

**The Report of the
Independent Public Inquiry
into the Non-domestic
Renewable Heat Incentive (RHI)
Scheme**

Volume 2 — Chapters 20–41

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**The Report of the Independent Public Inquiry into the
Non-domestic Renewable Heat Incentive (RHI) Scheme**

and

Department of Finance

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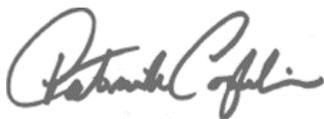
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Chapter 20 – Emerging awareness in the public sector of the RHI and its flaws

- 20.1 The Inquiry has received written and oral evidence from many witnesses – including officials, Ministers and SpAds in both DETI/DfE and DFP/DoF – not one of whom realised the inherent weaknesses of the non-domestic RHI scheme nor the real reasons why, by late 2014 into 2015, it had become so popular with soaring uptake levels, or why the usage patterns and budget impacts were so different from those modelled originally. While both Dr Crawford and Timothy Cairns were aware, by July 2015 at the latest, of the perverse incentive to waste heat in order to gain tariff,¹⁰⁴⁹ the Inquiry was told that the first time that many others were alerted to the fact that the subsidies exceeded the cost of the fuel was after publication of the very critical report by the Northern Ireland Audit Office in June 2016, more than four years after CEPA's addendum tariff proposals in February 2012 had been adopted by DETI and approved by DFP for the launch of the RHI scheme later that year.
- 20.2 In marked contrast, a number of other Government and public sector bodies soon became aware of the attraction of the RHI scheme and its distortive impacts on the heat market, even, in some instances, actively promoting it and increasing the budgetary pressures which DETI would then face.
- 20.3 This was also true for the private sector where, as discussed in chapter 21 of this Report, within three weeks of the launch of the non-domestic RHI scheme in November 2012, the attraction of the medium biomass tariff with no tiering became very obvious to a number of individuals and commercial organisations. Indeed, the Inquiry was told by boiler installers that initial uptake in relation to the scheme was slow because potential users thought it was too good to be true and therefore hesitated to make the necessary investment.¹⁰⁵⁰
- 20.4 One might expect, however, that there would be a more open and frank exchange of information between public sector bodies in relation to potential concerns with the scheme than could be anticipated from the commercial sector, since public sector bodies ought to be more attuned to the requirement of securing value for public money. In the following sections of this chapter, examples of information received by organisations in the public sector and understanding of the scheme gained by them are discussed, as well as the extent to which this was then shared, or not, with the Department which was responsible for the running of the scheme.

Cross-departmental co-operation

- 20.5 The Inquiry considers that strong and transparent co-operation within and between the Departments of any devolved administration is essential, particularly where the expenditure of large sums of public money are at stake. In Northern Ireland the pledge of office taken by Ministers and junior Ministers, contained in the Ministerial Code, obliges them to “serve all the people of Northern Ireland equally” and “to promote the interests of the whole community.”¹⁰⁵¹

1049 And the Deputy Secretary in DETI, Mr Stewart, was informed by Mr Cairns at some point – probably during the summer of 2015 – of concerns about potential fraud or abuse of the scheme (discussed further in chapter 29 of this Report).

1050 WIT-195711

1051 DOF-00004

20.6 Minister Foster, in her letter to her ministerial colleagues on 21 June 2011, referred to in chapter 6 of this Report, highlighted the importance of inter-departmental and agency co-operation, emphasising that for opportunities to be maximised and for the optimum potential of the local renewable heat market to be reached there needed to be a cross-departmental approach.¹⁰⁵² Her letter recorded:

“To this end, I would propose the establishment of a Renewable Heat Strategy Group to consider issues relating to the development of the renewable heat market.”

The new group would sit under the Sustainable Energy Inter-Departmental Working Group (SEIDWG), which the DETI Minister chaired.

20.7 SEIDWG had been established with the aim of ensuring a co-ordinated approach across the Northern Ireland Executive to the promotion of sustainable energy. The objective was to enable Departments to ensure that energy related policies and practices were in concert with each other, with the aim of maximising the use of public funding and delivering value for money in the support of sustainable energy initiatives. It was established in 2008 and met for the first time on 28 January 2009. The final meeting of SEIDWG took place on 15 January 2015, after which the group was reconstituted to focus on wider strategic energy issues.

20.8 The Renewable Heat Strategy Group was a sub-group of SEIDWG which was specifically to focus on renewable heat and, as noted above, was to “consider issues relating to the development of the renewable heat market”. It was originally to include membership from DETI, OFMDFM, DFP (Central Procurement and Properties), DRD, DARD, DOE, DHSSPS and Invest NI. It represented one means by which to encourage effective inter-departmental working in the area of renewable heat. There were, of course, other less formal means by which such cooperation and information-sharing could have been achieved; but such a sub-group, with representation from a number of Departments and a specific focus on renewable heat, was obviously a potentially extremely helpful way of securing these objectives.

