

INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME**CLOSING SUBMISSION ON BEHALF OF AN ENHANCED PARTICIPANT****MR PETER HUTCHINSON****Introduction**

- 1) This submission on behalf of Mr Peter Hutchinson aims to address the contextual background against which the RHI was developed, before moving to more specific issues the panel have engaged with during the course of the hearings. This submission is made in accordance with the Directions issued by the Inquiry and consequently this submission will not seek to mention every issue dealt with in oral or written evidence. It will deal with the main themes or issues identified in the course of the Inquiry. Where an issue or evidence is not expressly addressed it is not to be assumed that this amounts to a concession.
- 2) The Northern Ireland Civil Service, “NICS”, has traditionally been modelled on the Whitehall approach to governance.
- 3) In 2010/11 devolution, in terms of the St Andrew’s agreement, was in its infancy within Northern Ireland, having only resumed in 2007. This is a factor relevant both to the ability and experience of politicians running government departments and their interface with civil servants. There is no evidence that there was any consideration given to the orthodoxy of maintaining a Whitehall style civil service, in circumstances where there was pressure for Northern Ireland to not merely follow policy formulated in Whitehall, but to design and develop bespoke Northern Ireland policies.
- 4) Much attention has been focused on the stark dichotomy between the seventy-seven civil servants dealing with RHI policy within Department of Energy and Climate Change, “DECC”, compared with the one full time and one part time civil servant in Northern Ireland. However, it is equally relevant to note that the Scottish Parliament and Welsh Assembly do not have energy devolved to them to the same extent as it is in Northern Ireland. Whereas in Whitehall there is an entire Department devoted to Energy (albeit it also is responsible for nuclear energy issues). Energy was but one of the Divisions within DETI. These observations are important in setting the context against which the actions of those within Energy Division should be considered.
- 5) The Inquiry is asked to consider whether the NICS was in fact equipped with sufficient resources and experience to undertake the devolution project? Timothy Johnston recognised this issue in his evidence suggesting,

“I think one of the questions at the end of this process and before re-establishment, whenever that might be, I think we’ve got to ask ourselves across a huge range of tasks: have we the capacity to do it?” TRA-14137

- 6) David Thomson suggested to the Panel that,

“Devolution is a very hard difficult process to manage...all those things that the large Whitehall Departments did...we were replicating here.” TRA-05659.

- 7) David Sterling suggested in evidence at **TRA-06730** that,

“Again, this comes back to the quandary we faced in a devolved Administration, where we are required to develop a policy and where you could argue that it maybe takes as much investment to develop policy for 1.8 million people as it does for 50 million people-plus, but, again, that’s something we wrestle with on a day-to-day basis.

I think, by and large, given the difficulties we face, we do tend to develop good policy in Northern Ireland, we develop a lot of policy which is attuned to the particular circumstances of this place and that that policy has worked well, but I think this scheme now — I think I said before — was really just a project too far for us.”

- 8) It is against this background that Peter Hutchinson found himself as the only full-time member of the Branch within Energy Division with responsibility for devising, developing and implementing the RHI scheme in what was a novel and highly complex policy area. It would be a mistake however to consider that all of his time was confined to the RHI, he was also working on other energy issues, as an example of tasks he was simultaneously required to undertake he also was responsible for carrying out checks on applications under the Renewable Heat Premium Payment Scheme, advising on Domestic RHI policy work and leading on the establishment and implementation of an Executive-wide approach to unifying sustainable energy messaging (managing a contract with an external marketing agency).

Background

- 9) Peter Hutchinson joined the NICS in 2005. By the time he became involved with Energy issues in 2009, as a Deputy Principal, he had gained experience as a ‘generalist’ within the NICS. He did not have an energy background, he had no technical expertise in energy and had not been trained in project management. Notwithstanding this, it is respectfully submitted that he approached his task with vigour and diligence.
- 10) By the time Peter Hutchinson had come into DETI the die had been cast in respect of Northern Ireland designing its own bespoke approach to renewable energy. This decision was entirely consistent with the political desire that devolution be seen to work but little, if

any, consideration appears to have been given to whether DETI was properly resourced to undertake this task.

- 11) Once the decision was made to proceed with a bespoke Northern Ireland scheme, it is not surprising that such was the disproportionate resource available to DECC, significant regard was had to the work that DECC had undertaken in respect of its own scheme. Further there was a recognition of the difficulties that a significant divergence from the DECC scheme would bring, with Northern Ireland stakeholders naturally keen to have a similar scheme locally.

The Devolution Project and Resources

- 12) Looking back at the resources available within Energy Division it is clear that there was a significant lack of resources. This was obvious to the permanent secretary David Sterling who acknowledged that DETI had 13 of the 82 PfG targets with a net resource of just over £200 million out of a total budget for the Executive resource DEL budget of around £10 billion. The permanent secretary noting that DETI staff were being,

“asked to punch well above our weight in terms of the contribution we were making.” TRA-06064.

- 13) The Department for Economy recognise that,

“With the benefit of hindsight it is now clear that the level of resources devoted to the RHI Scheme from 2011 to 2016 was inadequate and created vulnerabilities...” WIT-03283

- 14) The minister recognised an issue with resources at **WIT-20585**, being aware that *“Energy Division was a small team with limited resources”*. Such was her concern that she flagged this issue up with the permanent secretary and the Head of the Civil Service. She believed that Energy Division was,

“under acute pressure to keep on top of their workload (despite working very hard) because of the large number of initiatives that its significantly larger GB counterpart, DECC, was able to produce simultaneously. I observed that this had the effect of Energy Division having to constantly ‘fire-fight’...” WIT-20596

“I do think that the officials worked long hours, probably longer hours than some of their colleagues in other parts of the Civil Service... You just can’t expect officials to keep working long hours all the time or there will be a consequence to that.” TRA-08523

(emphasis added)

- 15) Against a background of corporate acceptance of the devolution project and the limited resource, the permanent secretary David Sterling considered the response of the civil servants was to reflect a,

“ ‘can do’ attitude and a willingness to take on new tasks and challenges”
WIT-04024.

- 16) The concerns expressed by the Minister above could have described the working conditions of Peter Hutchinson. Notwithstanding the imposition of these onerous conditions and working hours, he exemplified the ‘can do’ attitude and willingness to accept the challenges posed by his complex and technical position.

