but it did not have the resource to be able to do these inspections. That requires heating engineers, not just a normal —

**Ms Gildernew:** Which AFBI or DARD have, by the way.

**Ms Cousins:** Yes. We explored with other Departments whether there was the capacity, and the answer was that nobody had the capacity.

**Ms Gildernew:** This is my final question, Robin. PwC's draft interim report outlines at paragraph 5.20 that 31 site visits could not be completed. Do you know what the reason for that was? Has the Department any plans in place to revisit those sites to complete the inspection?

**Dr McCormick:** This is the risk. The downside risk of unannounced inspections is that some people are not available when you turn up. That is the main reason. That is a relatively small proportion of the ones it tried.

**Ms Cousins:** Yes, and there were other occasions when they could not be on the site due to specific reasons like biohazard. Those were legitimate reasons why they could not be on the site.

**Ms Gildernew:** We know there are mitigation measures against biohazard. If there is a will, there is a way.

**Dr McCormick:** These inspections are based on, at least in part of the work of PwC, risk stratification. It is not as though we are inspecting because we have a primary cause for concern about any of them. The concerns arise from the generality of those that have been inspected. There is not a prima facie reason to go back: it is not that we suspect those 31 of being any more at risk —

**Ms Gildernew:** I accept that.

**Dr McCormick:** — or a cause for concern than anywhere else. We are satisfied that the purpose and intent behind the inspections at PwC has been achieved. We have enough information out of it to take some judgements about what we should do next. It then goes back to the points made earlier about going forward with a risk-based approach, which is making the best possible use of money and using every available resource.

**Ms Gildernew:** Given the conversations we have had, Andrew, over the past month or two, do you have an opinion now that every single applicant should be inspected?

**Dr McCormick:** What PwC told us was that there were a number of sectors where every case it visited was OK, so there is an argument to say that you identify a category — this is exactly the kind of risk-based approach Gordon was talking about — where maybe you say that, based on a reasonable assessment of judgement, it is not necessary to inspect.

That is still ahead of us as a decision. I would not commit to an answer on that today. It is not beyond the bounds that the right thing is, in fact, ultimately to inspect everybody, but we definitely have to make sure the priority is given to those where there is evidence from the schematic that we have some of the symptoms PwC picked up in the categories it identified. Those were issues around domestic, parasitic drying or that kind of case. So, yes, we have to prioritise those, but then, having done that, we have to keep under review what are we learning from this and what do we do next. That is a dynamic we have to pursue.

**The Chairperson (Mr Swann):** Andrew, in regard to inspections and all the rest of it, Ofgem made us aware the last time it was with us that it has an annual self-cert that every applicant has to verify. That self-cert states it is a criminal offence to knowingly make false representation to the scheme. Is that based in law? Is there a penalty?

**Dr McCormick:** I assume there is, yes. That is not something I have gone through with it, but the obligation under the scheme is to comply with the regulations, and that includes ongoing obligations. The test of criminality would include evidence of intent to defraud and so on. The thresholds are quite high, but our responsibility is to control this as rigorously as we possibly can, fairly and proportionately.

**The Chairperson (Mr Swann):** So a claim for running a boiler 25 hours a day would be criminality.

**Dr McCormick:** If the evidence supports intent to deceive, yes. If that is an artefact of some other factor in the calculation, that would not be fraud. We have to look at those on their merits, case by case.

**The Chairperson (Mr Swann):** We have been quite hard on Ofgem, but it also warned the Department a number of times about tiering.

**Dr McCormick:** That is fair. I would agree. I accept that.

**The Chairperson (Mr Swann):** And you ignored it as well.

**Dr McCormick:** Action was not taken that should have been taken. I accept that, yes.

**Mr McMullan:** It clearly states in the papers from the Department that any deviation from the reason for the grant is deemed non-compliant, so I do not think that is an argument. If somebody is doing something any way outside it, that is non-compliant.

**Dr McCormick:** There is a distinction, I think, between non-compliance and criminality.

**Mr McMullan:** It is not compliant, because we are working with money here. I have not heard one mention yet of clawback. As was said, in every other grant aid there is clawback, and if you step outside, you are non-compliant. There is no word of criminality. That is further down the road.

Heather, you talked about doing inspections in-house through other Departments and said that there had to be engineers. What was the standard of the inspections by Ofgem?

**Ms Cousins:** It also used an engineering company to do the technical aspects of its inspections.



**Mr McMullan:** You are saying it could take £1,000 to do an inspection at home when we can take them from England to do them for between £100 and £900 with engineers, but at the same time, we say we are not happy with what was done.

**Ms Cousins:** I do not necessarily think we are comparing like with like here. The £100 inspection did not include an engineer going to a site.

**Mr McMullan:** So, on that premise, we should revisit all those inspections that Ofgem did if it was being charged £100 by an engineer.

**Dr McCormick:** Again, I think we have to apply to that category, as to all the others, a risk assessment. What is going to be the most effective use of our time and resources now to get the best possible way forward here? We are still at the stage of reflecting on the significance of the PwC work and where we are with Ofgem. We have some decisions we will need to put to the Minister as options for the way forward. That is critical work for us now.

**Mr McMullan:** Part of why I was saying that is this: do you not take decisions on your own without reflecting on PwC? What is your own view on it?

**Dr McCormick:** Our responsibility is to make some informed judgements about what to do next. That is critical. We would have to go to the Minister if we were committing further resources to these tasks, and, undoubtedly, some further resource will need to be put into it. It is absolutely right for us to look hard at this. It is part of what we are here for.

**Mr McMullan:** You have not answered the question, with respect. Where is your assessment of it, without reflecting on PwC's? That is the point I am trying to get over here. If we are going to look at putting our own teams in, will we have an open cheque for them, or will we definitely know what it will cost and where we are going with the inspections?

**Dr McCormick:** The correct answer is that we have not decided those things yet. We are still working on it, so apologies.

**The Chairperson (Mr Swann):** Folks, I am going to call a 15-minute suspension.

*The Committee suspended at 4.47 pm and resumed at 5.11 pm.*

*On resuming —*

**The Chairperson (Mr Swann):** OK, folks, we will resume where we left off. We will move on to another section of questions. Carla?

**Mr Lunn:** Are you on the right section? I thought that we were doing structural weaknesses.

**The Chairperson (Mr Swann):** Is it structural weaknesses? My apologies, Trevor.

**Mr Lunn:** That is all right. We are four hours in here. *[Laughter.]*

**The Chairperson (Mr Swann):** Tell me about it.

**Mr Lunn:** Do I look like Carla?

**The Chairperson (Mr Swann):** After four hours?

**Mr Lunn:** Andrew, I want to clarify a couple of things from your previous answers, if you do not mind; it should only take a moment. I am sorry to go back to the random site inspections, because I know that they have been well trawled over. If you do 57 random site inspections and identify a problem at almost all sites — I know that Heather said that payment was suspended in a few cases — can you give us any idea of the type of problems that might arise on a random site inspection that would not result in a penalty or some action?

**Dr McCormick:** If I recall, one or two of them involved apparent discrepancies in meter readings, which could have been resolved by seeking an update from the applicant. There was also a case in which something was not totally satisfactory in the primary evidence from inspection.

**Mr Lunn:** When you say "apparent discrepancies" in the meter reading, what does that mean? I assume that somebody gave you a wrong meter reading, presumably to their own advantage. Is that not sufficient to warrant some action? It is straightforward. I will not use the word "fraud", because I have said "legalised fraud" so many times that I am tired of it now. However, that is a pretty good example. How difficult is it to read a meter?

**Dr McCormick:** Yes, but human error also applies. If it was the result of an honest mistake, you just fix it. Some of us have made honest mistakes at times in our lives, so you just have to take each case on its merits. If there is evidence of something non-compliant, that standard has to be applied. If it is shown that somebody has deliberately set out to deceive, you also have to act accordingly. All that was said to us was that they had found a number of issues, and, in most cases, they had found a way to resolve them, so an investigation was not triggered. At the next level up, they had complaints or external challenges of one sort or another, and we were very dissatisfied that they did not refer those to us. They investigated them and, in some cases, closed the cases without even telling us they had them.

**Mr Lunn:** I am not saying that everybody is perfect. We are all human and human error is a common thing, but reading a meter is so easy. What would be the excuse for getting it wrong? Did you not have your glasses on or did you mistake a two for a one and put in 12,000 instead of 11,000? Were there many of those?

**Ms Cousins:** We do not have the detail of that.

**Mr Lunn:** Fair enough, but I just get —

**Dr McCormick:** Let me see whether we can find some more detail to send you.

**Mr Lunn:** That would be interesting.

**Dr McCormick:** I can see the concern, and it is right that we should answer that concern. I am sorry that I do not have precise detail on that.

**Mr Lunn:** In response to an earlier question from Robbie on the turnover of staff and business continuity, you accepted that a constant turnover could be a problem but said that it had been impressed on staff who were leaving that their memories might be called on in the future, but was there not proper record-keeping and minuting? Before Michelle left, she asked a question about meetings not being recorded until November 2015. Is it part of the culture of the Department to rely on previous employees' memories?

**Dr McCormick:** No. The authoritative record is the formal record. We have made a lot of investment in retaining and managing public records. We no longer have the classic old-fashioned paper file where you could look at everything in date order and it sits in a registry. Instead, we have an electronic filing system. That has a lot of advantages with searchability and so on, but it is sometimes quite hard to track through it.

Questions were asked earlier about culture, and that affects the nature of how things are recorded. As we are emailing internally all the time, we tend to take it for granted that the email trail will probably mean that most important things are picked up and recorded. To me, the documentary record is much more important. The opportunity to test someone's memory is supplementary. Sometimes, a quick word with somebody who used to work in an area can save a long time searching for a document if someone says, "The important point to remember is this". Nothing like enough of that happened in this case. We might have been in a better place if the significance of some of the points that people were aware of had been passed on more fully at certain points.

**Mr Lunn:** Declan asked a question earlier — it was quite a while ago — about two levels of management running in parallel. In the private sector, companies have what you might call a suggestion box, and employees from a lower level are actively encouraged to make suggestions and

direct those to a higher level. Maybe I have picked it up wrong —I am not saying that it is the case now — but could it have been the case at that time that lower-ranking employees were not actively encouraged to make suggestions and, effectively, to whistle-blow?

**Dr McCormick:** I do not know exactly what the culture felt like in that period. I think that the right approach is for senior managers to ask and to be open and transparent in their behaviour and welcome challenge and suggestions. A long time ago, there used to be a staff suggestion service in the Civil Service. The more important thing is for there to be a willingness to listen and a feeling that no question is a stupid question.

**Mr Lunn:** I am sure that your door is always open to employees who want to make suggestions. I just wonder what some employees might have felt in making suggestions that might be construed as criticisms, which was probably so in this case. If a lower-ranking employee had gone to somebody senior and said, "This scheme is dreadful; we need to discontinue it", they might have had a wrong reaction; they might have felt that, if they did that — it has been known to happen in all scenarios — their future progress might have been impeded. I am sure that it does not go as deep as that.

**Dr McCormick:** It absolutely should not. I recognise the syndrome that you describe, but it is a very wrong syndrome. The only right tone at the top, which is a phrase that I have heard, is one that welcomes challenge, is prepared to listen and does not dismiss questions, comments or challenges. It will help to get the right thing done if the person speaking is right. If they have missed something, they will learn through a dialogue that allows their understanding to be developed. That is a win-win: either way, dialogue and engagement on that will be better.

**Ms Cousins:** Part of the governance stream that I am responsible for in the new Department for the Economy has a change transformation team. The whole idea of that is to create a new culture that will look at overall Civil Service values. It involves focus groups of staff from all grades coming together to discuss what we want to do to change culture, what we are looking for and how we can achieve that. That work has already started. We also have seminars about how things are done in the Department; it was two Departments coming together into a new Department, so we share ideas about how we did things, and we pick up on best practice. We are very aware that a lot of work needs to be done on creating that open culture where people feel that they can raise concerns as part of the normal course of business rather than having to do it through a whistle-blowing process.

**Mr Lunn:** That is good to hear, but it is also worrying from the point of view of what happened in the past. If you had to create this new culture — seminars, focus groups and an open atmosphere — it indicates that, in the past, perhaps that was not the case. That is what I was getting at.

**Ms Cousins:** It is more about the fact that it is new.

**Mr Lunn:** It seems that an awful lot of people had reservations and concerns about the scheme from day one, including the whistle-blower and, I am sure, junior staff. I do not want to insult anybody, but so much was structurally wrong with the thing from day one that a number of people working on it — I think that you, Andrew, said that there were six or 10 — must have had reservations. Perhaps they expressed them, but it took so long.

**Dr McCormick:** One reason for having a fact-finding exercise is to establish what the situation was. Part of that process has to be to give all those who were around at the time the chance to say what they were thinking about and an open opportunity. We are asking closed questions in that process about specific documents, but there has to be a general point about what they thought about it and what their understanding of it was in a very open and genuine way so that we are fair.

At this stage, there are not clear signals that there was an awareness of the grave risk. That is what concerns me most about the whole thing.

**Mr Lunn:** I understand that, when the scheme was initially set up, it was planned that there would be regular reviews of the subsidy levels.

**Dr McCormick:** Yes.

**Mr Lunn:** The first review was planned to begin in January 2014 and be in place by April 2015. Fourteen or 15 months seems like an inordinate length of time to have a review of something that

started only two years previously. Why was that review date missed? Why did the review not happen?

**Dr McCormick:** There is no good answer to that. It should have happened. It was a condition of the approval of the scheme in 2012 through the process at case work and then the submissions to DFP and so on. All had recognised that the biggest risk in the scheme was the potential for an under-generous or overgenerous tariff. That was identified in the business case in 2012 and is why it was built into the programme. Had it been a proper programme management approach, the commitment was to have a review. In practical terms, it probably drifted because the attention was on other things, notably the introduction of the domestic scheme and — I am sounding like a broken record, I am afraid — the low take-up. The scheme was not performing, so the need for a review was not clear.

**Mr Lunn:** Sorry, I do not agree with you. If it was a good scheme and there was a low take-up, surely there was a need for a review. Do you have diaries? This is a case of flagging something up and putting it down for two years hence. I am not trying to be facetious.

**Dr McCormick:** I have nothing strong to say in response; you are being totally reasonable.

**Mr Lunn:** Applicants had to install the heating system before they applied to the scheme. Do you think, in retrospect, that that was a crucial flaw? Why was the scheme set up in that way? To put it delicately, it seems back to front.

**Dr McCormick:** I find it odd, and it is unusual. It evolved as a way of doing things in relation to several aspects of renewable energy, and this is one part of the way of working that came from the way it was being done across the water.

**Mr Lunn:** Was it done that way across the water?

**Dr McCormick:** Yes, it was the same basic system. In 2011-12, a range of options for the best approach to renewable heat and all those things were drawn out, the pros and cons analysed, and the recommendation was to do it in that way.

The lesson to be learned from what happened is to question whether that was a good approach. I would absolutely hesitate to adopt that approach for something else because we have learned such hard lessons from this case.

**Mr Lunn:** I appreciate that you were not there, but surely the people who set this up, combined with the procedures that it went through, could have said, somewhere along the line — we have been through all this and I do not want to repeat it — "Hold on a minute. We will be able to regulate the flow of applications if we get the application forms first". We might even have avoided the situation that happened towards the very end of the scheme where people had spent thousands of pounds on equipment, ordered thousands of pounds of equipment and could not get out of the contracts, but the scheme was finished. You are not disagreeing with me.

**Dr McCormick:** I am not. It looks very unhelpful. The expectation was that the scheme would continue and, therefore, would run until it gradually reached a stage of saturation where prices would have moved so that renewable heat would have become more normal. It was trying to deal with the barrier to new investments. Had reviews and aspects of control of costs or value for money — those are separate — been built in earlier, it would not have hit problems and been the risk that you describe, where people had made their investment and the scheme then closed on them. That would have been avoided.

**Mr Lunn:** That is before you get to the people who were selling the boilers, who had probably ordered a load of stock, particularly when the spike happened. Maybe they would have been able to return it. Anyway, we have been there.

The DETI casework committee approved the business case for the scheme on 9 March 2012. Are we allowed to know who sat on that committee?

**Dr McCormick:** Yes. We can get you the names but on the basis of the usual protocols about naming members of the Senior Civil Service in public hearings.

**Mr Lunn:** Were minutes kept of those meetings?

**Dr McCormick:** Yes.

**Mr Lunn:** If you could supply the minutes and the personnel, that would be very useful.

**Mr Dunne:** I will not be too long, I hope. Andrew, in the last session, you talked about there being no case for a fuel subsidy in Northern Ireland because biomass fuel was cheaper than oil.