20.9 The evidence seen by the Inquiry confirmed that the Renewable Heat Strategy Group was established in January 2011. However, it met upon only three occasions on 18 October 2011, 4 July 2012 and 20 May 2013, albeit the intention from the papers at the time was that it would meet twice a year.¹⁰⁵³

20.10 The Group clearly had good intentions as a forum for bringing people together from across Departments. It appears to have been briefed by, and had its meetings supervised by, Peter Hutchinson and Joanne McCutcheon, with the latter chairing its meetings.¹⁰⁵⁴ The Group’s Terms of Reference were included in the papers for its first meeting in October 2011.¹⁰⁵⁵ It had three primary objectives, the first of which, in relation to the Northern Ireland RHI, was to:

“Advise on the design and implementation of the Northern Ireland RHI and, following implementation, provide an ongoing monitoring and advice function to ensure that the RHI (and any other policy initiatives) are supporting the delivery of the 10% renewable heat target.”¹⁰⁵⁶

1052 DFE-143714 to DFE-143716

1053 See the group’s Terms of Reference at DFE-63876: “Following Executive endorsement of the strategy/road map and the full implementation of the RHI, the group will meet biannually to review progress.”

1054 DFE-63969

1055 DFE-63870 to DFE-63884

1056 DFE-63874

- 20.11 The Inquiry also notes that, at the meeting on 4 July 2012, one of the Action Points agreed was that there should be discussion between DETI and DARD about interaction between the NI RHI and Government grant schemes.¹⁰⁵⁷
- 20.12 The Inquiry was unable to discover precisely why the Renewable Heat Strategy Group ceased to meet after May 2013. The only explanation which was provided to the Inquiry was pressure on resources. Ms Hepper's written evidence to the Inquiry was that:
- “The work of the group was paused, following discussion with the Minister in the context of the wider SEIDWG work programme. This was because the Division and the Renewable Heat Branch was under considerable resource pressures and could not sustain the servicing of a number of groups associated with SEIDWG, including the Renewable Heat Strategy group [sic]. With a very small team working on renewable heat further prioritisation was required and the focus had to be on the work to complete the RHI and work on a wider Road Map/Strategy or affiliated issues needed to be given a lower priority at that time. The Top Management of the Department would have been made aware of the Minister's decision on this.”¹⁰⁵⁸
- 20.13 The Inquiry considers it unfortunate that the work of the Group was paused, particularly when the business case for the NI RHI scheme (discussed in chapter 11 of this Report) had indicated that an inter-departmental Renewable Heat Strategy Group would monitor the progress of the RHI in terms of achieving the necessary 2020 Programme for Government target.
- 20.14 Minister Foster's oral evidence to the Inquiry was that she believed she was made aware of the Group's work being paused due to resource pressures at the time but that she did not think she had realised the significance of it at the time, in terms of the Group's monitoring role for the scheme. Minister Foster emphasised that she believed the work to have been 'paused', rather than 'stopped'¹⁰⁵⁹ – although it appears to the Inquiry that the work of the Group was not resumed, at least during the period of the RHI scheme being open to applications.
- 20.15 The absence of the Renewable Heat Strategy Group, after its work was paused, is likely to have reduced the opportunity and/or incentive for the sharing of information relevant to the RHI scheme between Departments. Such a group, if it also had private sector involvement (such as the earlier Oversight Group which oversaw the AECOM/Pöyry work, discussed in chapter 2 of this Report) could have been an additional means by which DETI could have obtained information relevant to the RHI scheme from a variety of sources. In this respect, the Inquiry notes that there had been a recommendation from the ETI Committee in its renewable energy inquiry that there be a group which included representatives from the renewable energy sector to advise on Government policy on renewable energy;¹⁰⁶⁰ and that there was strong support for the Renewable Heat Strategy Group in the DETI 2011 consultation, which indicated that it might undertake a range of monitoring functions.¹⁰⁶¹
- 20.16 In any event, despite the emphasis on cooperation by Minister Foster in her letter of June 2011, in practice cooperation with, and the supply of information and assistance to, DETI from other public sector bodies rarely seems to have emerged in relation to the NI RHI scheme.

