

**RHI Inquiry**

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Rt Hon Peter Robinson
C/O John McBurney
John McBurney, Solicitors
Bannside Chambers
3-7 Church Square
Banbridge
Co Down
BT32 4AS

14 November 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 will be familiar with the work of the Inquiry and its Terms of Reference from your previous engagement with it and the Inquiry remains grateful for the witness statement you have already provided.

As you may be aware, the Inquiry continues to seek some further written evidence from witnesses and participants, particularly where issues have arisen in evidence recently provided in respect of which it is necessary, or appropriate, to provide an

opportunity for further response. The Inquiry Chairman also retains the right to require witnesses to attend to provide (further) oral evidence, and consideration will be given to whether that is necessary in light of additional written evidence which is received.

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.

Where you have been asked about a matter which has been addressed to some degree in your previous written evidence and you are clear that there is no further evidence which you can provide, please simply say so.

In the interests of fairness, you are also encouraged to provide, through the further written statement now being requested of you, any additional information that you can which is relevant to the Inquiry's investigation of the matters falling within its Terms of Reference in relation to any of its phases, in light of any additional matters which have emerged during the course of the Inquiry's evidence-gathering processes.

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

As before, it is vital that the further witness statement you provide to the Inquiry is your own evidence, absent the influence of others; that it is comprehensive; and that it fully explains your involvement in the matters about which you have been asked.

In the event that you require or desire access to some documentation, not already in your possession, in order to assist you in preparing your statement, the arrangements set out in my previous correspondence to you continue to pertain.

You have been referred, in the text of the notice, to a number of pieces of evidence, either written or oral, provided by other witnesses to the Inquiry. Your legal

representative will have access to these in light of his representation of a number of others before the Inquiry, who have enhanced participatory rights. For the avoidance of doubt, your legal representative is entitled to show you the full text of any of the witness statements to which reference has been made in the body of the enclosed notice.

I also remind you, as before, of the restriction orders made by the Chairman of the RHI Inquiry, which affect how you may deal with this correspondence and its enclosures (which are also provided to you under a duty of confidentiality to the RHI Inquiry). You may, of course, share the correspondence and the enclosed Notice and documents with your legal representative(s), under the same conditions as I set out in my previous correspondence.

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

A copy of this correspondence has also been provided to your legal representative, John McBurney of John McBurney Solicitors (by email only).

Finally, I would be grateful if you or your solicitor could acknowledge receipt of this correspondence and the enclosed notice by email to Patrick.Butler@rhiinquiry.org.

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

Yours faithfully



Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE
[No 218 of 2018]

Appointment of Jonathan Bell as DETI Minister

1. You are referred to the evidence of Timothy Johnston at **WIT-74127/8**, in which he indicates, *inter alia*, that he advised you (as First Minister) of his view that Jonathan Bell was not a suitable candidate to be appointed to the role of DETI Minister (and that Mr Bullick, he believes, shared that assessment); and the oral evidence of Mr Johnston, to similar effect, at **TRA-14140 to TRA-14150**. As to this:
 - a. Do you accept that Mr Johnston provided advice to you, or expressed views to you, of this nature? If so, please provide details (insofar as you now can) of when and in what terms these views were expressed and what you made of them.
 - b. Were you provided with similar advice, at any material time, by Mr Bullick? If so, please provide details (insofar as you now can) of when and in what terms these views were expressed to you and what you made of them.
 - c. Whether or not you were provided with advice of this nature by Mr Johnston or Mr Bullick:
 - i. Did you yourself have any concerns about Mr Bell's capability to properly discharge the functions of DETI Minister at any material time during your tenure as First Minister and/or Leader of the DUP?
 - ii. Were any such concerns expressed to you by other senior members of the DUP?

- iii. In either event, please provide such details as you can about these concerns and also explain why, notwithstanding them, you were content to either nominate Mr Bell for that office and/or continue to permit him to occupy it.

Appointment of Timothy Cairns as Minister Bell's Special Adviser

2. Please give as full an explanation as you can as to the process by which Timothy Cairns was appointed as Special Adviser to Jonathan Bell in his role as DETI Minister in or around May 2015. In the course of your response, please address the following issues:
 - a. Why and by whom was Timothy Cairns assigned to Jonathan Bell as a Special Adviser?
 - b. Was Timothy Cairns assigned to Jonathan Bell as a Special Adviser against either Jonathan Bell or Timothy Cairns' wishes (or both)?
 - c. To what extent did Jonathan Bell or his Special Adviser have any input into these decisions?
 - d. Do you consider that the provisions of the relevant Code governing the appointment of Special Advisers which was in force at that time (see **DOF-00592 to DOF-00600**) was complied with in all material respects in relation to this appointment? Please give reasons for your answer.

In the course of preparing this response, you may wish to have regard to the evidence of Timothy Cairns at **WIT-20172 to WIT-20174**, **TRA-12606 to TRA-12612** and **TRA-12622/3**; the evidence of Jonathan Bell at **WIT-22624**, **TRA-12275 to TRA-12284** and **TRA-12318/9**; and the evidence of Timothy Johnston (in relation to the appointment of Special Advisers more generally) at **TRA-14111 to TRA-14139**.

Relationship between Minister Bell and his Special Adviser

3. Describe your view and understanding of the relationship between Minister Bell and his Special Adviser Timothy Cairns during the periods covered by the Inquiry's Phase 3 and Phase 4 work. In particular, but without prejudice to the generality of the foregoing, provide such details as you can of:
 - a. Any differences or disagreements between the Minister and his Special Adviser (including any such differences or disagreements as arose during the Ministerial trip to London on 9-10 June 2015);
 - b. The circumstances of Timothy Cairns' absence from the Department from in or around 10 to 29 June 2015 and of his return to work in the Department at that time; and
 - c. The working relationship between the Minister and his Special Adviser.
4. Set out whether you consider that the matters you have addressed above did have, or may have had, an adverse effect on DETI dealing effectively with the RHI issue during the periods covered by Phases 3 and/or 4 of the Inquiry's work.
5. The Inquiry has heard a variety of evidence in relation to a meeting which took place on or around 26 June 2015 for the purpose of repairing the relationship between Minister Bell and Mr Cairns after events in London and/or making arrangements for their future working together; and a series of meetings *prior* to this at which you (and Mr Johnston) met separately with Minister Bell and Mr Cairns respectively. In this regard you are referred to the evidence of Timothy Johnston at **WIT-74097 to WIT-74121** and **TRA-14154 to TRA-15196**; the evidence of Timothy Cairns at **WIT-20154 to WIT-20169**, **WIT-20178 to WIT-20185**, **TRA-12638/9** and **TRA-12669 to TRA-12696**; and the evidence of Jonathan Bell at **WIT-22616 to WIT-22626** and **TRA-12292 to TRA-12318**. As to this:

- a. Please set out as fully as you can your involvement in any meeting with either Minister Bell, Mr Cairns or both at or around this time in relation to the working relationship between them.
 - b. As to the meeting on 26 June 2015 in particular:
 - i. Were you aware that this meeting took place?
 - ii. What role, if any, did you have in the arrangement of the meeting?
 - iii. To what extent, if at all, were you present at the meeting or did you take part in it? (Please be as specific as possible in relation to any involvement you had in this meeting in light of what appears to be a difference in evidence between Timothy Johnston on the one hand and Messrs Cairns and Bell on the other as to whether or not you were in attendance).
 - iv. Please set out as clearly as you can what was discussed and agreed at this meeting.
 - v. In particular, to your knowledge or recollection, were any allegations on the part of Timothy Cairns in respect of bullying of him by Jonathan Bell discussed?
 - c. In particular, to your knowledge or belief, was the issue of the RHI Scheme discussed or addressed in any way at any of the meetings held between you and/or Timothy Johnston on the one hand and Jonathan Bell and/or Timothy Cairns on the other. If so, please provide as full details as you can.
 - d. Do you have any contemporaneous documentation or communications pertaining to the above-mentioned meetings or exchanges (including, for instance, typed or hand-written notes; emails; text messages; and any other communications or records, whether electronic or otherwise). (If so, please provide these to the Inquiry.)
6. You are referred to the text exchanges which occurred between Timothy Johnston and Timothy Cairns on 27 June 2015, which Timothy Cairns later

forwarded to Richard Bullick on 17 December 2016 (see the documents bearing Inquiry reference **IND-31977 to IND-31978**). As to the subject matter of these text messages:

- a. To the best of your knowledge, is it correct that Jonathan Bell's "*temper*" was not mentioned or dealt with at the meeting? If so, why not (in light of the complaints Timothy Cairns appears to have been making)?
 - b. To your knowledge, was Jonathan Bell warned about his temper and/or his future conduct, as Timothy Cairns trusted he would be?
 - c. Were the concerns Timothy Cairns raised put "*on the record*", as he requested? If not, why not? If so, in what manner?
 - d. Timothy Johnston indicated that there were 'not too many people working to get the matter resolved'. What do you understand to be the issue to which he was referring? Do you agree that there were not too many people working to get it resolved? If so, why was that the case?
 - e. To what issues do you understand Timothy Johnston to have been referring when he wrote that he was satisfied that the matter had been handled fairly "*dealing with ALL the issues raised*"?
 - f. Were you aware of Timothy Cairns' disappointment and annoyance regarding the meeting? To your knowledge, who else, other than Timothy Johnston, was made aware of Timothy Cairns' disappointment and annoyance regarding the meeting?
7. In respect of the ongoing working relationship between Minister Bell and Mr Cairns from this point onwards (and, particularly, during the summer and autumn of 2015), please address the following matters:
- a. Who decided, despite the apparent difficulties in their relationship which arose around the time of the Ministerial trip to London, that Minister Bell

and Mr Cairns should continue to work together?

- b. Given the difficulties which appear to have arisen in the working relationship between Minister Bell and Timothy Cairns, were any procedures put in place to monitor this issue, either formally or informally?
- c. What arrangements, if any, were put in place at or following this meeting to ensure that the working relationship between Minister Bell and Mr Cairns did not impede the proper or efficient working of their Department?
- d. What further steps, if any, did you take, or cause to be taken, in order to satisfy yourself that the working relationship between the two men was adequately repaired and/or functioning correctly?
- e. In your view, how did the nature of the relationship between Minister Bell and Timothy Cairns affect how the RHI issue was dealt with from June 2015 to February 2016? (In this respect, you may wish to consider and comment upon the evidence of Timothy Johnston at **WIT-74096/7** and the evidence of Andrew McCormick at **WIT-10516**).
- f. Do you agree with Mr Johnston's evidence (at **WIT-74112**) that, with the benefit of the knowledge now available, it was a mistake for Mr Cairns and Mr Bell to continue to work together? If so, please explain why that view could not have been and/or was not formed at the relevant time.
- g. Do you agree with Mr Johnston's evidence (at **WIT-74120/1**) that, with the benefit of the knowledge now available, it was a grave mistake not to instigate a more formal process to address Mr Cairns' concerns? If so, please explain why that view could not have been and/or was not formed at the relevant time.
- h. Do you agree with Mr Johnston's evidence (at **WIT-74106**) that senior party colleagues of yours took the view that both Mr Cairns and Minister Bell should be dismissed from their respective roles? If so, please

provide such details about this as you can.

- i. Please give an account of what consideration, if any, you gave to dismissing either or both men from their respective roles at that time and the basis for any decision you came to as to that.
8. Please provide your response to the suggestion on the part of Mr Cairns that you did "*nothing to protect*" persons who had brought bullying allegations (against Mr Bell) to you (see, for instance, **WIT-20179**).
 9. Having forwarded the texts dated 27 June 2015 to Richard Bullick in December 2016, there were further text exchanges between them. In particular, Timothy Cairns sent Mr Bullick text message (see **IND-31974**), indicating that it was his view that Mr Bell "*needs to be exposed*" but that he could not expose his part "*without putting boot into*" you (Peter Robinson). He also indicated a concern that text messages he had sent "*puts spads running the show back to fore*". His text messages also indicate his view that his allegations of bullying against Jonathan Bell were not taken seriously by you, the then First Minister (see again **IND-31974**); and suggest that Richard Bullick was of the view that "*the party's response to this [allegations of bullying made against Minister Bell by Timothy Cairns] and the other complaints was totally inadequate*". As to the subject matter of these text exchanges:
 - a. Please provide your response to the suggestion that you, as party leader and First Minister, failed to deal adequately with recurring issues linked to Jonathan Bell's behaviour.
 - b. Please provide your response to the suggestion that the party's response to Timothy Cairns' allegations, and the other complaints made in this regard, was totally inadequate.
 - c. In each case, set out (insofar as you can) the detail of allegations of which you were made aware; how and by whom you were so made aware; and the steps, if any, taken by you in response.

Approval of 2015 Regulations

10. To your knowledge and belief:
- a. Was there any guidance, instruction or encouragement given to DUP MLAs as to whether they should (i) attend the debate on the approval of the 2015 Regulations; and/or (ii) vote in any particular way (or abstain) in relation to the motion to approve the 2015 Regulations?
 - b. How many DUP MLAs (i) attended the Assembly sitting at which the motion to approve the 2015 Regulations was debated; and (ii) voted in favour of it?

(Mrs Foster was asked to address these matters in her written evidence but indicated that she did not recall specifically the whipping arrangements in relation to the 2015 Regulations: see **WIT-20700**).

Party donors

11. Please set out, from your knowledge and belief (including your knowledge as a former DUP Leader):
- a. Whether any persons or business who has received or is receiving subsidies from the RHI Scheme was a donor to the DUP (or any DUP representative) either in the sense of having made a donation which requires notification to the Electoral Commission or otherwise.
 - b. Whether any persons or business who otherwise benefitted from the RHI Scheme (for instance, as a supplier or installer or biomass boiler plant or as a supplier of wood chips or pellets) was a donor to the DUP (or any DUP representative) as above.
 - c. Whether Moy Park and/or the Ulster Farmers Union was a donor to the

DUP (or any DUP representative) during the period 2011 to 2016.

Responsibility for Jonathan Bell's decision-making in summer 2015

12. In Andrew McCormick's second witness statement to the Inquiry, at paragraph 125 (see **WIT-11286**), he observed that "... *given the clear way in which the DUP had enforced oversight by the First Minister in the context of NIRO, it is impossible for them to then insist that the sole responsibility for the decision to delay the tariff reduction lies with Jonathan Bell (as argued in the Statement by Arlene Foster to the Assembly on 19 December 2016).*" As to this:
- a. What do you understand Dr McCormick 2 to be referring to when he refers to your 'enforced oversight' of the DETI Minister in the context of NIRO?
 - b. Do you accept that you enforced oversight of the DETI Minister's decision making in the context of NIRO?
 - c. Regardless of your answer at c. above, please set out what involvement, if any, you had in relation to decision-making in respect of NIRO which fell (initially or primarily) within the DETI Minister's responsibilities.
 - d. Please provide your response to the suggestion that it was, would be or is wrong to insist that the sole responsibility for the decision to delay the introduction of tiering to the RHI Scheme in summer/autumn 2015 lies with the then DETI Minister.

Governance and conduct of Special Advisers

13. Do you agree with the evidence of Timothy Cairns (see **WIT-20181**) to the effect that, during the period or during periods when you were DUP Leader, "*Timothy Johnston... ran all matters relating to the party*" and that, he believes, "*Mr Johnston in running party matters while a SPAD was operating outside of what he was permitted to do*"? Please give reasons for your answer. In the event

that you do so agree, please explain, to your knowledge, how this came to be the position.