**Dr McCormick:** Yes. That was at the inception of the scheme.

**Mr Dunne:** Did you consider having a capital grant scheme for the installation of boilers?

**Dr McCormick:** That was one of the options that was appraised in the feasibility study in 2011.

**Mr Dunne:** Why did we not go for that? That would have saved an awful lot of bother.

**Dr McCormick:** Yes, we can say that now. The view was taken that this would create a greater incentivisation. What they were trying to do was to get the most renewable heat for the £25 million that was available. With advice from the consultants and the internal analysis, as is rehearsed in a submission to the Minister, those options were considered, and the pros and cons were addressed. The recommendation was to go with this tariff-based system, and that was approved. All that I can say is that that is what happened. The reasoning is set out in the feasibility study and the business case.

**Mr Dunne:** Have you reviewed that now?

**Dr McCormick:** We have looked at it, yes. We have the papers. Again, if you want access to those documents —

**Mr Dunne:** Are you satisfied now, having carried out your review, that the Department went for the proper method?

**Dr McCormick:** Again, it is hard to answer that without importing into the past knowledge from the present. I have not seen anything in that process that makes the decision and principle of doing it that way inherently unreasonable. The much more important issues arise because they did not have a cost control and had this glaring risk in relation to value for money. To make the point again, we have focused a lot on tier tariff. A tier tariff would not in itself have prevented the budgetary problem. There would have been less of an incentive to apply, but, in theory, you could have an infinite number of applicants coming through and, therefore, bust your budget anyway. Tiering was not the solution to budgetary control. In that circumstance, they would have needed a budgetary control as well, but GB did. GB started with a tiered tariff and, as things evolved, introduced both break clauses, so that they could suspend or close the scheme, and digression, which automatically reduced the tariff as they moved towards budgetary ceilings. We missed all those and found ourselves in 2015 able neither to turn the tap off nor protect against the risk of abuse because the tariff was so generous. A lot of things were missed. I do not think that it is inherently because of the design of the scheme in the sense of it being a tariff-based system. What is frustrating is that an awful lot of work went into considering and reviewing the tariffs, yet we got it wrong.

**Mr Dunne:** That maybe leads me into the next question. However, before I leave this, how was the domestic scheme managed? Could you clarify how it operates? Is it a capital grant scheme?

**Dr McCormick:** It has an element of grant and a tariff as well.

**Ms Cousins:** It is a tariff scheme, but it is capped at a maximum of £2,500.

**Mr Dunne:** Was there any real discussion about transferring that into the commercial scheme?

**Dr McCormick:** There is a point there that is both good and bad. Both schemes, in their principal design, mirrored the approach being taken across the water. If only we had also looked at a tiered tariff, as was happening across the water. Is that a fair summary?

**Ms Cousins:** Yes. One other difference is that, with the domestic scheme, there is a deemed heat requirement for each individual property based on the energy performance certificate. As you know, it is an independent check that you pay for and says what heat a particular property requires.

**Mr Dunne:** So it was managed and controlled.

**Ms Cousins:** Yes.

**Mr Dunne:** Knowing what we all know now, do you think that the energy team in DETI was adequately resourced and had sufficient qualities and skills to manage the project?

**Dr McCormick:** Most parts of the Civil Service will, at some stage, say that they are under pressure and need more resources. That was more of a difficulty in more recent days when there was an intensity of work around aspects of renewables policy, including the NIRO, which has been a very difficult issue recently.

**Mr Dunne:** That was in the last 18 months or so.

**Dr McCormick:** I am not sure how it felt in 2012-13. I had only one very brief discussion with predecessors about that point, and it did not present to me that a major issue was being raised. Obviously, there was some concern about people being busy, but I do not think that it is unreasonable to have expected some of these issues to have been handled better. It is important to point out that the scale of resource that DECC and Ofgem have for these functions is much larger, because they are dealing with the economy of scale of working at GB level. I would certainly suggest that, had we been able to be part of a UK-wide scheme, that might well have been a better way forward. That opportunity did not arise. There was an element of timing and an element of judgement. Northern Ireland was different in that we had an oil-dominated heating market as opposed to the gas-based market across the water, and there was a risk — it comes through in the papers — of displacing the growth of gas in Northern Ireland. It is very unfortunate that we were not able to be part of that bigger system, because it would have meant a more proportionate resource. There is probably a point in there, Gordon. In fairness, there are probably difficulties there. People were under pressure, but I could not say that it was unreasonable to expect them to have addressed some of the points that have caused concern.

**Mr Dunne:** It was not reasonable.

**Dr McCormick:** It is not unreasonable to expect that.

**Mr Dunne:** It is not. So they fell short. Was there even the necessary technical and commercial expertise across the whole Department to manage the scheme? It was obviously quite technical and new to them. That was a major risk.

**Dr McCormick:** That is a very important thematic point and goes back to the points that the Chair raised at the outset of this session. The point that we really need to focus on is that we should only take on an area with this degree of technical complexity if we have either internal or external expertise that is really effective, well aligned and reliable. We have learned some hard lessons on that in the past.

**Mr Dunne:** The last time you were here, we talked about project management. The point was made that this should have been project-managed. Were there people in the Department with the necessary skills to manage such a project who had gone through the training and were competent?

**Dr McCormick:** I do not know the extent of the detailed training of the individuals concerned. What has been represented to me is that very detailed work was going on that would have had some of the features of project management and intense engagement, including some from a senior level, but what is conspicuously missing is a clear structure, clear record-keeping, checkpoints, a risk register

and an issues log. There was a risk register for the scheme — it is in the business case — but it does not seem to have been effective.

**Mr Dunne:** There will have been a sponsor and a project manager. Were they ever clearly identified in the Department?

**Dr McCormick:** De facto, there were people who were playing roles akin to those roles but not with the rigour and formality that was needed.

**Mr Dunne:** That is a major failure. The Audit Office made the point that there was previous history in DETI in relation to broadband. It was before our time — certainly before my time. That risk had been identified previously, and we are all worried about whether that was ever addressed. It looks like it has not been addressed with project management.

**Dr McCormick:** The deficiency in that area was mainly in the period from 2011 through to the inception and operation of the scheme, and so that predated the actual hearing and report on Bytel. However, the point stands that, as a matter of good practice in management, we should have been doing better on that point. There is no big defence there, to be honest.

**Mr Dunne:** Had you adopted a project management system, it would have gone through all the various stages that would have given assurance of quality and value for money. All the various technical people and senior management would have been involved to sign off the various stages. That is what it is all about. It is about shared responsibility. It is about giving assurance to us and everyone that the scheme is properly qualified and that it is capable of doing what it sets out to do. The major failure, in not having a project management system in place, has been major non-compliance. Would you agree?

**Dr McCormick:** Yes. I would say that those systems, the good systems that you have described, are a necessary condition for getting things right. I do not think that they are a sufficient condition. There also has to be adherence to things agreed.

**Mr Dunne:** True.

**Dr McCormick:** In this case, one of the problems is that the good aspects of our governance that applied, as you will see in the casework minutes, included some conditions on approval and those were not fulfilled. You could have the best system of project management, but still have non-adherence to the things agreed.

**Mr Dunne:** Yes, but if part of it was management review —

**Dr McCormick:** That would mean more likelihood of challenge.

**Mr Dunne:** Yes. All the managers should have sat round and agreed this. They should have asked, "Are all these things agreed? Are they signed off?". The sponsor would then sign off the project to verify that it meets the requirements. Unfortunately, that does not seem to have happened, and we have had that major downfall.

**Dr McCormick:** Agreed. I would argue that, as well as a good system, you also need people to adhere to fulfilling their responsibilities.

**Mr Dunne:** You need compliance. Really, you need internal audit to ensure that there is compliance. Again, that did not happen.

**Mr Lunn:** I have a supplementary question, but it might intrude on the next question, so, if you do not mind, I will wait until Robbie is finished.

**The Chairperson (Mr Swann):** That is OK.

**Mr McMullan:** I have a supplementary question. Was an economist ever used?

**Dr McCormick:** Yes. The economists were —

**The Chairperson (Mr Swann):** Oliver, we will cover that in the next section.

**Mr Butler:** I have two questions. The first is one of my own. At the start of today's session, you mentioned the work that went into the casework at the beginning of what we loosely term a project at this stage. What do you consider to have been in place in the original casework that could have addressed the inefficiency of the scheme?

**Dr McCormick:** The key points are that there was the condition for review, which we have talked about already. That was a condition for approval. There was a recognition in that of the risk of getting the tariff wrong. That was a reason for the team to have kept that under review, and neither of those things happened in practice. There are probably some other details, but those are the things that stand out for me.

**Ms Cousins:** It also covered the need for flexibility, so that you were not having to go for legislative change every time you wanted to change something. That did not make its way into regulations either.

**Dr McCormick:** That is a very good point.

**Mr Butler:** Off the bat, there are certainly three reasonably sensible instances. That leads into the main question anyway. On page 9 of the C&AG's report, the graph shows that the subsidy rates in GB halved from 2012 to 2015, while Northern Ireland's rate actually increased. We know that this was not being monitored by the Department. Would it be fairer to say that it was not being monitored or that the effect of it was not being recognised?

**Dr McCormick:** I go back to the point that I made at the very beginning that nobody had seen and understood the excessive incentive that was inherent in the high tariff. The initial position was that we needed to incentivise investment and, therefore, we adopted the commitment that, once a tariff was applied, it would remain in place for 20 years and would be operated with inflation. All the analysis and decisions in the early stages took us to that decision. The flaw was missed at the outset, and then the opportunities to introduce digression, which would have led to the kind of progressive decrease seen in the GB tariff, were not followed up. Digression was mentioned in the 2013 consultation, and there is some evidence in the 2014 documentation that some on the team had expected that to move, but it did not happen. Nobody pushed it or argued for it strongly enough for it to happen. Then we drifted into 2015, and, by the time the uplift in applications began to kick in, there was nothing that could be done, because any change had to be taken through legislation. Hence the gap between announcement and effect, which provided the opportunity for the spike. All those things are just what happened. They are not good answers.

**Mr Butler:** OK. I assume then that no steps had been taken when it became evident that there were much higher rates here in comparison with GB.

**Dr McCormick:** The problem did not crystallise. Until March 2015, people were still concerned about low take-up, and when take-up began to increase, they felt, "This is beginning to work." That was good because they had been trying to promote renewable heat, and all of a sudden it was going well. Then it hit a budgetary problem, and the focus was on the budget rather than on value for money. That is just wrong.

**Mr Lunn:** You mentioned digression, Andrew. The English scheme did not have digression at the start; nor did ours. You could say that ours followed the English scheme. But, before very long, they introduced digression. Even if nobody spotted that at the time or reasonably thought that we should do the same thing for the same reasons — sorry to bang on — the review that was missed in April 2014 would have taken care of that. I just want to put that on the record.

**Dr McCormick:** You are absolutely right. That is why I go back to the point that the casework approval was on those conditions.

**Mr Lunn:** In the normal way of things is there sufficient contact between various parts of the UK Civil Service, through which English officials might have pointed out to us that they had decided to introduce digression? Did they?



**Dr McCormick:** That is a fair point. On the extent and depth of discussion, comparing notes with colleagues in London would have been a good thing. I do not know to what extent that happened, but it seems not to have had any effect.

**Mr Lunn:** Do your records show that the Department had been advised that the English scheme had decided to introduce digression?

**Dr McCormick:** Yes, we were well aware of that, through informal contact and, indeed, ministerial correspondence. That was there and was not acted on.

**Mr Lunn:** Are you saying that it was in the Minister's correspondence? At ministerial level, we were advised that it had been necessary to introduce digression in England.

**Ms Lockhart:** Just on that point, Ofgem was regulating the English side of things, and it was administering our scheme. Did it not tell the Department at any stage that —

**Dr McCormick:** It was going ahead and applying the system as it was being amended. The regulations for the English scheme were amended, I think, 10 times over the last number of years. That would all have been going on. There was probably no strong reason for it to come to our attention because, again, of the low uptake. The low uptake would have meant that people were not focusing on it, because it was not seen as a problem until it was too late.

**The Chairperson (Mr Swann):** Sorry, Andrew, in Ofgem's evidence to us, they claimed to have written to the Department on 14 May 2014, highlighting concerns over tiered tariffs.

**Dr McCormick:** Yes, that is right; they did indeed. Again, I emphasise that that is one of the opportunities that we missed. Tiering would have made a big difference to the concerns on value for money and risk of abuse. It would have dampened the demand and, therefore, helped with the budget, but it would not have solved the budgetary problem totally. It is a fair point that Ofgem raised that, and we said that earlier. I do not think that it was for them to draw attention to digression, for example. We knew about that anyway. DECC introduced it in 2013, so we were well aware of that. There was no sense of a need to do it in Northern Ireland, that is the problem.

**Mr Lunn:** What was the nature of the correspondence between the Ministers?

**Dr McCormick:** That was a routine update. There were a number of letters, but the ones that I am most familiar with would have been in late 2013. Normal practice is for the lead London Minister to write to colleagues in the devolved Administrations to say, "Here's what we're doing".

**Mr Lunn:** Can we see those?

**Dr McCormick:** Yes, I do not think that there is any difficulty with that.

**Mr McMullan:** Ofgem was here last week. They said that they shared the information from here with colleagues in England. They used information on what we were doing here and shared it in England.

**Dr McCormick:** Yes.

**Mr McMullan:** Is that normal practice?

**Dr McCormick:** It is not unusual for them to talk about what is going on, informally. I do not see any difficulty with that.

**Mr McMullan:** Is there nothing wrong with that?

**Dr McCormick:** Nothing particularly.

**Mr McMullan:** Is there no data protection or anything?

**Dr McCormick:** It would not have been about individual details. It would have been about the principles, policies and practices. I do not think that there is anything wrong with that. It would not have been about individual applicants.

**Mr McMullan:** I appreciate that, thank you.

**Ms Lockhart:** I have a very quick question, and I know that it is maybe rehearsing a bit of old ground. Andrew, when did you take over in the Department?

**Dr McCormick:** 1 July 2014.

**Ms Lockhart:** When did we realise that there was a problem?

**Dr McCormick:** The problem was drawn to my attention as a budgetary problem in May 2015. The first record or signs within the team of awareness was March 2015. It was brought to my attention in May 2015. The nature of that discussion was very much, "We need to get more money for this".

**Ms Lockhart:** As head of a Department and given the nature of the organisational structure — I am not getting into specifics around staffing — are you not absolutely furious that no one thought to tell you, from July 2014 to March 2015, that there were concerns and issues with the tiering or the fact that we did not have tiering?

**Dr McCormick:** I share all the concerns and frustrations that are being expressed here. This was not at all satisfactory. I have to look at making sure that we learn the lessons. The lesson has to include the fact that people have a responsibility and a freedom to raise concerns. That is the kind of cultural point that I touched on with Declan earlier. It is very important that we set the right tone so that people can express difficulties and are not afraid to raise them. I absolutely share the dismay at what has happened here.

**Ms Lockhart:** In the previous session, you outlined that tariffs were based on an assumed particular size of boiler and usage level, but it did not require much change to either of those assumptions for the rate of return to go to a very high number. The Audit Office report identifies the potential for returns to scheme applicants to be as high as 82% per year for 20 years. I assume that the business case for the scheme would have been examined by the Department's economists as part of an economic appraisal. The crux of my question is this: do you know why your economists did not carry out a sensitivity analysis on the proposed tariffs to ensure that value for money was being achieved? I know that there are stocktakes and what-if type scenarios at certain times in all government procurements. Will you maybe just expand on that?

**Dr McCormick:** I find this a cause of significant concern, and it is a point that I have discussed with the team. As you said, the sensitivity analysis is a fundamental, basic check. I cannot see any evidence of it having been applied to the complex —

The assumptions were quite complicated, and, in the information that we have had from CEPA's work, the model seemed to work on the basis of the assumptions. A lot of assumptions were made about the kind of usage that would apply, the kind of scale of boiler, the kind of scale of heating that was required and the extent of heat needed. I am not sure that they focused on what emerges from some of the significant sectors where that worked, which justifiably involved 24/7 use. There are clearly some flaws in that analysis. Whether they were —

**Ms Lockhart:** So, they did analyse it.

**Dr McCormick:** A lot of detailed work was done to look at the scale of boilers, hours of heating, the heat requirement and the efficiency of boilers. All those were analysed in very extensive detail to produce a recommended tariff.

In the initial CEPA report, the crucial line was that they did not recommend tiering. That was the case in 2011. Then, after the initial consultation during 2011, the Department procured an addendum to the work of CEPA, because there had been strong pressure during the consultation to have higher tariffs. A further piece of work was then done, and it was at that point that the tariff was increased from the initial proposal in 2011 to the number that was adopted in 2012. That is when there was a chance to re-examine the question, "If we are going to increase the tariff, does that mean that we have to think

about tiering again?". I have no evidence of that question being asked, but maybe there is more to be found in our fact-finding. To me, that is right at the heart of why this went wrong. Sorry, I am only rehearsing what is in the Audit Office's report.