1057 DFE-64010

1058 WIT-16705; See also TRA-01798 and TRA-02295

1059 TRA-08525

1060 DFE-380878 (from an update provided to the ETI Committee in August 2011)

1061 See the analysis of consultation responses at DFE-05745

20.17 Mr Sterling, the DETI Permanent Secretary during the development, and early operation of the RHI scheme, told the Inquiry that a particular cause of concern was to “break down barriers between Departments” and he thought that there was still “a little bit of silo-based mentality in Departments”.¹⁰⁶² Sir Malcolm McKibbin, Head of the Northern Ireland Civil Service between 2011 to 2017, stated that:

“The culture should’ve existed that would have allowed people, when they saw a problem with the use of public resources that that should have been flagged up to a more significant level.”¹⁰⁶³

20.18 The following sections highlight some of the shortcomings in this regard which came to light in the course of the evidence heard by the Inquiry.

Department of Justice and the Desertcreat Project

20.19 On 27 November 2012, when the NI RHI regulations had been in operation for less than a month, Brian Hood, then Managing Director of Sheridan & Hood Limited, a building services and engineering company, wrote to David Ford, then Minister at the Department of Justice (DOJ). Sheridan & Hood had been asked to provide cost proposals for a tender in respect of a biomass energy centre for the Desertcreat training facility (then a proposed new police, fire and prison training college to be situated near Cookstown).

20.20 Mr Hood noted that the energy proposals by the consulting engineers for the project involved two 1MW biomass boilers with extensive underground heating distribution pipework fuelled with woodchip and running for approximately 3,000hrs per annum. He acknowledged that boilers of such magnitude fell outside the then current NI RHI scheme but suggested, as an alternative, individual 99kW biomass boilers for each of the ten (of 12) buildings to be heated. He suggested that these would be small in physical size and would not be unsightly, being located adjacent to each building. The remaining two buildings would require larger plants, which would also qualify for subsidy under the scheme.

20.21 Mr Hood costed the heating proposals specified by the consulting engineers at £1.5 million with running costs of around £199,337 plus VAT per annum. Using biomass pellets and the individual 99kW boilers which he proposed, he estimated that the annual fuel bill would be £130,494 which, deducted from an annual RHI subsidy of £175,230, would leave an annual surplus for the college of £44,740. He pointed out that the heating system which he proposed, operated over the 20-year grandfathered lifetime of the NI RHI scheme, should yield a total net income of £894,800 as compared to a deficit in excess of £2 million under the arrangement proposed by the consultants.¹⁰⁶⁴

20.22 Mr Wayne Cullen of BS Holdings Ltd, the relevant installers and another company connected to Mr Hood, had taken the precaution of confirming through an RHI enquiries email account (which appears to have been operated by Ofgem)¹⁰⁶⁵ on the same date as the Sheridan & Hood letter, 27 November 2012, that completely separate generating plants each serving their own separate heat distribution systems would meet the NI RHI scheme criteria. Although the response to Mr Cullen indicated that appropriate evidence would have to be supplied with the

1062 TRA-16578 to TRA-16580

1063 TRA-16787

1064 WIT-197224 to WIT-197225

1065 TRA-04875 to TRA-04877

applications for accreditation, the response stated that: “According to the details you have provided it seems that your clients would meet the criteria to be able to apply for multiple installation.”¹⁰⁶⁶

- 20.23 Mr Hood’s letter to DOJ was sent by email and the email was said to have been copied to four MLAs: Mr Sammy Wilson, DFP Minister; Mr Danny Kinahan; Mr Patsy McGlone; and Mr Ross Hussey.¹⁰⁶⁷ Mr McGlone, who was then the chair of the ETI Committee, told the Inquiry that had he seen the letter he would have passed it to the clerk of the Assembly Justice Committee, but he had no recollection of having received it.¹⁰⁶⁸ Mr Wilson, Mr Kinahan and Mr Hussey each told the Inquiry in written statements that they had no recollection of receiving the letter either.¹⁰⁶⁹ As appears from the further exchanges below however, it is clear that DOJ did receive the letter.
- 20.24 On 10 January 2013 Mr Cullen received a reply on behalf of DOJ to Mr Hood’s letter and to an email he had sent to DOJ on 21 December 2012. With regard to the proposal that a number of individual 99kW boilers would be economic, the Desertcreat programme director, Mr McCrossan, said:
- “It may be possible to split the circulation to meet the maximum size permitted within the current design. ...However, whether it is appropriate for a Government funded facility to attempt to exploit possible loopholes in the RHI and recover the benefit is an interesting question. The principle of deliberately splitting the load over a number of small boilers not linked together, albeit on one site, could be interpreted as a deliberate attempt to circumvent the intent of the RHI, which is to give priority to smaller installations. We are not certain that this is something that the Government would wish to pursue.”¹⁰⁷⁰
- 20.25 Mr Hood told the Inquiry that, immediately upon receipt of the letter of 10 January, his company made a telephone call to Mr Hutchinson at DETI who confirmed that there could be no objection to multiple boilers each separately installed in separate buildings. They explained the nature of the response that had been received from DOJ and the suggestion that their proposal of multiple boilers was wrong or in some way illegitimate, but, according to Mr Hood, Mr Hutchinson: “came back and said we were correct”.¹⁰⁷¹ The Inquiry notes Mr Hood and Mr Cullen had already liaised with Mr Hutchinson and Ms McCutcheon during 2012 in order to familiarise themselves with the proposed RHI scheme.¹⁰⁷²
- 20.26 A response in accordance with Mr Hutchinson’s advice was then sent by Mr Cullen to the Desertcreat project co-ordinator on 11 January 2013.¹⁰⁷³ After a further communication from the Desertcreat project team of 1 February 2013 in which it maintained its opinion that “this project could not obtain RHI approval for the system as suggested by Sheridan & Hood”,¹⁰⁷⁴ as well as raising other issues of concern with the Sheridan & Hood proposal, Mr Hood wrote