- 17) It is submitted that in his characteristically measured way Peter Hutchinson described his role as *“complex and heavily loaded”* **WIT-06034**. A snapshot of the work he was undertaking can be seen in the comments of his line manager, Joanne McCutcheon, approved by the head of Division Fiona Hepper, where she refers to his work during 2011:

“Peter has performed exceptionally well during the year, well above what would be expected from his grade. He worked largely on his own, managing the consultants who were modelling a proposed renewable heat incentivisation scheme for NI. He then drafted the consultation publication for the scheme and fronted the public consultation events...He is in a very heavily loaded post-as well as public consultation he has drafted a State Aid application, liaised with DECC on the primary legislation, worked with OFGEM on a feasibility study, appointed an agency to develop a brand for cross departmental sustainable energy messaging and coped with a high volume of briefings, AOs and correspondence case-he has consistently gone the extra mile throughout the year.” **DFE-430499**

- 18) What emerges from this description of his workload, is a diligent, conscientious civil servant, working well above what would be expected from his grade. The fact he was working *“largely on his own”* is a clear example of the lack of resources within DETI. That is not to ignore the clear leadership role being played by both Fiona Hepper and Joanne McCutcheon who were engaged and involved at all relevant times. The complexity and variation of different demands on his time is to be compared with the experience within DECC where there were a team of 77 civil servants. Given the volume of resource available to DECC, even its generalist civil servants had the luxury of being able to concentrate on individual issues within the RHI scheme. Peter Hutchinson confirmed that DECC would also have had the advantage of a number of in-house experts:

“We would have been conscious that DECC had more staff, would have had legal people, economists, technology experts, teams for each individual technology — a biomass team or a heat pump team or whatever — so, there was often merit in terms of trying to engage with them to understand what they were doing and, as far as possible, you know, if they were doing something in terms of eligibility or legislative change or something like that,

to bear that in mind and try and think, “Well, what are DECC doing?”, and, “Let’s bear that in mind in future work programmes, then”. **TRA-01501**

- 19) Against a background of a recession and a requirement for the NICS to try and reduce costs, the pressure on DETI increased rather than remaining static. This did not affect the momentum of the NICS in carrying out the devolution project nor cause it, or the political classes, to consider the inherent risks or a pause. David Thomson suggests that,

“There were regular discussions with the Minister. But, I mean, I found, in my time, it was: you kept getting things added, and new initiatives came on stream or other priorities popped up. It was very difficult to stop things. And when you try to stop things there was, generally, difficulties — opposition —not opposition, but people saying, “No, we can’t do that” **TRA-05638**

- 20) Peter Hutchinson, like Fiona Hepper, was working *“evenings and weekends”* **TRA-05646**. The constant pressure and need for further resources in Energy Division was recognised by David Thomson who considered that it *“could always use more resources”* **TRA-05660**. At the very highest level within the Department the pressure was obvious. David Sterling recognised that he would have been conscious that Energy Division was under pressure, and suggested that the Resources Group, worked hard to find ways to identify and obtain additional resources in response to requests from the team, **TRA-06072**. This pressure on resources was present across the board in the NICS at the time.
- 21) This constant increase in workload finds an example in the fact that having worked to create and implement a non-domestic scheme, the work on Phase 2 of the scheme occurred against a background of Peter Hutchinson having to spend almost a day a week working on the RHPP. Further when additional staff were made available, this often reflected a new workstream, the *“new staff came with new responsibilities as well-”* **TRA-04838**.
- 22) Peter Hutchinson considered that his line manager and Fiona Hepper recognised the lack of resources and that Fiona Hepper consistently made the case for, and successfully obtained, additional staff for Energy Division. At a time when there was a 5% overall reduction in staff in across DETI, this represented an approximately 30% increase in resource in Energy Division. Despite this the workload in the Branch relentlessly increased.
- 23) With hindsight it is clear that there were insufficient resources. It is submitted that the fact this was not clearly identified by Top Management at the time is a reflection of the significant financial and resource pressure the NICS was experiencing in general, the perception amongst civil servants that they had to get on with it, and the clear desire within the political classes, that the full devolution project must be progressed and, crucially, that the NICS had to be seen to be making it work. Importantly, whilst the chronic lack of resources and weight of the Department’s workload was acknowledged by those occupying the upper echelons, this was not reflected in any efforts by them to scale back political ambition or the scope of the work to be done.

24) The resource issue permeates the themes and issues explored in evidence by the Inquiry. It should be used to both contextualise the actions of individuals and as a calibration against which the question of reasonableness is gauged. It is respectfully submitted that when the actions of Peter Hutchinson are viewed through this prism that the Inquiry panel will consider that any errors or omissions were not as a result of his individual carelessness but, rather, as a consequence of systemic failings.

Challenge Fund v RHI

25) This issue is complicated by the fact that the term ‘RHI’ was being used interchangeably to refer both to a general heat incentive and the specific type of incentive that was ultimately chosen. This ambiguity in respect of nomenclature is not unusual in a new and novel scheme but should not be confused with a predetermination.

26) Peter Hutchinson is clear that neither he, Joanne McCutcheon nor Fiona Hepper had a predetermined view in respect of which option was preferable; all options were to be fully considered. The focus would have been on “*What works best for Northern Ireland in terms of delivery*” **TRA-01512**. The initial phase of the process was to come to a determination as to which was preferable and he would have participated in discussions with his superiors,

“...normally the process be (sic) that the three of us would be sitting down, possibly with Sam as well, who’d been involved in it, and having those general discussions about, “Well, this is what CEPA are saying. What’s the pros, cons, and risks, benefits?”” **TRA-1496**

27) It would have been clear to everyone, in particular CEPA, that DETI had no expertise upon which to call. The design and analysis of the scheme required specialist heat economists and it was recognised that “*these skills are not available within DETI.*”, **WIT-07780**. The specialised heat economists engaged were CEPA. The specification for their contract required them to carry out an economic appraisal using the 10 steps outlines in NIGEAE, **WIT-105245**. In particular they were to,

“Make recommendations, based on the evidence gathered and the economic analysis carried out, on the most cost effective structure of a Northern Ireland RHI to increase the level of renewable heat to 10%”. **WIT-105247**.

28) CEPA acknowledge their role in the introduction to the 2011 report, namely to consider policy options, to include capital grants, not just to consider a GB RHI type scheme, **WIT-04606**. It is submitted that the following indicate there was no predetermination: -

- a) Had there been a predetermination against a challenge fund Peter Hutchinson would not have gone back to CEPA as he did in respect of the May 2011 report. He asked them to address why, when the body of the draft report suggested a challenge fund came

out better economically, did they not follow this through in their recommendation? He requested CEPA be “*very clear why RHI is preferred option over Challenge Fund in the long term funding scenario*”, **CEP-143606**. This was not a request for them to reflect what they perceived DETI to prefer, rather to find out what the CEPA recommendation actually was and why? This was important as the draft report conclusion appeared to be inconsistent with the analysis. He suggests that,

*“I think, ultimately, we were asking them for their advice on the best policy match and the best issue to get the 10% in Northern Ireland...But there were legitimate concerns about the deliverability of a challenge fund.” **TRA-01567***

(emphasis added)

- b) The evidence of CEPA has not expressly contradicted Peter Hutchinson’s evidence that during the teleconference with CEPA in June 2011 the Department were asking them to provide their advice on the best policy for Northern Ireland, regardless of any perceived preference. Clearly it was CEPA’s report, which would be published and which CEPA would have to stand over both professionally and reputationally.
- c) Peter Hutchinson would have been aware that CEPA were holding themselves out as independent, as the June 2011 report expressly indicated,