**Ms Lockhart:** Have the economists been challenged on that? Are they being —

**Dr McCormick:** I have not spoken to the people who were there at the time, but the people who are working for me now as economists have looked at what happened. They can see that, if you look at the assumptions, the conclusion is reasonable. My question then is this: where was the sensitivity analysis and the what-if challenge to that? It seems that that was not sufficient. I do not have a good explanation for why that was the case.

**Ms Lockhart:** Again, it goes back to the people who were there at the time and the questions that need to be asked of those individuals. I think that that is something further that we could explore.

The incredible decision not to tier the subsidy rates obviously led to the huge incentive to burn more wood and generate more heat than needed simply to collect the subsidy rate. Has the Department done any analysis to see if that is actually happening on the ground? That probably goes back to explaining your inspections and your plan for going forward.

**Dr McCormick:** From the evidence acquired so far, as in the PwC report, the question that we have to address now is this: what is the right thing to do about that and, especially, what is the most effective way to change the future? We cannot change the past or the present, but can we change the future? Our strategic approach to that will influence our judgement on what further approach to take. I think that we also have to be fair to applicants and recognise that some are, essentially, category 1 in the PwC report, where there is no issue of question marks over compliance or behaviour. We recognise that there will be a substantial proportion who are, in that sense, correct.

**Ms Lockhart:** When do you expect to know what you will do?

**Dr McCormick:** This is urgent work. I do not want to put a precise time frame on it. In the next couple of months, we need to be resolving this, gearing up and finding a way forward.

**Ms Lockhart:** Are you talking January?

**Dr McCormick:** Realistically, to do the kind of processes that we need, which will include looking at all the issues around what is the right thing to do going forward, is complicated. The last thing that I want to do is rush to something that is, in the end, wrong and compounds the bad position that we are in. We do not want to do that.

**Ms Lockhart:** Maybe, at that stage, we will get some more information as a Committee.

**Mr Kearney:** I am going to reframe the approach here very slightly just to tweak it a little. I have three quick questions. Andrew, it seems that the Department operated from 2012 to 2015 on the basis that there was no risk to the block grant and that everything was going to be covered by the Treasury.

**Dr McCormick:** In practice, yes.

**Mr Kearney:** Let me set out that perception for you, because, on the basis of everything that we have heard, there is a reasonable basis to say so. On that assumption, do you accept that that type of complacency led directly to the failed regulation by the Department?

**Dr McCormick:** It is definitely connected. There is no question about that. I think that the understanding of the budgetary control system differed from the early days. As Alison Clydesdale drew out at the session six weeks ago, she and some successors were well aware that, while this was called AME, it was not standard AME and was subject to either a ceiling or a clawback the following year. That is something that Treasury quite often does. If you overspend in one year, you repay in the next year. Then there is the reference to 5% that crept in. In the end, that was a very distracting red herring. The attitude in the early days was more around low uptake. There was no anxiety about the budget, not because of a point of principle but more because it was not spending. The serious problem during 2015 was that, while there were some people in the Department who remembered and

brought to attention those old emails that showed the issue, the prevailing view was that this was AME. That was one important fact that was both helpful and unhelpful. It was helpful in the sense that we got some money from the Treasury. The Treasury gave us AME increases during 2015-16, and that will have reinforced the view that the Treasury is paying. It was helpful that it did but unhelpful in the sense that it reinforced the mindset that, ultimately, as you know very well, was wrong.

**Mr Kearney:** In the context of a culture that was one, in my view, of negligence, mindsets responded that disregarded those realities and led to that type of complacency.

**Dr McCormick:** I cannot disagree with that.

**Mr Kearney:** At this time, do you have any other projects of this scale on your books?

**Dr McCormick:** No. There is nothing that compares to this in scale or nature.

**Mr Kearney:** You have substantial projects, obviously, given the nature of your brief.

**Dr McCormick:** Yes. The big budgets in the Department are for Invest Northern Ireland, and its deal flow is projected by financial budgetary management and controlled by its internal casework procedures and, where projects are of a particular scale, departmental and DOF approval. Those are —

**Mr Kearney:** Can you assure us that the consequential learning under your leadership will directly impact and influence the governance of the schemes now?

**Dr McCormick:** Absolutely. It is a clear and straightforward responsibility.

**Mr Kearney:** So it will be lateral.

**Dr McCormick:** Yes, across the full range of our budgets.

**Mr Kearney:** We are not coming back to Bytel again.

**Dr McCormick:** No.

**Mr Kearney:** Lastly, we have recognised that there is a significant issue for the block grant. You indicated earlier that there is a measure of cross-departmental communication about how it is going to be mitigated. Can you confirm that that is the case?

**Dr McCormick:** It is an issue for us. It is the old story: if it is a small debt, it is your problem and, if it is a big debt, it is your bank's problem. The Department of Finance is aware of it and is being very helpful about it in the monitoring context, as Heather described earlier, but we still have to fulfil our part of the responsibility in getting it right. That is where our efforts are focused.

**Mr Kearney:** Do you agree that, flowing directly from this, there is also a very significant intangible economic and financial fallout from the project?

**Dr McCormick:** Yes. I had a number of interesting conversations after the scheme closed. Had we been able to sustain a controlled renewable heat incentive scheme that delivered as originally intended, a positive consequence would have been a very vibrant renewable heat sector, including the production of fuel and installations. I talked with a number of suppliers, and they had seen a real business opportunity, so I am well aware that a consequence of what happened is detrimental to that growth. I am also conscious that we need to look at the competitiveness of the sectors that make legitimate use of the scheme. This works; it works exceptionally well for poultry houses, and we need to recognise that as we go forward. Looking at change, we need to be sensitive to the consequences for those sectors when managing the present and the future.

**Mr Kearney:** As things stand, this has caused huge damage to the whole concept of renewable energy and heating in the North. And finally, then, this is, for me, a corollary. It is not just about financial debt; it is much more far-reaching than that. It is about reputational damage to DETI then,

and your Department now. There are reputational issues for the entire structure of governance in our Civil Service. Do you agree that it throws up serious issues of public confidence?

**Dr McCormick:** Yes, which is why the essential thing for us is to put things right in every possible sense. That means looking at a very honest and direct learning of what happened, as we have tried to do this afternoon. Also, it is about looking at what we can do to show there are ways forward. Again, we need to test those within a legal framework, but restoring reputation and restoring confidence is absolutely critical from my point of view, yes.

**Mr Kearney:** Thanks Andrew, thanks Heather, thanks Robin.

**The Chairperson (Mr Swann):** The 5% was a "distracting red herring". Expand on that for me, Andrew.

**Dr McCormick:** It goes back to an email of April 2011 from the Treasury, in which there is a throwaway line that says there will be some penalty, and perhaps 5% of the overspend AME would be recouped from resource DEL. If that was the only budgetary constraint, it would not be so bad. In practice, what happened, of course, is that we were told by the Treasury in January this year that no exceeding was permitted and the entire exceeding was to be charged to resource DEL, not 5% of it. So what happens in 2016-17 and the forward years is a 100% penalty. The complication is that, in the 2015-16 financial year, Treasury provided the additional AME, so we had no penalty. I have worked with Treasury for a lot of years, so that does not totally surprise me. The Treasury does its own thing, and, in the end, its decisions are final, but the email where the 5% figure appears, if you read it in context, was clearly not a final and definitive authoritative statement of the Treasury position. It was at a stage when the scheme was still being developed. It never seems to have been confirmed, and it was one of the points where I found myself most frustrated in the whole process, because we had relied on something without it having any real foundation.

**The Chairperson (Mr Swann):** I understand where you are coming at it from — that the 5% may have been the only risk. Is there potential that it is still an additional risk?

**Dr McCormick:** No. The Chief Secretary's letter of January this year gave a final and definitive position on what was being provided for us for renewable heat. That is, as I understand it, the final position. Maybe I should just double-double-check this point with the Department of Finance.

**Mr McMullan:** Just before I ask my question, is there any record anywhere to say that the 5% was mentioned to anybody at a meeting as being the only possible clawback?

**Dr McCormick:** That was the nature of some of the internal discussions during 2015. At that stage, the focus of attention from March 2015 through into the autumn was to seek additional budget cover either from DECC or from Treasury. The crutch that we were resting on was that, from what Treasury used to say in the past, the degree of risk is only 5%. So that was being talked about and was the advice that I was given during 2015. I belatedly — and I regret not asking for it earlier — then asked in February 2016, "Show me your authority for that. Where is the document that conveys that authority?". All that was available was the Treasury email, which, when I saw it in context, was, I am afraid, only a relatively informal communication.

**Mr McMullan:** Who was that sent to?

**Dr McCormick:** It was sent to our team in DETI at the time and to the Department of Finance and Personnel. DFP saw that at the time. It was discarded as a red herring. It did not have any final authority.

**Mr McMullan:** Do you agree with me that it could be part of the problem that people took comfort in that 5% —

**Dr McCormick:** Yes.

**Mr McMullan:** — and carried on, knowing that they were only going to be possibly hit with a 5% at any level?

**Dr McCormick:** Yes. That is what we are being told. That is the extent of the risk.

**Mr McMullan:** So that went to DFP and where else?

**Dr McCormick:** Within DETI and —

**Mr McMullan:** How far in DETI did it go?

**The Chairperson (Mr Swann):** Oliver, we have copies of that email. That is in the papers.

**Mr McMullan:** OK. Sorry. I keep being pulled up all the time —

**The Chairperson (Mr Swann):** I am just helping you.

**Mr McMullan:** I am trying to find out exactly what is going on here, because people are going by an off-the-cuff remark of 5%, and they are running a scheme that will cost into the billions on predication of 5%. I do not know if we are in the real world or not.

In 2013, Ofgem noted that there were two installations that had received full or partial funding through the Carbon Trust, through Invest NI interest-free loans, and it was queried whether the loans were regarded as state aid or not. DETI then appeared to be content without the application going through into the scheme. Has the Department ever looked at whether it was breaking any rules or was in breach of any state aid rules?

**Dr McCormick:** That was drawn to attention in precisely those terms, as you say, by Ofgem. Is that the final position, Heather? Can you take that point, please? I have another document that I need to see.

**Ms Cousins:** Yes. The Department looked into whether it was state aid or not. We have a team that looks at that. We communicated to Ofgem that it was not state aid and it was OK for it to proceed with that application.

**Mr McMullan:** So interest-free loans were given out to two installations. That was on top of very generous funding coming in as well.

**Dr McCormick:** These are the cases that were referred by Action Renewables to Ofgem as part of the documentation that Ofgem provided in the last few days. Ofgem drew this to our attention — this is also where it refers to the tier tariff. Going back to what we were saying earlier, we have established that this is the only time that Ofgem raised the issue of the tier tariff. It then passed this on for us to consider, and it was discussed with the state aid experts in DETI. We identified that there was a potential problem as to whether these would be above the de minimis threshold in relation to state aid. We have only just received some of this documentation from Ofgem, so I need to reflect further on this and come back to you with our conclusion on the point that you have asked about.

**Mr McMullan:** OK. How many other people applied for a loan from the Carbon Trust or a free loan from Invest NI?

**Dr McCormick:** I do not have that detail. I will get back to you on that.

**Mr McMullan:** How was that loan administered? How was it got out to the public on the back of the scheme? Did that work in tandem with the scheme?

**Mr McMullan:** They were separate policy initiatives that were separately administered. I will need to get back to you with the detail on that. I am sorry; I do not have that to hand.

**Mr McMullan:** What was the tie-up between Invest NI, Ofgem and the Department?

**Dr McCormick:** I am not aware of any direct contact between Invest NI and Ofgem. There may have been, but I am not aware of any. Again, I need to check this whole area out and come back to you with a written explanation.

**Mr McMullan:** Will you do that?

**Dr McCormick:** Surely.

**Mr McMullan:** Are you satisfied that there are no other papers in there in which somebody said something to you know who and said what? Do you think that people were under pressure to spend this money from further up the food chain?

**Dr McCormick:** I think you asked me this the last time, and I said that I am sure that there are more documents that would be of great interest in this whole process. We are continuing to look at that as fully as we possibly can. Of course there was pressure to make use of the budget and to perform as well as we possibly could. There was a Programme for Government target, and an obligation at EU level, to improve the proportion of heat being produced from renewable sources. That was there, and it was entirely legitimate. My view of these things is that our obligation is to fulfil the policy directions that are determined by Ministers, and also to fulfil the obligations to secure value for money and propriety and regularity of expenditure, and to protect against fraud. We need to do the right processes well. Yes, the Programme for Government now is focused on outcomes. We are all being told to change our behaviours and be less risk-averse, but we also have to manage risk effectively. Our responsibility — what we are answering on today and will continue to answer on — is the limitations on and failings in delivery. The pressure to perform, to spend money and to get things done well was there, but it was entirely legitimate.

**Mr McMullan:** Are you confident that we are going to get some more, or do you think that there should be more?

**Dr McCormick:** More resource?

**Mr McMullan:** Aye, in any other Department, other than where you are looking?

**Dr McCormick:** All we can do is try very hard to bear down on future expenditure. The responsibility now is to focus our attention on that.

**Mr McMullan:** This is my last question. There does not seem to be any clawback built in here in the way that there is for other grant aid. Michelle hit on that earlier. Indeed, if you look right through the whole thing and at every Department, any grant aid — the one that we are all involved in at the minute is the rural development programme and how you qualify for funding there. I would love to know where the mantra for this came from. What example was it taken from? Who dreamt it up?

**Dr McCormick:** Many of the features were read across from the GB system and scheme. Certainly, where there is evidence of non-compliance, we can pursue that. If we find evidence of fraud —

**Mr McMullan:** So you took this from the GB scheme?

**Dr McCormick:** Most features. If only we had taken the tiering as well. That is the big flaw. Most aspects of the regulations and the nature of the policy and the fundamental arrangements were a carbon copy.

**Mr McMullan:** Are we not confident enough here to take it from here, rather than taking it from England and ending up with a flawed system even before we started, which we were told about as far back as 2013-14?

**Dr McCormick:** The GB system did not have the same flaws.

**Mr McMullan:** It was not the same system.

**Dr McCormick:** It was broadly the same system, with different tariffs. This is where, if we had understood and analysed the tariffs properly and effectively, this could have been avoided. It was clearly avoidable — there is no denying that.

**Mr McMullan:** OK. Thank you.

**Mr Dunne:** May I make one quick point, Chair? Andrew, if there had been one clear owner of the scheme, instead of two — Ofgem and DETI — would it have significantly reduced the risk? There is always a risk when two bodies are involved, and the lines of responsibility and demarcation were not clear.

**Dr McCormick:** My answer to that is, again, unhelpful to the Department's position, because my answer is that there were not two people responsible. There was one person responsible, which was us, and we did not fulfil our responsibilities.

**Mr Dunne:** Ultimately, yes.

**Dr McCormick:** Ultimately. If we had required Ofgem to deliver more clearly and more fully, and if our oversight of Ofgem had been more effective, I would agree with you that that would have been the right thing to do, but I do not think that it is inherently — we were in a principal-agent relationship. We were the principal, and it was the agent. I would not describe it as a partnership.

**Mr Dunne:** It was the agent.

**Dr McCormick:** It was our agent to deliver, but it was our responsibility.

**Mr Dunne:** But it was empowered to deliver the engineering part of it.

**Dr McCormick:** Yes. There are aspects where I could express disappointment about things it did, but that would not take away from the need to acknowledge, on the Department's behalf, the things that we got wrong.

**Mr Dunne:** You were ultimately responsible for everything.

**Dr McCormick:** Yes, that is right.

**The Chairperson (Mr Swann):** Andrew, I want to go back briefly to where Oliver was in regard to the interest-free loan, administered by the Carbon Trust through Invest NI.

**Dr McCormick:** Yes.

**The Chairperson (Mr Swann):** The renewable heat incentive sitting — both sitting within DETI.

**Dr McCormick:** Again, I would need to get back to you with a fuller understanding of that; I would not want, at this stage of the afternoon, to give answers that are not well evidenced. I will come back to you on that point.

**The Chairperson (Mr Swann):** My train of thought is that someone sees an opportunity, and it goes back to commercial gain rather than to the objectives of the scheme.

**Dr McCormick:** Yes, I see what you are saying.

**The Chairperson (Mr Swann):** That is potentially happening in the Department. If you are prepared to look at that, it would be useful to come back to it.

**Mr McMullan:** Can we find out more about the free loan?

**Ms Cousins:** Just looking at some of the information that we have received on this today, it appears that the legislation was amended to facilitate whoever got the interest-free loan paying it back and then availing themselves of the scheme, but not both.



**Mr McMullan:** So you paid it back before you got the scheme.

**Dr McCormick:** That seems to prevent a double benefit. If the concern is that there is a risk of double benefit, that seems to have been foreseen.

**Mr McMullan:** If you had been in the scheme and the paperwork was brought forward, how do you pay the loan back before you go into the scheme? I would love to know how you did that. I am in business, and I would love one of those loans.