1066 DFE-345416

1067 WIT-197225

1068 TRA-03050

1069 WIT-50012; WIT-166210

1070 WIT-197487 to WIT-197491

1071 TRA-04523

1072 TRA-04524

1073 WIT-197492 to WIT-197493

1074 WIT-197509 to WIT-197510

a further letter to the Minister for Justice on the same date, 1 February 2013. In this letter Mr Hood asked that DOJ reconsider its approach and suggested a meeting to discuss the issues raised by his correspondence, including the suggestion that “your department seek someone from the RHI NI team along to agree what can or cannot be done within RHI scope...”¹⁰⁷⁵

- 20.27 On 21 February 2013 Mr Hood received a reponse from the Minister of Justice referring to his communication with the Desertcreat programme team and continuing in the following terms:

“I am satisfied that the Programme Team has properly considered the correspondence from BS Holdings Ltd and am content with their advice not to re-open the issue.”¹⁰⁷⁶

This correspondence appears to have brought the discussion about the possible use of the Sheridan & Hood proposed heating scheme at the Desertcreat site to a close.

- 20.28 However, the same potential ‘saving’ of public money in respect of the Desertcreat project by the use of multiple boilers was raised by Mr Cullen in emails sent to the then DFP Minister’s Assembly email address on 6 December 2012 and again on 10 December 2012, when he also contacted Mr McGlone MLA in whose constituency the project was located and who was known to be very supportive of its development.¹⁰⁷⁷ Mr McGlone also tabled an Assembly question relating to the use of biofuel at the college on 5 December 2012, but it did not raise the points about which Mr Cullen and Mr Hood had made representations, in particular what Mr Cullen described as: “the potential massive savings of taxpayers [sic] money.”¹⁰⁷⁸

- 20.29 While the Inquiry appreciates that the proposed multiple medium-sized boilers were to be installed in separate buildings, it seems clear that the Desertcreat programme team, including Mr McCrossan, perceived the proposal as exploiting a ‘loophole’ in the scheme, and constituting a deliberate attempt to circumvent the intention of the scheme. Mr Hood’s letter also explained in clear terms how it was possible to make use of the scheme not only to secure heat which was essentially free but, also, in a way which generated a profit from public funds. Notwithstanding this, the Inquiry was not presented with any evidence of any relevant enquiry/warning being sent to DETI by DOJ.

- 20.30 The Inquiry was provided with a witness statement from Nick Perry, the Permanent Secretary of DOJ, which discussed DOJ’s involvement in this episode.¹⁰⁷⁹ In addition, in representations made to the Inquiry, DOJ has emphasised that it satisfied itself that Ofgem, the scheme administrator, was already aware of, and concerned about, the potential to seek to manipulate the NI RHI scheme by using smaller, multiple boilers. This point is made by reference to the Desertcreat project team’s response to Mr Cullen of 1 February 2013,¹⁰⁸⁰ in which it was noted that:

“Ofgem, who are responsible for administering the scheme in Northern Ireland, are particularly concerned with efforts to access the RHI, via system manipulation, with multiple boilers below the 100kW limit.”

Reference was then made to Volume 1 of the Guidance published in relation to the NI RHI scheme, particularly the section dealing with eligibility.