*“In all this, we have discussed our conclusions with DETI, but the recommendations remain our own,” **WIT-04616**.*

- d) CEPA in evidence does not have a positive recollection of being under any form of pressure from DETI to orient their report in a particular way, **TRA-01309**. If CEPA chose to try and interpret DETI’s position this was both inappropriate and contrary to the terms upon which they were engaged.
- e) The legislative position in 2010 was that DETI did not have a power to make regulations for anything other than a challenge fund. Had a challenge fund not been seriously considered, or a makeweight option, Alison Clydesdale would not have written to HMT in April 2011 to seek confirmation that the funding could be used for a grant, **WIT-06575**.
- f) Peter Hutchinson tracked a comment to the 31st March 2011 draft CEPA report. It expressly indicates that CEPA needed to consider a number of options and make this clear. He criticises the manner in which the options have been presented by CEPA and states: -

*“There appear 4 options
Do nothing
Short term challenge fund
Long term challenge fund*

NI RHI
Needs to be clearer.” WIT-12624

29) Ultimately it was the Minister who took the decision. However, it is important to note that whilst it is accepted that in monetary terms a challenge fund would (based on the CEPA assumptions/modelling) come out better than an NI RHI, at the time Peter Hutchinson properly considered that the ultimate decision was consistent with the DECC RHI decision, who also selected an incentive based scheme above a grant based scheme. This was something local stakeholders were both aware of and demanding local action upon, and the general desire to provide a longer term support to the market. Further there was a legitimate concern that there was not the administration funding to deal with a challenge fund and other non-monetary factors should be taken into account, these are addressed at **WIT-16648 to 16650**.

30) The DETI SPAD Dr Crawford clearly saw an advantage in getting “*more than our fair share of the UK pot*” **TRA-13096**, and considered that the Northern Ireland Executive should “*fill our boots*”, **TRA-16672**, rather than being concerned with the value for money of a scheme. Against this evidence, it is clear that the Minister and her SPAD would not have given determinative weight to the value for money of the scheme. David Sterling corroborates this and confirms that insofar as his recollection at the time was that it did not matter what the cost (and even if the Minister and her SPAD had read the CEPA report) his expectation was that an NI RHI would have been chosen,

*“that the realpolitik may have been such that the Minister would’ve said,
 “Let’s go with that option”, in any event.” TRA-06175*

Reliance on experts

31) The absence of sufficient resource was not just financial but also in terms of ‘in house’ expertise. This was explicitly recognised within Energy Division who were required to outsource to obtain this technical expertise. Peter Hutchinson was entitled to rely upon the experts engaged, CEPA, OFGEM and Arthur Cox, to provide a proper service, including identifying all of the relevant issues and relaying them to him. It is now clear that this reliance was largely misplaced.

32) During the evidence sessions Mr Cockburn of CEPA initially tended to suggest that CEPA were not any more expert than DETI. He was ultimately forced to accept that this was inaccurate and they had both more experience and expertise than DETI, CEPA having relevant transferable experience in the field of renewable electricity and AEA having experience in the field of renewable heat, **TRA-01552**. However, it must have been clear to them that Peter Hutchinson, whilst doing his utmost to try and understand both the technical issues and various conclusions from spreadsheets, was applying his training as a generalist civil servant. Insofar as there was any ambiguity as to the expertise of CEPA,

despite their tender for the project and the clear expertise reflected in their curriculum vitae, this should have been clearly expressed to the Department.

33) The evidence heard to date supports the suggestion that whilst Peter Hutchinson had no expertise in respect of renewable heat, he worked diligently to try and understand the more technical aspects of the CEPA work. In particular: -

- a) He kept abreast of what DECC were doing in respect of their RHI and where possible to develop contacts, **TRA-01531**.
- b) He would do his best to interrogate the CEPA workings and spreadsheets and request clarification. He suggests that *“I think we asked them lots of questions throughout their process”* **TRA-01987**. The fact Peter Hutchinson describes CEPA as being ‘patient’ reflects both the volume of his questions and the (understandable) difficulties he encountered with fully understanding the CEPA calculations/models.
- c) An example of Peter Hutchinson using his best endeavours to interrogate the spreadsheet can be found in the email chain at **WIT-106413**. He includes what he describes as a ‘simple spreadsheet’. His witness statement identifies a number of subsequent emails and conversations (**WIT-09030 to WIT-09032**). Whilst the exchange illustrates the technical complexity of the CEPA model and the robust efforts by Peter Hutchinson to understand it, ultimately it is clear that the expertise of CEPA was critical.
- d) He was conscious that their model was *“very complex”* **TRA-02054**, yet developed his own spreadsheet to try and replicate their findings and as an aid for his monitoring of the scheme.
- e) He identified that DECC had factored in *“‘ongoing barrier’ costs”* **CEP-58988** and raised with CEPA why these were not factored into tariff calculations as they were in GB. This is not to suggest that he had technical expertise which rivalled that of CEPA, rather identifies a diligence in comparing and cross referencing with the DECC scheme.
- f) Whilst he did not receive the 2012 model from CEPA, he spent time trying to work out how the figure of 5.9p was derived. Ultimately CEPA used their expertise to persuade him they were correct. He suggests,

“Well, I think I went back a couple of times and said, “Look, I’m getting 5p, you know, as -“, and they’ve said, “Well, you haven’t thought about this” or, “You haven’t thought about that.” **TRA-02078**

34) In respect of CEPA it is clear that it failed in its duty to the Department and that reliance upon their expertise, was misplaced: -

- a) CEPA in its first report identified and considered the requirement for tiering for the NI RHI rates using the DECC approach but opined that it was not required in respect of biomass.
- b) In this novel and complex project they failed to properly identify their ‘working assumptions’ to the Department, **TRA-01254**.
- c) CEPA did not fully or clearly set out or communicate to DETI the risks associated with their key assumptions, for example the assumption of a 17% load factor in the absence of tiering.
- d) CEPA did not properly communicate the sensitivity of a change in the variables or the assumptions to the tariff. The information from CEPA caused Peter Hutchinson to develop an erroneous understanding that where there was a higher load factor this would be netted off by the additional fuel used and shorter lifespan of equipment.
- e) In the specific context of the 2012 addendum, the work CEPA ultimately provided to DETI was, clearly, sub-par. For instance, Mark Cockburn conceded that the tariff calculations contained in the addendum were incorrect, **WIT-107781**. Indeed, quite apart from the tariff calculation, the 2012 addendum report was littered with other mistakes and inconsistencies, (**WIT-107775**; **WIT-107779-80**). This is perhaps explained, in part, during Mark Cockburn’s oral evidence to the Inquiry, wherein he conceded that CEPA were strictly limiting everything they did because they felt they were not being paid enough, **TRA-01260**. Indeed, it is interesting to note that even CEPA’s November 2017 report prepared for the specific purpose of this Inquiry, was not immune to error. **TRA-16384**
- f) Following public consultation CEPA were asked to “*reconsider their assumptions in light of the new evidence presented*” and to “*consider the resulting implications for tariffs and overall costs*”. It appears from the evidence available to the Inquiry that CEPA’s model had, in fact, disclosed the need for tiering of the small scale biomass tariff, **TRA-01350**. Notwithstanding, CEPA appear not to have realised this and/or failed to communicate that necessity to DETI.
- g) CEPA recognised that the scheme might be particularly attractive to users with high heat loads, for example poultry and mushroom farmers, but they did not impart this warning to DETI, **TRA-01992**.
- h) CEPA to not appear to have properly understood their role as independent experts, requested to and required to provide an independent report. DETI were relying on their expertise. For instance, had they suggested the inclusion of tiering for any of the tariffs, it is inconceivable that this would not have been adopted. CEPA were clearly alive to

the risk of overcompensation at all relevant times and were aware of the fixed overall (and annual) budget (**TRA-01253**).

