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By email to: [mary.o'neill@finance-ni.gov.uk](mailto:mary.o'neill@finance-ni.gov.uk)

9 July 2018

Dear Sir

**Re: The Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme**  
**Provision of a Section 21 Notice requiring the provision of evidence in the form of a written statement**

I am writing to you in my capacity as Solicitor to the Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme (known as 'the RHI Inquiry') which has been set up under the Inquiries Act 2005 ('the Act').

I know that you are already very familiar with the work of the Inquiry and its Terms of Reference.

The Inquiry is grateful for the detailed evidence, both oral and written, already provided by you. That evidence has, along with evidence from other persons and organisations, been considered by the Inquiry and there are a number of further matters arising therefrom in respect of which the Inquiry wishes to ask you questions. The Inquiry also wishes to afford you an opportunity, at this stage, to address any

issues arising from the evidence of other witnesses provided since 21 February 2018<sup>1</sup> which you consider it necessary to address.

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

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

The Schedule to the enclosed Section 21 Notice provides further detail as to the matters which should be covered in the written evidence which is required from you.

As you are aware, receipt of this correspondence and its enclosures places you under a duty of confidentiality to the RHI Inquiry in respect of them. You may share the correspondence and the enclosed Notice with your legal representative(s), but neither you nor they may show, communicate the contents of, nor provide this correspondence or the Notice to any other person or organisation without the express permission of the RHI Inquiry. Any breach of this duty of confidentiality is actionable at the suit of the Inquiry Chairman. In addition, a similar restriction is contained in Restriction Order No 2 of 2017 made by the Inquiry Chairman and available on the RHI Inquiry website.

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

Given the tight time-frame within which the RHI Inquiry must operate, the Chairman of the Inquiry would be grateful if you would comply with the requirements of the

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<sup>1</sup> The last day of your oral evidence to the Inquiry.

Section 21 Notice as soon as possible and, in any event, by the date set out for compliance in the Notice itself.

Finally, I would be grateful if you could acknowledge receipt of this correspondence and the enclosed notice by email to [Patrick.Butler@rhiinquiry.org](mailto:Patrick.Butler@rhiinquiry.org).

Please do not hesitate to contact me to discuss any matter arising.

Yours faithfully

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

**Patrick Butler**

Solicitor to the RHI Inquiry

0289040892

**SCHEDULE****[No 133 of 2017]****CEPA**

1. In your oral evidence on 18 December 2017 (**TRA-2085 to TRA-2092**) you suggested, in terms, that you believe you discussed the question of the need for tiering of tariffs in the NI RHI Scheme with CEPA at or about the time when you received CEPA's Addendum Report in February 2012. CEPA have, through a witness statement from Mark Cockburn dated 22 February 2018 at **WIT-108105 to WIT-108149** (in response to Section 21 Notices 5 and 9 of 2018), attempted to address this issue, in particular at **WIT-108119**. Please set out anything else that you wish to say on this issue, given the apparent contradiction between your evidence and that of CEPA.

***Andrew Crawford***

2. In your oral evidence on 5 December 2017 you were asked a number of questions about a submission to the DETI Minister dated 8 June 2011 (see, for example, **TRA-1602 to TRA-1613** in this regard) and about whether it was potentially misleading insofar as it described the NI RHI option as the one offering "the highest potential renewable heat output at the best value" (**WIT-744 at paragraph 24**). In his oral evidence on this submission on 16 April 2018 at **TRA-7971 to 7972**, Andrew Crawford suggested that officials may have been deliberately misleading the Minister (**TRA-7971 lines 5 and 6**). Please set out anything else that you wish to say on this issue, in light of the evidence of Andrew Crawford.

***Sandra Thompson's Evidence Re Anticipated RHI Monthly Payments***

3. You are referred to an email at **DFE-278136 to 278137** and to a Section 21 Notice addressed to, and a replying witness statement received from, Sandra

Thompson in respect of this email (WIT-27001 to WIT-27008). Please address the following issues arising from these documents:

- a. Clarify the role played by you in assessing or providing advice or information regarding assumed load factors for use in calculating anticipated tariff payments under the RHI Scheme;
- b. Set out each load factor suggested by you including details of each of the following:
  - i. The date (or approximate date) when you first suggested using each load factor and the period (or approximate period) for which each one was used;
  - ii. The precise basis for selecting each such load factor (for example, the CEPA assumptions, evidence from the operation of the GB RHI Scheme, evidence from the operation of the NI RHI Scheme, or otherwise);
- c. Identify any officials other than you or Ms Thompson who were involved in these matters;
- d. Identify any documents of which you are aware which are relevant to these matters and, if you believe that relevant classes of document are likely to exist but are outside your custody or control, please provide a detailed description of them as well as details of where, and by whom, they are likely to be held.
- e. In the event that you, during your time in Renewable Heat Branch, knew that a load factor greater than 17.1% (the load factor assumption used by CEPA in its tariff calculation in respect of the 20-99kW solid biomass band) was being used to assume the level of anticipated payment under the NI RHI Scheme then please address the following issues:

- i. explain whether you advised those using, or considering using, the greater load factor of the fact that it was different from that used by CEPA and:
  - if you did do so, please provide full details of this;
  - if you did not do so, please explain this;
  
- ii. explain whether you considered the possible implications of using the greater load factor including, but not limited to, implications for the RHI Scheme budget and:
  - if you did so, please provide full details including details of whether, and if so when, to whom, and in what terms, you communicated with others about those possible implications;
  - if you did not do so, please explain this;
  
- f. The Inquiry has been provided with a spreadsheet which appears to have been used by Sandra Thompson, and possibly others, in order to project/assess/monitor payments being made to Ofgem for transmission to RHI scheme members (there are many iterations of the spreadsheet, seemingly amassed through the life of the RHI Scheme, which are contained in a folder attached to this Notice). The spreadsheet includes a column dealing with load factors. It appears that an assumed load factor (which may have changed over time) was used to project payments, and then some effort was made to calculate actual load factors based on payments. Please explain:
  - i. Your awareness, during your time in Renewable Heat Branch, of these spreadsheets;
  
  - ii. Any role you played in respect of these spreadsheets;

iii. Insofar as the spreadsheets used a greater load factor for installations in the 20-99kW solid biomass band than that assumed by CEPA (17.1%), confirm whether you advised anyone of this fact and:

- if you did do so, please provide full details of this;
- if you did not do so, please explain this;

iv. Insofar as the spreadsheets used a greater load factor for installations in the 20-99kW solid biomass band than that assumed by CEPA (17.1%), explain whether you considered the possible implications of this including, but not limited to, implications for the RHI Scheme budget and:

- if you did so, please provide full details including details of whether, and if so when, to whom, and in what terms, you communicated with others about those possible implications;
- if you did not do so, please explain this.

### *Possible Gaming of the GB and NI RHI Schemes*

4. Dealing firstly with your understanding of how multiple boilers servicing a single building (whether hydraulically separate or not) would be treated under the RHI Scheme:

- a. Your oral evidence in respect of this issue is recorded at **TRA-4862 to TRA-4864**;
- b. Cathal Ellis' oral evidence on this issue (which included evidence about how his understanding of the issue was informed by a conversation he had with you) is recorded at **TRA-7429 to TRA-7430**;

- c. Dr Edmund Ward, of Ofgem, gave oral evidence regarding a telephone discussion he had with Alastair Nicol of Element Consultants on the issue of multiple boilers on or about 15 August 2013, which he understood was going to lead to Mr Nicol contacting DETI about the issue (recorded at **TRA-9083 to TRA-9086**);
- d. Mr Nicol addressed this issue in his written evidence at **WIT-200243** where he stated as follows:

*"I spoke on at least one occasions (sic) to a gentleman at DETI. Netherleigh, Massey Avenue Belfast The Colleague was responsible for issues pertaining to the RHI I genuinely cannot recollect the name of that person, the content of our call or the dates.*

*I suspect that at least one of those calls was to ask for confirmation in respect of the then rumoured separated hydraulic arrangements and 99kW boilers. I'm moderately confident that the response was to take it up with Ofgem."*

- e. In your interview with PWC on 11 October 2016 (**IND-4247 to IND-4249**) you stated as follows at the very foot of **IND-4247**:

*"Once you add a second boiler if it's heating the same building, if it's heating the same heat network then the installation, the band is decided by the combined heat capacity, so 2 x 99 boilers heating the same house or the same office block that is a 198 kilowatt boiler so the tariff is for that 100+. If the heat network is distinct, and OFGEM are content that it is distinct and its two buildings or two processes or two whatever it might be, then they're two separate installations."*

In light of the above pieces of evidence, please address the following points:

- i. Clarify when, during your time in Renewable Heat Branch, you first had to address the question of multiple boilers in the same building and how that scenario would be treated under the RHI Scheme;
  - ii. Clarify whether it was you who had a conversation with Mr Nicol in or about August 2013 and, if it was you, provide your recollection of that conversation and, in particular, clarify whether Mr Nicol informed you of the advice he had received from Dr Ward on or about 15 August 2013 regarding the issue of multiple boilers and hydraulic separation;
  - iii. If it was not you who had the said conversation with Mr Nicol, provide whatever evidence you can on the question of the identity of the official who did do so;
  - iv. Clarify whether, in light of the evidence of Dr Ward, Mr Nicol, and/or your PWC interview transcript, you wish to amend or supplement the evidence already given by you regarding multiple boilers on hydraulically separate systems (as recorded, in particular, at **TRA-4862 to TRA-4864**).
5. It is clear from Dr Ward's written statement and oral evidence that Ofgem procured a report from AECOM in mid-2012 which attempted to provide, *inter alia*, a working definition of 'heating system' in respect of the GB RHI Scheme (the report can be found at **WIT-114584 to WIT-114596**, with the definition of 'heating system' at **WIT-114585**). It also appears from Dr Ward's written and oral evidence that a definition, focusing upon physical separation, was applied to the NI RHI Scheme when it came into force in November 2012. In respect of this issue:
- a. Clarify whether you were ever, during your time in Renewable Heat Branch, made aware (e.g. by Ofgem, DECC, or any other person or body) that Ofgem had sought external assistance in respect of the definition of 'heating system' (and, if you were aware, provide details of when, how, and through what documents you became so aware);

- b. Clarify whether you or, to the best of your knowledge, DETI was ever, during your time in Renewable Heat Branch, provided with a copy of all or part of the relevant AECOM report (and, if a copy of some or all of the report was provided, please give details of when, how, and through what documents this occurred);
- c. Clarify whether you or, to the best of your knowledge, DETI was ever, during your time in Renewable Heat Branch, advised (e.g. by Ofgem, DECC, or any other person or body) of the working definition being used by Ofgem in respect of 'heating system' (and, if such advice was provided, please give details of when, how, and through what documents this occurred);
- d. In the event that neither you nor, to the best of your knowledge, DETI was ever, during your time in Renewable Heat Branch, advised of the said working definition, and of the result that multiple boilers on physically separate systems within a single building could be separately accredited under the RHI Scheme, then please address the following hypothetical questions:
  - i. If you and/or DETI had been so advised, clarify whether, based upon your experience of working in the Branch, DETI would have accepted that working definition and its consequences (provide reasons for your answer);
  - ii. If you and/or DETI had been so advised and DETI had not accepted that working definition and its consequences, explain what action you believe, based again upon your experience of working in the Branch, DETI would have taken (once again, provide reasons for your answer);
- e. Clarify whether you or, to the best of your knowledge, any other DETI official ever, during your time in Renewable Heat Branch, asked any

question of Ofgem, DECC, or any other body about how Ofgem and/or DECC were interpreting the term 'heating system' in respect of the NI and/or GB RHI Schemes, and:

- i. if such a question was asked, please provide full details of same including when, of whom, and through what documents such a question was asked as well as details of any answers provided;
    - ii. if such a question was not asked, please explain the reasons for this, particularly given the fact that issues had been raised regarding the lack of any definition of the term 'heating system' in the Ofgem 'Legal Review' of November 2011 (WIT-1237 to WIT-1264);
  - f. Clarify what your interpretation of the term 'heating system' was in the context of the RHI Scheme during your time in renewable Heat Branch and, if this interpretation changed at any point during that time, please provide full details of this (including when, how, and for what reasons that change occurred).
6. It is clear from the evidence of Dr Ward that Ofgem was aware, in 2013, of the possibility that the GB RHI Scheme was being gamed through the installation of multiple smaller boilers on hydraulically separate systems in place of larger boilers on fewer systems and through the questionable use of heat. You are referred, in this regard, to the following:
- a. The October 2013 Ofgem document at **OFG-126978 to OFG-126981 at OFG-126980, row 11;**
  - b. The July 2013 Ofgem document at **OFG-59162 to OFG-59179 at OFG-59176, 5<sup>th</sup> bullet;**
  - c. The November 2013 Ricardo-AEA document at **OFG-87862 to OFG-87887 at OFG-87874, 87879, and 87882;**

d. Dr Ward's oral evidence on 11 May and 7 June 2018;

In this particular context, please address the following issues:

- i. Clarify whether, during your time in Renewable Heat Branch, Ofgem ever made you (or, to the best of your knowledge, DETI) aware of the fact that Ofgem and/or its auditors were encountering possible 'gaming' of the GB RHI Scheme of the type described in the above documents (and, if Ofgem did make you or DETI so aware, please provide full details of this);
- ii. Clarify whether, during your time in Renewable Heat Branch, Ofgem ever advised you (or, to the best of your knowledge, DETI) that Ofgem and/or its auditors were encountering possible 'gaming' of the NI RHI Scheme of the type described in the above documents (and, if Ofgem did make you or DETI so aware, please provide full details of this);
- iii. Clarify whether, during your time in Renewable Heat Branch, you (or, to the best of your knowledge, DETI) were ever advised by any person or body other than Ofgem (e.g. DECC, Ofgem's site auditors, or others) of possible 'gaming' of the GB or NI RHI Schemes of the type described in the above documents (and, if you or DETI were so advised, please provide full details of this);
- iv. Clarify whether, during your time in Renewable Heat Branch, you (or, to the best of your knowledge, DETI) ever became aware of possible 'gaming' of the GB or NI RHI Schemes of the type described in the above documents (and, if you or DETI ever became so aware, please provide full details of this).
- v. If neither you nor, to the best of your knowledge, DETI were advised, or became aware, of possible 'gaming' of the GB or NI

RHI Schemes of the type described above, then please explain what you believe, based upon your knowledge and experience of Renewable Heat Branch, you/DETI would have done had you/it been made aware of the possibility of 'such gaming' (providing reasons for your answer).

7. It appears that Ofgem may, on the basis of legal advice, have been sceptical regarding the utility of Regulation 34(p) of the GB RHI Scheme (and the corresponding Regulation 33(p) of the NI RHI Scheme) as a tool for addressing 'gaming' of the RHI Scheme. In this regard, you are referred to a paper prepared by an Ofgem official (Katy Read) entitled 'Gaming – Wasting Heat' (from **WIT-114696 to WIT-114708**, pages **114697** and **114700** in particular), and asked to address the following issues:
  - a. Clarify whether, to the best of your knowledge, Ofgem ever advised DETI of its concerns or scepticism regarding the utility of Regulation 33(p) in this regard;
  - b. If DETI was so advised, please provide full details of this (including the date, mode, detail of, and parties to any relevant communications) as well as:
    - i. details of any actions taken by DETI as a result (as well as the reasons for such actions); and/or
    - ii. an explanation for DETI's failure to take any action as a result;
  - c. If DETI was not so advised, please set out what actions you, based upon your experience of working in renewable Heat Branch, believe DETI would have taken had it been so advised.

*Your Conversation with Dr Ward on 13 May 2014*

8. Dr Ward gave evidence about your 13 May 2014 telephone conversation regarding the 20-99kW solid biomass band at **TRA-6643 to TRA-6649**. It appears from this evidence that:
- a. he did not specifically recall you mentioning in that conversation any of the other strands that were causing you to have concerns about possible overcompensation occurring in respect of installations in that band (i.e. Janette O'Hagan's May 2014 communication, the March 2014 Smart Eco-Hub event, and so on);
  - b. he did not specifically recall you mentioning overcompensation or over-generosity;
  - c. he did not gain any sense of urgency or immediacy in respect of the issue of review or amendment in respect of that band;
  - d. he did gain a sense that the issue would be looked at only after the DETI had dealt with the domestic RHI Scheme (i.e. that the domestic RHI Scheme was taking priority at that time).

Clarify whether your recollection accords with that of Dr Ward and:

- i. if it does accord, please explain in particular why the sense of urgency apparent in respect of this issue in your handover note (**WIT-7596 to WIT-7609**) did not feature in your discussion with Dr Ward;
- ii. if it does not accord, please provide details of where your recollection differs with that of Dr Ward.

*Phase 2 of RHI*

9. In your oral evidence on 21 February (TRA-5076 to TRA-5131) you were asked a number of questions regarding Phase 2 of the RHI Scheme including the prioritisation of the Domestic RHI Scheme and apparent de-prioritisation of the introduction of cost controls. You are now referred to a number of further documents on this broad issue:
- a. 3 Dec 13 email attaching Energy Divisions input for Minister's Briefing pack for the ETI Committee on NI Economic Strategy Annual Monitoring Report appearance on 15 Dec 13 (DFE 355687) The entry for renewable heat (DFE 355695 to DFE 355696)
  - b. 6 Dec 13 Submission from to Arlene Foster and Andrew Crawford ETI Committee Query LMU/137/13 (DFE 268112 to DFE 268125) The update on RHI Phase 2 appears at par 13 of the Departmental Response (DFE 268121)
  - c. Input prepared by Joanne McCutcheon for the Heads of Branch Meeting Scheduled on the 24 Jan 14 (DFE 410117)
  - d. Input prepared by Joanne McCutcheon for the Heads of Branch Meeting Scheduled 6 Feb 14 HOB (DFE 410124)
  - e. 13 February 2014 email from Joanne McCutcheon to John Mills together with attached draft Domestic RHU policy document (DFE 500216 to 500232) corresponding Metadata (DFE 424387 to DFE 424391);
  - f. Input prepared for the Heads of Branch Meeting Scheduled 20 Feb 14 (DFE 410132)
  - g. Input prepared by Joanne McCutcheon for the Heads of Branch Meeting Scheduled 6 Mar 14 HOB (DFE 410139 to DFE 410140)

- h. 12 Mar 14 email from Alan Smith to Peter Hutchinson commenting on Domestic business case together with tracked version with Alan Smith's comments (**DFE 500310 to 500357**)
- i. 13 March 2014 email from Joanne McCutcheon to John Mills together with draft synopsis for domestic RHI (**DFE 500459 to DFE 500470** corresponding Metadata (**DFE 424381**)).

In light of the above documents, and your consideration of the oral evidence of other relevant officials including, but not limited to, John Mills since 21 February 2018, please confirm whether you can now cast any further light upon the process surrounding the prioritisation of the Domestic RHI Scheme and the de-prioritisation of the introduction of cost controls, including details of whether (and, if so, when, by whom, and for what reasons) a conscious decision was made to prioritise the former and de-prioritise the latter. In the event that you can now cast further light upon these issues, please do so.

*The cost control mechanism and the Domestic RHI Scheme*

10. The July 2013 Phase 2 Public Consultation contained a cost control mechanism that was to apply to both Domestic and Non-Domestic RHI Schemes. It appears that the initial drafts of the Domestic RHI Synopsis for casework (referred to above) and the Domestic Business Case (referred to in your evidence on 21 February 2018) did not include any reference either to the cost control mechanism or to any decision that had been reached about its inclusion / non-inclusion. Please address the following issues arising from these documents:

- a. Was a conscious decision taken not to introduce the cost control mechanism through the introduction of the NI domestic RHI Scheme?

- b. If the answer to the previous question is in the negative, is it the case that in working up the Domestic RHI proposals (as evidenced by the draft Synopsis for casework and draft Domestic RHI Business Case) the issue was simply not considered and, if so, can you explain this?
  
- c. If the answer to the previous question is in the affirmative, please provide whatever detail you can in respect of that conscious decision including, in particular, the following:
  - i. The identity of those involved in the decision-making process;
  
  - ii. The date, or approximate date, of the decision;
  
  - iii. The involvement (if any) of the Minister and, if she had no involvement, the reasons for this;
  
  - iv. The regard (if any) that was had to the risks and impacts associated with the decision;
  
- d. Did you, or, to your knowledge, Fiona Hepper or Joanne McCutcheon, ever explain to John Mills, Davina McCay, or other Energy Branch official, that the cost control mechanism set out in the July 2013 Phase 2 Public Consultation envisaged application to both the domestic scheme and non domestic scheme?
  
- e. If the answer to the previous question is in the affirmative, please provide whatever detail you can in respect of the relevant communications;
  
- f. If the answer to the previous question is in the negative, please explain why such an explanation was not provided.

*State Aid and the Domestic RHI Scheme*

11. In your oral evidence on 21 February 2018 you were asked a number of questions about your knowledge in January and February 2014 of the need for the Domestic RHI Scheme to obtain 'State Aid approval' from the European Commission. Arising out of this evidence, please address the following specific issues:

- a. Set out whether you are aware of any DETI discussions about whether or not the Scheme ought to be notified to the Commission and, if you are aware of such discussions, please provide full details of same including details of the officials involved and the extent of the involvement (if any) of the DETI Minister;
- b. Set out whether you are aware of a conscious decision having been taken not to notify the Domestic Scheme to the Commission and, if you are aware of such a decision, please provide full details of it (including when, by whom, and for what reasons it was reached);
- c. If you are not aware of any conscious decision having been taken in this regard, please explain, to the best of your knowledge, why the Domestic Scheme was not notified to the Commission;
- d. Explain why the State Aid requirements in respect of the Domestic Scheme were not addressed in your handover document.

*Handover Note*

12. Dan Sinton was an official in Renewable Heat Branch who remained when you left and who had been involved with the RHI Schemes prior to your departure. Please address the following issues in respect of Mr Sinton and your handover note:

- a. Confirm whether Mr Sinton was given a copy of the handover note, made aware of the issues identified in it, and/or given any instructions or information to pass on to any new officials relating to, or arising out of, it and, if he was, please provide full details of this;
- b. If Mr Sinton, as a continuing link between old and new Renewable Heat Branch officials, was not used in any of the aforementioned ways in respect of your handover note, please explain why this was the case.