**Dr McCormick:** I will get back to you with a fuller description. We want to give an assurance, but it seems that there was a primary prevention of double benefit.

**The Chairperson (Mr Swann):** That is purely a timing issue. Going back to the peculiarity of the scheme, you installed the boiler before you got the grant.

**Mr McMullan:** That would also release you from declaring that you had other finance for the scheme.

**The Chairperson (Mr Swann):** Which was part of the application from Ofgem.

**Mr McMullan:** If you were asked that.

**Dr McCormick:** Let us get back to you on that.

**The Chairperson (Mr Swann):** Down the same avenue, then, on de minimis, which is where we are going round, I think that the Department actually rejected the two applications for installations that Ofgem brought to the Department's attention, and the Department then changed the definition of de minimis or how they read it. Would that be correct?

**Dr McCormick:** Sorry —

**Ms Cousins:** We literally only got this information —

**The Chairperson (Mr Swann):** Ofgem was in front of us a fortnight ago. I am sure that you have referred to Hansard and what was covered there.

**Dr McCormick:** I am aware that this was discussed. I have not done sufficient preparation on this point. Apologies; we should have.

**The Chairperson (Mr Swann):** The Department brought back de minimis decisions from Ofgem on 13 October 2014 or thereabouts. It is in the Ofgem documentation.

**Dr McCormick:** That was covered in the evidence session. You are right.

**The Chairperson (Mr Swann):** Why did the Department feel the need to bring back that part of the decision-making process at that stage?

**Dr McCormick:** Sorry, I am not prepared on that point. I should have been. I will get back to you on that.

**The Chairperson (Mr Swann):** I refer you to page 55 of the Hansard report. Mr Poulton said:

*"There was the high-level discussion in April 2014 around state aid issues."*

I questioned him on "high-level", and he said that they met at all levels of the Department in regard to de minimis and the Department bringing that back from Ofgem. The two parts we have talked about into consideration — Carbon Trust and neutral loans coming from Invest NI to support an RHI scheme — potentially clashed through de minimis. The Department brought back that responsibility from Ofgem at the same time, having rejected two applications.

**Dr McCormick:** I can see where you are going, but I do not have the factual analysis of that point to answer you. Again, apologies: we should have looked at that more fully following the Ofgem session.

**Mr McMullan:** Can we also find out who dreamed up this way of giving out the free loan? Was that part of the discussion on the overall scheme, to entice people in? Did only two get the money that we know of?

**Dr McCormick:** I will check those facts.

**The Chairperson (Mr Swann):** Maybe only two declared that they got the money. Andrew, if you are telling me that you could get the interest-free loan and pay it back before applying to the scheme, you did not have to —

**Dr McCormick:** Again, let us check that. It is a matter of fact, and I do not know.

**Mr McMullan:** Where did the money come from? Who released that money from what Department?

**The Chairperson (Mr Swann):** It was Invest, I assume.

Andrew, it is an intensive piece of work. Maybe you will take some of our concerns away with you today. Folks, any other questions? No.

Andrew, Heather: thank you very much for your attendance here today. I would like to say that this is it, but there are other actors in the scheme who have to get back to us. It is only fair to put you on notice that we will expect you back again at some stage.

**Dr McCormick:** I understand that entirely.

**The Chairperson (Mr Swann):** The information that we have requested —

**Dr McCormick:** I have to get back to you with several things, and I will do that as speedily as I can.



Northern Ireland  
Assembly

Public Accounts Committee

# OFFICIAL REPORT (Hansard)

Inquiry into the Non-domestic  
Renewable Heat Incentive Scheme:  
Department of Finance

30 November 2016

## NORTHERN IRELAND ASSEMBLY

## Public Accounts Committee

Inquiry into the Non-domestic Renewable Heat Incentive Scheme:  
Department of Finance

30 November 2016

**Members present for all or part of the proceedings:**

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

**Witnesses:**

Ms Alison Caldwell	Department of Finance
Ms Emer Morelli	Department of Finance
Mr David Sterling	Department of Finance
Mr Kieran Donnelly	Northern Ireland Audit Office

**The Chairperson (Mr Swann):** I welcome David Sterling, permanent secretary and accounting officer for the Department of Finance, and Emer Morelli, head of supply division in the Department of Finance. Folks, you are very welcome. David, I believe that you want to make an opening statement.

**Mr David Sterling (Department of Finance):** Yes, very briefly, Chair. Good afternoon and thank you for inviting us along. I am joined by Emer Morelli, who is a grade 5 in charge of supply division in our public spending directorate. I would like to say a few words about the fact that I will be wearing two hats today. You originally asked me to come along to answer questions about my time as accounting officer in the Department of Enterprise, Trade and Investment (DETI) from October 2009 until my transfer to the Department of Finance and Personnel (DFP) on 1 July 2014. However, you have now advised that you will be asking questions about my role as permanent secretary in DFP, now the Department of Finance. Emer will assist me in relation to those questions.

In dealing with questions about my former role, there are a couple of factors that I need to explain before I take your questions. First, I am conscious that, unlike with many other PAC meetings that I have attended, there has not been a sort of detailed cradle-to-grave investigation of the issue by the Audit Office with an agreed report between the Comptroller and Auditor General (C&AG) and the accounting officer. Secondly, I think that it is a matter of record that certain matters are the subject of an ongoing and parallel fact-finding review that has been commissioned by Andrew McCormick in his role as the current Department for the Economy accounting officer. Obviously, it would not be appropriate for me to discuss the issues that are currently being addressed in that review or that may be addressed in the extension to that review.

Therefore, in answering your questions today, I will rely primarily on three forms of evidence in my role as DETI accounting officer: first, my memory of what occurred in that period; secondly, papers that have been provided to me by DFE, including submissions and other material that I would have seen during the time I was there; and, obviously, thirdly, the official Hansard report of the Committee's previous evidence sessions. For the reasons that I have described, I have obviously not been able to speak to the people whom I worked with on this issue. I thought it would be useful to clarify that at the start.

**The Chairperson (Mr Swann):** OK, David. That is useful. That would be our understanding from the start. We have been at this now for a considerable period because of our interest in it. I would be cautious about your "cradle to grave" comment concerning the accounting officer and the Northern Ireland Audit Office. That report is there, and we started our inquiry on the basis of it.

**Mr Sterling:** I accept that, but I meant that normally there would have been a value for money inquiry that would have looked at issues, perhaps over a longer period. I am not in any way decrying the work that has been done; it is slightly different.

**Mr Clarke:** We need more clarity around that. I picked up on what David said as well. I have been on the PAC for a considerable time, and, while in monetary value this may be the biggest issue, I picked up, maybe, a criticism of the Comptroller and Auditor General. I would not want to be associated with that, because this inquiry is no different to any other inquiry. It is a cradle-to-grave inquiry, from start to finish. This one may have a higher value, and it may seem that it is getting more coverage. The first one that I sat on was the inquiry into agency staff for the police, which was quite complex and took a considerable time to get an agreed position on. Maybe David could say more about that, because I am a wee bit uncomfortable.

**Mr Sterling:** There was certainly no suggestion of any criticism at all of the C&AG in all this. I would not want to make a big issue of this at all. It is just simply that normally, as a witness, I would be attending on the basis of a value-for-money audit or a special investigation. This was on the back of a review of the accounts, so it is in a slightly different context, that is all. It does not in any way affect what I am going to say today and I am not making any comment on the role of the C&AG or the quality of his report at all.

**Mr Clarke:** Just for the record, maybe it is a good job it is not a value-for-money report that we are doing. I think we can all clearly demonstrate that this is not value for money.

**The Chairperson (Mr Swann):** Thank you for that clarification on those couple of points, David. Will you clarify for the Committee what your role was in the non-domestic renewable heat incentive (RHI) scheme from its inception?

**Mr Sterling:** Yes, certainly. I will be honest: if you had asked me for my recollections of the scheme when I left the Department at the beginning of July 2014, they would have been that this was a scheme that was not really working. It was not terribly visible on my radar. It was a scheme that, in my recollection at the time, was underperforming. We had been granted a four-year budget of £25 million at that stage for the renewable heat incentive, and we had surrendered £10 million. Ultimately, £15 million was to be surrendered, and there was some criticism that this was expenditure and spending power that was lost in Northern Ireland. My recollections were that this was a scheme that was mirroring one that had been introduced in Great Britain. It was part of our overall drive, through the 2010 strategic energy framework, to address issues of sustainability. We had made very good progress with the pursuit of renewable electricity, and renewable heat was secondary to the primary goal of pursuing renewable electricity. However, we were behind on our commitment, which was to have 4% renewable heat by 2015 and 10% by 2020. My recollection is that the scheme differed from the GB scheme because our counterfactual was domestic heating oil — kerosene — rather than natural gas. As kerosene was more expensive than natural gas, my recollection is that our incentive was less generous than GB's.

That was my recollection of the scheme at the time. I was not closely involved in the development of the scheme, but I am here today to answer questions as to why things turned out as they did. I am happy to answer questions in that regard.

**The Chairperson (Mr Swann):** 'Managing Public Money' states that accounting officers are expected to take personal responsibility for having good project and programme management techniques in

place and to be able to show value for money. Do you think that you met your responsibilities in this case, given what you have just said?

**Mr Sterling:** No. That is a very fair question given the extent of the budgetary pressure that we now face.

At the time, I felt that I had fulfilled my obligations to put a sound, internal control and governance system in place for this. Again, the key factors — the key controls, if you like — were that we were adopting a scheme that had been operating in GB, albeit with adaptations that I will come to. We engaged Cambridge Economic Policy Associates (CEPA), who are internationally respected consultants with a strong track record in this type of work, to advise us on the design of the scheme. They were here last week giving evidence. We consulted twice on the scheme proposals before setting an incentive package. We put in place a casework committee, which is a very strong governance mechanism, and I would certainly have had confidence in those who were on that casework committee to scrutinise the business case rigorously and thoroughly. The business case was subsequently approved by DFP, and we engaged Ofgem to manage and monitor the operation of the scheme. I regarded that control framework as sound.

On your point about project management, we did not mandate the projects in controlled environments (PRINCE) methodology for all projects in DETI or, indeed, in any Department, but it is good practice. Certainly, PRINCE was used in the Department at that time on other energy projects such as Gas to the West, some telecoms projects and, indeed, in my time there as senior responsible officer (SRO) for a couple of projects. We used it in the arrangements for the G8 summit in 2013. There is a reasonable question to be asked as to whether we should have applied PRINCE methodology to this project and, with hindsight, I have to accept that it probably should have been. It would have reduced risk had we done so.

**The Chairperson (Mr Swann):** You talked about the PRINCE methodology. Did you appoint an SRO?

**Mr Sterling:** No, there would not have been a formal SRO within the accepted definitions of the PRINCE methodology.

**The Chairperson (Mr Swann):** But, you did not accept PRINCE for this. Is that what you are saying?

**Mr Sterling:** No. PRINCE was not applied to the management of the non-domestic RHI project.

**The Chairperson (Mr Swann):** Did you appoint an SRO, or is that —

**Mr Sterling:** No, I did not. I did not appoint an SRO.

**The Chairperson (Mr Swann):** Can I ask why? We are talking about a scheme which, at that stage, was worth £25 million. In your own words, you were worried about the £15 million that was possibly being sent back. Why was there not a senior responsible officer for —

**Mr Sterling:** There would still have been somebody responsible for the project in the line management structure. That would occur for any project, whether you were using PRINCE methodology. An SRO is a term that you would use if you were applying the PRINCE methodology and, in this particular case, we did not.

**The Chairperson (Mr Swann):** Why did you not use the PRINCE methodology in this?

**Mr Sterling:** It would not have been a decision of mine. The decision on whether it would have been appropriate to apply a formal PRINCE methodology would have been taken in the energy division. I am not conscious of what considerations were applied to it at the time.

**The Chairperson (Mr Swann):** Even as the permanent secretary or accounting officer, it would not have been something that you would have —

**Mr Sterling:** No. As I mentioned earlier, there would be quite a number of projects in all Departments that would not have a full PRINCE methodology attached to them.

**The Chairperson (Mr Swann):** You mentioned the concern about the £15 million being handed back and not being spent in the Northern Ireland economy. Did that start the panic in the Department: in other words, let us get this spent, let us push this?

**Mr Sterling:** No, I would not describe it as panic. My recollection is that, in the light of the slow uptake, there were moves to publicise the scheme more during 2013. My recollection of the time when I left the Department is that there was no panic associated with the scheme, one way or the other. There was a great range of other energy issues that would have been higher on my radar at that particular time.

**The Chairperson (Mr Swann):** The business case for the project at that time would have been, how much? Do you remember what it was?

**Mr Sterling:** I am sorry, in what sense?

**The Chairperson (Mr Swann):** Had the scheme gone to its full completion, what was it going to be worth to the Northern Ireland economy or what was the cost?

**Mr Sterling:** I do not recall exactly what the estimate in the business case of the total cost was. My focus, my awareness at the time, was in and around £25 million had been allocated for the first four years.

**The Chairperson (Mr Swann):** As regards where we sit now, there are estimations of £1.18 billion. Do you agree that this is an unprecedented level of mismanagement of public funds? It is probably the worst that we have seen since devolution.

**Mr Sterling:** We are facing a shortfall in funding of £20 million a year. Twenty million pounds is a major loss but, when you multiply it by 20, you end up with a very big number; so, in that regard, I agree that it is unprecedented.

I was struck by Mark Cockburn's comments last week. I do not think that we, in the Department of Finance or the Department for the Economy, accept that that has to be the outcome; quite the reverse. I think that everything needs to be done to reduce the budgetary pressure going forward. Obviously, there is a limit to what we can say about how that might be done. I think that that has to be the top priority. We have to stop the exposure to the block. I am acutely conscious, with my Department of Finance hat on, of the very many pressures facing the Executive at the moment. We have to do all we can to reduce this.

**Mr Easton:** Thank you for your presentation so far. In March 2012, it was proposed by the RHI casework committee that there would be a periodic review of the RHI scheme. The first was scheduled for 2014.

*"The NI RHI will have scheduled reviews built into the scheme to allow DETI to ensure that the scheme remains fit for purpose and value for money ... The scope of these reviews will include analysis of tariffs (either to be reduced or increased), the appropriateness of technologies..."*

and so on. Why did that not happen?

**Mr Sterling:** I cannot satisfactorily answer that. I regard the absence of a major review as being critical in all this. Again, I was struck by Mark Cockburn's evidence last week. He said that, no matter how well you design an incentivising tariff mechanism, you have to be constantly alert to the market reaction to it. You have to be alive to the way in which people might seek to exploit it or "game it", to use the language. For that reason, you need regular reviews; and it is quite clear that the absence of a review has been a major contributory factor to the problem we face today.

It is clear that, in 2014, there were discussions in the Department. The intention seems to have been that a review would be conducted, first, 18 months after the operation of the scheme or to take account of the first 18 months of it. I have seen a submission suggesting that the intention, later in 2014, was to review the operation of the scheme after two years of usage. However, that did not materialise.

**Mr Easton:** So, if I hear what you are saying, the review should have happened in 2014 and, for some reason, it did not. You had skipped off to another Department at that stage, but you had read that they were maybe going to have it another two years later? Is that what you are saying?

**Mr Sterling:** No. The submissions that I have seen recently suggest that the Minister was advised that the intention in May 2014 was to conduct a review that would take account of the first 18 months' usage. Subsequently, in the autumn, further advice suggested that the review would look at the first two years' usage of the scheme. To put that in context, when I left the Department at the beginning of July, there had been around 216 applications to the scheme. I think that a certain number of those had been accredited. There had been a low uptake.

**Mr Easton:** Which is why you thought that it was a failure.

**Mr Sterling:** Yes. I am not going to jump to any conclusions as to why the review was not done when it should have been. Questions around that will be addressed in the fact-finding review, so there is a limit to what I can say about that.

**Mr Easton:** Should that review have happened or been started before you went?

**Mr Sterling:** The business case indicated that the first review should have taken place in January 2014.

**Mr Easton:** And you went in July.

**Mr Sterling:** I went in July.

**Mr Easton:** Why did you not make sure that it happened?

**Mr Sterling:** It is not a particularly good excuse, but, to be honest with you, I was not conscious at the time of the need to do the review in January 2014.

**Mr Easton:** Are we allowed to ask who would have been?

**The Chairperson (Mr Swann):** Probably not; we cannot ask for names.

**Mr Easton:** Would somebody below you have known? Is that fair? Should they have known?

**Mr Sterling:** The business case indicated that a review would be done. It was recognised, I think, in the casework committee.