- 35) Ultimately it is submitted that at the relevant time there was no reason for Peter Hutchinson to conclude that CEPA did not have the appropriate expertise.
- 36) In respect of the CEPA failures, in particular the failure to communicate the need for tiering and the consequences of the cost of biomass fuel: -
- a) It is clear that Peter Hutchinson (along with the Departmental economist) had been repeatedly and consistently challenging their figures and assumptions to the best of his experience. He was therefore entitled to rely upon their expertise.
 - b) He was entitled to consider that CEPA were actively considering tiering as it had been built into their 2012 model and CEPA had suggested to DETI it was required in respect of ground source heat pumps, **TRA-02059**.
 - c) Whenever he interrogated or questioned CEPA assumptions or modelling he was told that he had failed to consider a relevant matter, **TRA-02078**.
 - d) Ultimately, he was relying on the CEPA numbers being correct as they were “*expert economists*” with relevant and “*good experience in energy modelling*”, **TRA-02083**. As this was a reasonable assumption to make, it is inappropriate to criticise Peter Hutchinson, with the benefit of hindsight, for failing to identify that tiering was required.
 - e) Given the extent to which Peter Hutchinson went to question and interrogate the CEPA model/information it is respectfully submitted that the Inquiry should accept his evidence that it is likely that he questioned CEPA about tiering, not just in respect of the GSHPs, asking the question,

“Well, what about the other tariffs?”, and they obviously have not recommended it. I don’t think I would’ve laboured the point, because I would’ve thought that if it’s required, they would’ve volunteered it like they would’ve done for the ground source heat pumps, and I’ve been mindful that it’s built into the model.” **TRA-02085 and 02086**.

- 37) In respect of OFGEM it is clear that it failed in its duty to the Department and that reliance upon their expertise, was misplaced: -

- a) OFGEM had considerably more experience of RHI type schemes given its role in administering the DECC scheme; it was entirely reasonable that the DETI would rely upon and take comfort from OFGEM’s engagement in the NI RHI scheme. OFGEM

were aware that DETI were placing reliance on this, see **OFG-01734** and encouraged it, see **OFG-162032**.

- b) OFGEM envisaged a role for itself in the oversight and development of the NI RHI Scheme inter alia in the suggestion within the feasibility study that there be a joint administration board. OFGEM were in a unique position. They had previous experience working with DECC. This could have been utilised to suggest the absolute necessity for such a board. Rather than utilising this experience, it was Peter Hutchinson and Joanne McCutcheon who raised the issue of the board expressly with OFGEM in August 2012, **WIT 104543**. This was not ultimately implemented and whilst Matthew Harnack had no recall of the basis for this, the OFGEM evidence from Mr Avis suggests,

*“it was my understanding that a decision was actually made at Matthew Harnack’s level that we shouldn’t actually proceed with one.” **TRA-06254**. (emphasis added)*

- c) Rather than fully utilise the experience, knowledge and resources available to OFGEM, it became entangled in bureaucratic arrangements and failed to impart its learning from administering the DECC scheme, or sufficient information (names and addresses where there were multiple boilers) to allow DETI to identify timeously matters which might have led to the identification of gaming earlier. Whilst it would be possible to outline a catalogue of instances in which OFGEM failed to pass information to DETI, one particularly troubling example can be seen in February 2014, when the NI Scheme was still in its infancy (72 accreditations). At this time, OFGEM’s Jacqueline Balian sent an email communicating the following industry feedback:

*“Many of those present mentioned it, one saying, ‘I know quite a few people in our local farming community who say that they are giving up sheep and just raking in the money from the RHI.’ ... Others asking how long they have before the loophole is closed.” **OFG-260635** (emphasis added)*

Despite being aware of gaming within the GB Scheme, by way of under-sizing and installing multiple boilers (**OFG-260159**), OFGEM failed to pass this information on to DETI. Dermot Nolan, CEO of OFGEM, properly conceded, *“I think we told DECC more than we told DETI. That was a failure – a significant failure”*, **TRA-16429**.

- d) The memorandum of 4th November 2011 raised a number of issues in respect of its review of the draft regulations. These same issues had been raised with DECC and DECC had decided not to address them, rather it decided to proceed and address ongoing issues in due course. It is respectfully submitted OFGEM acquiesced in the DETI decision to proceed in a similar fashion to DECC, in the full awareness that if DETI took a different course to DECC there was the real risk of divergence of the

schemes with the consequence of a loss of the economies of scale presented by OFGEM. Had there been a strong objection to the DETI stance this would have been escalated up to more senior management. Further, the evidence of Keith Avis suggests OFGEM approval of the decision, **WIT-102323**, suggesting,

“The DETI proposals concerning the NI RHI Scheme were reviewed by OFGEM, including its legal team, and deemed appropriate to enable operational processes to be framed to reflect the detail.”

- e) Significantly OFGEM did not clearly alert DETI in the initial stages of the RHI that they would be treating hydraulically separate heating systems within the same building as separate, or of the potential implications of this decision in respect of gaming opportunities, **TRA-09030**.
- f) OFGEM failed to provide evidence from which DETI officials might have identified the potential for gaming of the scheme earlier. The information within the email of Alastair Nicol to Edmund Ward dated 15th August 2013 which provided three case studies in respect of boilers not hydraulically linked, see **OFG-164265**, was not imparted to DETI. Further, the November 2013 Ricardo-AEA presentation information was not imparted. This is despite it being clear to OFGEM employees that DETI regarded them as the experts in the interpretation of the Regulations, regularly referring queries to them for advice and assistance. The OFGEM response to DETI appeared to be reactive rather than proactive.
- g) It is submitted that the OFGEM suggestion in June 2012 that DETI had the option to stall the implementation of scheme pending the DECC changes to the GB scheme was not put with the clear preference for waiting which is now asserted. David Sterling considers that if OFGEM felt as strongly about their June 2012 warning as alleged, then they ought to have,

“picked up the phone to, you know, top management in the relevant organisation and said, “I just think you should know about this.” **TRA-06708**

- h) Further, Peter Hutchinson was clear in his evidence that whilst the ‘legal side’ of OFGEM made a point, the DETI position in respect of not diverging from DECC was explained and *“some in OFGEM agreed with our point of view”* with the issue not being raised again by OFGEM, **TRA-02207**. If OFGEM had truly felt DETI’s course of action to be inappropriate they could have refused to proceed with the administration of the scheme.