*Meeting on 12 August 2014*

13. It appears that Stuart Wightman may have migrated your entry in the Heads of Branch record, relating to the potential for a 20-99kW solid biomass tariff review, into the new DETI Energy Efficiency Branch ('EEB') plan for 2014/2015 (of which there were a number of iterations over the course of the said year – an example of this is served herewith under Inquiry reference **DFE 419557 to DFE 419565**). The Branch Plan recorded an intention on the part of EEB officials to have a meeting with you and, as well as discussing the Domestic RHI Scheme, to discuss the issue of the aforementioned tariff review. The meeting itself appears to have been attended by Seamus Hughes and Dan Sinton. In this regard:

- a. Were you ever made aware, by Mr Hughes, Mr Sinton, or by any other DETI official, that there was a desire to discuss with you the aforementioned tariff review? (If you were so aware, please provide all relevant details)
- b. Following your departure from Renewable Heat Branch, was the subject of the aforementioned tariff review ever raised with you by the officials who succeeded you and Ms McCutcheon or, indeed, by any other officials? (If it was raised, please provide full details of this)

*Invest NI*

14. At TRA-5009 to TRA-5011 you were asked about a 12 June 2013 meeting with, *inter alios*, Invest NI officials and persons from Sheridan & Hood and you expressed doubt as to whether you had, in fact, a meeting with the Invest NI officials. Invest NI have addressed this meeting in a witness statement from their Chief Executive of 23 March 2018 at WIT-144242 to WIT-144248 and they suggest that you were in fact at this meeting. Please therefore consider whether there is any aspect of your evidence on this issue which you would like to amend or supplement.

15. The Inquiry has become aware that, under a *Sustainable Development Support Programme* and a *Sustainable Productivity Programme*, Invest NI funded the assessments of the energy needs of certain client companies by independent Technical Consultants and that a large number of the resulting reports prepared by such consultants (which said reports were provided to Invest NI Technical Advisors) made reference to the NI RHI Scheme, to how it was operating, to the potentially high rewards available under it, and to the potential perverse incentives and/or gaming opportunities that existed. A small sample of such reports are enclosed with this Section 21 Notice and are summarised below.

(1) *Ulster Carpet Mills*

- a. In an email exchange with Invest NI on 2 January 2013 Element Consultants stated as follows in respect of the report that attached to his email: “*Completely reworked to account for RHI - however I find this is a bit of a quandry [sic] for the recommendation is now not to adopt the technically best solution but instead to grab the RHI money - What can I say?*” (Inquiry reference WIT-144327 to 144328).
- b. In the report itself (Inquiry reference WIT-144599 to 144630) the following information appears:
  - i. **WIT-144599** – The report is noted to be *version B (Final)*.

- ii. **WIT-144605** – The payback period, with the benefit of the RHI Scheme, for the biomass technology option is recorded as being 4.3 years;
- iii. **WIT-144613** – In the second paragraph under 3.8 the following text appears: “... *Regardless the introduction of the RHI pretty much limits the value of installing any boiler over 1MWth - particularly where the estimated optimal size is 1,200kWth – In many ways, technical due diligence is irrelevant, and you just install the largest boiler that you can claim RHI for*”.
- iv. **WIT-144615** - Under 3.9 and the heading ‘*the impact of the RHI on boiler sizing*’ there is the following passage:

*“The Renewable heat incentive, now available in Northern Ireland, completely distorts the economic case for biomass and the best technical solution cannot now be recommended on economic grounds.*

*Instead the project must be considered as an opportunity for revenue generation and the recovery of the maximum amount of RHI revenue support over the 20 years that an accredited RHI project will receive funding.*

*In the initial form of the scheme, the maximum size of boiler that could receive support will be 1 MWth and this effectively limits the size of the boiler plant.”*
- v. **WIT-144622** – Under the table the following is recorded: “*In summary the RHI will dramatically improve the economic case for the installation of biomass. The RHI will dictate the installation of a smaller boiler and whilst this is not the optimal solution a project receiving the support of the RHI would be economically viable option for UCM.*”

**(2) Salty Dog / Keli Frecha Holdings Ltd**

- c. This report dated August 2013, runs from **WIT-145704 to 145784** and contains the following statements:

- i. **WIT-145709** – *‘Using Biomass will actually increase the amount of fuel the site consumes. The cost of pellet fuel will be more than that of natural gas but this is offset by the RHI payments that will be received’.*
- ii. **WIT-145724** – *‘This project is only viable because of the Renewable heat incentive. In fact the cost of boiler fuel will, we anticipate, increase by some £1,500/annum. There is fundamentally no energy saving basis for the project and receipt of RHI is therefore the only underpinning commercial reason for development’.*
- iii. **WIT-145725** – *‘Over a 20 year period eligible heating plant will receive quarterly payments for metered heat consumed. The payments are extremely generous - in this case and because of the plant size 8.6p/kWh and are indexed over 20 years. So in this case a wood installation that is not as efficient as gas and costs more to run can actually generate a very large potential saving solely from public funding’.*

**(3) Marine Court Hotel, Bangor**

- d. The report ‘Biomass for Marine court Hotel, Bangor’, Version B, Final, dated 10 February 2015, 2014 [sic], appears at **WIT-148944 to 148977** and contains the following information:
  - i. **WIT-148949** –

*‘You have asked us to consider installing 4 separate 99kW pellet boilers so as to generate the maximum RHI. Installing 4 separate pellet boilers at this site will be difficult and expensive and technically inappropriate – although we acknowledge far from technically impossible.*

*‘It is a technical solution driven solely by the RHI payment and not by technically optimal solution.’*

*‘We acknowledge that the very high RHI revenue payment is essentially driving the installation of multiple small boilers and that*

*the RHI support is significant – However, there is also an onus to find a technically appropriate solution.*

*'Both options offer a notional payback of a little over 3 years. Clearly since the 4 x 99kW option has the potential to displace the most oil and thus receive the largest RHI payments – this project has the greatest net present value....The NPV is almost twice that of a smaller installation.*

*'In this case and for the reasons given throughout this report we recommend that you adopt a technically appropriate solution rather than an RHI driver solution.'*

In respect of these reports, please address the following issues:

- i. Set out the awareness (if any) that you had, during your time in Renewable Heat Branch, of Invest NI's *Sustainable Development Support* and *Sustainable Productivity* Programmes, its funding energy reports for client companies by independent Technical Consultants, and the consideration of those reports by in-house Technical Advisors;
- ii. If you did not have any awareness of any of the aforementioned matters:
  - Set out the reasons for this;
  - State whether you believe that you ought to have been made aware of them;
- iii. Specify whether you or, to the best of your knowledge, DETI was ever made aware by Invest NI or by any of its Technical Advisers or retained Technical Consultants of issues that were being raised in reports prepared by the said Consultants regarding the RHI Scheme such as, for example, the following (which arise out of the 3 reports summarised above):

- That the RHI Scheme may have been causing or contributing to the installation of technically sub-optimal or inefficient systems;
- That the RHI Scheme was being viewed by some as an opportunity for revenue generation;
- That the RHI tariffs were viewed by some as being extremely generous;
- That persons were installing multiple smaller boilers on hydraulically separate systems instead of larger boilers on a single system in order to maximise RHI returns;
- That there was potentially a very short payback period in respect of outlay on biomass technology because of the RHI Scheme;

(if you and/or DETI were made aware of some or all of these issues by Invest NI, its Advisors, or retained Consultants, please provide full details of this including the date, means, and detail of each relevant communication)

- iv. If you and/or DETI were *not* made aware of these issues by Invest NI, its Advisors, or retained Consultants, please
  - Set out the reasons for this;
  - State whether you believe that you and/or DETI ought to have been made aware of them;
- v. Clarify whether, during your time in Renewable Heat Branch, you would have had contact with Invest NI's Technical Advisors on issues other than RHI and, if you did, please provide a summary of the issues in respect of which you would have had contact, the approximate frequency of that contact, and the individual Technical Advisors with whom you would have had contact.

*Moy Park*

16. Clarify whether, during your time in Renewable Heat Branch, you and/or the Branch ever had any communications with Moy Park regarding any of the following issues (providing, if you and/or the Branch did have such communications, full details including the date and mode of same, the Moy Park and DETI personnel involved, and the issues discussed):

- a. Moy Park's expansion and/or its promotion of indirect hot water heating;
- b. Moy Park's pricing system for its growers;
- c. Moy Park's funding of new poultry houses and the retro-fitting of indirect hot water heating systems to existing poultry houses through 'additional housing payments' made to its growers;
- d. Moy Park's promotion of the RHI Scheme to its growers;
- e. The uptake of biomass heating and/or the RHI Scheme amongst poultry farmers and Moy Park growers in particular;
- f. The heating demands of poultry sheds;
- g. The likely number of new poultry sheds and/or indirect hot water heating retrofits coming on line in the next 12 months, 24 months, etc.

17. In the event that there was little or no communication by you and/or the Branch with Moy Park on the above issues, please provide an explanation for this.

18. In the event that there was communication by you and/or the Branch with Moy Park on issues other than those listed above, please provide a summary of the issues which were the subject of such communications, the approximate frequency of those communications, and the individual Moy Park personnel with whom you and/or the Branch would have communicated.

*Cathal Ellis*

19. In his oral evidence Mr Ellis stated, in terms, that he advised you of:

- a. the high heat requirements of the commercial mushroom growing sector and their interest in the RHI Scheme (TRA-7277 to 7280);
- b. how good the RHI Scheme was for the agricultural sector (TRA-7327 to 7329).

In this regard:

- i. please confirm whether you agree or disagree with Mr Ellis' evidence; and
- ii. if you disagree with, or agree with but wish to supplement, Mr Ellis' account on the above issues, then please set out the necessary details at this juncture.

*The Oral Evidence of Mrs Hepper, Ms McCay, Mr Hughes, Mr Wightman, Mr Mills, and Mr Thomson*

20. All of the above DETI officials have given oral evidence in public to the Inquiry since you completed your oral evidence on 21 February 2018 and the transcripts of their evidence are publically available. To the extent that you consider the evidence of any of those officials contradicts your evidence on a significant issue, or is materially incomplete in respect of any significant issue, you should take this opportunity to address those issues by way of further written evidence, but only to the extent that the said issues have not already been addressed in your existing oral and written evidence.

*The Evidence of Other Persons Called Since 21 February 2018*

21. To the extent that you consider the evidence of any other witness contradicts your evidence on a significant issue, or is materially incomplete in respect of any significant issue, you should take this opportunity to address those issues by way of further written evidence, but only to the extent that the said issues have not already been addressed in your existing oral and written evidence.

**NOTE:**

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



**INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME**

**RHI REF: Notice 133 of 2018**

**DATE: 30 August 2018**

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**Witness Statement of: Peter Hutchinson**

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I, Peter Hutchinson, will say as follows:

**INTRODUCTION**

The following statement provides responses, to my best recollection, to the questions posed by the Chairman of the RHI Inquiry in correspondence of 10 July 2018.

I have structured my response in line with the questions posed and numbered paragraphs for ease of reference.