14. Do you consider that, in the event of the return of devolution in Northern Ireland, arrangements as to the governance and conduct of Special Advisers could or should be improved? If so, how? Please give reasons for your answer. (In your response you may wish to address the procedures which might apply in the context of a dispute or breakdown in relationship between a Minister and a Special Adviser; the arrangements for appointment of Special Advisers; the arrangements for oversight of Special Advisers; and whether, and the extent to which, appointing Ministers should also be responsible, as well as accountable, for the actions of their Special Advisers.)

Lessons to be learned

15. In light of your experience of politics and government in Northern Ireland, please also offer any thoughts you may have as to (a) how problems which have been identified by the RHI Scheme (including in the course of evidence given to the RHI Inquiry) might be addressed in the future and (b) any recommendations as to governance or practice which you consider would be useful in addressing these issues and/or ensuring that they do not recur in future.

General

16. To the extent (recognising that you are not an enhanced participant in the Inquiry) that you are aware of the evidence of any other witness or participant contradicting your evidence on a significant issue, or being materially incomplete in respect of any significant issue, you should take this opportunity to address those issues by way of further written evidence (to the extent that the said issues have not already been addressed in your existing oral and written evidence).

17. Please set out any further significant evidence or observations you have or of which you are aware, having regard to the Inquiry's Terms of Reference, which has not been adequately addressed in your previous written evidence or to which you wish to draw the Inquiry Panel's attention.

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 218 of 2018

DATE: 22 November 2018

Witness Statement of: Peter Robinson

I, Peter Robinson will say as follows: -

Appointment of Jonathan Bell as DETI Minister

1. You are referred to the evidence of Timothy Johnston at **WIT-74127/8**, in which he indicates, *inter alia*, that he advised you (as First Minister) of his view that Jonathan Bell was not a suitable candidate to be appointed to the role of DETI Minister (and that Mr Bullick, he believes, shared that assessment); and the oral evidence of Mr Johnston, to similar effect, at **TRA-14140 to TRA-14150**. As to this:
 - a. Do you accept that Mr Johnston provided advice to you, or expressed views to you, of this nature? If so, please provide details (insofar as you now can) of when and in what terms these views were expressed and what you made of them.

It was my custom to seek and listen, in confidence, to the views of a range of colleagues when making decisions on such matters. I do not believe I received advice from anyone in the resolute terms and critical tone quoted in your communication. I acknowledge Mr Johnston expressed his misgivings about the potential appointment of Jonathan Bell and indicated it would not be his choice. However, in the confidence of such discussions Mr Bell was not the only Minister or post holder about whom I have known Mr Johnston to express similar comments – including others I appointed.



While the issue of the criteria I or any other leader uses to make Ministerial appointments is probably outside the remit of the inquiry I believe a fuller outline of the circumstances might be helpful. I start from the point that it was never my intention to have this reshuffle. By this time, I was determined that I was going to retire and would not again submit to requests from colleagues to stay in Office. I had appointed the team that was to take the Party through to my retirement. My successor would have a period in Office before the Assembly election which would allow him/her to refresh the Ministerial team.

However, unexpectedly a vacancy arose in the Department of Health. A reshuffle was forced upon me and one element of my thinking was to do as little as possible to disturb the settled state of non-Ministerial posts and positions within our overall Assembly team. I did not want to widen the personnel on the Ministerial team more than was needed. There were other options that I considered at the time but each of them had implications that would have led to a reshuffle with significant knock-on effects to Assembly Committees and other posts as well.

In arriving at my conclusions on any appointment, I had to take into consideration some wider factors including who to maintain or appoint to other Ministerial posts and the available pool of possible candidates. In particular, while it is easy to argue that it is possible to keep an existing Minister in post, this simplistic approach does not take into account the responsibility I had to encourage members to grow their talents and to give Ministers experience of working in different departments to best prepare them for any future leadership role. This was particularly important given my intention (then unknown to others) to retire.

It is true to say Mr Bell was not the most popular member in the DUP's team and might have been seen as an acquired taste, but that was never the telling factor in making an appointment. Jonathan Bell had suitable academic qualifications and worthwhile life-experience in his professional career. He had valuable know-how of carrying out Ministerial duties as a Junior Minister and he was practised in contributing at Executive meetings. In the peculiar circumstances of the

mandatory coalition with Sinn Fein he had proved proficient in working with Sinn Fein Ministers and forceful, yet measured, in reaching agreements on the necessary day-to-day issues with them.

If I, and other leaders, had been bound by the exacting standards some of my colleagues advocated and could only make appointments that met the level of perfection that they prescribed, there might have been a lot of empty seats around the Executive table.

- b. Were you provided with similar advice, at any material time, by Mr Bullick? If so, please provide details (insofar as you now can) of when and in what terms these views were expressed to you and what you made of them.

Mr Bullick would have been one of those I would have consulted. I do not recall any comment he made on this possibility. The confidential discussions Mr Johnston, Mr Bullick and I regularly had, were not formal meetings, they were relaxed, free-flowing and always carried out in a congenial and good-natured atmosphere, punctuated by Mr Bullick's sardonic humour. I had very capable and trusted Special Advisors and while I did not always take their advice, I certainly listened to it. Ultimately, I was the one who had to make the decision taking into account a wide range of factors some of which would have carried more weight with me than they may with others.

- c. Whether or not you were provided with advice of this nature by Mr Johnston or Mr Bullick:

- i. Did you yourself have any concerns about Mr Bell's capability to properly discharge the functions of DETI Minister at any material time during your tenure as First Minister and/or Leader of the DUP?

I always have some reservation when making any appointment. It is only when exercising responsibility in



Office that a Minister's metal and skill is tested and a proper judgement can be made. Some shine, others disappoint. I recognised, given how Mrs Foster had positively exercised the role as DETI Minister for such a sustained period, – particularly as it related to job creation and tourism - that a new Minister entering the department would have a difficulty when comparisons were being made. I therefore always encouraged new Ministers not to be reticent in asking a predecessor for the benefit of their experience. I believed Mr Bell had the capability to properly discharge the functions of DETI Minister – otherwise he would not have been appointed or retained in the post.

- ii. Were any such concerns expressed to you by other senior members of the DUP?

Not that I recall.

- iii. In either event, please provide such details as you can about these concerns and also explain why, notwithstanding them, you were content to either nominate Mr Bell for that office and/or continue to permit him to occupy it.

This has been covered by previous answers.

Appointment of Timothy Cairns as Minister Bell's Special Adviser

2. Please give as full an explanation as you can as to the process by which Timothy Cairns was appointed as Special Adviser to Jonathan Bell in his role as DETI Minister in or around May 2015. In the course of your response, please address the following issues:

- a. Why and by whom was Timothy Cairns assigned to Jonathan Bell as a Special Adviser?

I have no precise memory of the mechanics surrounding this appointment but as Timothy Cairns had fulfilled that role while Jonathan Bell was a Junior Minister I had, following discussions with my Party Officer colleagues, a conversation with Jonathan to see whether he was



willing to continue using Mr Cairns. I cannot remember where and when. (The aspect of the question relating to “why?” is covered in more detail at c. below.)

- b. Was Timothy Cairns assigned to Jonathan Bell as a Special Adviser against either Jonathan Bell or Timothy Cairns’ wishes (or both)?

I received no objection on the part of either man. If there had been an objection we would have gone back to the drawing board. That would have entailed assessing whether any other Minister was willing to make a switch and if not, we might have had to try to move Mr Cairns into Party HQ or let him go. This was, in my view, a promotion for Mr Cairns to a Ministerial SPAD post rather than being the SPAD of a Junior Minister. DETI was a very attractive Department with really interesting work and opportunities to develop. It included considerable travel which most young people would welcome.

- c. To what extent did Jonathan Bell or his Special Adviser have any input into these decisions?