38) In respect of Arthur Cox the Department had provided the OFGEM memorandum of 4th November 2011 to Arthur Cox to address and assess the risks associated with those issues in its review of the draft NI regulations. No proper assessment of these risks was presented.

39) It is respectfully submitted that the acts and omissions of the experts upon whom the Department relied for advice cannot be divorced from the limited resources available to the Department to perform a detailed review of expert advice. It should not be taken from this that there was no such scrutiny, rather it stands to reason that further and more adequate resources would have strengthened the process.

Departmental scrutiny

40) Of course Peter Hutchinson was relying on Departmental scrutiny to assist. This scrutiny included the internal economists, the casework committee and the Department of Finance. It is of great regret that this scrutiny did not identify and address deficiencies in the scheme, however it is implicit in the nature of such failures that they should be seen as systemic, rather than individual errors.

41) He regularly utilised a Departmental Economist, Sam Connolly, to engage with, and for his input into, the CEPA report, for “*quality assuring*”, **TRA-02105**, for discussing the pros and cons around the RHI and Challenge fund and in finalising the tariffs, **TRA-02115**. Mr Connolly also signed off the casework papers indicating that

*“I’m content that this appraisal has been carried out in accordance with the NIGEAE guidance and that the approach adopted represents value for money and is the most effective way of allocating the resources provided by HMG for the purpose of a Northern Ireland RHI”. **TRA-02115***

42) Peter Hutchinson was entitled to rely on the sign off from Mr Connolly for assurance. He was not only relying on CEPA doing what they had been contracted to do (an NIGEAE compliant assessment), but also on Mr Connolly given Mr Hutchinson had only undertaken one half-day training course in NIGEAE, **TRA-04845**.

43) The casework committee was intended to be a robust procedure to interrogate a scheme. The committee consisted of Trevor Cooper, an acting Grade 3 but long term finance Director within DETI, Shane Murphy, a senior principal economist and Philip Angus, Grade 5. In respect of the Casework Committee process: -

- a) The minutes of the Casework committee, whilst not verbatim, clearly show a robust discussion about the scheme selection. That a Challenge Fund was better in monetary terms than an NI RHI was not hidden, rather it was expressed transparently and the minutes suggest,

*“a challenge fund option could produce the most renewable heat at the lowest cost.” **WIT-00900**.*

- b) Non-monetary issues, to include consistence with the GB scheme were identified and discussed, **WIT-00900**.
- c) The Departmental Economist, Sam Connolly, was present and did not demur from the matters raised by, and with, the committee.
- d) The requirement of Review was expressly addressed with and indicated to the committee.
- e) The issue of suspension of the scheme was raised by Peter Hutchinson. However there should be no confusion as to what he was referring to. It is clear that he was not suggesting that the Regulations contained a suspension power. Given the committee had a copy of the draft regulations this would have been obvious to them, and the others from Energy Division at the meeting. Rather he was suggesting, and it ought to have been obvious to the others there, that the primary powers the Department held could be used to amend or repeal the legislation.
- f) Trevor Cooper was aware of the source of the funding and that it was AME with a DEL consequence, having been copied into, or made aware contemporaneously, of the Jon Parker email.

Project Management

- 44) Whilst it is perhaps easy with the benefit of hindsight to see that formal project management could have played a potentially important role in the subsequent management of the RHI scheme, a number of factors appear to have led to this not being in place.
- a) Firstly, this was a policy project rather than a capital project. Whilst the guidance is not prescriptive, a significant thrust of the examples within the NIGEAE was in respect of procurement, construction or capital projects.
 - b) The absence of project management did not cause any contemporaneous concern within the NICS during the development or implementation of the RHI scheme. The processes in place to interrogate and ensure a robust project, namely peer scrutiny, the casework committee, ministerial scrutiny, other department scrutiny and even external engagement with OFGEM, did not identify this as a failure at the time.
 - c) Further, those who succeeded Peter Hutchinson, and the other members of Energy Division, failed to contemporaneously identify the absence of project management as an issue, notwithstanding any evidence the Inquiry may have heard with the benefit of hindsight. If the requirement for project management been properly ingrained within the Departmental or NICS culture, it is inconceivable that those who reviewed the scheme in casework or finance, and/or those who succeeded Peter Hutchinson, Joanne

McCutcheon, Fiona Hepper and David Thomson, would not have raised this as an immediate and significant issue.

- d) Given that the absence of formal project management did not cause alarm bells to ring within the Department or greater NICS, it is submitted that this was a systemic issue. It is strongly suggestive that corporately the NICS was not as comfortable, or experienced in, applying project management techniques to policy development. Peter Hutchinson noted the different culture in respect of project management in 2010 suggesting,

“I think the position back in 2010, in my mind certainly, is different from where we are now in terms of project management within the Civil Service, and it’s almost like a prerequisite for everything” **TRA-01482**

- e) Peter Hutchinson did not receive project management training from the NICS until the year ending March 2014, **TRA-04815**.
- f) Up to 2014, expenditure and take up on the RHI scheme was considered to be low, **TRA-05688**. OFGEM in November 2013 considered that,

“As the scheme is fairly new, the number of applications received to date doesn’t form a strong basis for detailed and accurate conclusions for the scheme’s future. Statistics are however consistent, when adjusted for NI’s population, with the results of the scheme in other regions for their corresponding periods.” **WIT-08439**

45) It is against a background of a lack of resource that the absence of formal project management should be judged, rather than with the clarity of hindsight. At the time the Scheme commenced, there was no formal decision taken by the Department around formal project management arrangements. Indeed, corporately, the Department for the Economy has conceded that, *“With the benefit of hindsight, it is now very clear that the level of resources devoted to the RHI from 2011 to 2016 was inadequate...”* and recognised that formal project management methodology *“would have been difficult to administer given the limited staff resources committed to this project.”*, **WIT-03283**. Notwithstanding the dearth of resource available within the Division, efforts were made to implement the principles of project management, albeit out-with a formal framework. As David Thomson stressed in his evidence, PRINCE was not a one-size-fits-all methodology, it must be applied proportionately and must be adapted to the circumstances of a particular project, **TRA-05676**.

46) It is respectfully submitted that consideration of the impact of formal project management is, at this juncture, entirely hypothetical and that, as such, it would be unfair to make speculative judgments with regards to the prospective efficacy of any such approach. When set against the context of a scrutiny process in which some eight other stages failed, it is impossible to suggest with any degree of certainty that, for example, an additional layer of

management in the form of a project board would have made any material difference; it may well have been the case that reapproval was missed in any event. Indeed, this is particularly so when one considers that those who would have constituted the project board following Team 1's departure appear not to have read the documentation which was left for them, nor to have taken any steps towards implementing the project management they now purport to recognise as having been essential.