**CEPA**

**1. In your oral evidence on 18 December 2017 (TRA-2085 to TRA-2092) you suggested, in terms, that you believe you discussed the question of the need for tiering of tariffs in the NI RHI Scheme with CEPA at or about the time when you received CEPA's Addendum Report in February 2012. CEPA have, through a witness statement from Mark Cockburn dated 22 February 2018 at WIT-108105 to WIT-108149 (in response to Section 21 Notices 5 and 9 of 2018), attempted to address this issue, in particular at WIT-108119. Please set out anything else that you wish to say on this issue, given the apparent contradiction between your evidence and that of CEPA.**

- 1.1 I maintain that, on conclusion of the CEPA Addendum Report (February 2012) that I would have engaged with CEPA (Iain Morrow) on a range of issues linked to the Report to ask questions or seek clarifications. One of these issues was whether or not tiering was required for any other technology or band, other than the Ground Source Heat Pump tariff raised by CEPA.
- 1.2 Through the work with CEPA / AEA (in 2011, 2012 and 2013), I enjoyed a positive working relationship and had regular contact with all those involved in the contract. In particular, I worked closely with Iain Morrow and would have spoken with and corresponded regularly on any areas of the work where I needed clarification.
- 1.3 On receipt of the February 2012 Addendum report I would have spoken with Iain Morrow to understand the main recommendations and to discuss any key issues that I needed to be aware of. This was an ongoing dialogue that can be seen in emails at WIT 08563 and DFE 317138. The latter email confirms how Iain and I would often discuss issues orally and there would not necessarily be a written note. As stated above, at this stage, when discussing the final tariffs that CEPA were recommending one of the issues I would have raised was whether their model highlighted the need for tiering across any of the other technologies or bands.
- 1.4 I would have had a level of confidence, based on the previous work with CEPA in 2011 and 2012, that they were best placed to advise on the need for tiering and would be proactively recommending it should it be required. Therefore my discussion with Mr Morrow would have been a check that it was not being recommended elsewhere – rather than a detailed conversation about every technology or band.
- 1.5 Notwithstanding the statement of Mr Morrow at WIT 1028229 suggests the CEPA 2012 model flagged up the necessity for tiering this model was not shared with DETI.

***Andrew Crawford***

**2. In your oral evidence on 5 December 2017 you were asked a number of questions about a submission to the DETI Minister dated 8 June 2011 (see, for example, TRA-1602 to TRA-1613 in this regard) and about whether it was potentially misleading insofar as it described the NI RHI option as the one offering “the highest potential renewable heat output at the best value” (WIT-744 at paragraph 24). In his oral evidence on this submission on 16 April 2018 at TRA-7971 to 7972, Andrew Crawford suggested that officials may have been deliberately misleading the Minister (TRA-7971 lines 5 and 6). Please set out anything else that you wish to say on this issue, in light of the evidence of Andrew Crawford.**

- 2.1 There was absolutely no intention to mislead the Minister or Special Advisor as suggested in the question and there would be absolutely no motivation for such an action.
- 2.2 As I attempted to explain in oral evidence (and previous statements) the phrase “the highest potential renewable heat output at best value” was in relation to comparing a bespoke NI RHI scheme with the GB scheme, as designed. In terms of incentivising the market, it was perceived that DETI had the option of a short term scheme or a long term scheme – a short term scheme would be grant based and the longer term scheme would be a RHI method. The phrase used in the submission would have been referring to the two long term methods.
- 2.3 I accepted, during my oral evidence, that the paragraph was perhaps poorly drafted and now open to misinterpretation.
- 2.4 However, it should also be stated that the 8 June 2011 submission did not have a specific recommendation on the Scheme and left it open to the Minister and the Advisor to consider. In addition, given the complexities of the issue a meeting with officials was offered whereby a fuller, more detailed briefing could be provided with any questions answered. I do not believe that these actions are consistent with any attempt to deliberately mislead.

***Sandra Thompson's Evidence Re Anticipated RHI Monthly Payments***

**3. You are referred to an email at DFE-278136 to 278137 and to a Section 21 Notice addressed to, and a replying witness statement received from, Sandra Thompson in respect of this email (WIT-27001 to WIT-27008). Please address the following issues arising from these documents:**

**a. Clarify the role played by you in assessing or providing advice or information regarding assumed load factors for use in calculating anticipated tariff payments under the RHI Scheme;**

3.1 The Inquiry will be aware that the information provided by Ofgem on a weekly and monthly basis included a range of information including expected hours of operation (or load factor). Then payments made to accredited installations were paid based on the metered heat output.

3.2 I believe this information, provided by Ofgem, would have been shared with Ms Thompson to aid her forecasting of the wider Divisional budgets and I would have provided advice and guidance as required. Further to this, I would have provided her with some advice on how payments were determined (i.e. through tariff x metered heat output / heat output) and advised on how this could be factored into monitoring spreadsheets.

3.3 As Ms Thompson developed spreadsheets to aid monitoring of budgets and expenditure it is likely that I provided some advice on the information that should be recorded and some advice on the calculations to be made.

**b. Set out each load factor suggested by you including details of each of the following:**

**i. The date (or approximate date) when you first suggested using each load factor and the period (or approximate period) for which each one was used;**

**ii. The precise basis for selecting each such load factor (for example, the CEPA assumptions, evidence from the operation of the GB RHI Scheme, evidence from the operation of the NI RHI Scheme, or otherwise);**

3.4 I don't recall setting out precise load factors however I note the information provided by Ms Thompson in her statement (WIT-27001 to WIT-27008) that I provided figures between 20% - 30% on which to forecast future payments during 2013 (and possibly into 2014). I cannot recall the dates of this or the reasons for this – it is possible that this was as part of a wider quarterly

forecasting exercise which I provided information to Ms Thompson (as part of her role in Energy Co-ordination).

3.5 I assume the basis of selected such load factors was from preliminary analysis of data received by Ofgem and considering the payments being made to installers. Using that “real” data to determine load factors and potential future payments.

**c. Identify any officials other than you or Ms Thompson who were involved in these matters;**

3.6 I would have been discussing this future forecasting with my line manager, Joanne McCutcheon.

**d. Identify any documents of which you are aware which are relevant to these matters and, if you believe that relevant classes of document are likely to exist but are outside your custody or control, please provide a detailed description of them as well as details of where, and by whom, they are likely to be held.**

3.7 I am not aware of any further documents which would be relevant on these matters. Many of the communications with Ms Thompson would have been oral – her office was close to mine and I would have spoken with her at her desk on these matters.

**e. In the event that you, during your time in Renewable Heat Branch, knew that a load factor greater than 17.1% (the load factor assumption used by CEPA in its tariff calculation in respect of the 20-99kW solid biomass band) was being used to assume the level of anticipated payment under the NI RHI Scheme then please address the following issues:**

**i. explain whether you advised those using, or considering using, the greater load factor of the fact that it was different from that used by CEPA and:**

- if you did do so, please provide full details of this;
- if you did not do so, please explain this;

**ii. explain whether you considered the possible implications of using the greater load factor including, but not limited to, implications for the RHI Scheme budget and:**

- **if you did so, please provide full details including details of whether, and if so when, with whom, and in what terms, you communicated about those possible implications;**
- **if you did not do so, please explain this;**

3.8 I would have had regular discussions with my line manager on scheme performance, uptake levels and forecasting. I am not sure that I would have had detailed conversations with Ms Thompson on the CEPA assumptions.

3.9 As explained previously, I would have been conscious that the 17% load factor had been derived from the “reference installation” and that CEPA had advised that a range of installations would be deployed – and that not all would be in line with the exact characteristics of the relevant reference installation. Therefore, using a forecast of between 20-30% did not cause alarm at that stage, especially given the perceived low volume of numbers and the difficulty in assessing performance based limited data. This was also supported by Ofgem’s annual statement (November 2013) which stated;

*“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.”*

3.10 I think I would have been conscious that if installations had higher heat outputs than the reference installation then they would receive higher payments than the reference installation – hence the need to forecast future spend on the load factor provided to Ms Thompson to attempt to accurately project future spend versus budget.

3.11 As before, I would have had regular discussions with Joanne McCutcheon on the perceived performance of the Scheme and possible future forecasts, with the knowledge that the Scheme could be difficult to predict (attempting to model based on GB experience). Discussions on budget unpredictability would have led to the agreement to include a section on Cost Controls in the 2013 Consultation.

3.12 I would have also had meetings with Fiona Hepper on the Scheme prior to her leaving Energy Division in November 2013. These discussions would have focussed on Scheme uptake and spend against budget – I do not recall discussing the detail of load factors or the methodology behind forecasted spend.

**f. The Inquiry has been provided with a spreadsheet which appears to have been used by Sandra Thompson, and possibly others, in order to project/assess/monitor payments being made to Ofgem for transmission to RHI scheme members (there are many iterations of the spreadsheet, seemingly amassed through the life of the RHI Scheme, which are contained in a folder served with this Notice). The spreadsheet includes a column dealing with load factors. It appears that an assumed load factor (which may have changed over time) was used to project payments, and then some effort was made to calculate actual load factors based on payments. Please explain:**

**i. Your awareness, during your time in Renewable Heat Branch, of these spreadsheets;**

3.13 I was aware that Ms Thompson prepared such spreadsheets. I don't think I had access to them or they were routinely shared, however it's likely that Ms Thompson referred to them whenever I discussed RHI spend, monitoring or future spend with her.

**ii. Any role you played in respect of these spreadsheets;**

3.14 My responses at 3.2 and 3.3 are relevant. On the creation of these spreadsheets it is likely that I provided some advice on the information that should be recorded and some advice on the calculations to be made.

**iii. Insofar as the spreadsheets used a greater load factor for installations in the 20-99kW solid biomass band than that assumed by CEPA (17.1%), confirm whether you advised anyone of this fact and:**

- if you did do so, please provide full details of this;
- if you did not do so, please explain this;

3.15 My responses at 3.8 to 3.12 refer.

**iv. Insofar as the spreadsheets used a greater load factor for installations in the 20-99kW solid biomass band than that assumed by CEPA (17.1%), explain whether you considered the possible implications of this including, but not limited to, implications for the RHI Scheme budget and:**

- **if you did so, please provide full details including details of whether, and if so when, with whom, and in what terms, you communicated about those possible implications;**
- **if you did not do so, please explain this.**

3.16 My responses at 3.8 to 3.12 refer.

***Possible Gaming of the GB and NI RHI Schemes***

**4. Dealing firstly with your understanding of how multiple boilers servicing a single building (whether hydraulically separate or not) would be treated under the RHI Scheme:**

- a. Your oral evidence in respect of this issue is recorded at TRA-4862 to TRA-4864;**
- b. Cathal Ellis' oral evidence on this issue (which included evidence about how his understanding of the issue was informed by a conversation he had with you) is recorded at TRA-7429 to TRA-7430;**
- c. Dr Edmund Ward, of Ofgem, gave oral evidence regarding a telephone discussion he had with Alastair Nicol of Element Consultants on the issue of multiple boilers on or about 15 August 2013, which he understood was going to lead to Mr Nicol contacting DETI about the issue (recorded at TRA-9083 to TRA-9086);**
- d. Mr Nicol addressed this issue in his written evidence at WIT-200243 where he stated as follows:**

***"I spoke on at least one occasions (sic) to a gentleman at DETI. Netherleigh, Massey Avenue Belfast The Colleague was responsible for issues pertaining to the RHI I genuinely cannot recollect the name of that person, the content of our call or the dates.***

***I suspect that at least one of those calls was to ask for confirmation in respect of the then rumoured separated hydraulic arrangements and 99kW boilers. I'm moderately confident that the response was to take it up with Ofgem."***

- e. In your interview with PWC on 11 October 2016 (IND-4247 to IND-4249) you stated as follows at the very foot of IND-4247:**

***"Once you add a second boiler if it's heating the same building, if it's heating the same heat network then the installation, the band is decided by the combined heat capacity, so 2 x 99 boilers heating the same house or the same office block that is a 198 kilowatt boiler so the tariff is for that 100+. If the heat network is distinct, and OFGEM are content that it is distinct and its two buildings or two***

*processes or two whatever it might be, then they're two separate installations."*

**In light of the above pieces of evidence, please address the following points:**

- i. Clarify when, during your time in Renewable Heat Branch, you first had to address the question of multiple boilers in the same building and how that scenario would be treated under the RHI Scheme;**

4.1 My position and my memory on this remains as what I outlined in my evidence session. It was my understanding, at the time, that if there were two boilers heating the same building then the capacity of the boilers would be cumulated rather than being treated as two separate stand-alone systems (with the relevant tariff being paid on the accumulated capacity). If I received a query on the treatment of multiple boilers that understanding would have formed the basis of the response – I would have also advised whoever was making the query that Ofgem were the final arbiters for accreditations and would expect to see schematics of plants to determine how to accredit and therefore technical queries should be submitted to them. I was of the view that if boilers were heating the same building they would not be treated separately.