**Ms Emer Morelli (Department of Finance):** Yes, and in the supporting information, under the regulations, that the review would be done. It is important to note that there was a delay in the regulations —

**Mr Sterling:** Yes. The business case was originally completed in the spring of 2012 — I think it was approved in April 2012 — but the scheme did not become operational until November 2012, so there was a delay of five or six months. I imagine that somebody could say that it would not have been appropriate to do the review in January 2014 —

**Mr Easton:** Because of the delay?

**Mr Sterling:** Because of the slippage in the introduction of the scheme. In January 2012, I think that there had been only 99 applications for the scheme. Having said that, it is conjecture; I have not been able to speak to any of those involved to establish clearly why the review did not take place.

**Mr Easton:** So, in conjecture, it may have been the case that somebody in charge of that project and team made the decision not to go ahead with the review because of the delay but never came to you to say yes or no.



**Mr Sterling:** I will be honest with you: to the best of my recollection, I was not conscious that there was a review to be done in January 2014.

**Mr Easton:** But there would have been others who were.

**Mr Sterling:** Indeed.

**The Chairperson (Mr Swann):** David, you said that the Minister was advised that a review would take place in May. So, the Minister was aware that there should have been a review.

**Mr Sterling:** No. The Minister was advised that a review would be done in May 2014. Subsequent advice, in the autumn of 2014 — I think that it was in October — said that a review would be done later with regard to the first 24 months' usage of the scheme.

**The Chairperson (Mr Swann):** If someone made the Minister aware, why did they not make you aware?

**Mr Sterling:** I was aware at that stage because I was copied into those submissions. What I am saying is that I have no recollection of being aware, in January 2014, that a review needed to be done at that stage.

**The Chairperson (Mr Swann):** But it came on to your radar in May 2014.

**Mr Sterling:** I was copied into the submissions, so I would have to say that I was aware of it. I cannot recall whether it was something that registered or rang any alarm bells with me.

**Mr Clarke:** David, does the Minister micromanage every scheme?

**Mr Sterling:** No. Not at all.

**Mr Clarke:** Why would someone copy the Minister and you into something regarding a review if the Minister was not having to micromanage the Department?

**Mr Sterling:** I am sorry; I should explain. The purpose of the two submissions I have mentioned was to update the Minister on progress with the renewable heat incentive; that was for the domestic and non-domestic schemes. Obviously, at that stage, we still had not put the domestic scheme in place. From memory, it became operational in December 2014. These were submissions which were alerting the Minister on progress, and it is normal practice in the Department to alert the Minister on progress on significant initiatives.

**Mr Clarke:** I have of a couple of other things, Chairman, around what David has said. In response to Alex, you talked about the Department being on constant alert. Then you did use conjecture as to whether it was appropriate — it is conjecture because you do not know whether it was appropriate for carrying out a review or otherwise. At the start of your evidence to Alex, you talked about the newness of the scheme and the slow uptake, and you were quick to defend because before you left the Department there were only 216 applications, which probably implies that all this happened after you left.

**Mr Sterling:** I am not seeking, in any way, either in answer to that question or any other question, to duck any personal responsibility.

**Mr Clarke:** In some of your responses, it does seem as though you are trying to pass the blame to someone else.

**Mr Sterling:** I want to be very clear, and thank you for pointing that out, because I had not intended my answer to sound like that.

**Mr Clarke:** A few of your answers are sounding like that, because we are pulling the Minister into something about micromanaging, and that is how it looks. You are suggesting that there were 216 applications, which is a small number, before you left the Department. Ultimately, the review should have taken place before you left the Department. In your submission today, you said that there was a

slow uptake. Let us say that there had been a continuously slow uptake and, if we go back to the value-for-money argument, the Comptroller and Auditor General would also have been critical if money was set aside, the programme was not successful, and money was returned. Why, with only 216 at your date of departure, did the review not take place to find out why the scheme was not working effectively at that time?

**Mr Sterling:** Again, that is a very reasonable question and I do not have a satisfactory answer as to why the review did not take place. I was aware that there had been a slow uptake of the scheme. At the time, the response to that was to advertise the scheme more heavily than had taken place.

**Mr Clarke:** You were aware of the slow uptake and, in your armoury, and what should have been taking place anyhow, was a review. Given that we could have been in a different scenario, which might have been a safer one than the one we are in today, that we could not have spent the money, why did the review not take place to find out why the scheme at that time was not successful?

**Mr Sterling:** As I explained before, I cannot satisfactorily answer why the review did not take place during the time I was there.

**Mr Clarke:** Can you see the problem? By your own admission, the scheme was not taking off particularly well, you had an opportunity to review it, and someone in your Department, for which you were the accounting officer at the time, failed to do it, did not do it — whatever excuse we want to use for that — and it did not happen. Can you see why this is flagging up an issue to me in your Department under your leadership at that time? There was an issue with this scheme. There was an opportunity to review it and you failed to review it, and then it runs out of control.

**Mr Sterling:** I accept that a review did not take place in my time. I accept that the business case quite clearly said that a review would take place in early 2014. I cannot satisfactorily explain why it did not take place. Questions about that are being addressed in the fact-finding review. Going back to your introductory point, I stress that I am not trying to pass the buck to others. I will accept full responsibility for any failings that happened during my time, and I am absolutely clear about that.

**Mr Clarke:** Fair enough.

**Mr Kearney:** David, thanks for repeating that assurance, because I formed exactly the same conclusion as Trevor.

**Mr Sterling:** To the Committee, I am sorry because I had no intention —

**Mr Kearney:** Let me finish my point. It sounded to me in your opening remarks and then in response to the Chair's questions and to some of Alex's questions that we were beginning to get a pattern that it was nothing to do with you. I am just letting you know that that is not just one member's perception, interpretation or conclusion; it is the opinion of at least one other.

David, do you consider a review to be an important or a systemic element of any proper internal control system?

**Mr Sterling:** Absolutely.

**Mr Kearney:** No or yes?

**Mr Sterling:** Yes.

**Mr Kearney:** You said earlier that you felt that you had fulfilled your responsibility to install proper internal controls and then you outlined the architecture of that. How does the failure to explain why you did not direct for a review square with your belief that you had in fact proper internal controls in place?

**Mr Sterling:** I did not explain myself clearly enough earlier on. I was trying to explain what I felt about the scheme when I left in 2014. Obviously now, with the benefit of the C&AG's report and all of the analysis that has been done to date, I accept fully that mistakes were made. I accept fully that the

design of the tariff should have had tiering in it. Again, I note Mark Cockburn's comments last week that he regrets that he had not recommended that tiering be introduced.

**Mr Kearney:** He also denied that it was a big deal. Do you share that view?

**Mr Sterling:** No, I would not deny that it was a big deal. I think that it is very significant, and I have to say that, if you are looking for two critical factors that have given rise to the budgetary loss, one is the initial tariff design and two is the failure to do reviews. When I was talking earlier about my responsibility, as I said, I was trying to describe how I felt at the time about the control system that had been put in place. What I did not properly explain is that it is now clear that the control system may have looked good but the application of the control system was deficient. Otherwise, how would you explain what has happened? I take responsibility for that.

**Mr Kearney:** How do you believe it was defective?

**Mr Sterling:** In two regards. First, the initial tariff design would have, I think, mitigated some of the problems that we faced had it had tiering introduced at the start, but, significantly, the review did not take place. The other significant factor is that warning signs that were flagged up by Ofgem and by the whistle-blower were not taken account of. Those things together, I think, in large part are what has contributed to the problem that we face today. As I said, it will be for others to determine the extent of my personal responsibility, but, today, I want to give the facts as I understand them now and as I recalled them at the time.

**Mr Kearney:** I have one more question on the casework committee. You said that a strong governance committee was in place, involving the Department, Ofgem and CEPA, all of that constituting a strong governance framework. Do you stand over that?

**Mr Sterling:** As I said, at the time, I felt that that was a sound set of governance arrangements. I accept now, on the basis of what we know now, that it clearly was not sufficient and that the application of the controls — the way in which they operated — was not sufficient.

**Mr Kearney:** Do you know that there were no minuted meetings up until November 2015?

**Mr Sterling:** Between?

**Mr Kearney:** From the beginning of the scheme until November 2015.

**The Chairperson (Mr Swann):** Between Ofgem and the Department.

**Mr Sterling:** Sorry, yes, I knew that from Ofgem's evidence.

**Mr Kearney:** Did you know that at the time?

**Mr Sterling:** No.

**Mr Kearney:** Is that normal? Would you have encouraged or sponsored that practice in the Department?

**Mr Sterling:** No, it is good practice to minute meetings.

**Mr Kearney:** I would have thought so, too. The data-sharing protocol was proposed by Ofgem not by the Department. Were you aware that it had to be proposed by Ofgem in order to give some type of structure to communications —

**Mr Sterling:** No, I was not aware of that.

**Mr Easton:** I put this scenario to you. You were leaving in July 2014, and the review was meant to be in January 2014. It was delayed by five months. Is there a possibility that, as a result of the fact that you were moving on, you took your eye off the ball, left it to your predecessor and that it drifted along because of the two months' difference?

**Mr Sterling:** No. As I say, I was not alert to the significance of the review that was needed of the non-domestic renewable heat initiative. Perhaps, with hindsight, I should have been more sensitised to that, but I was not. Nobody was ringing alarm bells to me, other than in regard to the slow take-up of the scheme. With hindsight, I accept that there were warning signs. I have referred to Ofgem's comments and the whistle-blower. Those issues should have been reacted to.

**Mr Easton:** Were you aware of those warning signs?

**Mr Sterling:** No, I was not.

**Mr Easton:** Someone at a lower level was.

**Mr Sterling:** I think that is a matter of record.

**Mr Easton:** They did not see fit to tell you.

**Mr Sterling:** To the best of my knowledge, I was not apprised of them.

**Mr Easton:** You are absolutely sure.

**Mr Sterling:** To the best of my knowledge. The issues were not flagged up in the assurance statements that were prepared in the Department on a six-monthly basis. They were not flagged up in the Department's corporate risk register. These issues were not apparent. They were not brought to my attention in the way that I normally would have expected with major risks.

**Mr Easton:** No one had a quiet word with you or gave you a phone call.

**Mr Sterling:** If somebody were to say, "I bumped into David Sterling in a corridor and said that there was a problem with such and such", it may have happened. However, I have to say that, honestly, I have no recollection of such a thing.

**Mr Easton:** We know about the periodic reviews that did not happen. There was the option to hold emergency reviews if the need arose. Why did that not happen?

**Mr Sterling:** Sorry, the option to?

**Mr Easton:** To have emergency reviews. Did you ever feel the need for an emergency review?

**Mr Sterling:** My general point was that the absence of any review was clearly a weakness that has contributed to the problem we face today.

**Mr Easton:** But you did not feel the need for one because of the low uptake and because nobody was highlighting it to you.

**Mr Sterling:** Nobody had raised any issues that suggested to me that I needed to say, "You need to do an emergency review now".

**Mr Easton:** A monitoring committee was to be established in respect of the budget, and the Department was to receive monthly reports from Ofgem. Did that happen?

**Mr Sterling:** As far as I am aware, the Department's energy division received regular reports from Ofgem. I am not sure whether it got one every month, but there were regular reports.

**Mr Easton:** Did they establish a monitoring committee?

**Mr Sterling:** I am not sure whether there was a properly constituted monitoring committee as such. That is not to say that there was not, but I was not aware that there was such a thing.

**Mr Easton:** Where did we read that there was meant to be a monitoring committee?

**The Chairperson (Mr Swann):** It is in the DETI casework correspondence from 2012.

**Mr Easton:** OK. You do not know whether there was meant to be a monitoring committee at all.

**Mr Sterling:** It was one of the requirements —

**Mr Easton:** But you do not know.

**Mr Sterling:** No, I do not.

**Mr Easton:** You would have left it to whomever was in charge of the section to get the committee in place, which did not seem to happen, as far as you know.

**Mr Sterling:** I would have left the director of a division to deal with an issue like that.

**Mr Easton:** So, if no monitoring committee was set up, do you think that might have added to the fact that you did not know about these things cropping up?

**Mr Sterling:** I am not sure if that would have been a significant factor. My assumption was that the regular reports from Ofgem would have been scrutinised, whether it was by a formally constituted committee or a group of people, I just was not aware.

**Mr Easton:** Did they receive monthly reports from Ofgem?

**Mr Sterling:** I do not know, sorry. My understanding is that regular reports were submitted. I am not sure if they got one every month.

**Mr Easton:** OK. Did you get monthly reports?

**Mr Sterling:** No, I did not.

**Mr Easton:** Did you get any reports?

**Mr Sterling:** No. I was aware of the budgetary issue through the normal financial reporting arrangements in the Department. I knew that there was underspend, and I was copied into the submissions that reported on the progress of the scheme.

**Mr Easton:** So, as you were in charge, do you not find it astonishing that, in such a major scheme, you do not seem from your evidence to have got any reports or updates? It was just about the finances. I find it incredible that you did not seem to get any updates for such a major scheme. It is astonishing, and, if you did not, no one higher up, such as the Minister, for example, got them either.

**Mr Sterling:** With hindsight, I accept that it is surprising that I did not get regular updates. Having said that, in the Department, we were dealing with a lot of issues. In an energy division, in particular, there were a lot of issues around. At the time, one of the primary concerns that I had on the energy front at the time was the level of energy tariffs. We were in a particularly volatile period. In 2013, we were due to get a 17.8% increase in Power NI's domestic electricity tariffs. Gas prices in Belfast went up 8.7%, and NIE price control had been referred to the Competition Commission. There were difficult stakeholder relationships between bodies in the energy field. In December 2012, we successfully got Northern Ireland excluded from the carbon price floor, which helped to save Northern Ireland consumers about 3% on their tariff bills. We were working hard on gaining state aid approval for the gas to the west project, which was a particular priority for us. We had ongoing issues with the North/South interconnector. The absence of the North/South interconnector is costing consumers about £20 million in tariffs. The Moyle interconnector was only working on a 50% basis. We had major concerns from the non-domestic energy sector, particularly large electricity users, and there was a review going on of industrial and commercial tariffs. We were also working on an Energy Bill. So what I am saying is that the non-domestic renewable heat initiative needs to be seen in the context of those other issues. All those other issues were higher on my radar than the RHI. I am happy to accept that, with hindsight, I may have got my priorities wrong, but that was the way that I saw it at the time and that was the way that it was being presented to me.

**Mr Easton:** You are saying basically that you had a lot more issues that you thought were more important at that time. I am sure that you got reports and updates on those, but you did not on this one. That is what we are concentrating on.

**Mr Sterling:** Absolutely. I am not trying to absolve myself of any responsibility for this; I am saying that, at the time, the issues that I have described are issues that I was much more actively involved in than the RHI.

**Mr Kearney:** In previous evidence that was given to us, David, it was helpfully described that possibly as many people as eight to 10 people in your Department had a helicopter view of the scheme. People in energy division and above energy division were closely monitoring the scheme and its operation. Are you saying that, of the eight to 10 middle-ranking and senior members of staff who had that helicopter view, none were talking to you about the non-domestic RHI scheme?

**Mr Sterling:** I need to be careful that I do not get into individual levels but —

**Mr Kearney:** We will not.

**Mr Sterling:** The key structure was me, as head of the Department, and, at that time, I had two deputy secretaries directly reporting to me. One was responsible for policy group, and one was responsible for finance and corporate services. Energy division fell within the policy group. There was a director in charge of energy division at grade-5 level, so the key line to me was that relationship. Beneath the director, there were those who were working on the project. Without getting into personalities or details or anything, let us just talk generally. A project like RHI would probably be developed by a grade 7 and a deputy principal. I am not sure that there was a line of eight people, but the team would report to the grade 5, who would report to the grade 3, who reported to me. That, in a general sense, is how this type of project would be managed.

**Mr Kearney:** You are missing my point completely. If that number of personnel had a helicopter view of the scheme, I find it inconceivable that one of them was not reporting on the scheme to the boss of the Department. You speak about your reporting line from policy group through to you: was that reporting line working?

**Mr Sterling:** I thought that the reporting line was working well.

**Mr Kearney:** Except you did not know anything about the scheme, it was not on your radar and you were not in a position to clarify how it evolved from inception. You were unaware that no minutes were being taken and unaware that the robust control system was not, in fact, talking to itself.

**Mr Sterling:** To the best of my knowledge, nobody was flagging it up to me that there were any major problems with the non-domestic RHI other than the slow uptake of the scheme.

**Mr Kearney:** I appreciate that completely. I will finish on this, Chair. I can get the idea that you did not know. Whether or not you should have known is a different question, but I get that you are saying that you did not know. I do not get why your reporting line was not working, and I would like you to comment on that.

**Mr Sterling:** Those questions can only be answered through the fact-finding review that is being put in place. If I were to answer that, I would be drawn into commenting on the conduct of officials who are already answering questions in the fact-finding review.

**Mr Kearney:** I disagree entirely, but I will leave it at that.

**Mr Sterling:** I am trying to think whether there is any other way that I can help you on that.

**Mr Kearney:** I disagree with what you just said. I am happy to move on.

**Mr Dunne:** Apologies for being late. David, it is good to see you again. On a point of clarification, is "PRINCE" the proper term for the methodology?