- 47) Dealing with the period to 2014, the Inquiry is aware of the very small number of staff working on the RHI, who were working long hours, evenings and weekends. Against this background it respectfully suggested that it is only with the clarity of hindsight that criticism can be made of the consideration that it would not be proportionate to implement formal project management given the small team of people working on RHI, namely one full time Deputy Principal, one part time Grade 7 and a Grade 5 with an extensive portfolio of other issues. The permanent secretary confirmed that he did not see them as,

“...people that I would have characterised as being excessive risk-takers or, indeed, to any great extent risk-takers at all, so I would have had confidence in their ability to examine a risk, make a judgment and proceed in a way that was basically sound.” TRA-06797

- 48) The manner in which the small number of staff involved in RHI were operating was akin to a project management system. Peter Hutchinson considered that,

“I think the position we were in was that the principles of project management in terms of who are the key members of staff, what are the roles and responsibilities, you know, were there. We were reporting regularly to Fiona, you know, in terms of weekly or monthly meetings. The risk register would have been considered on a – probably on a quarterly basis with Fiona and Joanne. So, there were principles of it I think, but as you say, it was probably more of an informal PRINCE, you know, process ...

...all the documents were there and they were logged and provided, certainly in the handover note ... what we were doing felt proportionate to what was being delivered.” TRA-01484 (emphasis added)

- 49) David Thomson recalls that Fiona Hepper was in regular contact with OFGEM, and that effectively he considered this was “*effectively a project board*”, **TRA-05684**.

- 50) David Sterling's evidence in respect of project management and resource is illuminating. He accepts a general failure in DETI when he was the permanent secretary to find sufficient resources for project management, stating: -

“With hindsight now, I wish I had been, as I say, more inquisitive about the programme of activities that was flowing from the strategic energy framework and perhaps have suggested that, “Look, if we can't find

sufficient resource to do proper programme and project management, then let's get it in from the SIB". I would accept that entirely now..." TRA- 06066

- 51) More specifically in respect of the RHI he suggests there was little resource within Energy Division for project management,

"I wish I'd had the foresight at the time to recognise the, the lack of resource for project and programme management in energy division." TRA-06070

- 52) The absence of formal project management must ultimately be a corporate failing as it was not hidden from others within the Department. At all relevant times those who peer reviewed the scheme and who succeeded to posts within the Renewable Branch did not identify the clear absence of project management as a failure or a matter which required redress.

Monitoring

- 53) At the same time as considering Phase 2 issues, Peter Hutchinson was tasked with monitoring of the scheme. This task was made significantly more onerous by virtue of the failure of OFGEM to provide the sort of information which would have assisted him in identifying earlier patterns of behaviour. OFGEM provision only of limited geographical information, in circumstances where it had the relevant information from which relevant conclusions might have been drawn, prevented a proper understanding of the patterns of usage, or any sectoral analysis.

- 54) Whilst there is no documentary evidence to confirm that the Risk Register was regularly reviewed, the evidence of Peter Hutchinson is that it was reviewed quarterly,

"Joanne would've had it in a hard copy in terms of read through it and said where we were. I think at that stage, rightly or wrongly, it didn't feel like any risks had crystallised, and maybe that's why no major changes have happened to it or no changes at all." TRA-01515

- 55) Peter Hutchinson was alert to, and took steps to, monitor the information he was being given. He gave evidence that,

"I'd have been tracking applications, accreditation, heat capacity, keeping an eye on what different technologies and, then, sort of regular meetings at grade 7 and grade 5 level to discuss that..." TRA-04849

- 56) He was aware of the risk of gaming of the scheme, but of note is that OFGEM had failed to properly explain to him how it would be interpreting the regulations and guidance, in particular in respect of additional capacity in the same building. This led to Peter Hutchinson considering that a boiler added to premises would be treated as additional

capacity and added together, **TRA-04862**. It is clear from the evidence that Peter Hutchinson was referring detailed matters of technical interpretation of the guidance and regulations to OFGEM for their decision. It is of note that OFGEM were not in 2013 clearly identifying to him any trend or pattern that was emerging as inter alia a result of the manner in which it was interpreting the guidance. In particular no warning emerged from OFGEM along the lines that *“Look we’ve told you about this in November. Now it’s happening on the ground”* **TRA-04881**.

57) It is submitted that any suggestion that Peter Hutchinson, by the use of monitoring, should have identified difficulties within the scheme in 2013 is erroneous. This is to place the benefit of hindsight above the circumstances in place at the time, namely the low actual number of applications. In 2013 the number of applications (not accreditations) in the four quarters were 9, 19, 22 and 30. It is important to note that Peter Hutchinson was looking for trends which emerged over time. It was entirely reasonable for him to consider that as the industry was more familiar with biomass, this would be the technology picked up in the initial period. He was not being given the addresses of installations and the monthly and weekly reports from OFGEM failed to provide information around load factor or running hours in a manner which allowed for ready analysis.

58) Regardless of whether the scheme was in fact performing in line with the initial uptake of the GB scheme, or not, the message coming from OFGEM in mid 2013 was not consistent with that. OFGEM was suggesting that they were not recovering their costs with the level of applications, **TRA-04948**.

59) It is significant to consider the information provided by OFGEM in its first annual report in respect of the scheme. This suggests the actual usage data is limited as it utilises data from the application information and it may not reflect actual or current outputs, **DFE-331066**. Further the report confirms that,

“the number of applications received to date doesn’t form a strong basis for detailed and accurate conclusions for the scheme’s future.” **DFE-331065**
(emphasis added)

60) It is submitted that it would have been reasonable for a reader, and for Peter Hutchinson, to consider that the experts were warning against drawing conclusions and that not only were there a low actual number of applications but that there was limited actual usage output evidence. From reading the report there would have been no obvious cause for concern.