4.2 I note that Dr Edmund Ward confirmed in his oral evidence at TRA 09085 that "at the time when the policy was being developed and agreed with DETI, it appears nobody in the development team really explained this in a great deal of detail..."

- ii. Clarify whether it was you who had a conversation with Mr Nicol in or about August 2013 and, if it was you, provide your recollection of that conversation and, in particular, clarify whether Mr Nicol informed you of the advice he had received from Dr Ward on or about 15 August 2013 regarding the issue of multiple boilers and hydraulic separation;**

4.3 I have no recollection of speaking to Mr Nicol however if he says he spoke to a gentleman in DETI on the RHI it is more than likely it would have been me.

4.4 Without having a memory of the conversation I am not in a position to comment on what Mr Nicol may have said or how / if he relayed the conversation with Dr Ward.

4.5 It remains my position that on multiple boilers I would have been focussed where the heat was being used – if the heat was being used within the same

premises / building (a single contained unit) then the boilers would be treated cumulatively as a single installation. That this was my understanding at the time is confirmed by Mr Ellis at Day 52 pgs 173/4.

**iii. If it was not you who had the said conversation with Mr Nicol, provide whatever evidence you can on the question of the identity of the official who did do so;**

4.6 As above, if Mr Nicol spoke to a male within Energy Division it is more than likely it was me.

**iv. Clarify whether, in light of the evidence of Dr Ward, Mr Nicol, and/or your PWC interview transcript, you wish to amend or supplement the evidence already given by you regarding multiple boilers on hydraulically separate systems (as recorded, in particular, at TRA-4862 to TRA-4864).**

4.7 I do not think I have anything additional to say on this matter other than what I have indicated above, in my previous written statements and in my oral evidence.

5. It is clear from Dr Ward's written statement and oral evidence that Ofgem procured a report from AECOM in mid-2012 which attempted to provide, *inter alia*, a working definition of 'heating system' in respect of the GB RHI Scheme (the report can be found at WIT-114584 to WIT-114596, with the definition of 'heating system' at WIT-114585). It also appears from Dr Ward's written and oral evidence that a definition, focusing upon physical separation, was applied to the NI RHI Scheme when it came into force in November 2012. In respect of this issue:

a. Clarify whether you were ever, during your time in Renewable Heat Branch, made aware (e.g. by Ofgem, DECC, or any other person or body) that Ofgem had sought external assistance in respect of the definition of 'heating system' (and, if you were aware, provide details of when, how, and through what documents you became so aware);

5.1 I do not believe that I was ever made aware by Ofgem or others that Ofgem has sought external assistance in respect of the definition of a "heating system".

b. Clarify whether you or, to the best of your knowledge, DETI was ever, during your time in Renewable Heat Branch, provided with a copy of all or part of the relevant AECOM report (and, if a copy of some or all of the report was provided, please give details of when, how, and through what documents this occurred);

5.2 I do not believe that I was ever provided with a copy of all or part of the relevant AECOM report.

5.3 To the best of my knowledge no one else within Renewable Heat Branch (or DETI as a whole) was provided with said report.

c. Clarify whether you or, to the best of your knowledge, DETI was ever, during your time in Renewable Heat Branch, advised (e.g. by Ofgem, DECC, or any other person or body) of the working definition being used by Ofgem in respect of 'heating system' (and, if such advice was provided, please give details of when, how, and through what documents this occurred);

5.4 I do not believe that I was ever advised of the working definition being used by Ofgem in respect of a "heating system".

5.5 To the best of my knowledge no one else within Renewable Heat Branch (or DETI as a whole) was advised of the working definition being used by Ofgem in respect of a “heating system”.

**d. In the event that neither you nor, to the best of your knowledge, DETI was ever, during your time in Renewable Heat Branch, advised of the said working definition, and of the result that multiple boilers on physically separate systems within a single building could be separately accredited under the RHI Scheme, then please address the following hypothetical questions:**

**i. If you and/or DETI had been so advised, clarify whether, based upon your experience of working in the Branch, DETI would have accepted that working definition and its consequences (provide reasons for your answer);**

5.6 I believe that if it had been explained to me or colleagues in Renewable Heat Branch that the Ofgem working definition of a “heating system” was resulting in multiple boilers on physically separate systems within a single building being accredited under the Scheme some of the following actions would have been taken.

- DETI would have advised that this working definition was not in line with the policy intent of the Scheme and the issue of multiple boilers.
- DETI would have sought an explanation from Ofgem on the scenario, how it had arisen and potential implications for the Scheme.
- DETI would have asked Ofgem for an assessment on the potential impact of this scenario and whether a legislative amendment was required.
- DETI would have, if required, engaged with DECC on how this issue was treated in the GB Scheme and the relevant legislative provisions.
- DETI would have considered legislative options to ensure the working definition used by Ofgem was consistent with the policy intent – seeking support and advice from Ofgem and DECC as appropriate.

**ii. If you and/or DETI had been so advised and DETI had not accepted that working definition and its consequences, explain what action you believe, based again upon your experience of working in the Branch, DETI would have taken (once again, provide reasons for your answer);**

5.7 My response to 5.6 seeks to address what I believe would have been the appropriate actions should DETI have been made aware of the impact of the

“working definition” being used by Ofgem in terms of the accreditation of multiple boilers heating a single building.

**e. Clarify whether you or, to the best of your knowledge, any other DETI official ever, during your time in Renewable Heat Branch, asked any question of Ofgem, DECC, or any other body about how Ofgem and/or DECC were interpreting the term ‘heating system’ in respect of the NI and/or GB RHI Schemes, and:**

**i. if such a question was asked, please provide full details of same including when, of whom, and through what documents such a question was asked as well as details of any answers provided;**

5.8 I believe the issue of accreditation of multiple boilers was raised during the 2012 consultation on the DETI / Ofgem RHI guidance documents. I expect that I, and possibly others within the team, discussed this issue (and many others) with Ofgem officials at that time (potentially Michelle Murdock and Keith Avis).

5.9 My understanding of how the issue of multiple boilers and additional capacity was to be treated during the administration of the Scheme would have been formed during discussions with Ofgem at this stage. My understanding would have also been informed through reading up on the policy intent of the DECC led Scheme in GB and perhaps some discussions with DECC officials.

**ii. if such a question was not asked, please explain the reasons for this, particularly given the fact that issues had been raised regarding the lack of any definition of the term ‘heating system’ in the Ofgem ‘Legal Review’ of November 2011 (WIT-1237 to WIT-1264);**

5.10 As stated at 5.8, I believe that the accreditation of multiple boilers would have been discussed during the preparation and consultation of the 2012 guidance documents. There may have been other instances when it was discussed but I cannot say for certain. I would have also considered the policy intent from DECC for the GB Scheme and felt that the position in GB, which I understood as meaning additional boilers could not be utilised to heat the same building but accredited separately, was similar to the position in NI.

**f. Clarify what your interpretation of the term ‘heating system’ was in the context of the RHI Scheme during your time in renewable Heat Branch and, if this interpretation changed at any point during that time, please provide full details of this (including when, how, and for what reasons that change occurred).**

- 5.11 My interpretation of the term heating system in the context of the RHI Scheme would have been a boiler or boilers heating a single building (a self-contained unit). I would have expected that where a building was being heated by 2 or more boilers this would have been treated as “additional capacity” and the relevant tariff determined by the cumulative capacity of the boiler. My focus would have been where the heat was being used – if the heat was being used in the same building then the boilers were forming part of the same system.
- 5.12 My understanding or interpretation of the term “heating system” in relation to the RHI Scheme did not change at any point in time.

**6. It is clear from the evidence of Dr Ward that Ofgem was aware, in 2013, of the possibility that the GB RHI Scheme was being ‘gamed’ through the installation of multiple smaller boilers on hydraulically separate systems in place of larger boilers on fewer systems and through the questionable use of heat. You are referred, in this regard, to the following:**

- a. The October 2013 Ofgem document at OFG-126978 to OFG-126981 at OFG-126980, row 11;**
- b. The July 2013 Ofgem document at OFG-59162 to OFG-59179 at OFG-59176, 5<sup>th</sup> bullet;**
- c. The November 2013 Ricardo-AEA document at OFG-87862 to OFG-87887 at OFG-87874, 87879, and 87882;**
- d. Dr Ward’s oral evidence on 11 May and 7 June 2018;**

**In this particular context, please address the following issues:**

- i. Clarify whether, during your time in Renewable Heat Branch, Ofgem ever made you (or, to the best of your knowledge, DETI) aware of the fact that Ofgem and/or its auditors were encountering possible ‘gaming’ of the GB RHI Scheme of the type described in the above documents (and, if Ofgem did make you or DETI so aware, please provide full details of this);**

6.1 I am not aware of Ofgem ever raising with me or other members of Renewable Heat Branch their experience of the possible ‘gaming’ of the GB RHI Scheme as described in the above documents.

6.2 During 2013 and 2014 we were dealing with Ofgem on a regular basis on the delivery and administration of the Scheme; on the Carbon Trust loan issue and issue pertaining to data sharing. At no point did Ofgem raise the issue of ‘gaming’ as described in the question.

- ii. Clarify whether, during your time in Renewable Heat Branch, Ofgem ever advised you (or, to the best of your knowledge, DETI) that Ofgem and/or its auditors were encountering possible ‘gaming’ of the NI RHI Scheme of the type described in the above documents (and, if Ofgem did make you or DETI so aware, please provide full details of this);**

- 6.3 I do not believe that I (or others in the Branch) was ever advised that Ofgem and/or its auditors were encountering possible 'gaming' of the Scheme as described in the above documents.
- iii. Clarify whether, during your time in Renewable Heat Branch, you (or, to the best of your knowledge, DETI) were ever advised by any person or body other than Ofgem (e.g. DECC, Ofgem's site auditors, or others) of possible 'gaming' of the GB or NI RHI Schemes of the type described in the above documents (and, if you or DETI were so advised, please provide full details of this);**
- 6.4 As part of the process of the Inquiry I was made aware that Biomass Energy NI, as part of its 2011 response to the public consultation, highlighted the possibility of gaming due to multiple boilers. At the time, I would have felt that this issue would have been addressed through the Regulations and through the administration of the Scheme. I may have also considered the policy intent in DECC to ensure the NI Scheme was broadly in line on matters of administration and compliance.
- 6.5 Other than that, I do not recall ever being advised by any other person or body of possible 'gaming' of the Scheme as described in the above documents. Similarly, I am not aware of anyone else in DETI were so advised.
- iv. Clarify whether, during your time in Renewable Heat Branch, you (or, to the best of your knowledge, DETI) ever became aware of possible 'gaming' of the GB or NI RHI Schemes of the type described in the above documents (and, if you or DETI ever became so aware, please provide full details of this).**
- 6.6 I do not believe that I (or others in the Branch) ever became aware of possible 'gaming' of the Scheme as described in the above documents.
- v. If neither you nor, to the best of your knowledge, DETI were advised, or became aware, of possible 'gaming' of the GB or NI RHI Schemes of the type described above, then please explain what you believe, based upon your knowledge and experience of Renewable Heat Branch, you/DETI would have done had you/it been made aware of the possibility of 'such gaming' (providing reasons for your answer).**

6.7 My response at 5.6 is relevant.

6.8 I believe that if I (or others in the Branch) had been notified of the possible gaming, as described in the above documents, we would have been aware that this was not in line with the policy intent of the Scheme. Therefore, DETI would have worked with Ofgem, and liaised with DECC, on appropriate options to ensure this gaming was not allowed within the Scheme.