As the Minister, Jonathan Bell was obviously part of the process. I spoke to him about the circumstances and ascertained he was content to appoint Mr Cairns. Timothy Cairns would have been consulted but Special Advisors do not choose the Department to which they are to be assigned, though they obviously can decide whether to accept the appointment, or not. There were a number of factors which were beyond the knowledge of Mr Cairns:

- 1. Contrary to the assumption reached by Mr Cairns, Party Officers were part of the process. (Indeed, a number of Ministers were also Party Officers);**
- 2. Mrs Foster wished to keep Andrew Crawford as her Special Advisor.**
- 3. Mrs Foster’s decision necessitated Mr Ewart moving out of Finance.**
- 4. There had been an issue in DSD (outside the scope of this Inquiry) which led us to believe it would be appropriate to move Stephen Brimstone out of DSD and into OFMDFM.**



5. **Dr Philip Weir’s medical knowledge made him a valuable asset for the Health Minister.**
6. **Mr Ewart’s friendship with Mr Storey, his knowledge of all Departments through his involvement in DFP as well as his Local Government experience made DSD a suitable fit, while Mr Cairns having worked with Mr Bell in OFMDFM made these final placings fairly easy and logical.**

Mr Cairns is quoted as saying the decision “defied logic”. As he was not in a position to know the factors which together provided the logic, as it applied to other departments, he might have been better not setting himself up as the judge of such matters. I suspect it is this opinionated trait that later contributed to his unacceptable behaviour in London.

- d. Do you consider that the provisions of the relevant Code governing the appointment of Special Advisers which was in force at that time (see **DOF-00592 to DOF-00600**) was complied with in all material respects in relation to this appointment? Please give reasons for your answer.

As, since my retirement, I have been wonderfully and gloriously liberated, I feel able to give a more expansive and less guarded answer than the confines of the question would necessitate or practising politicians would wish.

To at least understand the specifics of this issue it is necessary to appreciate the backcloth of that period. When we took up our posts after the revival of devolution we inherited a set of procedures which to the best of our abilities we sought to work within. Frankly, our abiding priority was to work the new, historic, yet difficult arrangements of forming and operating an Executive with age-old adversaries.

The formation of an Executive with Sinn Fein as our major partner in government was a bold and risky endeavour – one which was not universally popular. Consequently – for both Sinn Fein and the DUP – ‘delivery’ was of critical importance. We both needed

to show the Northern Ireland public that such an arrangement could not only function but could deliver a better life for everyone. In that climate “getting things done” was paramount and I seriously doubt whether the three Executive parties, that I am aware of, whose later appointment practices could be judged to have transgressed the Code, spent any time reflecting on protocols when making SPAD appointments. Looking at the Code *ex post facto* I believe if parties had, for even a moment, concentrated on the particulars of the Code it would have been relatively simple to obtain an approval role for the central party organisation by inserting a practice within the procedures referred to in Paragraph 11 of the Code without damaging the Ministerial control of the appointments process or violating the Code. For the DUP what has been described as the “drift” away from the protocols was not a deliberate attempt to circumvent the Code nor were the motives in any way malign. We wanted to avoid a repeat of a problem that had arisen in the past and were just too busy in a chaotic environment awash with urgent and pressing business to focus, as we should have, on the details of the Code. I believe DUP Ministers strictly fulfilled all the requirements of the code in precisely the way that was originally intended, until the Party Officers attuned those procedures for their own Ministers because of the unpleasant experience with one Special Advisor who was chosen by a Minister but did not work with the party. While I have no recollection of being present at the Officers’ meeting that determined future appointments would be undertaken by the Officers, I fully support the need for the party’s approval being a requirement in the appointments’ process. A key element of the role of a Special Advisor is to communicate with the party machine on the Minister’s behalf. To do this properly it is necessary for the Party to trust the individual receiving and disseminating views and messages. The protocols allow for the Permanent Secretary to be satisfied a candidate for the post of Special Advisor is suitable to join the Civil service; it

was the Officers' view that it was not unreasonable for the Party also to be content.

Furthermore, once a cadre of Special Advisors was established, using the Code by the original set of Ministers there was a desire, where possible, to retain their knowledge of the system and we were reluctant to see colleagues who had served the party's Ministers being dumped and left unemployed.

In addition, once a Special Advisor had gone through the procedures, when first appointed, it seemed extravagant and unnecessary to start the process afresh for the same SPADs when a Ministerial reshuffle took place.

I do not accept the picture being painted that the party centrally decided who each Minister's SPAD would be and imposed the decision upon them. Mrs Foster was not the only Minister who sought to retain a SPAD while moving department and every Minister would have been part of the process of SPAD appointments for their own department. Mr Storey was consulted and was pleased that Mr Ewart would be transferred to DSD. Others readily agreed to retain the Special Advisor used by their predecessor. The Minister was always the appointing authority though the party by inserting itself into the process undoubtedly curtailed and replaced appreciable parts of the Minister's role in the process.

It might be heresy to someone with a distinguished career as one of our most respected judges and to those who work in a more stable and conventional world but we did not dwell in that environment. We plied our trade on the front-line of Northern Ireland politics; we functioned in a rough and inauspicious climate and we did not live our lives consulting a rule book at every moment. We were coping with extreme situations in a governmental system and structure unlike anything experienced elsewhere. Of course, there are some common features but the nature of OFMDFM and its obligation to reach cross-party



agreements made central control a key and necessary part of the system if it was to work.

No matter whose version of this process the Inquiry determines cuts closest to the truth it is clear that the protocols were stretched to, and beyond, their limits. The parties moulded the Code to make it work effectively for them in the peculiar structures we operate. My explanation is not offered as a defence of the Party Officer's decision but solely as a contrite explanation and in the alternative, in mitigation.

In the course of preparing this response, you may wish to have regard to the evidence of Timothy Cairns at **WIT-20172 to WIT-20174, TRA-12606 to TRA-12612** and **TRA-12622/3**; the evidence of Jonathan Bell at **WIT-22624, TRA-12275 to TRA-12284** and **TRA-12318/9**; and the evidence of Timothy Johnston (in relation to the appointment of Special Advisers more generally) at **TRA-14111 to TRA-14139**.

Relationship between Minister Bell and his Special Adviser

3. Describe your view and understanding of the relationship between Minister Bell and his Special Adviser Timothy Cairns during the periods covered by the Inquiry's Phase 3 and Phase 4 work. In particular, but without prejudice to the generality of the foregoing, provide such details as you can of:
 - a. Any differences or disagreements between the Minister and his Special Adviser (including any such differences or disagreements as arose during the Ministerial trip to London on 9-10 June 2015);

I was not aware of any strain in the relationship between the Minister and his Advisor until I received an account, from Mr Johnston, about the fiasco in London at the beginning of June 2015 when it was reported that Mr Cairns had acted and spoken rudely, defiantly and



inappropriately to his Minister, in the presence of others and how Mr Bell had reacted angrily to his behaviour.

- b. The circumstances of Timothy Cairns' absence from the Department from in or around 10 to 29 June 2015 and of his return to work in the Department at that time; and

I was informed (I'm not sure by whom) that Mr Cairns Sensitive personal information redacted by the R

[REDACTED]

- c. The working relationship between the Minister and his Special Adviser.

Clearly after the London event the relationship had broken down. [So I take this question to mean the working relationship between the two men after the intervention of Mr Johnston and myself.] On each subsequent occasion when the Minister and his Advisor attended Party and Ministerial meetings the two men appeared to be on good terms and working as a team.

4. Set out whether you consider that the matters you have addressed above did have, or may have had, an adverse effect on DETI dealing effectively with the RHI issue during the periods covered by Phases 3 and/or 4 of the Inquiry's work.