61) Whilst it might be suggested that further individual work might have been carried out to interrogate the information being given by OFGEM, given the limited resources available to DETI, it is unrealistic to suggest that Renewable Energy Branch had sufficient resource, or time, to undertake a significant amount of this work. This is accurately reflected in the Chairman’s comment to Dr MacLean’s enquiry as to whether Peter Hutchinson ever

contacted his equivalents in DECC to compare notes in respect of OFGEM, the Chairman observing,

“I don’t think, well, there’s enough time for you to have any natural curiosity.” **TRA-04931**

- 62) Peter Hutchinson armed himself with information in respect of fuel prices. He had the Sutherland tables, but again he was looking for longer term, rather than weekly trends, as fuel prices could go up and down. Not only was he entitled to rely on an expectation that the CEPA analysis would be valid for a reasonable period of time in the absence of significant market change, and the 2012 CEPA report suggested no change in prices **TRA-04964**, but he was clear that there was going to be a review in 2014, **TRA-04967**.
- 63) Whilst Peter Hutchinson did attend promotional events, he confirms that installers did not come up to him and question payback periods, **TRA-04973**. These events were not aimed at non-domestic customers, *“rather you would have had a lot more farmers and people building their own homes”*, **TRA-04973**. Peter Hutchinson was there primarily to allow people to speak to him and ask him questions. It is unsurprising that he did not spend his time picking up leaflets aimed at people who were going to install boilers. In this regard it is also of note that none of his other colleagues from the department present at the events, from renewable electricity branch for example, ever came up to him and queried what is now known to have been advertised, **TRA-04975**. It is respectfully suggested that, given the evidence the Inquiry has heard in respect of Peter Hutchinson being proactive, interrogating issues he did not understand and raising queries with CEPA, OFGEM and others, had he been aware of the very small payback periods being pejoratively advertised he would have brought those issues back to DETI for further consideration.
- 64) It hardly surprising that those with a clear self-interest in promoting the sale of the technology did not raise the manner in which the scheme might be gamed with Peter Hutchinson. It was accepted by the Ulster Farmer’s Union and Action Renewables, both key stakeholders, that they did not bring these issues to DETI’s attention and the Inquiry will wish to consider why they did not do so. Further, it appears that other governmental bodies without any apparent self-interest followed a similar course and failed to bring to DETI’s attention any knowledge of perverse incentives.
- 65) Of course a significant part of the monitoring function was to be the review planned for early 2014. This is not to be confused with the cost controls issue.

Phase 2 cost controls

- 66) The issue of interim costs controls was considered in 2012 and following the Ministerial decision in June 2012 to proceed with the scheme and not to bring in the DECC cost controls until Phase 2, the issue remained live during 2013. Minister Barker from DECC had written to Arlene Foster to keep her updated on the interim cost control measures. A

phase 2 consultation identified three areas of work being moved forward, one of which was in respect of interim cost controls which would be implemented, with work thereafter taken in respect of degression.

- 67) The interim cost control designed by Peter Hutchinson very much relied on the DECC standby mechanism, and then applying it to both the domestic and non-domestic scheme. The consultation responses in respect of the costs controls had not proved to be controversial. Peter Hutchinson considered them a first step to degression, **TRA-05108**.
- 68) John Mills was aware of the consultation document and its inclusion of cost controls. Fiona Hepper recalls highlighting to him the consultation that was finishing and mentioning cost control as

“I do remember talking about cost control because this term, “degression”, came up and it was obviously a novel term, and I remember, you know, spelling that for him because it’s an odd spelling of the word.” **TRA-01795**

- 69) John Mills does not dispute Mrs Hepper’s account as this was one of the three elements of the consultation, **TRA-07087**. He accepts that there was no reason that it would not have affected both the domestic and non-domestic schemes, **TRA-07093**.
- 70) Whilst the Phase 2 domestic and non-domestic schemes were proceeding at differing paces, due in part to a state aid issue, the cost control work was there to be implemented as and when a legislative route was available, **TRA-05127**. Whilst not a panacea, the cost control necessity was raised in the handover note, **WIT-07605**. Had the matter been properly addressed at that stage it would at least have allowed for suspension of the scheme mid-year following any spike in applications.

Review

- 71) At different times in the Inquiry, the need to review the scheme may have been confused with the Phase 2 consultation in respect of further non-domestic technologies, cost controls and the domestic scheme. These were entirely separate issues. The need for review was clear from both the TRIMed contemporaneous documents setting up the scheme and within the Strategic Energy Framework, ‘Progress to 30 September 2013’ document, **DFE-399083**.
- 72) John Mills was aware of the need for a review, but he did not maintain the same momentum in early 2014 as had been present before Fiona Hepper left the Department. He signed off an Assembly Question answer, given in February 2014, containing reference to the review. Peter Hutchinson was conscious that Joanne McCutcheon was aware of the need for a review and he suggests she would mention feeding issues into the review, **TRA-05060**. At a March 2014 meeting with John Mills, Peter Hutchinson and Joanne McCutcheon told him

that the scheme was due to be reviewed that year, **TRA-05133**. It is of note that the Heads of Branch meetings in May and June 2014, which were intended to deal with immediate actions in the next number of weeks, included a reference to the need for a review of tariffs in phase 1, before being removed after Davina McCay left the temporary position, **TRA-05522**.

- 73) The Risk Register clearly identified a planned review of the scheme in 2014 at **WIT-7064**. The need for Scheme review was contained in the Business Case, the DFP approval and the State Aid approval; it was plainly a requirement. All of the key documents pertaining to the Scheme were filed on TRIM. It is inconceivable that anyone, having read these documents, would not be aware of the necessity for review.

Jannette O'Hagan meeting

- 74) Mrs O'Hagan presented as a stakeholder. She did not perceive herself as a whistle-blower, **TRA-04676**, and consequently did not appear to others as such. Peter Hutchinson recalls the meeting being professional, friendly and interesting, **TRA-05031**. It was not a single issue meeting and lasted 45 minutes to an hour. Whilst his mindset at that stage was that the tariff had been set by CEPA at the appropriate level and that would guard people from overusing (**TRA-05034**) he was not closed to considering any evidence provided. It is submitted that the notes taken after the consultation from Mrs O'Hagan at **WIT-265031** are relevant and clearly identify that the consultation finished the following Monday and that a request was made for evidence of examples. It is submitted that this request, which was made orally then confirmed in email, exhibits the absence of a closed mind to the issues. Specific examples were not provided by Mrs O'Hagan and the opportunity to follow these up therefore did not materialise at that time.
- 75) It is clear that when Mrs O'Hagan next made contact with Peter Hutchinson, he did use the experience of their previous meeting and connected this with his by now greater experience of the scheme and link this to payments being higher than expected under the CEPA modelling, **WIT-07600**. He used the information provided by Edmund Ward, to identify a problem in respect of biomass boilers. Whilst this coincided with Peter Hutchinson being transferred to OFMDFM, he took the appropriate action to alert his new line manager Davina McCay and to set out in writing a comprehensive description of the problem along with a solution. In doing so the Branch was fully aware that "*This issue would need to be considered as a matter of urgency.*", **WIT-07601**. Further he indicated a willingness to be contacted and to return to discuss any issues the new team considered necessary.
- 76) Not only did he identify the problem but he considered and proposed a "*solution*", namely the tiering of tariffs, **WIT-07601**.

Handover process

77) There was no formal guidance in respect of handovers in the NICS at the relevant time. David Thomson did not prepare a formal document for handover to his successor. Chris Stewart confirmed the absence of a formal handover process was standard practice across the NICS, *“There was no systematic approach to that, so it was ad hoc”* TRA-11507. Mr Stewart referred to Peter Hutchinson’s handover note and suggested that whilst there might be many examples of written handover notes,

“there would be just as many, if not more examples of people...-relying on learning on the job”, TRA-11507.