**Mr Sterling:** Yes.

**Mr Dunne:** Is that a project management process or procedure?

**Mr Sterling:** It is a project in a controlled environment (PRINCE).

**Mr Dunne:** Is it my understanding that that was not in place for this project.

**Mr Sterling:** That is correct.

**Mr Dunne:** That is what we were told. Andrew implied that, unfortunately, there was no project management process or procedure in place for the scheme, and he felt that that was missing. Was there a project manager — I do not want to know the name of the person — in DETI who was responsible for the scheme?

**Mr Sterling:** There would have been somebody responsible for the project management of the scheme. Certainly, I recall Mark Cockburn last week saying that he was dealing with somebody who, in his view, was clearly the project manager for the scheme.

**Mr Dunne:** So the project manager had overall responsibility for the workings of the scheme and was responsible to you, finally? Is that fair?

**Mr Sterling:** That is fair, yes; through the line that I described.

**Mr Dunne:** Is it also fair to assume that, because of the lack of project management procedures, there was a lack of management review and systematic review, as well as a lack of team responsibility for the whole project, because of the failure to implement the proper procedures? Is that a fair assumption?

**Mr Sterling:** I do not know exactly how the project was being managed at the time.

**Mr Dunne:** But you were ultimately responsible for it. Is that fair?

**Mr Sterling:** Yes, as head of the Department, I am ultimately responsible for what goes on in the Department.

**Mr Dunne:** For all of it, really, but obviously not Ofgem. On the Ofgem issue, I take it that you or the project manager were ultimately responsible for the project as well.

**Mr Sterling:** I suppose, as accounting officer for the Department, I am responsible for putting in place sound systems of control. If those sound systems of control are not operating as they should —

**Mr Dunne:** They are there to be effective and efficient and to protect everyone.

**Mr Sterling:** That is correct, and they are there to safeguard public expenditure.

**Mr Dunne:** Unfortunately, they were not in place.

**Mr Sterling:** I have made the point before —

**Mr Clarke:** Chairman, I think that we are possibly straying into an area that affects them a wee bit, because we are trying to apportion blame.

**Mr Dunne:** We are talking about the processes and procedures, but we have established that they were not in place.

**Mr Sterling:** Yes. I have said before that I will take responsibility for any failings that are down to me in all this, but it is not for me to make a judgement on that responsibility. My role here is to provide the Committee with evidence, and that is what I seek to do.

**Mr Dunne:** Right, we will move on. An overview of risk management was outlined in a note of a meeting in March 2012 of the RHI casework committee. Nine risks were identified, including the risk

of an incorrect subsidy level being either too high or too low, which was to be managed through regular planned reviews of the subsidy levels. Are you satisfied that that risk was adequately managed?

**Mr Sterling:** No, and I have accepted already that one of the major contributory factors to the budgetary pressure that we face today is that the scheme was not reviewed.

**Mr Dunne:** OK. The risk of fraud and the risk of insufficient budget for the administration of future payments were also identified. How well were those risks managed?

**Mr Sterling:** Again, we were reliant at the time on Ofgem performing its role as managers of the operation of the scheme and as accreditors for the installations that applied to join the scheme. We have now had the benefit of the PwC report, which has raised some questions about the effectiveness of that and highlighted some issues in and around installations, and so on. There are definitely some issues to be addressed there. With hindsight, there probably should have been more effective scrutiny of the schemes.

**Mr Dunne:** There should have been. The risk of fraud was always a factor. You are a civil servant, so I assume that you and your Department would always be on the lookout for risk. An insufficient budget was always going to be a risk. Are you saying that it was up to Ofgem to manage those risks?

**Mr Sterling:** It was our agent in that regard. We looked to Ofgem to do that. It was reasonable to engage Ofgem, given that it was discharging a similar responsibility in Great Britain at the time.

**Mr Dunne:** Was there a clear statement of requirement for the task that Ofgem was given, including of risk?

**Mr Sterling:** There was. It was based broadly on the arrangements that applied in England, and we were essentially obtaining a similar service.

**Mr Dunne:** Was that appropriate, considering that they were different schemes?

**Mr Sterling:** Again, with hindsight, we have to address questions on whether the arrangement, whereby we got a population-based share — 3% — of the inspections that were occurring, was sufficient. I accept that, with hindsight, we might have looked at it differently.

**Mr Dunne:** Yes. In fact, had the PRINCE methodology been in place, I assume that you would have reviewed the feedback from Ofgem periodically and looked at the risk, and the evidence of risk. If the feedback from Ofgem had been monitored, would you not, in hindsight, have put in more resources to increase Ofgem's frequency of audit and review?

**Mr Sterling:** In hindsight, yes. I am sorry, but what was the first part of your question?

**Mr Dunne:** I was talking about the PRINCE methodology.

**Mr Sterling:** I am not sure that applying the PRINCE methodology would have made a significant difference. However, through the creation of an issues log, it might have flagged up matters such as the need to have the business case reappraised and the review conducted more clearly. I would still say that whether you are applying PRINCE or not, there should be what we would call a good BF system to identify issues.

**Mr Dunne:** What is a BF system? Is that "bring forward"?

**Mr Sterling:** Yes.

**Mr Dunne:** In other words, it is a management review. Would there not have been a frequent management review of the whole project by those with the senior responsibility? Would they not have sat down once a month and had a meeting to review how everything was going?

**Mr Sterling:** I expect that that would have been done, yes, for any project of that nature.



**Mr Dunne:** That is my point, though. This lacked project management. There would have been a team in there managing it, and if someone were on leave, the issues would have been covered by someone else. The whole thing would have gone forward with shared responsibility and shared accountability and been much more effective and efficient. Is that fair to say?

**Mr Sterling:** Yes. Again, it is worth pointing out that the voices of those who were involved in that way need to be heard. At the moment, those questions will be asked and those issues addressed through the fact-finding review.

**Mr Dunne:** I understand that the drive behind the renewable heat incentive scheme was to meet EU renewables targets. Is that fair? Was that one of the main reasons?

**Mr Sterling:** Yes. With the renewable heat incentive scheme, the desire was to contribute to the UK's overall target under the renewable energy directive. The target that was identified in the 2010 strategic energy framework was 10% of heat to be delivered through renewable sources by 2020, with an interim target of 4% by 2015. The initial focus was on the non-domestic side, but equally there was a recognition that about 50% of heat that is generated in Northern Ireland comes from domestic households, so there was a clear desire to have a domestic scheme as well.

**Mr Dunne:** Was there always that risk of the Department incurring infraction costs as a result of being unable to meet targets?

**Mr Sterling:** I am not sure. Non-compliance with an EU directive can lead to infraction costs, but that was not the major driver. The major driver was that the scheme was seen as being something that would contribute to the target but that, within that, would help to reduce our reliance on fossil fuels, thereby creating a more secure energy supply chain. It would help promote the use of renewable energy materials, such as biomass, and the other technologies that were to be supported through the RHI scheme. In the business case, the Department was also looking at the extent to which there might be some wider economic benefits through helping promote the renewables sector of the economy. All those were factors in the business case.

**The Chairperson (Mr Swann):** OK. Emer, you transferred across to the public spending directorate in the Department of Finance in October 2014. When did you become aware that there were problems with the RHI scheme?

**Ms Morelli:** The RHI scheme first came to my attention in June 2015, when we were advised by DETI that it had missed our requirement for approval of an addendum to the scheme.

**The Chairperson (Mr Swann):** You were informed by the Department?

**Ms Morelli:** Yes.

**The Chairperson (Mr Swann):** OK. I am conscious that you were present at a casework meeting on 21 October that referred to trigger points that were not implemented in 2013 and should have been included. Are you aware of what those trigger points were?

**The Chairperson (Mr Swann):** By way of background, a further business case came forward from DETI to improve the scheme over the period from April 2015 onwards. In the course of looking at that business case, it became apparent that DETI had consulted on cost controls on the non-domestic scheme in 2013. Included in those cost controls were various tiering trigger points and other methods of controlling spend.

**Ms Lockhart:** Thank you for coming before the Committee today. I have a couple of questions. David, you mentioned Mr Cockburn's evidence last week. You have obviously looked at the transcript in detail. He laid a lot of the blame at the Department's feet. I think that he is quoted as saying that it was a problem on the Department's part. I want to go back to something that he said about a consultation. Cambridge Economic Policy associates did an addendum to its overall consultation report in the first instance. There were 75 responses to that consultation, but they received only five of them. Can you explain why that was the case or who — not names — fronted that? Would you have been aware of that?

**Mr Sterling:** No, I cannot explain what happened there. I think that I am right in saying that the Committee has asked the Department for the Economy to provide some advice on that. I was not aware at the time that, when the work was being done post the consultation, the consultants had been given only five of the total number of consultation responses. I am not sure why that was, but, as I said, I think that I am right in saying that the Committee has asked for advice on that from the Economy Department.

**Ms Lockhart:** What are your comments on Mark Cockburn saying that it was the fault of the Department? I cannot remember his exact words, but he very much laid the blame at the feet of the Department.

**Mr Sterling:** I think that I flagged it up before that there were a number of contributory factors. I do not think that it is for me to pin the blame, but the contributory factors that I identified earlier include that, with hindsight, the tariff probably should have had tiering built into it, and Mark Cockburn expressed regret at that. I have already referred to the fact that there should have been regular reviews to test how the market was responding to the incentivisation mechanism, and I suppose that the follow-up on other such issues that were identified in the 2013 consultation should have been done. A third factor is the warning signs that came from Ofgem and the whistle-blower. Taking those things together, you get a sense of why we have ended up where we are.

**Ms Lockhart:** Am I right in saying that that all happened while you were in position?

**Mr Sterling:** Yes. If we unpack it, the tariff mechanism was agreed while I was in post. The tariff was designed in 2012. There was also clearly a need to conduct regular reviews. A review did not occur during my time, so I bear some responsibility for that. I presumably bear some responsibility for not causing the review to be conducted. I am not, for a second, attempting to apportion blame, but I argue that reviews should have been conducted after my time. I accept responsibility for reviews not occurring during my time. Alarms bells were rung by Ofgem while I was there, and the whistle-blower —

**Ms Lockhart:** Alarms were raised when you were there, but you were not aware of them.

**Mr Sterling:** No, I was not aware of them. To the best of my knowledge, nobody brought it to my attention.

**Ms Lockhart:** To the best of your knowledge, no one brought it to your attention.

**The Chairperson (Mr Swann):** Carla, Trevor is looking to get in.

**Mr Clarke:** I want to dig slightly deeper, David. On the 75 consultation responses, you are right. We have asked for the information and hope that we will be furnished with it. Was it custom and practice for the Department with other schemes, when you brought in Cambridge or some other consultants, to be selective about what was said to them?

**Mr Sterling:** I have no personal experience of anything similar. I cannot recall being involved in another project in which we would have engaged consultants in that way and then asked them to review consultation responses. That is not to say that it did not happen, but I cannot recall anything like that.

**Mr Clarke:** I appreciate your honesty. Given that you did that — not you personally, but a Department — and were paying Cambridge a significant amount of money to do a significant piece of work, do you think that it would be acceptable, in the sense of what anybody would consider reasonable, to filter the information that you give them to come to an informed judgement in what they give you?

**Mr Sterling:** It certainly would not be appropriate to edit, censor or filter responses so that the consultants whom you had paid to give advice saw only a narrow section of opinion. As I said, I do not know what happened in this instance, and I do not want to get into speculation. Having said that, I am aware of some consultations in which you will find that, for example, you get a large number of responses that are essentially the same thing. Somebody who represents a particular interest may have created a letter that a large number of people will sign. You do not need to read all those, because they are identical. I have no idea whether that happened in this instance, but it could explain

why, in some cases, consultants might not get every consultation report. Some consultation responses can be quite long as well.

**Mr Clarke:** From listening to the gentleman last week, some of the ones that he got were the long ones. I am not trying to apportion blame, but you can understand, given the way in which the evidence was presented last week, why some of us would draw a conclusion that information was filtered, if Cambridge got only five responses out of 75 and no explanation of what the others were about.

**Mr Sterling:** I can understand why you have asked the question, yes.

**Mr Kearney:** David, briefly explain what is the process when a permanent secretary moves out of one Department and into another? Is it the established practice that you provide a handover note or report to your successor that gives a sense of the strengths and weaknesses in the overall departmental operation?

**Mr Sterling:** Yes, that is normal practice.

**Mr Kearney:** Is that done on the basis of consulting with all the relevant senior personnel with responsibility for oversight of all the departmental projects and schemes?

**Mr Sterling:** There is not an absolutely standard approach to this, because some permanent secretaries moving into a new Department might have different requirements from others. Some will specify how they want their briefing to be constructed. In general terms, what I would expect is all business areas to be required to identify key issues for the incoming permanent secretary. Those key issues would probably be subdivided into things for immediate attention, things that the new permanent secretary needs to know and things that can be read in slower time.

**Mr Kearney:** That is very helpful. Did the RHI scheme feature in the schematic that you have just outlined?

**Mr Sterling:** My recollection is that, when Andrew took over from me, we provided him with a comprehensive departmental first-day brief that identified issues. I have not seen it since I left the Department, so I do not know whether the RHI was flagged up in it or not, but I am sure that it is still available.

**The Chairperson (Mr Swann):** OK David, we will ask for that.

**Mr Kearney:** You do not know whether the RHI scheme was in that.

**Mr Sterling:** I simply do not recall whether it was or not.

**Mr Kearney:** Would you not have read that before it was given over to Andrew McCormick?

**Mr Sterling:** I would have done, but I am saying it is two and a half years ago, and I cannot remember whether the RHI scheme is in it or not. Bear in mind, a first-day brief like that can often be quite a thick document, as you will be identifying a range of issues across the Department and in the Department's arm's-length bodies.

**Mr Kearney:** Therefore, I could make a supposition from that that the RHI scheme did not feature in the report, or it at least did not feature in the report with any concerns about it being flagged up. Bear in mind previous submissions to the Committee, when we heard that junior — much more junior — members of staff were identifying warning signs and, in the process of moving at much more junior levels in the Department, were flagging up their concerns in handover notes that they were supplying to their replacements.

**Mr Sterling:** I honestly do not know. I am not even going to conjecture as to whether it would have been or not.

**Mr Kearney:** That is OK. That is fine.

**Mr Sterling:** There should be a copy of it available.

**Ms Lockhart:** From memory, there was a consultation launched in 2013. I remember seeing the foreword, which very specifically talked about tiering. To my knowledge, the results of the consultation never went anywhere, and the recommendations were not brought forward. Why was that the case? Was that during this period?

**Mr Sterling:** The consultation was conducted during 2013, and a consultation response was not produced. Again, Andrew referred to this. He said that he did not have a satisfactory explanation of why it was never finished. I do not have one either. Issues and questions around that will be addressed by the fact-finding review. It was relied on —

**Ms Morelli:** — to bring forth the adjustments made on 18 November 2015.

**Ms Lockhart:** The results of that were relied on for the adjustments in November 2015.

**Mr Sterling:** Yes.

**Ms Lockhart:** Those responses sat from 2013 to 2015 on a shelf somewhere and were implemented only in 2015? Or am I wrong? I am new to all this, so I am finding my way here, too.

**Mr Sterling:** As I said, I do not know exactly what happened. I can say that there was not a formal consultation response published in my time.

**Ms Lockhart:** Would that be normal practice? Do a lot of consultations go out for which there is no —

**Mr Sterling:** No. That would be unusual. Normally, people who have responded to a consultation press for a consultation response. Various interest groups would be keen to see what the outcome was.

**Ms Lockhart:** Yes. That is a wee bit mind-boggling. There were numerous letters from the Minister in your equivalent Department in GB in 2013 and 2014 setting out the introduction of degression and tariff reviews to ensure affordability. The idea of a cost cap, which would limit the number of new applicants if the budget were at risk, was also referred to in those letters. The letters would have crossed your desk, I assume. I am just wondering why you did not look for similar cost controls to be introduced in Northern Ireland.

**Mr Sterling:** This is the same point that I addressed about the consultation response. The consultation had looked at a range of cost-management measures. Again, I do not have a satisfactory explanation for why that was not progressed at the time.

**Ms Lockhart:** OK. At any of your meetings with your equivalent grade in the then Department of Energy and Climate Change (DECC), did the RHI scheme come up for discussion? In particular, were the issues of tiering, degression and budget ever discussed?

**Mr Sterling:** I did not have any discussions with anybody in DECC about the RHI scheme, but there were discussions at the energy division level with DECC on it. I do not have the detail. I do not recall the nature of those discussions. However, I was aware that there were pretty regular discussions between the Department's energy division and DECC on a whole range of energy issues, so engagement was regular.

**Ms Lockhart:** Did engagement not happen at your level? There was no —

**Mr Sterling:** Not on the RHI scheme.

**Ms Lockhart:** I am not even sure whether the term "permanent secretary" is used in England. Do you have an equivalent over there?