1075 WIT-197507 to WIT-197508

1076 WIT-197605

1077 WIT-197396 to WIT-197399

1078 WIT-197394 to WIT-197395

1079 WIT-91009 to WIT-91011

1080 WIT-91080 to WIT-91081

- 20.31 However, it does not appear that the Desertcreat project team consulted Ofgem directly, although they clearly did consider the published NI RHI Guidance. Ofgem’s approach to the interpretation of the NI RHI regulations relating to multiple boilers is discussed in detail elsewhere in this Report. It may well have been the case that the passage in the NI RHI Guidance relating to multiple installations led the project team to consider that the NI RHI scheme could not be ‘exploited’ in the way which had been suggested by Sheridan & Hood. In fact however, it could be so exploited, even though that appears to have been contrary to DETI’s original policy intent.
- 20.32 In the Inquiry’s view, DOJ could and should have done more to communicate this potential issue to DETI, particularly in light of how insistent Messrs Hood and Cullen had been about the correctness of their approach. It would not have been a difficult step for someone in DOJ to contact someone in DETI, as Mr Hood suggested in his correspondence, in order to ascertain whether the scheme could be used in the way in which it had been suggested (which DOJ had considered involved the exploitation of a loophole) and, if so, to ascertain whether DETI, which was responsible for the scheme, was aware of this. DOJ may well have been right to have accepted its programme team’s advice not to re-open the design of the biomass heating strategy for the proposed college in order to avail of the NI RHI scheme (for a range of different reasons) but that does not mean that it could not have drawn the issues raised with it to the attention of DETI for its information or further enquiry.

Invest NI

- 20.33 Invest Northern Ireland is a Non-Departmental Public Body (NDPB) the sponsor or parent body of which was DETI, now DfE. It was established by and operates under the Industrial Development Order (Northern Ireland) 1982 as amended by the Industrial Development Act (Northern Ireland) 2002 and its functions are dealt with in section 2 of that Act. Section 2 provides that it will “exercise the functions which immediately before the appointed day were functions of the Department” and a number of pieces of legislation are then listed. One of those pieces of legislation is the Energy Efficiency (Northern Ireland) Order 1999, article 3 of which provides:
- “Invest Northern Ireland may take such action as it thinks appropriate for the purpose of promoting the efficient use of energy in industry.”
- 20.34 The Inquiry heard oral evidence from Alastair Hamilton, then Chief Executive of Invest NI, as well as from Jim Clarke, an Invest NI official, and Alastair Nicol, an independent expert contracted by Invest NI to perform certain services for its client companies relevant to the RHI scheme.
- 20.35 Mr Hamilton explained that the primary function of Invest NI was the delivery of projects on behalf of the Department and also on behalf of the Northern Ireland Executive, in the execution of its Programme for Government.¹⁰⁸¹ Independence was exercised in relation to the adoption of the target or objective and managing the available resources, both people and budget, in the delivery of that target or objective. Apart from that function, Invest NI is completely aligned to all of the Government codes and practices, including Managing Public Money Northern Ireland, the Nolan Principles and the various other principles that govern public life.¹⁰⁸² Its functions are to be carried out in the public interest in the spirit, as well as the letter, of the law. It is a body that must observe high ethical standards and achieve value for money.¹⁰⁸³

1081 TRA-13482

1082 TRA-13471

1083 TRA-13472 to TRA-13473

- 20.36 Invest NI is an organisation which has about 50,000 customer engagements a year and 6,000 live letters of offer.¹⁰⁸⁴ In order to discharge its functions it has recruited to its staff a significant number of individuals from the private sector for the purpose of benefiting from their commercial knowledge and experience. Mr Clarke is but one example. Mr Hamilton confirmed that no one on the senior team at Invest NI was aware of the non-domestic RHI scheme until probably somewhere in 2014-15¹⁰⁸⁵ and he agreed that the commercial knowledge and experience to which Invest NI had access could have been available in the course of the development of the scheme had it been sought by DETI.¹⁰⁸⁶
- 20.37 Mr Hamilton explained that the equivalent body in Scotland discharges the Scottish Government's responsibilities on energy efficiency in the same way as it discharges export, trade and inward investment.¹⁰⁸⁷ In such circumstances it is difficult to see why Invest NI was not consulted at the development stage of the non-domestic RHI, if not for delivery of the project at least for the benefit of advice as to the commercial market development of the scheme. In oral evidence the Inquiry notes that DETI Finance's Mr Cooper suggested that Invest NI would have been a more natural home for RHI,¹⁰⁸⁸ a view that was shared by his finance colleague, Bernie Brankin.¹⁰⁸⁹
- 20.38 Mr Hamilton said that he had been unaware of an official Invest NI presence on the Renewable Heat Group until the Inquiry had commenced. He emphasised, however, that representatives from Invest NI were only present on that group to provide technological rather than commercial or economic advice.¹⁰⁹⁰
- 20.39 The Inquiry also heard oral evidence from Mr Alastair Nicol, an engineer from Element Consultants, who worked as a consultant for Invest NI.¹⁰⁹¹ If an Invest NI business client had an annual bill of £30,000 or more for water, waste and/or energy they were entitled to have a consultation with an expert in the relevant field who would then produce a report providing advice.¹⁰⁹² Mr Nicol was such an expert and he produced reports for Invest NI clients and for Invest NI from early 2013 onwards. Mr Nicol is a mechanical and electrical engineer by profession, with a specific interest in combustion that encompasses biomass technologies. He is the co-author of a number of publications addressing the design and operation of biomass combustion plant. Such publications include the 'Invest NI Guide to Biomass Heating'.¹⁰⁹³
- 20.40 His relationship with Invest NI was as one of a framework of sustainable development technical consultants consisting of independent specialised experts engaged to deliver technical consultancy reports to the businesses of Invest NI clients. As such a consultant, he was required to act impartially and seek to identify the most energy efficient solution to the business in question.
- 20.41 A typical assignment would require him to attend at the client's business premises in order to obtain an informed view of their heating demands. He would then produce an independent