I understand that both Mr Bell and Mr Cairns have indicated it did not. I do not believe it did. It may have impacted on the atmosphere within which they were working but it is a further step to say the two men were not mature enough to work through such a situation. Moreover, while the Special Advisor is an additional and useful resource who can assist in communicating with both departmental and party officials and acts as an advisor and sounding board, there is a large, experienced and talented team around the Minister of Civil Service Officials who provide advice and guidance and make recommendations.



5. The Inquiry has heard a variety of evidence in relation to a meeting which took place on or around 26 June 2015 for the purpose of repairing the relationship between Minister Bell and Mr Cairns after events in London and/or making arrangements for their future working together; and a series of meetings *prior* to this at which you (and Mr Johnston) met separately with Minister Bell and Mr Cairns respectively. In this regard you are referred to the evidence of Timothy Johnston at **WIT-74097 to WIT-74121** and **TRA-14154 to TRA-15196**; the evidence of Timothy Cairns at **WIT-20154 to WIT-20169**, **WIT-20178 to WIT-20185**, **TRA-12638/9** and **TRA-12669 to TRA-12696**; and the evidence of Jonathan Bell at **WIT-22616 to WIT-22626** and **TRA-12292 to TRA-12318**. As to this:
- a. Please set out as fully as you can your involvement in any meeting with either Minister Bell, Mr Cairns or both at or around this time in relation to the working relationship between them.

There seems to be a fundamental misunderstanding about the purpose of the three meetings that followed the London event. They were not part of a complaints procedure. If they had been I would not have been within a mile of them. Both the Department and the DUP have formal processes for such eventualities. Neither Mr Johnston nor I would have volunteered to be part of any investigation or complaints hearings.

Mr Johnston and I were solely attempting to ascertain whether it would be possible to reconcile two colleagues who were performing roles within the Administration. Obviously, in doing that we needed to establish the key elements of the breakdown not for adjudication purposes but to understand the nature and depth of the discord. Mr Johnston had briefed me about his phone conversations with both Mr Bell and Mr Cairns. We met both Mr Bell and Mr Cairns separately. The first meeting was with Mr Bell who outlined his criticism of Mr Cairns. He expressed his anger at the way he had been treated and referred to Mr Cairns having, in the presence of others, shown disrespect and insolence in attempting to command him to follow his instructions. When we met Mr Cairns he accepted, without prompting, that he had



acted improperly and inappropriately (He would not have had much choice as he knew his behaviour had been witnessed) and, though time has impaired my recall of the every detail of the altercation, there was sufficient overlay in the two accounts to gain a general picture of what had happened. Mr Cairns did, in his account, indicate that Mr Bell had reacted angrily. He added that Mr Bell's style and behaviour had been, from time to time, overbearing and aggressive.

Because Mr Johnston had outlined the nature of Mr Cairns' comments, made in their telephone conversation, I stressed in our meeting with Mr Bell that he needed to observe a standard of conduct befitting a Minister. (Though I had not at that stage heard any remarks directly from Mr Cairns.) In the meeting with Mr Cairns I expressed my astonishment at how he had conducted himself and made it clear I agreed with his admission that it was unacceptable.

However, we were not making an assessment of the degree of blame attached to either, nor were we making recommendations on sanctions. Our one task was to establish whether it was possible to encourage both men to re-commence working together. After the two meetings we concluded that there was sufficient goodwill to make it possible to resolve the matter and we started the groundwork to arrange a meeting and effect a reconciliation.

b. As to the meeting on 26 June 2015 in particular:

i. Were you aware that this meeting took place?

Yes.

ii. What role, if any, did you have in the arrangement of the meeting?

I asked Mr Johnston to set it up.

iii. To what extent, if at all, were you present at the meeting or did you take part in it? (Please be as specific as possible in relation to any involvement you had in this meeting in light of what appears to be a difference in evidence between Timothy



Johnston on the one hand and Messrs Cairns and Bell on the other as to whether or not you were in attendance).

I certainly intended to be present at the combined meeting, but I do not believe I was present for the substance of the meeting. I seem to recall being called away on urgent business (I may have left as the meeting commenced). I note there was a suggestion that if I was not present it might be concluded that Mr Johnston was acting outside the Code. I do not share that view. The Code sets out general areas of activity for Special Advisors, but it could never be definitive. This would be one of the areas where the Code refers to the overlapping of Party and Governmental issues. The task in this case was to reconcile two colleagues who were part of the government machine which would – in the Code’s language – be in the Administration’s interest. However, if the Inquiry does not accept this view then I take full responsibility for Mr Johnston being at the meeting. He was present because I instructed him to be there. I know I discussed the outcome of the meeting with him afterwards.

- iv. Please set out as clearly as you can what was discussed and agreed at this meeting.

In the discussion I had with Mr Johnston afterwards he indicated that both Mr Bell and Mr Cairns had agreed to reboot their working relationship. He was upbeat about the outcome and we agreed to monitor the new start.

- v. In particular, to your knowledge or recollection, were any allegations on the part of Timothy Cairns in respect of bullying of him by Jonathan Bell discussed?

I have no recollection of Mr Johnston referring to this issue or indeed the original allegations from Mr Bell. It was a *clear the air* meeting so both Mr Bell and Mr Cairns had the opportunity to raise any matter they wished. Mr Johnston and I were carrying out an unofficial reconciliation process and were focused on the next steps.



- c. In particular, to your knowledge or belief, was the issue of the RHI Scheme discussed or addressed in any way at any of the meetings held between you and/or Timothy Johnston on the one hand and Jonathan Bell and/or Timothy Cairns on the other. If so, please provide as full details as you can.

It was not raised at any time when I was present or in Mr Johnston's report of the reconciliation meeting. I find it hard to see why it would have been raised in the context of the issue that was being dealt with.

- d. Do you have any contemporaneous documentation or communications pertaining to the above-mentioned meetings or exchanges (including, for instance, typed or hand-written notes; emails; text messages; and any other communications or records, whether electronic or otherwise). (If so, please provide these to the Inquiry.)

I have no notes of these informal meetings in any form.

6. You are referred to the text exchanges which occurred between Timothy Johnston and Timothy Cairns on 27 June 2015, which Timothy Cairns later forwarded to Richard Bullick on 17 December 2016 (see the documents bearing Inquiry reference **IND-31977 to IND-31978**). As to the subject matter of these text messages:

- a. To the best of your knowledge, is it correct that Jonathan Bell's "*temper*" was not mentioned or dealt with at the meeting? If so, why not (in light of the complaints Timothy Cairns appears to have been making)?

There were only three meetings. Mr Cairns was present at two of them and the meeting I was involved in with Mr Bell, at which Mr Cairns was not present, took place prior to Mr Cairns making his allegations. In the meeting with Mr Bell I had touched on his conduct based on the brief report I had of Mr Cairns' conversation with Mr



Johnston. If it was raised substantially it would have been at the third meeting that Mr Cairns attended, and I did not. I do not believe Mr Cairns or anyone else raised the issue. Neither Mr Bell or Mr Cairns could be described as a shrinking violet. Both men are forceful and assertive and had the opportunity when brought together to make plain any concerns they had.

- b. To your knowledge, was Jonathan Bell warned about his temper and/or his future conduct, as Timothy Cairns trusted he would be?

To the best of my knowledge there were only the three meetings I have previously referred to. It is also worth repeating that the purpose of the meetings was not to arbitrate on complaints but to attempt a reconciliation.

- c. Were the concerns Timothy Cairns raised put “*on the record*”, as he requested? If not, why not? If so, in what manner?

I have no recollection of Mr Cairns asking for anything to be “put on the record”, if he had he would have been told there was no record and directed to one of the formal processes if he wanted something on the record.