**Mr Sterling:** Yes. Here I am called a "permanent secretary", but I am a grade below a permanent secretary in a Whitehall Department. Technically, I am a grade 2, which is a director-general, in those terms.

**Ms Lockhart:** Would you ever have any sort of comings and goings with your equivalent?

**Mr Sterling:** You would, on specific issues, but, as I say, the RHI scheme was not one of them.

**Ms Lockhart:** I find that really difficult to comprehend, because of the magnitude of the scheme and because of the experiences of GB in and around tiering. I find it really hard to comprehend that there was absolutely no mention of the RHI scheme in any conversation that you had at your level, because of your Department's level of responsibility for it. In your mind, was it not that big a scheme?

**Mr Sterling:** That would not be unusual. Discussions about schemes like that tend to be conducted at lower levels in the organisation. For example, in a different context, in our relationship with the Treasury, the vast majority of discussions on the regular stuff occur at grade 5, grade 7 level. We are quite small in Whitehall terms, so you find that the engagement tends to be at lower levels.

**Ms Lockhart:** Yes, we are quite small, and I just cannot understand how something like this was not picked up, given the size that we are and the direction of travel that it was going in. I really struggle with that.

Trevor will take the next question.

**The Chairperson (Mr Swann):** David, yes, we are quite small, but when you put the bill of £1.18 billion onto this scheme, it starts to put it into perspective at a Whitehall level.

**Mr Sterling:** Absolutely. I suppose you need to bear it in mind as well that energy policy is devolved. The more difficult discussions with DECC would have occurred on other policy areas, where policy is maybe developed with a focus on what is good for England, or parts of England, and where perhaps it has not sufficiently recognised the implications for Northern Ireland. It would be in and around those issues where policies that it is implementing can have implications for us. I mentioned the carbon price floor, which was an example of a policy that was developed at Whitehall level but did not appreciate — it did not understand the implications that that would have for us here. There was an enormous amount of work that went on between DETI and the Department of Finance and Personnel at the time to get a derogation from that so that we were exempt from the carbon price floor. That occupied a lot of time at senior official level. RHI did not.

**Mr Clarke:** David, the C&AG's report says that DETI officials, as far back as May 2011, recognised that the Treasury position regarding the budget treatment was not the standard annually managed expenditure (AME), and therefore controls had to be in place to limit that expenditure. The need for that was highlighted by one of the grade 7s back in 2011, and they escalated the risk, but we have heard in previous sessions that nothing was done about this. Do you ever recall being made aware of that significant risk?

**Mr Sterling:** No, I was not aware of that at the time.

**Mr Clarke:** This is what makes it difficult, because there is an awful lot going on within the Department that you are not aware of. I suppose it is leaving some of us drawing blanks here in the sense that you are the accounting officer. This had financial consequences even in relation to that. It was limiting your expenditure but you, as the accounting officer, were not aware.

**Mr Sterling:** I was not. To the best of my knowledge, I was not involved in any discussions in 2011 about the implications of this. My recollection of the time is that we had a budget of £25 million over the four years. I recall that it was annually managed expenditure, but that there was a risk-sharing mechanism attached to that. I was not involved in any particular discussions in and around that.

**Mr Clarke:** We move to January 2014, and a letter from DETI's corresponding GB Department confirmed that the Northern Ireland allocation of AME would be a fixed amount, based on a 3% share of the GB budget. However, still nothing was done to manage the budget. I suppose you could be excused for not recalling that from 2011, but it has now been escalated. Your counterparts in GB have flagged this up. Why was there still nothing done?

**Mr Sterling:** Do you want to pick up on the —

**Ms Morelli:** Yes. In that period, the scheme was still in underspend, so the £25 million over the four years was set as the allocation, but —

**Mr Clarke:** Sorry, Emer. It may have been in underspend, but it was flagged up in 2011 and 2014 by your counterparts in GB in terms of the share of the budget you would be allocated because of the risk. Whether you were in underspend or overspend, why were risks not controlled at that time?

**Ms Morelli:** Across that period, the consultation had been launched with the intention, as it laid out, that cost controls would be brought in.

**Mr Clarke:** So you take —

**Ms Morelli:** It is important to stress that we had a defined budget over the four-year period of £25 million. That represented underspending against the population share at that time. That agreement, when it got to 2014-15, effectively stopped, and we then entered another period. To step on a little bit, DFP at the time required the scheme to come back for reapproval because of budget uncertainty; the budget had been confirmed for only that four-year period. Hence, from 1 April 2015, we required a reapproval of the scheme.

**Mr Clarke:** So you are saying that an equivalent Department in GB alerted your Department in relation to the 3% share of the GB budget, which, in a sense, was flagging up a risk, but you did not think that it was worth trying to put some control mechanisms in place even in January. I think —

**Ms Morelli:** Sorry, I am speaking on behalf of the Department of Finance.

**Mr Clarke:** Sorry; it is to you, then, David —

**Ms Morelli:** There was a consultation.

**Mr Sterling:** January in which year?

**Mr Clarke:** January 2014.

**Mr Sterling:** Again, at that time —

**Mr Clarke:** You were getting ready to go.

**Mr Sterling:** In fairness —

**Mr Clarke:** You were getting the bags packed and the office cleared.

**Mr Sterling:** I did not know that I was going in January 2014, so —

**Mr Clarke:** This is serious. To a degree, I will give you the benefit of the doubt for 2011. In January 2014, you heard from your counterparts in GB that there was an issue here. It was bad enough internally in 2011. Your counterparts in GB flagged up another issue in 2014, but it seems that still nothing was done.

**Mr Sterling:** At that stage, there was very low take-up of the scheme. We were actually surrendering funds. There was no — as I said, with hindsight, there were the first indications that the scheme might be being used in ways that went beyond the scheme's intention, but, as I said, those were not being picked up. The preoccupation at that time was with the fact that we were underspending and surrendering money. As I said, the response to that was to advertise and promote the scheme. It is for all those reasons that perhaps concerns that are clearly apparent now were not as apparent at that stage.

**Mr Clarke:** OK.

**Mr Sterling:** One postscript to that: it was a fairly unusual arrangement whereby a Department outside the Department of Finance was negotiating with another Department outside the Treasury on funding arrangements. There is a clear lesson here —

**Mr Clarke:** You might have been better stopping a few minutes ago. If it was unusual, it should have drawn your attention even more to it. If it was usual practice, it would have been unlikely for you to see it. You would have been better stopping without adding that part. Now that has been flagged up as being unusual practice, why did you not see it?

**Mr Sterling:** I realise that I dug a hole for myself there. Nonetheless, it is an important point that you make. I acknowledge that, again, with the benefit of hindsight, we should have paid more attention to that. However, as I said, probably because the scheme was underspending, attention was not drawn to it in the way that perhaps it should have been. My key point is that a lesson to be learnt from this is that, if any funding arrangements outside the normal Treasury/Department of Finance regime emerge, we really need to make sure that those are properly understood and managed.

**Mr Clarke:** I suggest that there is another lesson as well. Three years prior to someone outside this region flagging it, when someone internally flags an issue of risk, it should not be dismissed and should be looked at. A grade 7 flagged up the risk back in 2011. That should not have been cast aside; something should have been done then. So I think there is something else, Chairman. We should not dismiss someone when they flag a risk in the Department. There should have been a paper trail to prove that something was done about it.

**Ms Lockhart:** May I make one wee point there? You said that it was a different way of doing things. Were you aware that this was happening, or was that happening and you did you not know that you had someone in your Department liaising or negotiating, as you said?

**Mr Sterling:** I do not have any recollection that my attention was drawn to the uniqueness of this at the time. My recollection is that we had a budget of £25 million. Although it was annually managed expenditure, it was not free money. I was aware that there needed to be controls on this, but that is probably as much as I can recall knowing at the time.

**Ms Lockhart:** It shocks me again that you as the senior person could look at something so unique, as you said — something that is not really utilised in our government — and not think, "I need to get my head around this".

**Mr Sterling:** I have huge sympathy for the Committee, because you probably are thinking, "How did he not know what was going on?".

**The Chairperson (Mr Swann):** A fair point.

**Mr Sterling:** I understand that. I do not want to get into what people in the Department were doing, but at a senior level you are dealing with a huge range of issues all the time. It is a very fast-moving environment. I would love to be on top of the detail of every scheme and project, but I cannot be. As I say, it is difficult to explain in isolation just how this could have happened, and that is why I look forward to the Committee's conclusions on all this.

**Ms Lockhart:** In some ways, I do have sympathy for you. I understand that when you are in that senior role you depend on others around you to keep you informed. However, this is £1.9 billion at the end of the day. I have said this before, but we have people struggling to heat their homes. We have elderly folks living in absolute poverty who are not able to heat their homes, yet we have blown £1.9 billion into the ether.

**Mr Sterling:** I accept all that. As I said earlier, I am acutely conscious of the impact of the £20 million-a-year pressure that we are going to have to deal with over 20 years. I firmly believe that we can reduce that, and working on that has to be a priority for both me and Andrew. We really do need to make sure that is not the case, but I accept your point.

**Ms Lockhart:** One last question, and I asked this of Andrew. Are you not absolutely furious that you were not made aware of this?

**Mr Sterling:** The voices of the people who were working on the project have to be heard. I have not been able to speak to them. They have to be able to give their side of the story. I will reserve judgement until after that. What I will say — I have thought about this carefully — is that energy division is a tough place to work. I talked about some of the issues that have to be dealt with. There are an awful lot of good people in energy division who have worked very hard and done some very good things. There are some things that need to be explained, but I certainly will be giving the benefit of the doubt to those people until all of this has been gone through. Any of us, including myself, who are culpable in any way for this will have to be addressed in due course. However, I think it is worth mentioning that energy being a devolved matter is difficult for us. I remember being told in 2010 that the Department of Energy and Climate Change had about 800 people in the Department. We had fewer than 30, and we had to provide advice and develop schemes on all the range of issues that DECC was dealing with. It is hugely difficult. I feel personally for those people who were involved and the issues that they had to deal with.

**The Chairperson (Mr Swann):** David, coming back to the unusual scheme where somebody in DETI, at that stage, was negotiating with Treasury, you were permanent secretary at that time. You are now permanent secretary of Finance. How would you react if you found out that someone in the Department of the Economy was currently working with the Treasury on another funding scheme?

**Mr Sterling:** I would be surprised if there was a funding arrangement going on that we were not aware of. One of the things that we need to look at is whether we need to give some advice to Departments on this issue. I do not think we are aware of any other arrangements like this.

**The Chairperson (Mr Swann):** To be fair, you were not aware of this one either.

**Mr Sterling:** I was in DETI at the time. I was aware of the nature of the relationship; I was not aware of the detail of it. I think that that is the point I was making.

**The Chairperson (Mr Swann):** Emer, you were in Finance at that stage.

**Ms Morelli:** From October 2014.

**The Chairperson (Mr Swann):** Were you aware of that relationship?

**Ms Morelli:** No. Obviously, I looked back on it to prepare for my appearance today. The arrangement at the time seemed to be that this was a UK-wide scheme, and each devolved area had a contribution to make to a UK target. AME was provided. AME, by its nature, is flexible; it responds to demand, up and down, and is designed to mitigate risk on devolved projects.

**The Chairperson (Mr Swann):** We have seen the correspondence in which this was designated AME, but it was not to be treated as AME.

**Ms Morelli:** It would be unusual for AME to have a cap on it. This scheme, I suppose, by its nature and the requirement to meet the UK-wide target, seems to have been the policy decision behind putting the cap on it. I think it is important to say that DETI, as I understand it, engaged with DECC, and DECC engaged with Treasury. I have no sense that DETI was directly engaging with Treasury from a Northern Ireland perspective. The Department of Finance also engages with Treasury on AME returns and levels of spend, and that continued throughout this period. So I think it is important to say that, while the arrangement was between DETI and DECC, and there was DECC's arrangement into HMT, we also were engaged.

**The Chairperson (Mr Swann):** So there were two conversations going on about the same scheme.

**Ms Morelli:** I think it is important. I do not think that at any stage DETI engaged directly with HMT on this issue.

**The Chairperson (Mr Swann):** You said something earlier about that period in which there was not approval. I am looking at the casework notes from 21 October. You were at that meeting. Can you recall what reasons were given as to why that approval was not put in place and why it was allowed to expire?



**Ms Morelli:** My understanding was that DETI just had not recognised it as a requirement in April 2015. It came to light in June 2015 that it had expired, and we engaged then, urgently, with DETI to bring it back in and get an addendum to the business case.

**The Chairperson (Mr Swann):** And that would not have been registered on a risk register anywhere within either of the two Departments.

**Ms Morelli:** The Department of Finance would not have registered it. Once we issue an approval, that approval goes to the Department that is responsible, and it falls within its governance and management arrangements to take note.

**Mr Kearney:** In a previous hearing, evidence was submitted on the operation of the scheme from within the Department. I and others commented on it. What was actually offered by way of explanation came in the form of design flaws, misunderstandings, assumptions, weaknesses and thoughtlessness. That is how it was characterised. I am conscious that you were in the Department from the beginning of the scheme, for two years until July 2014, and then your successor took post, and Andrew was there from July 2014 until this scheme imploded. I am a bit disappointed with how this evidence session has gone, if I am honest. I do not say this in any way to be offensive but just to be very frank with you. You seem to have worked with two parameters: one, you do not know, and, secondly, there is a fact-finding exercise in play, and therefore you are fettered in your ability to analyse the situation or give us a view in relation to what has gone wrong. I just offer that as an observation in the hope — perhaps the vain hope — that, for the rest of the session, we might get a bit more guidance from you in relation to the difficulties that have arisen and that were clearly in place from the very get-go. Again, to repeat something that I said earlier, I just find it so inconceivable that eight to 10 people had a helicopter view of this particular scheme within the structure. You had a robust governance control system in place. PwC said that, in its opinion, the controls put in place over the NIE scheme were not sufficiently robust and, therefore, not fit for purpose. And yet you have no comment to make in relation to any of these matters. I just find that very disappointing.

**Mr Sterling:** I am sorry to hear that. I will try and address that. In regard to the fact-finding review, Andrew explained the purpose of that to the Committee, and obviously I have been briefed on it as well. When I have referred to the fact-finding review, it has been when I have been asked to address why those who were involved in the project team or developing the scheme did or did not do certain things. I think that I explained at the start that I have not been able to speak to those people, so I am having to rely on my memory at the time, and I am also having to be careful that I do not say anything that suggests that I have reached a judgement about their behaviour, conduct or performance, which I do not think would be appropriate for me. But I have said that, if there were failings on my part, I am perfectly happy to be amenable for those. I have flagged up and accepted that errors occurred. Things occurred on my watch. I have referred to the design of the tariff, the absence of a review and the fact that warning flags raised by Ofgem and the whistle-blower were not appropriately dealt with. On your point about why I did not know, I am being honest. Unless there are things that occurred that I have forgotten about, genuinely I was not aware, or made aware, of those things at the time, or if anybody did make me aware of them, it did not register with me. I am sorry that I cannot be more honest, but that is the way that it has been.

**The Chairperson (Mr Swann):** David, is there a normal standard procedure in the Department for handling whistle-blowers?

**Mr Sterling:** Yes, there is guidance on dealing with whistle-blowers. It goes back to 2009 and was updated in recent times.

**The Chairperson (Mr Swann):** Why was it not followed?

**Mr Sterling:** Again, I do not have a satisfactory answer to why that did not happen in this particular case.

**The Chairperson (Mr Swann):** Could there be other occasions when it has not been followed?

**Mr Sterling:** I recall that I appeared before this Committee to deal with the Bytel inquiry, and I acknowledged that a whistle-blower at that time had not been handled appropriately.

**The Chairperson (Mr Swann):** Why were lessons not learned?

**Mr Sterling:** This is not a particularly good excuse, but the whistle-blower initially made contact with the Department in, I think, autumn 2013 and followed up in May 2014. We did not have the benefit of the Bytel report from this Committee until, I think, 2015. As I say, I would not throw that out as an excuse as to why the whistle-blower was not dealt with appropriately. Again, I am sorry that I have to reference the fact-finding review, but the handling of that issue is, as you know, being dealt with in the fact-finding review.

**Ms Gildernew:** Look back to the beginning of the scheme. There was a four-year budget of £25 million, and it was not raising any hairs or setting off any alarm bells. The Treasury was picking up the cost of it. The Treasury required, in April 2015, a reapproval of the scheme, and that then triggered —

**Mr Sterling:** The Department of Finance required reapproval.

**Ms Gildernew:** OK. On the basis of your knowledge, where was the reapproval of the scheme? Where was the incentive to get that reapproval?

**Mr Sterling:** That was a condition of the original business case approval by the Department of Finance and Personnel at the time. The initial approval granted in April 2012 was only for three years.