1084 TRA-13476

1085 TRA-13480

1086 TRA-13476 to TRA-13477

1087 TRA-13481 to TRA-13482

1088 TRA-04118

1089 TRA-01638; TRA-01702

1090 TRA-13483 to TRA-13484

1091 TRA-13283 to TRA-13383

1092 TRA-13285

1093 OPB-00042 to OPB-00105

report illustrating the best technical and energy efficient way in which such demands could be met. That report would then be furnished to an Invest NI technical adviser, such as Jim Clarke, who would scrutinise it and, if approved, the report would be issued to the client. Mr Nicol was familiar with the GB RHI scheme and, in particular, the tiering of tariffs imposed by that scheme. He believed tiering to be a sensible concept that should broadly reflect the heat required and place some limitation upon revenue from subsidy.¹⁰⁹⁴

20.42 In total, Mr Nicol appears to have produced more than 30 such consultancy reports for Invest NI clients relating to the NI RHI scheme between 2012 and 2016, most of which have been listed in an appendix to his witness statement.¹⁰⁹⁵ During his oral evidence, Mr Nicol was only asked about a selection of these reports, although it is important to note that many of the issues raised in them, and summarised below, appear to have been repeated in other reports which were not opened in evidence.

20.43 The first report to which Mr Nicol was referred during his oral evidence dated from January 2013, some two or three months after the non-domestic NI RHI scheme had been launched.¹⁰⁹⁶ That report included the following commentary on the NI RHI scheme:

“In many ways, technical due diligence is irrelevant, and you just install the largest boiler that you can claim RHI for...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.”¹⁰⁹⁷

20.44 In October 2013 Mr Nicol reported on a large project, the optimal heating solution for which would have been a wet system with convectors and a large biomass boiler outside.¹⁰⁹⁸ However, the proposal being considered for the project in question involved installing several 99kW boilers outside on individual hydraulic circuits. In the course of his work on this project, but before completion of his report, Mr Nicol emailed Dr Ward at Ofgem on 15 August 2013 for advice, noting that in this particular project the client was adamant that a multiple boiler solution should be used to maximise RHI benefits.¹⁰⁹⁹ At that time Dr Ward was a senior technical manager within Ofgem’s E-Serve, equivalent to grade 7 in the Northern Ireland Civil Service, with responsibilities in respect of both the GB and NI RHI schemes. To Mr Nicol’s surprise, Dr Ward confirmed that each of the installations would be eligible for the RHI because they were hydraulically separate.¹¹⁰⁰

20.45 Mr Nicol also made a telephone call to DETI but he was unsure as to the identity of the official to whom he spoke – it may have been Mr Hutchinson, but Mr Hutchinson told the Inquiry he had no clear recollection of this call. The official who spoke to Mr Nicol about the issue told him to “take it up with Ofgem.”¹¹⁰¹

1094 TRA-13301 to TRA-13303

1095 WIT-200253 to WIT-200254

1096 WIT-144599 to WIT-144630

1097 WIT-144615

1098 WIT-146156 to WIT-146233

1099 OFG-164264 to OFG-164266

1100 TRA-09083 to TRA-09084; TRA-13328

1101 TRA-13328

20.46 In a report for a different project in April 2014 Mr Nicol wrote:

“The installation of a biomass boiler offers a payback of 3.5 years and NPV of £100,000 – no regular boiler installation can offer a similar return on investment (if at all!!!).”¹¹⁰²