7. It appears that Ofgem may, on the basis of legal advice, have been sceptical regarding the utility of Regulation 34(p) of the GB RHI Scheme (and the corresponding Regulation 33(p) of the NI RHI Scheme) as a tool for addressing 'gaming' of the RHI Scheme. In this regard, you are referred to a paper prepared by an Ofgem official (Katy Read) entitled 'Gaming – Wasting Heat' (from WIT-114696 to WIT-114708, pages 114697 and 114700 in particular), and asked to address the following issues:

a. Clarify whether, to the best of your knowledge, Ofgem ever advised DETI of its concerns or scepticism regarding the utility of Regulation 33(p) in this regard;

7.1 I do not believe Ofgem ever advised DETI of such concerns.

b. If DETI was so advised, please provide full details of this (including the date, mode, detail of, and parties to any relevant communications) as well as:

i. details of any actions taken by DETI as a result (as well as the reasons for such actions); and/or

7.2 I do not believe Ofgem ever advised DETI of such concerns.

ii. an explanation for DETI's failure to take any action as a result;

7.3 I do not believe Ofgem ever advised DETI of such concerns.

c. If DETI was not so advised, please set out what actions you, based upon your experience of working in renewable Heat Branch, believe DETI would have taken had it been so advised.

7.4 If DETI had been advised of such concerns, I believe the following actions would have been reasonable.

- Full advice would have been sought from Ofgem on the background to the issue and how it was impacting on the Scheme.
- Full advice would have been sought from Ofgem on the potential remedy to the issue.
- Policy options would have been considered as to how to remedy the issue – depending on timing, this could have been through the July 2013 Phase 2 Consultation.

- Depending on the agreed policy option, DETI legal advisors (Arthur Cox) would have been engaged with to prepare appropriate legislative changes.

***Your Conversation with Dr Ward on 13 May 2014***

8. Dr Ward gave evidence about your 13 May 2014 telephone conversation regarding the 20-99kW solid biomass band at TRA-6643 to TRA-6649. It appears from this evidence that:
- a. he did not specifically recall you mentioning in that conversation any of the other strands that were causing you to have concerns about possible overcompensation occurring in respect of installations in that band (i.e. Janette O'Hagan's May 2014 communication, the March 2014 Smart Eco-Hub event, and so on);
  - b. he did not specifically recall you mentioning overcompensation or over-generosity;
  - c. he did not gain any sense of urgency or immediacy in respect of the issue of review or amendment in respect of that band;
  - d. he did gain a sense that the issue would be looked at only after the DETI had dealt with the domestic RHI Scheme (i.e. that the domestic RHI Scheme was taking priority at that time).

**Clarify whether your recollection accords with that of Dr Ward and:**

- i. if it does accord, please explain in particular why the sense of urgency apparent in respect of this issue in your handover note (WIT-7596 to WIT-7609) did not feature in your discussion with Dr Ward;

- 8.1 As stated in my previous statements and evidence sessions, the conversation with Dr Ward on 13 May was neither a long conversation nor solely focussed on the issue of over-compensation or high load factors. I recall the issue of high payments / high load factors coming up during the conversation, possibly in the context of the Carbon Trust loan issue or Edmund's experience of the GB Scheme, and me asking whether this could be something that needs to be considered with the NI Scheme – I would have mentioned that the issue had been raised by a stakeholder (Ms O'Hagan) but doubt that I would have mentioned her name. I have no memory of mentioning the Smart Eco Hub Event.
- 8.2 The handover note, which was drafted immediately after the conversation, refers to Dr Ward speaking of high demand factors in certain sectors in GB and that this can lead to over-compensation. I would be confident that note is an accurate record of what was discussed.

- 8.3 When Dr Ward explained that he felt that it might be an issue to be considered further I asked for more information (which he sent through) and I asked about the complexities of Ofgem introducing tiering to the NI Scheme. The fact that I asked this question, which is referenced in the handover note, would suggest there was a level of urgency.
- 8.4 I felt that the matter was urgent and am surprised that Dr Ward did not identify my sense of urgency, given the comments I made immediately after this conversation within the handover note, "This issue would need to be considered as a matter of urgency." WIT 02523
- 8.5 I do not recall discussing the domestic scheme with Dr Ward or suggesting a review of the non-domestic Scheme would have to wait. This is not reflected in this section of the handover note which was drafted shortly after the conversation.
- ii. if it does not accord, please provide details of where your recollection differs with that of Dr Ward.**
- 8.6 As stated in 8.1 to 8.4, I recall speaking with Dr Ward on the potential for over-compensation and the linkages to high load factors, I would have highlighted a recent stakeholder comment on this issue. Dr Ward agreed that this could be an issue and provided some insight from his experience in the GB Scheme.
- 8.7 I do recall this issue being directly linked to overcompensation and therefore requiring review. The relevant section handover note, drafted directly after the conversation, refers.
- 8.8 I sought further information from Dr Ward and asked about Ofgem's ability to implement a change quickly should it be required i.e. the introduction of tiering. Dr Ward confirmed that this could be accommodated. Again, the handover note refers.
- 8.9 I do not think I would have discussed Branch work loads or the timing of such a review with Dr Ward. This would have needed to be considered by the Branch first.

***Phase 2 of RHI***

9. In your oral evidence on 21 February (TRA-5076 to TRA-5131) you were asked a number of questions regarding Phase 2 of the RHI Scheme including the prioritisation of the Domestic RHI Scheme and apparent de-prioritisation of the introduction of cost controls. You are now referred to a number of further documents on this broad issue:
- a. 3 December 2013 email attaching Energy Division's input for the Minister's Briefing pack for an appearance before the ETI Committee on the NI Economic Strategy Annual Monitoring Report (DFE-355687), and the relevant section on renewable heat (DFE-355695 to DFE-355696);
  - b. 6 December 2013 submission (DFE-268112 to DFE-268125, with the update on Phase 2 at paragraph 13 on DFE-268121);
  - c. Input prepared by Joanne McCutcheon for the Heads of Branch Meeting due to occur on 24 January 2014 (DFE-410117);
  - d. Input prepared by Joanne McCutcheon for the Heads of Branch Meeting due to occur on 6 February 2014 HOB (DFE-410124);
  - e. 13 February 2014 email from Joanne McCutcheon to John Mills enclosing draft Domestic RHI policy document (DFE-500216 to DFE-500232) and corresponding metadata (DFE-424387 to DFE-424391);
  - f. Input prepared for the Heads of Branch Meeting due to occur on 20 February 2014 (DFE-410132);
  - g. Input prepared by Joanne McCutcheon for the Heads of Branch Meeting due to occur on 6 March 2014 (DFE-410139 to DFE-410140);
  - h. 12 March 2014 email from Alan Smith to you referring to the Domestic RHI Scheme Business Case together with a tracked version with Alan Smith's comments (DFE-500310 to DFE-500357);
  - i. 13 March 2014 email from Joanne McCutcheon to John Mills together with draft synopsis for the Domestic RHI Scheme (DFE-500459 to DFE-500470) and corresponding metadata (DFE-424381);

**In light of the above documents, and your consideration of the oral evidence of other relevant officials including, but not limited to, John Mills**

**since 21 February 2018, please confirm whether you can now cast any further light upon the process surrounding the prioritisation of the Domestic RHI Scheme and the de-prioritisation of the introduction of cost controls, including details of whether (and, if so, when, by whom, and for what reasons) a conscious decision was made to prioritise the former and de-prioritise the latter. In the event that you can now cast further light upon these issues, please do so.**

- 9.1 As stated in my oral evidence (and in written statements) I do not recall a conscious decision to de-prioritise the introduction of cost controls or an instruction on the matter.
- 9.2 It is true that work on the Domestic RHI progressed at a quicker pace than both the non-domestic elements and the administrative elements (including cost control) of the 2013 Consultation. I believe this was due to the apparent interest from stakeholders on this element during the Consultation process and the fact the DECC were making progress with their own Domestic Scheme. We would also have been mindful that commitments on the timing of the launch of the Domestic Scheme would have been made to various parties, including those availing of the RHPP grant. In addition, a number of the issues relating to the expansion of the non-domestic Scheme stalled pending policy decisions in DECC.
- 9.3 I think it is also true that work on the administrative / technical elements in the 2013 consultation (including the cost control elements) did not progress at the required pace in late 2013 and early 2014 given other work pressures within the Branch.
- 9.4 When my move to OFMDFM was confirmed at beginning of April 2014 I believe that I would have discussed my work priorities with my line manager – i.e. what could be delivered in the next 4 weeks before I leave. I believe that it was agreed that I would focus on finalising papers relating to the Domestic RHI (Business Case, Policy Paper, Casework Papers etc.). I think I would have discussed this with Joanne McCutcheon, who, in turn, would have been discussing it with John Mills.

***The cost control mechanism and the Domestic RHI Scheme***

**10. The July 2013 Phase 2 Public Consultation contained a cost control mechanism that was to apply to both Domestic and Non-Domestic RHI Schemes. It appears that the initial drafts of the Domestic RHI Synopsis for casework (referred to above) and the Domestic Business Case (referred to in your evidence on 21 February 2018) did not include any reference either to the cost control mechanism or to any decision that had been reached about its inclusion / non-inclusion. Please address the following issues arising from these documents:**

**a. Was a conscious decision taken not to introduce the cost control mechanism through the introduction of the Domestic RHI Scheme?**

10.1 I don't think it was a matter of making a conscious decision not to introduce the cost control mechanism through the introduction of the Domestic RHI Scheme – I am not aware of such a decision and do not think I was involved in such a decision.

10.2 From my perspective, when working on the 2013 Consultation and its outworkings, there were three distinct yet interlinked elements 1) expansion of the non-domestic; 2) introduction of the domestic scheme; and 3) cost control and other technical / administrative issues.

10.3 Following the closure of the consultation and analysis of responses work on different elements progressed at different paces given the wider work pressures in the Branch. The first element progressed at a slower pace given the complexities and the need to learn from DECC decisions and processes. Work on the Domestic Scheme progressed at greater pace - probably due to the level of interest from stakeholders on that element of the consultation, the fact that DECC were moving ahead on their own Domestic Scheme and we were conscious that previous commitments had been made in relation to timing. The third element, as previously stated, was non-controversial however required finalisation of the policy and then legislative amendment. I assume there were discussions about the method / timing of the introduction but I cannot specifically recall.

**b. If the answer to the previous question is in the negative, is it the case that in working up the Domestic RHI proposals (as evidenced by the draft Synopsis for casework and draft Domestic RHI Business Case) the issue was simply not considered and, if so, can you explain this?**

10.4 Personally speaking, as someone involved in drafting the Synopsis Paper and Domestic Business Case, I may have felt that the cost control elements (and other administrative / technical issues) fell outside of the scope of the papers relating to the Domestic Scheme. Those papers were designed to secure the approval of the Domestic Scheme rather than any other administrative issues. I possibly had considered that the cost control elements (and other technical issues) would not be subject to Casework Committee or Business Case approval – rather it would be for Senior Management to agree the final proposals and oversee the necessary legislative amendments.