78) This absence of a formal handover system, in particular in circumstances where civil servants come from a generalist background is in hindsight inappropriate and something the Inquiry might consider making recommendations upon.

79) Notwithstanding the lack of handover process or template for a handover document, the handover papers compiled by Peter Hutchinson are an example of how he went above and beyond what might have been ordinarily expected in his role. The handover papers were comprehensive and substantial, being separated into sections covering staffing within the branch, immediate actions, the RHI, the RHPP, Phase 2 of the RHI, Sustainable Energy Communications and other ongoing actions and papers in respect of the Renewable Heat Sub Group/Strategy/BioEnergy Action Plan. The sections include key/useful information, with the location within the TRIM folder identified (ameliorating any perceived difficulties with navigating or browsing TRIM to identify documents) and a list of key contacts with contact details. Current and emerging issues were outlined with solutions suggested. Most importantly he drew up a comprehensive immediate actions plan to be taken forward in the next three months. His handover was directly to Davina McCay who was the acting Grade 7. His successor, and the successor to Ms McCay, could not have had a more helpful or comprehensive introduction to their new roles.

80) Whilst an important document, the handover document was not an onerous read. It not only identified relevant issues but classified some as ‘urgent’ and suggested solutions. It should have been immediately recognised as a key document. It is submitted that it is hard to understand why that document would not have been read in its entirety by the recipients

81) It is clear that Peter Hutchinson recorded that the list of immediate actions could be completed by the end of August 2014. It is submitted that given his work rate, he would have expected to have done so had he remained within the branch.

Other issues

82) All of the relevant information that was available to those who designed and implemented the non-domestic RHI was available to their successors. Chris Stewart accepted in evidence the suggestion that important information or documents were placed where they should

have been in TRIM and were therefore easily able to be found by succeeding civil servants, **TRA-11510**.

- 83) Whilst there has been some discussion around the difficulties with or limitations of the TRIM system, this document management system was not antiquated. It had been brought in between 2005 and 2010 (**TRA-05637**) as part of a major Civil Service reform programme and all staff were properly trained in its use, **TRA-11512**.
- 84) It is now clear that those who succeeded Joanne McCutcheon and Peter Hutchinson had complete copies of Peter Hutchinson's handover document, albeit it appears that at no stage was a copy volunteered to more senior management throughout 2015 or the first nine months of 2016 until Peter Hutchinson and Fiona Hepper alerted Alison Clydesdale, who was then involved in the team investigating the issue and preparing for a PAC hearing. This suggests at the very least a lack of transparency on the part of those who succeeded Peter Hutchinson and his colleagues in post and this is a matter the Inquiry will wish to consider when assessing the evidence of those succeeding civil servants.
- 85) John Mills was contemporaneously aware of the existence of the handover documentation, yet peculiarly suggests he did not call up a copy to himself. He was aware that his grade 7, Joanne McCutcheon, had to take a career break in 2014, yet failed to ensure that her post was filled before she, or Peter Hutchinson left. He had overruled Joanne McCutcheon's concerns that Peter Hutchinson should not be transferred and refused her suggestion that Peter Hutchinson be 'acted up' into her post. (**TRA-09531; IND-06232**). Having failed to take any steps to consider the contents of the handover documentation, John Mills was responsible for a Branch in which he did not have any or adequate understanding of the "*immediate actions*" (**DFE-05399**) or "*emerging issues*" (**DFE-05404**).
- 86) This situation was likely compounded by permitting the Branch to lose (at approximately the same time) both Joanne McCutcheon and Peter Hutchinson, the two remaining staff who had taken the RHI scheme implementation,
- 87) It is inconceivable that the Peter Hutchinson handover document would not have been read in its entirety by a reasonably diligent recipient. It should have been immediately recognised as a key document.
- 88) Peter Hutchinson clearly considered that the timeframe for the immediate actions was realistic. Davina McCay managed to make progress on four of the immediate action points. Even if the difficulties of coming into a new, heavily-laden post, where resources were limited, meant that it was felt that Peter Hutchinson's timeframes were optimistic, no steps appear to have been taken to bring this to the attention of senior management.

Conclusion

- 89) Whilst any administrative process subject to normal human frailties may be open to criticism, it would be unfair to apply a counsel of perfection with the benefit of hindsight to retrospectively identify complex and difficult issues as ‘obvious’. This applies in particular to the comparison of the cost of biomass with the tariff. An example of where an issue might only be identified armed with the knowledge of CEPA mistakes and with the full information at hand can be found within the latest witness statement of Mr Shane Murphy, WIT 19640. Expanding on an issue he raised in his oral evidence, Mr Murphy contrasts a further issue he has identified with the fact that many people have used the benefit of information and hindsight gained from the work of NIAO to conclude the CEPA biomass error was “obvious”. This illustrates the difficulty in setting aside what is now known to have occurred, and the danger in looking back with a focus on two already identified tables in a report seven years ago.
- 90) What is clear with hindsight, is that too much was being asked of this Department, Division and Branch. This is evidenced in the reorganisation of the Department. There is now a further Grade 3 led Division, two Grade 5s and a Grade 6 in energy division and a staff of approximately 43 dealing with RHI itself. This must be contrasted with the situation when Peter Hutchinson was in post whereby there was a severe restriction on resources and a lack of technical experience. It is submitted that this factor will weigh heavily in the balance, and militates towards a conclusion that individual acts or omissions in respect of those working on the RHI with Peter Hutchinson in DETI from 2011 to 2014 were not as a result of a want of care, rather were caused or permitted by the systemic failures within the system.
- 91) At this remove, it is clear that any issues with the Scheme were certainly not ‘obvious’ to officials. Peter Hutchinson had absolutely nothing to gain from *turning a blind eye*. Indeed, those who *were* aware of issues decided to say nothing. Aside from those in the industry, such as Action Renewables and the Ulster Farmer’s Union, who had appreciable commercial interests in the Scheme, a number of government Departments and Non-Departmental Public Bodies (namely, Invest NI) had either direct knowledge of, or sufficient knowledge to deduce, potential issues with the Scheme. Notwithstanding their knowledge, **none** of these entities imparted relevant information to DETI.
- 92) Against a background of a lack of resources and a political desire to replicate the Whitehall Civil Service in miniature in Northern Ireland, to include the design of bespoke energy policy, Peter Hutchinson undertook his task conscientiously, with the ethos of service and sense of public duty.
- 93) It is a matter of profound personal and professional regret to Peter Hutchinson that the shortcomings in the design of the RHI scheme were not identified and addressed at the outset, or at an earlier stage of its operation than actually transpired. It is submitted the matters highlighted in the foregoing illustrate the wider context in which he and Team 1 had to operate, and that this should be of fundamental importance in the Inquiry’s consideration of how the *structural* difficulties with RHI arose in order that the necessary

changes and reforms can be identified to the benefit of the future governance of Northern Ireland.

Dated this 29th day of November 2018

Peter Coll QC

Andrew McGuinness BL

Leah Treanor BL

Nicholas Compton BL