20.47 At a further point in the same report he noted:

“The structure of the RHI essentially dictates the commercial solution and it is really pointless installing a biomass boiler that is technically suited to the application for this will not provide adequate commercial return.”¹¹⁰³

Later in the same report he recorded:

“Over a 20-year period eligible heating plant would receive quarterly payments for metered heat consumed. The payments are extremely generous – in this case and because of the plant size 6.1p/kWh and are indexed over twenty 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. Although the initial cost of the installation of the heating technology may be significant, the RHI payments will more than compensate for this over the course of the agreement. On average, it takes just over three years for an organisation switching from oil to wood pellets to recoup their installation money.”¹¹⁰⁴

20.48 In a report for a different project in October 2014, Mr Nicol wrote:

“The RHI has created some anomalies. The first being the payment of RHI on multiple 99kW installations. Ofgem are apparently aware that this loophole has been exploited. There are examples of multiple 99kW boilers being used to heat poultry or similar sheds. Ofgem are apparently investigating this loophole and the intention is to prevent further inappropriate uses....Ofgem are apparently aware of numerous process activities that may not be operated at optimal efficiencies but where these may conceivably remain eligible for RHI funding. Again the levels of efficiency achieved in many potential industrial processes may be benchmarked to prevent inappropriate utilisation.”

In that particular case the client was using multiple 99kW boilers to dry woodchip.¹¹⁰⁵

20.49 In the course of a separate report compiled by Mr Nicol in November 2014 he wrote:

“The RHI rules state that a boiler of up to 99kW may receive 6.3p/kWh on any unit of heat produced (and used for useful purpose)...this rule has, perhaps unsurprisingly distorted the market and the price of equipment. The RHI allows...for an owner to install more than one 99kW facility and claim the higher rate on each one so long as they are discreet [sic] and hydraulically separate installations. Therefore in installing any 99kW installation it is in your best interest to run the boiler flat out all the time for the fuel is free and the more heat you produce the more money you may recover under the RHI.”¹¹⁰⁶

1102 WIT-147181 to WIT-147220 at page WIT-147186

1103 WIT-147188

1104 WIT-147217

1105 WIT-148813 to WIT-148814

1106 WIT-148908 to WIT-148943 at WIT-148923

The final point made in that report was that:

“This project is only viable because of the Renewable Heat Incentive. There is fundamentally no energy saving basis for the project and receipt of RHI is therefore the only underpinning commercial reason for development.”¹¹⁰⁷

20.50 In a further report dated December 2014¹¹⁰⁸ Mr Nicol noted in relation to a wood drying business:

“If you stay below 99kW and qualify for RHI in fact it is a profitable exercise. Unfortunately there would be absolutely no incentive to dry it efficiently – in fact quite the opposite.”¹¹⁰⁹

20.51 In January 2015 he provided a report in which he expressed the view that:

“The RHI in Northern Ireland imposes commercial constraints that inevitably lead to technically inferior installation.”¹¹¹⁰

20.52 In a report in February 2015¹¹¹¹ Mr Nicol recorded that the client had asked for consideration to be given to four hydraulically separate boilers “so as to generate the maximum RHI.” Mr Nicol noted that such a solution would be “technically inappropriate” and that “very high RHI revenue payment is essentially driving the installation of multiple small boilers”, whereas the onus on him was to identify the technically appropriate solution.¹¹¹²

20.53 In a report compiled in May 2015¹¹¹³ Mr Nicol wrote:

“Unfortunately the RHI payments are so large in Northern Ireland that it pays to waste heat – in other words the RHI payment is larger than the fuel cost. Economically and environmentally this is a very undesirable situation.”¹¹¹⁴

20.54 These reports, which were provided to Invest NI officials by Mr Nichol, were clearly articulating concerns about the efficacy of the NI RHI scheme, and its value for money. The Inquiry has quoted from a range of these reports to demonstrate just quite how clear the issues of market distortion and incentivisation of heat wastage were to those who were advising in relation to heating installations in this field in the years after the introduction of the NI RHI scheme; and how, at least in Mr Nicol’s case, there was plainly no intention to keep this quiet in some way.