10.5 With the above in mind, I did not include those elements in the first drafts of the aforementioned papers and do not recall any comments on the matter during the iterative preparation / approval process.

**c. If the answer to the previous question is in the affirmative, please provide whatever detail you can in respect of that conscious decision including, in particular, the following:**

**i. The identity of those involved in the decision-making process;**

**ii. The date, or approximate date, of the decision;**

**iii. The involvement (if any) of the Minister and, if she had no involvement, the reasons for this;**

**iv. The regard (if any) that was had to the risks and impacts associated with the decision;**

10.6 My responses from 10.1 – 10.5 seek to address these points. I do not believe there was a conscious decision taken on the matter as described in the question.

**d. Did you, or, to your knowledge, Fiona Hepper or Joanne McCutcheon, ever explain to John Mills, Davina McCay, or other Energy Branch officials, that the cost control mechanism set out in the July 2013 Phase 2 Public Consultation envisaged application to both the Domestic Scheme and Non-domestic Scheme?**

10.7 I do not recall. This issue and approach could have been discussed in the meeting with John Mills that I attended with him in February / March 2014 (mentioned in previous statements) however I have no clear recollection. Joanne McCutcheon may have raised this issue separately in any meetings she held with Mr Mills that I was not involved – but I have no knowledge of

these. I am also aware that Fiona Hepper met with Mr Mills to provide handover materials for the whole of Energy Division. This meeting included a discussion on the next steps for the RHI – but I was not at this meeting and therefore cannot say with any certainty.

- 10.8 The cost control mechanism was clearly identifiable in the Phase 2 consultation by all who read it.
- 10.9 I do not recall discussing the matter with Davina McCay or any other Energy officials.

**e. If the answer to the previous question is in the affirmative, please provide whatever detail you can in respect of the relevant communications;**

- 10.10 As stated in 10.7 - 10.9, I could not say with certainty if the issue was or was not discussed with Mr Mills or Ms McCay. If it was discussed it would have been in the context of the information provided at 10.1 – 10.5.

**f. If the answer to the previous question is in the negative, please explain why such an explanation was not provided.**

- 10.11 As stated in 10.7 - 10.9, I could not say with certainty if the issue was or was not discussed with Mr Mills or Ms McCay. If it was discussed it would have been in the context of the information provided at 10.1 – 10.5.

***State Aid and the Domestic RHI Scheme***

**11. In your oral evidence on 21 February 2018 you were asked a number of questions about your knowledge in January and February 2014 of the need for the Domestic RHI Scheme to obtain ‘State Aid approval’ from the European Commission. Arising out of this evidence, please address the following specific issues:**

**a. Set out whether you are aware of any DETI discussions about whether or not the Scheme ought to be notified to the Commission and, if you are aware of such discussions, please provide full details of same including details of the officials involved and the extent of the involvement (if any) of the DETI Minister;**

11.1 Whilst I do not specifically recall discussions regarding State Aid approval of the Domestic RHI Scheme, I would be confident that following my correspondence with DECC on the notification of the equivalent Scheme in GB that I would have raised the issue with my line manager, Joanne McCutcheon, and sought her view on how to proceed. It would also be likely that the issue would have been discussed with Mr Mills, potentially at the meeting in February / March 2014. It is also likely that I discussed the matter with DECC (Jacob Andresen) to gather some insight on their own State Aid application. However, I caveat this with the fact that I have no clear memory on that matter.

11.2 I would be certain I was not involved in any escalation of the issue to the DETI Minister or the Special Advisor.

**b. Set out whether you are aware of a conscious decision having been taken *not* to notify the Domestic Scheme to the Commission and, if you are aware of such a decision, please provide full details of it (including when, by whom, and for what reasons it was reached);**

11.3 I do not recall a conscious decision on whether to not notify the Domestic Scheme to the Commission. From considering the issue now, I think there would have been two options available to us at the time, either notify the Scheme to the Commission or remove elements of the Scheme that required notification from the final policy design i.e. prohibit non-Domestic users / operators / owners of equipment from being eligible within the Scheme.

11.4 However, as stated previously, I do not have a clear memory on this. I would, however, be confident that I would have spoken to my line manager about the matter following the correspondence from DECC.

**c. If you are not aware of any conscious decision having been taken in this regard, please explain, to the best of your knowledge, why the Domestic Scheme was not notified to the Commission;**

11.5 My answers at 11.3 and 11.4 are relevant. I do not recall a decision on this issue.

**d. Explain why the State Aid requirements in respect of the Domestic Scheme were not addressed in your handover document.**

11.6 The only explanation as to why I would not have mentioned the State Aid requirements of the Domestic Scheme in my handover document is that either, at the time, I felt that the issue had been addressed and a course of action agreed (i.e. it did not need to be highlighted in my note); or the failure to include direction in my note was an oversight on my part.

11.7 I am sorry that I cannot advise any further on the matter.

*Handover Note*

**12. Dan Sinton was an official in Renewable Heat Branch who remained when you left and who had been involved with the RHI Schemes prior to your departure. Please address the following issues in respect of Mr Sinton and your handover note:**

**a. Confirm whether Mr Sinton was given a copy of the handover note, made aware of it, made aware of the issues identified in it, and/or given any instructions or information to pass on to any new officials relating to, or arising out of, it and, if he was, please provide full details of this;**

12.1 To the best of my recollection, I did not provide a copy of the handover note to Mr Sinton. As Mr Sinton was leading on the domestic scheme and the RHPP it is likely that I had some conversations with him on those aspects of the note – however, I would have been fairly well abreast of the key issues in those areas so may have felt confident to draft those sections without referring to him.

12.2 As stated during my evidence sessions (and previous statements), the issues relating to the domestic RHI policy design listed in the handover note were discussed with Mr Hughes and Mr Sinton during the August 2014 meeting.

12.3 Depending on the point of the week when I completed the note Mr Sinton may not have been in the office to discuss in depth – at that stage he worked reduced hours, working the first part of the week only. He may not have been in the office from Wednesday onwards and therefore I may not have had the opportunity to discuss the note with him. In any case, Mr Sinton's role focussed more on the RHPP and domestic issues and therefore I may not have discussed the non-domestic Scheme with him.

**b. If Mr Sinton, as a continuing link between old and new Renewable Heat Branch officials, was not used in any of the aforementioned ways in respect of your handover note, please explain why this was the case.**

12.4 I felt providing the note to the acting G7 was sufficient – I did this via a hard copy version and an electronic version (via an email).

*Meeting on 12 August 2014*

13. It appears that Stuart Wightman may have migrated your entry in the Heads of Branch record, relating to the potential for a 20-99kW solid biomass tariff review, into the new DETI Energy Efficiency Branch ('EEB') plan for 2014/2015 (of which there were a number of iterations over the course of the said year – an example of this is served herewith under Inquiry reference DFE-419557 to DFE-419565). The Branch Plan recorded an intention on the part of EEB officials to have a meeting with you and, as well as discussing the Domestic RHI Scheme, to discuss the issue of the aforementioned tariff review. The meeting itself appears to have been attended by Seamus Hughes and Dan Sinton. In this regard:

a. **Were you ever made aware, by Mr Hughes, Mr Sinton, or by any other DETI official, that there was a desire to discuss with you the aforementioned tariff review? (If you were so aware, please provide all relevant details)**

13.1 As stated previously in my evidence sessions and written statements, my recollection of the August 2014 meeting was that it focussed solely on domestic issues.

13.2 Before leaving Energy Division I agreed with Mr Mills that I would return at any point to discuss issues relating to the RHI and renewable heat policy with new team members when in place. The August 2014 meeting was the only occasion I was asked to return to brief new team members.

13.3 Given the fact that I was never contacted to meet again, I would have assumed that there were no further issues to be discussed.

b. **Following your departure from Renewable Heat Branch, was the subject of the aforementioned tariff review ever raised with you by the officials who succeeded you and Ms McCutcheon or, indeed, by any other officials? (If it was raised, please provide full details of this)**

13.4 I do not recall the forthcoming tariff review ever being raised with me following my departure from Energy Division. I do not recall it being discussed during the August 2014 meeting.

13.5 To the best of my knowledge, Joanne McCutcheon was never contacted in relation to the tariff review – or any other issue relating to renewable heat.

***Invest NI***

**14. At TRA-5009 to TRA-5011 you were asked about a 12 June 2013 meeting with, *inter alios*, Invest NI officials and persons from Sheridan & Hood and you expressed doubt as to whether you had, in fact, a meeting with the Invest NI officials. Invest NI have addressed this meeting in a witness statement from their Chief Executive of 23 March 2018 at WIT-144242 to WIT-144248 and they suggest that you were in fact at this meeting. Please therefore consider whether there is any aspect of your evidence on this issue which you would like to amend or supplement.**

14.1 As stated during my evidence sessions, I do recall meeting with representatives from Sheridan and Hood (possibly on two occasions) and corresponding via email and telephone. My memory of my meetings with Mr Hood is that they took place in Netherleigh and involved DETI officials only (myself and Joanne McCutcheon).

14.2 I have no memory of attending the joint meeting with Invest NI officials and believed that I had met with Mr Hood either a few days prior or after that meeting.

15. The Inquiry has become aware that, under a *Sustainable Development Support Programme* and a *Sustainable Productivity Programme*, Invest NI funded the assessments of the energy needs of certain client companies by independent Technical Consultants and that a large number of the resulting reports prepared by such consultants (which said reports were provided to Invest NI Technical Advisors) made reference to the NI RHI Scheme, to how it was operating, to the potentially high rewards available under it, and to the potential perverse incentives and/or gaming opportunities that existed. A small sample of such reports are enclosed with this Section 21 Notice and are summarised below.

**(1) Ulster Carpet Mills**

- a. In an email exchange with Invest NI on 2 January 2013 Element Consultants stated as follows in respect of the report that attached to his email: *“Completely reworked to account for RHI - however I find this is a bit of a quandry [sic] for the recommendation is now not to adopt the technically best solution but instead to grab the RHI money - What can I say?”* (Inquiry reference WIT-144327 to 144328).
- b. In the report itself (Inquiry reference WIT-144599 to 144630) the following information appears:
  - i. WIT-144599 – The report is noted to be *version B (Final)*.
  - ii. WIT-144605 – The payback period, with the benefit of the RHI Scheme, for the biomass technology option is recorded as being 4.3 years;
  - iii. WIT-144613 – In the second paragraph under 3.8 the following text appears: *“... Regardless the introduction of the RHI pretty much limits the value of installing any boiler over 1MWth - particularly where the estimated optimal size is 1,200kWth – In many ways, technical due diligence is irrelevant, and you just install the largest boiler that you can claim RHI for”*.
  - iv. WIT-144615 - Under 3.9 and the heading *‘the impact of the RHI on boiler sizing’* there is the following passage:

*“The Renewable heat incentive, now available in Northern Ireland, completely distorts the economic case for biomass and the best technical solution cannot now be recommended on economic grounds. Instead the project must be considered as an opportunity for revenue generation and the recovery of the maximum amount of RHI revenue support over*

*the 20 years that an accredited RHI project will receive funding.*

*In the initial form of the scheme, the maximum size of boiler that could receive support will be 1 MWth and this effectively limits the size of the boiler plant.”*

- v. WIT-144622 – Under the table the following is recorded: *“In summary the RHI will dramatically improve the economic case for the installation of biomass. The RHI will dictate the installation of a smaller boiler and whilst this is not the optimal solution a project receiving the support of the RHI would be economically viable option for UCM.”*