**Ms Gildernew:** OK. Can we get sight of the official business case, or have we already got that?

**Mr Sterling:** I think that you have the business case.

**Ms Gildernew:** OK. The scheme was supposed to, or designed to, mirror the scheme in Britain.

**Mr Sterling:** Tailored to adjust for our circumstances here, yes.

**Ms Gildernew:** And officials in DETI were aware that they tiered the scheme across the water.

**Mr Sterling:** Yes.

**Ms Gildernew:** OK. Presumably they understood why the scheme was being tiered.

**Mr Sterling:** Yes, they would have done. They would have the benefit of the consultancy support from Cambridge Economic Policy Associates as well.

**Ms Gildernew:** Why do you think the decision was taken not to tier the scheme here? Who took it? Without getting into names — I am not looking to individualise this — why was that element of the scheme not included as part of our scheme?

**Mr Sterling:** The scheme design was addressed in the business case, which was considered by the casework committee and subsequently approved by the Department of Finance and Personnel. The tariff mechanism was approved in that sense. Why was tiering not introduced? Again, I go back to Mark Cockburn's evidence last week, where he expressed regret that they did not look more carefully at that and did not propose or recommend that it be introduced into the scheme. The conclusion reached at the time clearly was that tiering was not necessary in our circumstances.

**Ms Gildernew:** Was that because of the low take-up?

**Mr Sterling:** This would have been before that. This was in the design of the scheme. With the tariff, we were trying to incentivise people to change behaviours. We were incentivising people to move away from a reliance on fossil fuels and towards use of renewable heat sources — in this case, biomass. In constructing the tariff, you needed to provide people with an incentive to make the initial capital investment, which could be several tens of thousands of pounds. There are issues in and around the inconvenience of changing and moving over and, at about that time, biomass was not as readily available as it is today. There were a lot of issues that needed to be addressed to create a tariff that was considered sufficient to encourage people to move away from heating oil.

**Ms Gildernew:** We support the object of the scheme. I, too, want to see people changing behaviours and moving away from fossil fuels and into renewables. We do not have any difficulty with that. The difficulty is around how the scheme was designed. I am looking at a table on page 12 of the report by

the Comptroller and Auditor General and, just using a back-of-an-envelope calculation, there were 564 applications in about 29 months and about 359 in the next six months. Then, between October and November 2015, there were almost a thousand applications. What happened then, David, to cause the spike? You mentioned before about the scheme being marketed or advertised, but what was the driver for the increase in applications at that time?

**Mr Sterling:** I think that it has been accepted in previous evidence sessions that the main reason for the spike was that the Department said in September that it intended to introduce a new tariff that would include tiering and an overall cap, and there had to be a two-month period to alert people to it. Clearly, there was a rush of people applying to take advantage of the old tariff before the new one came in on 18 November 2015.

**Ms Gildernew:** How was it advertised? How did word get out? Was it in the press or online? Do you know how people got to hear about the scheme or why?

**Mr Sterling:** Not exactly.

**Ms Morelli:** You would have to ask the Department for the Economy, but an SL1 went to the ETI Committee in September as well.

**Ms Gildernew:** You mentioned the consultants, and we heard from them last week. One of the questions that we are keen to hear an answer to is how many hours there were. I know that you would need a right budget to pay for consultants, and they made the point that London-based consultants do not come cheap. Do you know how many hours they worked on this scheme?

**Mr Sterling:** I do not know that off the top of my head, although I am sure that it could be found out.

**Ms Gildernew:** OK. It seems very strange to me that the whistle-blower came forward in October 2013 and said that there was an issue that could be subject to abuse, yet the scheme was still open and taking applications two years later without a cap. There is talk that the tiering and the cap were introduced, and that was in November, so it was two years after a member of the public said that there could have been a problem. It seems an awfully long time. I accept that you were gone in July 2014, but we are trying to get our heads round all the areas where problems could have been addressed.

Whether inadvertent or not, there was a litany of mistakes: the lack of minutes of the original discussions between Ofgem and the Department, and the lack of regular reviews, but the low inspection rate is what I cannot get my head round. People were not going out to inspect whether the scheme was fit for purpose and whether it was doing what it was supposed to be doing. Given that a whistle-blower said in 2013 that there was an opportunity for the scheme to be abused, you can understand why the Committee is trying to get to the bottom of whether it was a cock-up or a conspiracy. Was there some level of acceptance that the scheme could be taken advantage of and that people were cute enough to do that? You are now faced with the task of cleaning it up. You are now in the Department of Finance, and you talked about the £20 million per year of cover that will be needed for the next 20 years. I know that I have thrown an awful lot of questions at you, but are you now taking legal advice on how to mitigate it and stop that expense to the public purse?

**Mr Sterling:** I will pick up those points. First, I think that Andrew has reported that his Department is looking at ways of reducing the forward commitments, and we will support the Department in whatever way we can in that. I made the point earlier that reducing the risk of future loss has to be a priority now. Secondly, on the level of Ofgem inspections, I think that I have already acknowledged that, with hindsight, we required a more robust inspection regime. Part of the explanation for that may be that, in the original design of the scheme, I think that the expectation was that a typical user would be in the service sector, using a small boiler for 15% of the time in, if you like, an office environment. Clearly, there had not been enough sensitivity analysis done on the tariff design to identify that it would be attractive to those operating in other sectors. We have seen a very high take-up in, for example, the poultry sector. The PwC report has looked at that, and it said that it was being used widely in the poultry sector in way that is compliant with the scheme. However, that was not envisaged at the time. I think that that points to something that I accepted earlier, which is that there should have been more sensitivity analysis and that there should have been regular reviews. I think that regular reviews are necessary to detect changes in the market and behaviours of those who are interested in the scheme so that you can move quickly and flexibly to adjust the tariff as market conditions change. I accept those points. I might have missed one or two of your questions.

**Ms Gildernew:** I asked so many that I may have missed them too. Is there a pattern of mistakes or oversight on the development of this scheme that strikes you as unusual?

**Mr Sterling:** You used the term "cock-up or conspiracy". I will leave others to judge that based on the evidence. All I can say is that the Audit Office reports suggested at that time that there was no prima facie evidence of fraud. The PwC report highlighted some instances that would require further investigation. I do not think that I can go much beyond that on the basis of the evidence that I have.

**Mr Clarke:** One of your comments in response was helpful because I think that the poultry sector has had a very negative reporting about how it has used the scheme, and I think that it was helpful that you identified how the poultry sector was exonerated, in a sense. Maybe you did not go as far as that.

I am interested in the other point that you made just before that about the service sector using it 15% of the time. A couple of things about that strike me. It may have been the anticipation that the service sector would use it 15% of the time, but many in that sector were using it 100% of the time, and there were no control measures to prevent that. The other thing that strikes me, David, from having a conversation with someone at the weekend, is that this was nearly a retrospective process. There was no investigation of the requirement: you put the boiler in, and you applied retrospectively, yet there was no system in place to prevent that. I find interesting your comment to Michelle about the service sector using it 15% of the time, given that there was no control mechanism to prevent 100% usage in either. Why was that?

**Mr Sterling:** The design of the scheme was that you could, essentially, purchase under the scheme and then apply for accreditation. I am not sure that, if we were doing it again, we would do it that way.

**Mr Clarke:** That is probably the right answer.

**Mr Sterling:** Sorry, what was the second part of your question?

**Mr Clarke:** Why was no mechanism in place to prevent 100% usage? There were people who put in boilers and made applications retrospectively. There were no checks and balances to see what their energy requirement was.

**Mr Sterling:** Again, I would have to accept that that, with hindsight, is a deficiency in the scheme. It is something that should have been detected with good monitoring of the system, and it emphasises the importance of conducting reviews to test how people are using the scheme and taking advantage of the incentivisation mechanisms.

**Mr Clarke:** Your honesty is useful, but many of us around a table have had experience in rural development schemes. Sometimes, we think that we were critical of rural development schemes. In that context, if you have started something you cannot apply. Why did you not set out that applicants should make the case first, and then their eligibility would be decided on? It seems to have been that everyone was eligible: just apply and you get a blank cheque.

**Mr Sterling:** Again, we transplanted in large part a scheme that was developed in England.

**Mr Clarke:** You did not transplant it all; you left the good parts in England and did not replicate them in Northern Ireland.

**Mr Sterling:** I would have to accept now that we should have tailored the arrangements here better. I have acknowledged that throughout the afternoon.

**The Chairperson (Mr Swann):** David, I want to ask about the transplant of the two schemes. As you said before, energy is a devolved matter. We had the option of a capital scheme. Why was that so easily ruled out?

**Mr Sterling:** I think that the conclusion was that, in simple terms, a tariff-based mechanism would incentivise the behaviours that we were looking for more effectively than a grant-based system. Emer looked at the business case in detail.

**Ms Morelli:** The key benefit of the incentivisation, and the payment of the tariff over the 20-year period, was to sustain the technology and to incentivise people to move to renewables. At that time, biomass and the renewable technologies were not common in Northern Ireland and we were starting from a much lower base than the rest of the UK, according to the business case. This seemed to be the most appropriate way and, indeed, that was the way that the UK-wide scheme was developed. The EU directive targets, as well, were over a set period. If you had gone for a capital scheme with upfront payment, you could not be assured that that would be the technology used over that period. That was a risk in that model. Again, both were considered in detail and we took the consultants' advice.

**The Chairperson (Mr Swann):** We have been given a minute of a DETI casework meeting on 9 March 2012. Under the "Options" section, it states:

*"The RHI option, whilst requiring complex administration arrangements, can be delivered at a fraction of the cost through building on existing systems already in place for the GB RHI"*

and

*"administration costs are much more affordable in comparison to the Challenge Fund option",*

which is basically the capital scheme. What is your assessment of that analysis, with the benefit of hindsight?

**Mr Sterling:** Before Emer speaks, with hindsight, I wish that we had introduced the capital-based scheme. However, that is with the benefit of hindsight. The issue of why did we not tailor something more specifically or build something from scratch goes to the point that I made earlier about the challenge facing us when it comes to energy policy. We have a relatively small resource in energy division, with a lot of obligations and commitments, and that is a factor that affects our ability to do some things as well. We have to be realistic about that.

**Mr Kearney:** Following on from those questions and answers, David, in relation to the badly tailored scheme, we take as a given that it had design flaws. And with the benefit of hindsight and of having read all the Hansard reports of previous hearings and looking at the evidence brought forward by others to the PAC, in your view, with retrospect, has that left the scheme open to structured commercial exploitation?

**Mr Sterling:** Yes. A combination of the weaknesses that I described, acknowledged and accepted before has left the system open to being "gamed", to use the term. There is no question of that.

**Mr Kearney:** We all accept that there is a likelihood that it has been gamed. I am asking you something different. Have the circumstances in which the system has been gamed as a result of design flaws been driven by the structured commercial exploitation of those design flaws?

**Mr Sterling:** Oh, I see. Are you asking whether the system was designed in such a way that it could be commercially exploited?

**Mr Kearney:** No, I am not asking you that. On the basis of how the system has been designed, is it possible, on the basis of your knowledge and insight, with the benefit of hindsight and having examined all the evidence, that this scheme has been subject to aggressive commercial exploitation for commercial gain, advantage and profit?

**Mr Sterling:** That is something that needs to be looked at, although I do not have evidence of that happening. The only evidence that I can rely on is the PwC report.

**Mr Dunne:** David, you made reference to your staffing levels and, indirectly, your workload and so on and so forth. As someone who was on the ETI Committee for some years, I know that the energy division had a big workload. What was done from your side to address those issues? Did you push for additional staff and ask for more resources? Did vacancies lie empty? What has been done to address those issues?

**Mr Sterling:** I was conscious that the energy division was under pressure; it was, as I said, a division that had a lot of very difficult challenges and complex issues.

**Mr Dunne:** There is no doubt about that.

**Mr Sterling:** However, many other areas of the Department were the same, such as those that dealt with telecoms, tourism policy, economic development policy, etc. The raw facts are that in March 2010 the total number of staff in the Department was 493, but when I left in June 2014 it was 469. So, across the Department, numbers had reduced by 5%. In the same period, the number in the energy division increased from 29 to 38, so we had managed to get a 31% increase in the staff number. That shows the priority that was given at the time to the range of issues that were being addressed in the division.

**Mr Dunne:** So there were no long-term vacancies in the division.

**Mr Sterling:** I do not recall the exact disposition of the team at the time, but I was conscious that it needed prioritisation. A decision to skew resources towards energy division, given the pressures that it faced, would have been taken at board level in the Department.

**Mr Dunne:** So it had an uplift from 29 to 38.

**Mr Sterling:** Yes.

**Mr Dunne:** So, would it be fair to say that it had adequate resources to deal with the workload or were they still stretched?

**Mr Sterling:** They were probably still stretched. You can never have enough resources; it would always be nice to have more. However, within the overall resource framework that we had, we sought to address the pressures in energy division at a time when overall numbers in the Department were decreasing.

**Mr Dunne:** The issue was addressed, then. Would it be fair to say that?

**Mr Sterling:** I will leave it to others to say whether it was addressed satisfactorily.

**Mr Dunne:** You made the point about the workload on a number of occasions. I concur that there was a heavy workload; a lot of stuff came through at that time. You mentioned the issues, and there is no question that they were big issues, but is it fair to keep saying, "We didn't really have the resources to deal with everything as fully, effectively and efficiently as we should have."?

**Mr Sterling:** What I tried to do with the senior team was balance the resources in the Department in an optimal way. If you had asked me, "Could you do with a few more people?", my answer would have been yes, but I could say that for a lot of areas.

**Mr McCrossan:** Thank you, David and Emer. I have listened throughout your contribution, and I agree with some of the remarks made by Declan and Trevor. You seem to have gone round in circles on some of the questions posed to you. It has been an extremely long day, but I am sure that we are not going to get much further in terms of any of the questions. The figures are clear. You have said that you hope or are sure — I am trying to remember your exact words — that you can minimise the cost to the block grant.

**Mr Sterling:** I did not say that I was sure that I could do it.

**Mr McCrossan:** You said on three separate occasions, David, so I am sure that you have a plan or something. You said it with confidence on three separate occasions. First, what financial modelling has been done to meet the overall costs and what parts of the public sector will be hit most as a consequence of the overarching cost of £350 million, say, in the next 20 years and, more importantly, the £140 million in this mandate?

**Mr Sterling:** First, the point that I was making was that the Department for the Economy is looking for ways to minimise the commitment, and we will provide whatever support we can. I made the point at the start — I think that Andrew made it before — that, for legal reasons, there is a limit to what we can say on how we might go about that. On the forward commitment, I think that Andrew's assessment was that over the 20-year lifetime of the scheme, the unfunded commitment — the pressure, if you like

— would be in the region of £405 million. That will depend on a number of things, including future take-up of the scheme in England, given that we do not know what the budget will be beyond the spending review period. We have firm allocations to 2019-2020. We in the Department are working with Ministers to agree a budget for next year and for the two years beyond. I am acutely aware that the £20 million a year pressure is something that we will have to address in that budget. That is a real and present challenge.

**Ms Morelli:** We are working very closely with DFE colleagues to ascertain what actions can be taken to minimise the spend. We are relying on the findings of the PwC report and on any other actions that can be taken. We will continue to liaise with PwC on that.

**Mr McCrossan:** Am I right in saying that there is no clear plan to mitigate the cost or the impact on the block grant?

**Mr Sterling:** Things are being worked on.

**Mr McCrossan:** It is all ifs and buts and "whataboutery".

**Mr Sterling:** Things are being worked on. I really cannot say any more than that.

**The Chairperson (Mr Swann):** David, you said that you had read the previous Hansard transcripts. Issues of state aid and de minimis were raised. When did the EU Commission give the green light for the scheme?

**Mr Sterling:** It was in October or November 2012. I do not have the exact date in front of me.

**The Chairperson (Mr Swann):** Given that the payments are much higher now than they were at the outset, have you revisited the scheme's compliance with state-aid rules?

**Mr Sterling:** It is something that the Department for the Economy is looking at.

**The Chairperson (Mr Swann):** So we could have a problem in connection with those as well.

**Mr Sterling:** I do not know. The issue is being looked at.

**The Chairperson (Mr Swann):** Is that Economy or Finance?

**Mr Sterling:** That is for Economy to lead.

**The Chairperson (Mr Swann):** You were very quick there.

**Ms Morelli:** Economy will lead, but Finance is requiring them to do so.

**The Chairperson (Mr Swann):** Finance is asking Economy to do that: I am glad that someone is getting on top of that.

There is a minute here from a casework meeting on 21 October 2015. Paragraph 3 states:

*"the main change in the legislation relates to the change introducing a tiered tariff and annual cap on the hours."*

Has that change taken place in legislation?

**Ms Morelli:** Yes, it was introduced on 18 November 2015.

**The Chairperson (Mr Swann):** It has been through all the stages. I am aware, David, that this is no longer your remit as accounting officer, so we appreciate your taking the time to contribute today. Emer, thank you very much for your contribution as well.