Let me be blunt, if the exercise I was part of had been to investigate and adjudicate on what had happened in and surrounding the event in London I would, of course, have been putting a series of questions to Mr Bell – but not solely to him. The London mess was triggered by the unacceptable behaviour of Mr Cairns. He admitted it, then sought to make himself into a victim (or at least diminish the severity of his wrongdoing) by belatedly making allegations about Mr Bell’s past behaviour which he tells the Inquiry were of such enormity and scale that he is appalled they had not been treated seriously. Yet he did not previously consider them to be of such enormity or seriousness to bother lodging a complaint. Before he became a Special Advisor he had been part of the DUP’s headquarters staff. He knew what the complaints



procedure was, he knew that it was activated by formally submitting a complaint to the Party Officers through the Party Secretary but he never used it. This is not to conclude that Mr Bell did not have a temper, it is to suggest that Mr Cairns never considered it to be of such a magnitude to merit making a formal complaint - and only mentioned the matter to me when he (Mr Cairns) was exposed as having acted inappropriately.

- d. Timothy Johnston indicated that there were 'not too many people working to get the matter resolved'. What do you understand to be the issue to which he was referring? Do you agree that there were not too many people working to get it resolved? If so, why was that the case?

I assume he was referring to the unwillingness of Ministers and SPADs to switch and the lack of enthusiasm from Party Officers who were appalled by the report of the London debacle.

- e. To what issues do you understand Timothy Johnston to have been referring when he wrote that he was satisfied that the matter had been handled fairly "*dealing with ALL the issues raised*"?

I can only speculate that he is referring to all the issues raised at the joint meeting.

- f. Were you aware of Timothy Cairns' disappointment and annoyance regarding the meeting? To your knowledge, who else, other than Timothy Johnston, was made aware of Timothy Cairns' disappointment and annoyance regarding the meeting?

No. It was reported to me that both men were satisfied. I was not aware he had expressed disappointment to anyone.

7. In respect of the ongoing working relationship between Minister Bell and Mr Cairns from this point onwards (and, particularly, during the summer and autumn of 2015), please address the following matters:



- a. Who decided, despite the apparent difficulties in their relationship which arose around the time of the Ministerial trip to London, that Minister Bell and Mr Cairns should continue to work together?

Nobody decided they *should* work together. The consensus with Party Officer colleagues was that we should attempt to establish if they *could* work together.

- b. Given the difficulties which appear to have arisen in the working relationship between Minister Bell and Timothy Cairns, were any procedures put in place to monitor this issue, either formally or informally?

Relationships break down all the time in every facet of life and many are re-established if there are mature and willing parties involved. Mr Johnston and I decided to maintain a watching brief on the situation. That involved watching their interaction at party and Ministerial meetings. I know I asked Mr Bell on several occasions if things had settled down and I was told they had. Mr Johnston had asked both men to inform us if any problems arose.

- c. What arrangements, if any, were put in place at or following this meeting to ensure that the working relationship between Minister Bell and Mr Cairns did not impede the proper or efficient working of their Department?

Our process was not a formal one so our monitoring was informal. Our task was to see if two colleagues could be reconciled or whether there would need to be a parting of the ways. As no switch could be arranged to another department then Mr Cairns would have either been assigned a job at HQ or if no position could be found he would have to seek alternative employment. There was, of course, a formal route Mr Cairns could have taken through the Department if he had wished – though to



my knowledge no SPAD has ever used it - and Mr Bell could have insisted on Mr Cairns being dismissed if he had determined the relationship was still not working. I think it would have been very unlikely the Party Officers would have asked us to attempt a second reconciliation.

- d. What further steps, if any, did you take, or cause to be taken, in order to satisfy yourself that the working relationship between the two men was adequately repaired and/or functioning correctly?

I have outlined the steps that were taken. We observed the interaction between the two men at party and Ministerial meetings and they were told to inform us of any problems that arose.

- e. In your view, how did the nature of the relationship between Minister Bell and Timothy Cairns affect how the RHI issue was dealt with from June

During my time in Office I was not aware there was “an RHI issue”. Much of the period you reference was taken up by the fall-out from the Kevin McGuigan murder, attempting to assess the status of the IRA ceasefire and trying to avoid a collapse of the Assembly and Executive. Moreover, the crucial negotiations that led to the Fresh Start Agreement were undertaken during this period which was also interspersed with holidays (both summer and Christmas) and, in December, the announcement of my retirement and the party selection processes for, and the change to, a new Leader. My view of the potential impact on any departmental decision because of the relationship between Mr Bell and his SPAD is covered in 4. (above).

2015 to February 2016? (In this respect, you may wish to consider and comment upon the evidence of Timothy Johnston at **WIT-74096/7** and the evidence of Andrew McCormick at **WIT-10516**).

- f. Do you agree with Mr Johnston’s evidence (at **WIT-74112**) that, with



the benefit of the knowledge now available, it was a mistake for Mr Cairns and Mr Bell to continue to work together? If so, please explain why that view could not have been and/or was not formed at the relevant time.

I have not been following the detail flowing from the Inquiry close enough to form a considered view on the first part of this question. It should be said that the question is built on a futile premise. We do not live our lives in hindsight we take decisions and stand or fall by them. Is it right to attempt to reconcile two colleagues whose relationship has broken down? I think most people would think it was. As to the second part of the question, it was Mr Johnston who presided at the joint reconciliation meeting and later confirmed that both men could work together.

- g. Do you agree with Mr Johnston's evidence (at **WIT-74120/1**) that, with the benefit of the knowledge now available, it was a grave mistake not to instigate a more formal process to address Mr Cairns' concerns? If so, please explain why that view could not have been and/or was not formed at the relevant time.

No. A formal process within the Department or indeed within the party is instigated when someone who is so exercised about a matter that they decide to trigger the process. I am not sure a third party should, or would have the *locus standi* to start a formal process, when the complainant who has the capacity to do so has not bothered.

- h. Do you agree with Mr Johnston's evidence (at **WIT-74106**) that senior party colleagues of yours took the view that both Mr Cairns and Minister Bell should be dismissed from their respective roles? If so, please provide such details about this as you can.

I have no recollection of any colleague, senior or otherwise, making such a remark. Nonetheless, it is possible that one of the Party Officers,



exasperated by the London event, might have made such a comment. If so, it was not a considered view. The considered view was that we should attempt to establish whether a rapprochement was doable.

- i. Please give an account of what consideration, if any, you gave to dismissing either or both men from their respective roles at that time and the basis for any decision you came to as to that.

My energy was expended in achieving reconciliation.

8. Please provide your response to the suggestion on the part of Mr Cairns that you did “*nothing to protect*” persons who had brought bullying allegations (against Mr Bell) to you (see, for instance, **WIT-20179**).

This is further evidence of Mr Cairns reaching conclusions without knowing the facts of a situation. No person sought my protection from Mr Bell. On one occasion a colleague came to me to report an incident where it was claimed Mr Bell had shouted at a Special Advisor. My recollection of the episode is that the SPAD was due to accompany Mr Bell to a meeting but I had required her presence at a meeting with the Secretary of State as part of the Stormont negotiations which were dealing with her area of expertise. I spoke to the Special Advisor (who is more than capable of dealing with anyone herself) and she did not want any further action to be taken as she had already forcefully expressed her disquiet to Mr Bell. Nonetheless, I later spoke to Mr Bell and told him, in terms, not to repeat such behaviour and to conduct his interaction with his Advisor with civility. If anyone had brought a complaint about bullying to me they would have been directed to the appropriate formal complaints process.

9. Having forwarded the texts dated 27 June 2015 to Richard Bullick in December 2016, there were further text exchanges between them. In particular, Timothy Cairns sent Mr Bullick text message (see **IND-31974**),



indicating that it was his view that Mr Bell “*needs to be exposed*” but that he could not expose his part “*without putting boot into*” you (Peter Robinson). He also indicated a concern that text messages he had sent “*puts spads running the show back to fore*”. His text messages also indicate his view that his allegations of bullying against Jonathan Bell were not taken seriously by you, the then First Minister (see again **IND-31974**); and suggest that Richard Bullick was of the view that “*the party’s response to this [allegations of bullying made against Minister Bell by Timothy Cairns] and the other complaints was totally inadequate*”. As to the subject matter of these text exchanges:

- a. Please provide your response to the suggestion that you, as party leader and First Minister, failed to deal adequately with recurring issues linked to Jonathan Bell’s behaviour.