**(2) Salty Dog / Keli Frecha Holdings Ltd**

- c. This report dated August 2013, runs from WIT-145704 to 145784 and contains the following statements:
  - i. WIT-145709 – *‘Using Biomass will actually increase the amount of fuel the site consumes. The cost of pellet fuel will be more than that of natural gas but this is offset by the RHI payments that will be received’.*
  - ii. WIT-145724 – *‘This project is only viable because of the Renewable heat incentive. In fact the cost of boiler fuel will, we anticipate, increase by some £1,500/annum. There is fundamentally no energy saving basis for the project and receipt of RHI is therefore the only underpinning commercial reason for development’.*
  - iii. WIT-145725 – *‘Over a 20 year period eligible heating plant will receive quarterly payments for metered heat consumed. The payments are extremely generous - in this case and because of the plant size 8.6p/kWh and are indexed over 20 years. So in this case a wood installation that is not as efficient as gas and costs more to run can actually generate a very large potential saving solely from public funding’.*

**(3) Marine Court Hotel, Bangor**

- d. The report ‘Biomass for Marine court Hotel, Bangor’, Version B, Final, dated 10 February 2015, 2014 [sic], appears at WIT-148944 to 148977 and contains the following information:
  - i. WIT-148949 –  
*‘You have asked us to consider installing 4 separate 99kW pellet boilers so as to generate the maximum RHI. Installing 4 separate pellet boilers at this site will be difficult and*

*expensive and technically inappropriate – although we acknowledge far from technically impossible.*

*'It is a technical solution driven solely by the RHI payment and not by technically optimal solution.'*

*'We acknowledge that the very high RHI revenue payment is essentially driving the installation of multiple small boilers and that the RHI support is significant – However, there is also an onus to find a technically appropriate solution.'*

*'Both options offer a notional payback of a little over 3 years. Clearly since the 4 x 99kW option has the potential to displace the most oil and thus receive the largest RHI payments – this project has the greatest net present value....The NPV is almost twice that of a smaller installation.'*

*'In this case and for the reasons given throughout this report we recommend that you adopt a technically appropriate solution rather than an RHI driver solution.'*

**In respect of these reports, please address the following issues:**

- i. Set out the awareness (if any) that you had, during your time in Renewable Heat Branch, of Invest NI's Sustainable Development Support and Sustainable Productivity Programmes, its funding energy reports for client companies by independent Technical Consultants, and the consideration of those reports by in-house Technical Advisors;**

15.1 I recall attending at least one joint Energy Division / Invest NI meeting during my time in DETI whereby officials provided an update on current work priorities. From memory, this was shortly after I had joined Energy Division and therefore may have been Autumn 2009. From that meeting and some contact with Invest NI (when they sat on the AECOM / Poyry oversight group) I would have been aware of the Invest NI and that they supported client companies on energy (and other matters).

15.2 I don't believe I was aware of the production of such energy reports, the consideration of these reports by in-house technical advisors, or how these reports would link to the delivery of the RHI Scheme.

- ii. If you did not have any awareness of any of the aforementioned matters:**

- **Set out the reasons for this;**
- **State whether you believe that you ought to have been made aware of them;**

15.3 As stated at 15.1 and 15.2, I would have been aware of the team in Invest NI and had some (ad hoc) contact i.e. Invest NI representation on the AECOM / Poyry Heat Study panel and representation on the Renewable Heat Sub Group (when it was meeting). I was not aware however of the detailed reports that were being commissioned and analysed (as stated in the question) and how these linked to RHI performance.

15.4 I think the sharing of such information could have been helpful and, as mentioned in oral evidence, a wider panel of experts assessing the delivery and performance of the RHI (including Invest NI) would have supported the work in Renewable Heat Branch. The information highlighted in the question (and the potential policy issues that arise as a result) could have been raised and discussed during the Renewable Heat Sub Group (or raised with DETI Energy Division) at any point should Invest NI have felt it relevant.

**iii. Specify whether you or, to the best of your knowledge, DETI was ever made aware by Invest NI or by any of its Technical Advisers or retained Technical Consultants of issues that were being raised in reports prepared by the said Consultants regarding the RHI Scheme such as, for example, the following (which arise out of the 3 reports summarised above):**

- That the RHI Scheme may have been causing or contributing to the installation of technically sub-optimal or inefficient systems;
- That the RHI Scheme was being viewed by some as an opportunity for revenue generation;
- That the RHI tariffs were viewed by some as being extremely generous;
- That persons were installing multiple smaller boilers on hydraulically separate systems instead of larger boilers on a single system in order to maximise RHI returns;
- That there was potentially a very short payback period in respect of outlay on biomass technology because of the RHI Scheme;

**(if you and/or DETI were made aware of some or all of these issues by Invest NI, its Advisors, or retained Consultants, please provide full details of this including the date, means, and detail of each relevant communication)**

15.5 To the best of my knowledge (and memory) neither I nor anyone else in DETI was made aware by Invest NI (or others) of the issues that were being raised in reports as highlighted in the question.

**iv. If you and/or DETI were *not* made aware of these issues by Invest NI, its Advisors, or retained Consultants, please:**

- **Set out the reasons for this;**
- **State whether you believe that you and/or DETI ought to have been made aware of them;**

15.6 I cannot offer a reason why DETI were not made aware of these issues via Invest NI.

15.7 I believe the issues in the reports (and the technical analysis / assessment provided by Invest NI and its advisors) would have been important to consider when reviewing and revising RHI policy.

**v. Clarify whether, during your time in Renewable Heat Branch, you would have had contact with Invest NI's Technical Advisors on issues other than RHI and, if you did, please provide a summary of the issues in respect of which you would have had contact, the approximate frequency of that contact, and the individual Technical Advisors with whom you would have had contact.**

15.8 I do not specifically recall any other contact with individual Technical Advisors working in Invest NI.

15.9 The only other contact I had with Invest NI (apart from the AECOM Heat Study Group and the Renewable Heat Study Group) that I recall would have been during separate work on Sustainable Energy Messaging – however this would have been with Communication and Marketing Advisors rather than energy specialists.

***Moy Park***

**16. Clarify whether, during your time in Renewable Heat Branch, you and/or the Branch ever had any communications with Moy Park regarding any of the following issues (providing, if you and/or the Branch did have such communications, full details including the date and mode of same, the Moy Park and DETI personnel involved, and the issues discussed):**

- a. Moy Park's expansion and/or its promotion of indirect hot water heating;**
- b. Moy Park's pricing system for its growers;**
- c. Moy Park's funding of new poultry houses and the retro-fitting of indirect hot water heating systems to existing poultry houses through 'additional housing payments' made to its growers;**
- d. Moy Park's promotion of the RHI Scheme to its growers;**
- e. The uptake of biomass heating and/or the RHI Scheme amongst poultry farmers and Moy Park growers in particular;**
- f. The heating demands of poultry sheds;**
- g. The likely number of new poultry sheds and/or indirect hot water heating retrofits coming on line in the next 12 months, 24 months, etc.**

16.1 To the best of my knowledge and recollection, I never had any engagement or communication from any representatives from Moy Park in relation to the RHI Scheme and on any of the issues (a-g) raised in the question. In the same way, to the best of my knowledge, no one else from Renewable Heat Branch had any such communications with Moy Park representatives – certainly, I am not aware of any.

**17. In the event that there was little or no communication by you and/or the Branch with Moy Park on the above issues, please provide an explanation for this.**

17.1 During my time in Renewable Heat Branch I engaged with a range of stakeholders through public consultations, making presentations at renewable energy events or through contact initiated by stakeholders to which I responded (emails, telephone calls or requests for meetings).

17.2 I do not recall proactively seeking out particular stakeholders to discuss any aspects of the RHI. Therefore, if Moy Park representatives did not directly contact me, either at events or through telephone or email, I would not have had any direct engagement.

**18. In the event that there was communication by you and/or the Branch with Moy Park on issues other than those listed above, please provide a summary of the issues which were the subject of such communications, the approximate frequency of those communications, and the individual Moy Park personnel with whom you and/or the Branch would have communicated.**

18.1 To the best of my knowledge / memory, there was no such communication.

***Cathal Ellis***

**19. In his oral evidence Mr Ellis stated, in terms, that he advised you of:**

- a. the high heat requirements of the commercial mushroom growing sector and their interest in the RHI Scheme (TRA-7277 to 7280);**
- b. how good the RHI Scheme was for the agricultural sector (TRA-7327 to 7329).**

**In this regard:**

- i. please confirm whether you agree or disagree with Mr Ellis' evidence; and**
- ii. if you disagree with, or agree with but wish to supplement, Mr Ellis' account on the above issues, then please set out the necessary details at this juncture.**

19.1 I recall engaging with Mr Ellis on a number of occasions between 2011-2014 in relation to the non-Domestic RHI. These engagements were in the form of meeting during Pofre held events in Greenmount and Enniskillen and occasional telephone calls / emails.

19.2 After the Scheme launched (possibly later in 2013) I recall Mr Ellis contacting me about presentations he was making to some of his stakeholders and he highlighted that he wished to raise the RHI amongst these stakeholders.

19.3 I do not recall Mr Ellis specifically raising the high heat requirements of this Sector or raising any issues or any concerns with what the impact of such a high heat demand might be.

19.4 I do recall Mr Ellis describing the RHI as a "good incentive" but at no point did he suggest that the Scheme was overly generous or presenting an opportunity for over-compensation. In 2013, the description of the Scheme as a "good incentive" would not have given me any cause for alarm – the Scheme was intended to incentivise heat users away from fossil fuels and onto renewable fuels – it was intended to be a "good incentive".

19.5 At no point did Mr Ellis suggest the Scheme was too good or in danger of over-compensating, generally or in relation to the agri sector.

***The Oral Evidence of Mrs Hepper, Ms McCay, Mr Hughes, Mr Wightman, Mr Mills, and Mr Thomson***

**20. All of the above DETI officials have given oral evidence in public to the Inquiry since you completed your oral evidence on 21 February 2018 and the transcripts of their evidence are publically available. To the extent that you consider the evidence of any of those officials contradicts your evidence on a significant issue, or is materially incomplete in respect of any significant issue, you should take this opportunity to address those issues by way of further written evidence, but only to the extent that the said issues have not already been addressed in your existing oral and written evidence.**

20.1 Whilst I have attempted to follow the Inquiry as much as possible I have not been able to follow each witness and their testimony in detail. From what I have seen or read, there does not appear to have been any significant contradictions but I am happy to engage with specific issues the Inquiry may wish to raise via correspondence.

20.2 Therefore, there is nothing further I wish to add or highlight at this stage in relation to the evidence provided by those named within the question.

***The Evidence of Other Persons Called Since 21 February 2018***

**21. To the extent that you consider the evidence of any other witness contradicts your evidence on a significant issue, or is materially incomplete in respect of any significant issue, you should take this opportunity to address those issues by way of further written evidence, but only to the extent that the said issues have not already been addressed in your existing oral and written evidence.**

21.1 Whilst I have attempted to follow the Inquiry as much as possible I have not been able to follow each witness and their testimony in detail. From what I have seen or read, there does not appear to have been any significant contradictions but I am happy to engage with specific issues the Inquiry may wish to raise via correspondence.

**STATEMENT OF TRUTH**

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

**Signed:**

A handwritten signature in black ink, appearing to read 'Peter Hutchinson', written over a horizontal line.

Peter Hutchinson

**Date:**

30 August 2018