Mr Cairns appears to be attempting to shape the narrative with baseless claims for which he has not provided a shred of evidence. I have set out above the one incident (not a formal or informal complaint) that was drawn to my attention and the action I took. In politics a Minister having a temper is not a unique occurrence. There are very few people who do not have a flaw or weakness. Neither Mr Cairns nor I are among the very few. The party has formal processes to deal with individual complaints never mind “recurring” complaints and they were never instigated in relation to Mr Bell during all of my time as Party Leader.

- b. Please provide your response to the suggestion that the party’s response to Timothy Cairns’ allegations, and the other complaints made in this regard, was totally inadequate.

Mr Cairns did not submit any complaint to the party. He raised an issue about Mr Bell’s temper with us during a reconciliation meeting. No other complaints were submitted in this or any other context.



- c. In each case, set out (insofar as you can) the detail of allegations of which you were made aware; how and by whom you were so made aware; and the steps, if any, taken by you in response.

I have already dealt with this matter in response to previous questions. Perhaps Mr Cairns could list the allegations that he erroneously claims were brought to me that neither the party nor I had dealt with.

Approval of 2015 Regulations

10. To your knowledge and belief:
- a. Was there any guidance, instruction or encouragement given to DUP MLAs as to whether they should (i) attend the debate on the approval of the 2015 Regulations; and/or (ii) vote in any particular way (or abstain) in relation to the motion to approve the 2015 Regulations?

I do not have even a dim recollection of any of these matters. The Party's Assembly Whip may have maintained a record but I doubt if it would have been retained this long.

- b. How many DUP MLAs (i) attended the Assembly sitting at which the motion to approve the 2015 Regulations was debated; and (ii) voted in favour of it?

I have no personal knowledge of attendance or voting at this session. It was not one of my functions to keep or maintain records of this kind.

(Mrs Foster was asked to address these matters in her written evidence but indicated that she did not recall specifically the whipping arrangements in relation to the 2015 Regulations: see **WIT-20700**).

Party donors



11. Please set out, from your knowledge and belief (including your knowledge as a former DUP Leader):

a. Whether any persons or business who has received or is receiving subsidies from the RHI Scheme was a donor to the DUP (or any DUP representative) either in the sense of having made a donation which requires notification to the Electoral Commission or otherwise.

None, that I am aware of was a donor to the DUP. I would not have been made aware who made donations directly to the campaign of individual DUP members and I did not pick up any “chatter” indicating any of our members had received such a donation.

b. Whether any persons or business who otherwise benefitted from the RHI Scheme (for instance, as a supplier or installer or biomass boiler plant or as a supplier of wood chips or pellets) was a donor to the DUP (or any DUP representative) as above.

I am not aware of any such person or business.

c. Whether Moy Park and/or the Ulster Farmers Union was a donor to the DUP (or any DUP representative) during the period 2011 to 2016.

I do not believe, and have no knowledge suggesting, that either Moy Park or the UFU ever made a donation to the DUP. I suspect the same stands for Party representatives.

Responsibility for Jonathan Bell’s decision-making in summer 2015

12. In Andrew McCormick’s second witness statement to the Inquiry, at paragraph 125 (see **WIT-11286**), he observed that “... *given the clear way in which the DUP had enforced oversight by the First Minister in the context of NIRO, it is impossible for them to then insist that the sole responsibility for the decision to delay the tariff reduction lies with Jonathan Bell (as argued in the Statement*



by Arlene Foster to the Assembly on 19 December 2016).” As to this:

- a. What do you understand Dr McCormick 2 to be referring to when he refers to your ‘enforced oversight’ of the DETI Minister in the context of NIRO?

Firstly, Mr McCormick’s assertion is not necessarily sound. How one issue is handled does not support the contention that the same pattern would be followed on another occasion. If in one case someone had raised a matter with the First Minister and the FM or the FM’s Office had taken an interest in the subject, it does not follow they would take an interest in another issue if it had not been flagged up or, if it had, that it would be monitored in the same way. Secondly, I hope Mr McCormick’s use of somewhat pejorative language (enforced oversight) does not suggest he disapproved of FM taking an interest in DETI matters.

- b. Do you accept that you enforced oversight of the DETI Minister’s decision making in the context of NIRO?

I admit I had to Google to find out what NIRO was (such is my retention of the alphabet of organisations and projects within and alongside government). That might also indicate how reliable my recollection will be on matters relevant to the issue. To the best of my knowledge the issue was raised with me at a constituency level but I cannot remember by whom. I therefore took an interest in the issue following that enquiry. I have no recollection of the details.

- c. Regardless of your answer at c. above, please set out what involvement, if any, you had in relation to decision-making in respect of NIRO which fell (initially or primarily) within the DETI Minister’s responsibilities.

While I do not recall any role beyond the level of relaying concerns, asking questions and receiving information in this case, it was not



uncommon for me to ask Ministers what the issues were that impacted on their decisions if a query had been raised, and if necessary point out other factors and give advice. On most occasions the Minister's intended decision would have been sound. Indeed I would have done much the same with Ministers from other parties. I would only have sought a change in a DUP Minister's decision if there were exceptional circumstances, for example the Minister's decision would not attract sufficient support from Party colleagues or with our partners in government or it was contrary or at odds with party policy. If it seemed to be the wrong line that was being adopted I would have said so and raised the topic at a Party meeting. Similarly if non-DUP Ministers were pursuing an issue that was concerning me I would raise the issue with colleagues and we would decide if it was of sufficient importance for us to set about blocking its passage.

- d. Please provide your response to the suggestion that it was, would be or is wrong to insist that the sole responsibility for the decision to delay the introduction of tiering to the RHI Scheme in summer/autumn 2015 lies with the then DETI Minister.

I had not been approached by anyone about any issue relating to RHI so I made no enquiries about this matter. Whether there were other factors causing the Minister to delay a decision is a matter the Inquiry will want to consider.

Governance and conduct of Special Advisers

13. Do you agree with the evidence of Timothy Cairns (see **WIT-20181**) to the effect that, during the period or during periods when you were DUP Leader, "*Timothy Johnston... ran all matters relating to the party*" and that, he believes, "*Mr Johnston in running party matters while a SPAD was operating outside of what he was permitted to do*"? Please give reasons for your answer. In the event that you do so agree, please explain, to your knowledge, how this came to be the position.

If his allegation is intended to suggest that Mr Johnston was running the operation and functioning of the party then it is palpably absurd. Mr Johnston was fully employed as my Special Advisor working hours well beyond what would be expected. The idea that in addition he was moonlighting as a DUP manager involved in all the party's business is risible. If, on the other hand, it is intended to convey the fact that his role as a Special Advisor to the First Minister required his regular and frequent involvement in aligning the position of the Party in the Assembly with the Party in the country then, of course, that would be accurate. However, that was part of his remit as a Special Advisor and not contrary to it.

14. Do you consider that, in the event of the return of devolution in Northern Ireland, arrangements as to the governance and conduct of Special Advisers could or should be improved? If so, how? Please give reasons for your answer. (In your response you may wish to address the procedures which might apply in the context of a dispute or breakdown in relationship between a Minister and a Special Adviser; the arrangements for appointment of Special Advisers; the arrangements for oversight of Special Advisers; and whether, and the extent to which, appointing Ministers should also be responsible, as well as accountable, for the actions of their Special Advisers.)

Yes. I think for the protection of Special Advisers there is a need for greater clarity on the boundaries of their role. The Code was probably drafted by plagiarising a UK document and does not reflect the peculiarities of our system.

Changes are needed to the Code on SPAD appointments to align what is sensible and workable with the Code, rather than parties trying to re-shape the code to what works for them. I think that means the party leader's approval should be required for the list of candidates the Minister has had compiled (in accordance with Para 11 of the Code) and from which he/she will choose the Special Advisor. If the role requires a working relationship with the party an appointee cannot be foisted upon it. There is no need for an appointee to be a Party member but there must be a reasonable presumption that the appointee



will be able to work with the Minister's party. However, if the Minister wishes, a previously employed SPAD should be capable of being appointed to another Minister without the longer evaluations of multiple candidates, the checks and the interview process.

In terms of the role they perform, there is a strong case for more notation about advice given and actions taken (with the caveat that some information given to the Minister will be confidential).

As far as a dispute or breakdown in the relationship between a Minister and a Special Advisor is concerned, it needs to be remembered that the SPAD's primary function is to support and assist the Minister, so ultimately a SPAD can be dismissed and replaced. However, if the breakdown is occasioned by the Minister acting improperly then the formal Departmental grievance procedures should be followed. In my view no change is required though perhaps greater awareness of how to get assistance in such circumstances might be useful. Given the abuse levelled at those who tried to effect a reconciliation outside the formal processes in the Bell/Cairns case it may be more difficult to find volunteers for a mediation role in the future. No good deed goes unpunished.

It is more difficult to suggest rules that might apply to the oversight of SPADs. Ministers will only be aware of that part of the Special Advisor's work that occurs within the range of their radar. It is in circumstances where a SPAD strays outside the Minister's direction or acts without authority that I suspect the Inquiry is considering. I can only suggest that there should be a duty on Permanent Secretaries if they are aware or learn of such concerns to hold a confidential (but minuted) conversation with the Minister. The warning or other discipline that follows would depend on the severity of the overreach or offence and whether a similar breach had occurred before.

I cannot recommend any change to the normal convention in relation to responsibility and accountability. Ministers are accountable for everything that happens in their own Departments but can only be judged responsible for

actions and decisions they initiated or were initiated with their knowledge and consent. They should also be responsible for decisions and actions taken to which they did not consent but did not prevent if they could reasonably be judged to have been capable of doing so.

Lessons to be learned

15. In light of your experience of politics and government in Northern Ireland, please also offer any thoughts you may have as to (a) how problems which have been identified by the RHI Scheme (including in the course of evidence given to the RHI Inquiry) might be addressed in the future and (b) any recommendations as to governance or practice which you consider would be useful in addressing these issues and/or ensuring that they do not recur in future.

The decision making processes of government are multi-layered. It is a recognition that no matter how well intentioned and capable human beings are in general terms we can all make mistakes. That's why we have appeal courts and most public bodies and private companies have some tribunal, review process or professional appellant body to adjudicate on errors that have been made. In the normal gestation of any government decision it is expected that an error or omission made at one level will be caught and corrected at the next. In the case of the RHI scheme it appears from the elements of your Inquiry I have picked up that weaknesses in the project were missed at every level. Consultants, Civil Servants, Ministers, Special Advisors, Senior Officials and the Department's Assembly scrutiny committee. In addition the wider Assembly interest seems to have been in favour of prolonging the defective scheme. Even the Press dog did not bark (until it was highlighted elsewhere and too late). Almost alone there was a whistle-blower who identified the potential problem but seems not to have been properly heeded. It was a perfect storm.

Once the defective scheme had bolted from the stalls it took some time before its failings were detected and the process of determining how to correct its

flaws and implementing those changes was also, self-evidently, too slow.

The Inquiry will have its own list of failings which, because of the forensic detail of the work carried out, will be much more extensive than mine; but looking at the core stages that I have identified it is possible to put in place processes where a future scheme in any Department could be more closely monitored, evaluated and audited at key stages of its conception, birth and life.

- a. Because of its size, the Northern Ireland Civil Service cannot retain within its ranks the breadth of expertise on every subject that will at times be required. As the scale of GB operations allows it to enjoy greater access to know-how there should be a presumption in favour of piggy-backing Westminster legislation and scheme-regulations unless our local circumstances require them to be tweaked or recast. This could be accomplished by a cut and paste approach for more complex legislation or by the Assembly voting in favour of a legislative consent motion.
- b. Early detection of a project veering off-course is essential and will only be discovered if a planned early warning assessment is carried out. The extra cost of such additional processes will mean the procedure may have to be used sparingly, depending on the potential downside if a project were to go awry.
- c. Once alerted to a scheme going off-line each Department should have in place a planned recovery protocol. The Minister should be immediately informed and would have a duty to report to the FM and dFM the nature of the problem and, when needed, seek an early slot on an Executive Agenda for such decisions as would be required and such Assembly time as needed. Officials would compile a list of options within a stipulated time-scale and recommendations should be with the Minister according to an agreed time-table. The Assembly Standing Orders may need to be amended to allow more urgent action as the Assembly and Committee procedures can be lengthy and cumbersome.
- d. It seems that a whistle-blower had identified at least part of the problem with this scheme but the warning was not treated with the appropriate urgency and its concerns not taken sufficiently seriously. There will be

a tendency within any department to believe it knows its business best and is most invested in closing down any spotlight on its failings. While every complaint of this kind will not turn out to be accurate it is nonetheless better to lean on the side of safety. All whistle-blower complaints or serious challenges to how schemes or programmes are operating should be confidentially shared outside the department that is involved. Perhaps the FM and dFM should be copied-in and therefore, in addition to the Departmental Minister, they would be in a position to monitor the department's response to the issue(s) raised.

General

16. To the extent (recognising that you are not an enhanced participant in the Inquiry) that you are aware of the evidence of any other witness or participant contradicting your evidence on a significant issue, or being materially incomplete in respect of any significant issue, you should take this opportunity to address those issues by way of further written evidence (to the extent that the said issues have not already been addressed in your existing oral and written evidence).

I am not aware of anyone contradicting my evidence. Where matters have been raised in the course of the Inquiry that I was not asked to address initially your further list of questions has given me the opportunity to respond.

17. Please set out any further significant evidence or observations you have or of which you are aware, having regard to the Inquiry's Terms of Reference, which has not been adequately addressed in your previous written evidence or to which you wish to draw the Inquiry Panel's attention.

It would be a stretch to present my response to this question as either significant or evidence but they are my observations.

There has been some commentary from the panel about DETI being such an important department that the Ministerial appointment was especially significant. Needless to say, as under the d'Hondt rules I chose our

departments, after consulting the Party Officers, I regarded all our choices as being key departments. However, I could not be convinced that DETI is more important than my first d'Hondt choice of Finance and I expect the public would take some persuasion before accepting it was more important than Health. I considered all our departments as important.

The following comments are submitted because of the public reaction to the scrutiny the Inquiry was tasked to undertake. The Executive and indeed the Ministers who peopled DETI collectively made and implemented thousands of decisions and undertook numerous missions to improve the lot of everyone who lives in Northern Ireland.

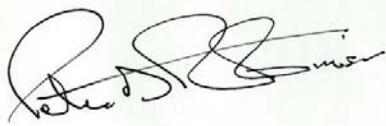
The reason the Inquiry has been doing its work was to investigate a failure. Obviously thousands of working hours have not been spent highlighting the countless advances made by the Assembly and Executive and in particular the many successes of DETI. As a consequence the public view of the Assembly and Executive is skewed. The completely understandable media exposure has left the impression that devolution has been a disaster, is beyond the competence of local politicians and is probably not worth restoring. That would not be a fair or justified conclusion.

My hope is that the work of the Inquiry will lead to changes that will improve governmental practises and the embarrassing exposure of undoubted failings will lead to strengthening and improving the way work is done in the future.

Statement of Truth

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

Signed:



Dated: 22 November 2018