20.55 Quite apart from what Mr Nichol was saying in the reports he filed with Invest NI, on 25 June 2014 Invest NI published a guide on biomass written by Mr Nicol.¹¹¹⁵ In the section ‘Sizing a Biomass Boiler’ the following passage appeared:

“In some respects, the size of a biomass boiler will be dictated by the amount of money that can be recovered by the RHI. Because plant of less than 99kW will receive 6.3p/kWh for every unit of heat produced and plants above this will receive 1.5/kWh, the economic pressure influences boiler sizing. This leads to under sizing

1107 WIT-148928

1108 WIT-149050 to WIT-149100

1109 WIT-149076

1110 WIT-149245

1111 WIT-148944 to WIT-148977

1112 WIT-148949

1113 WIT-149667 to WIT-149692

1114 WIT-149685

1115 OPB-00042 to OPB-00105

and far from optimal installations in some cases. The situation is further confused by the fact that the current rules allow two smaller boilers to serve the same premises so long as they serve separate hydraulic circuits. Thus 396kW of biomass installation could qualify for revenue support at 6.3p/kWh if the boilers served four hydraulically separate circuits. Of course the cost of four smaller boilers in relation to the revenue generated from load may not be worthwhile, but the situation might be beneficial for some installations.”¹¹¹⁶

- 20.56 As mentioned earlier, the Inquiry also heard evidence from Invest NI official Mr Clarke. He possessed a Bachelor of Science degree in Chemistry/Chemical Engineering and an MBA and, prior to joining Invest NI in 2008, had worked for some 20 years in the commercial sector. He achieved promotion to deputy principal in 2014 and then became a technical adviser with the sustainable development team.¹¹¹⁷
- 20.57 Mr Clarke described how, in a typical case, a client company would contact Invest NI for assistance in resolving energy efficiency and cost savings issues. Mr Clarke would then draw up a technical specification, in consultation with the client, and provide that to one of the framework of 21 consultants, of whom Mr Nicol was one. The report from the technical consultant would be furnished to Mr Clarke who would then scrutinise the report for corrections and/or comment, after which it would be submitted to the client.¹¹¹⁸ The cost of the reports provided by technical consultants were met out of public funds supplied to Invest NI. In answer to Inquiry Counsel, Mr Clarke described how Invest NI officials attended courses to ensure that processes were carried out correctly, public service values were observed – including value for money – and that no funds were “unnecessarily wasted or misdirected within the organisation.”¹¹¹⁹
- 20.58 Mr Clarke confirmed that, in October of 2014, he had seen a report in which two 99kW boilers on separate heating systems were showing a payback of three and a half years and an internal rate of return of 31%.¹¹²⁰ The latter figure may be compared with the 12% return assumed in the original CEPA calculations. He confirmed that such paybacks did not strike him as being unique.¹¹²¹ He also agreed that he was aware of the existing “loophole” that allowed the installation of multiple hydraulically separate 99kW boilers, each attracting the maximum subsidy. In his oral evidence he explained that he felt that a “loophole” was something that was contrary to the intention of the scheme, represented something “wrong” with the scheme, involved the expenditure of public funds and was something that the scheme designers would want to have drawn to their attention.¹¹²² When asked by the Inquiry as to why he had not drawn that “loophole” to the attention of DETI, or any of the other flaws identified by Mr Nicol as inhibiting the establishment of efficient energy use, Mr Clarke replied:

“The view at the time was that in the unit that I worked for it was Government Policy - it was DETI Policy – therefore, why question Government Policy?”¹¹²³

1116 OPB-00084

1117 TRA-13384 to TRA-13463

1118 TRA-13388 to TRA-13390

1119 TRA-13393

1120 TRA-13413

1121 TRA-13413

1122 TRA-13417 to TRA-13419

1123 TRA-13420

- 20.59 It is important to record that Mr Clarke was only one of a number of technical advisers at Invest NI who dealt with these matters and that he also accepted, on reflection, that his attitude had been wrong, emphasising that he was new to the job and that he had to line manage two staff. The Inquiry has not seen evidence to suggest that Mr Clarke’s approach was different to that of his colleagues; and he was called to give evidence at the Inquiry as representative of those within Invest NI performing a similar role, rather than because there was any particular concern about his individual conduct. The same is the case for Mr Nicol, as representative of consultants who assisted Invest NI in this field.
- 20.60 Mr Clarke’s attention was also drawn to the description by one of his colleagues, Mr Batch, of “the cash cow called pellets.”¹¹²⁴ Mr Clarke agreed that Invest NI had been aware of a number of ways in which the NI RHI scheme could be abused and/or exploited, including those identified by Mr Nicol in his reports. He agreed that everybody “on our team” was aware of these issues and that, upon occasion, he would discuss these issues with his line manager, Peter Larmour.¹¹²⁵ Mr Clarke told the Inquiry that Mr Larmour’s opinion was that it was DETI policy “so why would we question DETI Policy.” Mr Clarke added “to be fair to my Line Manager, I didn’t push that as I should have pushed it in terms of loopholes but the attitude was that it was Government Policy.”¹¹²⁶ For his part, in the course of his written statements of evidence to the Inquiry, Mr Larmour stated that:
- “I would have reported any issues that I felt required to be raised with my Line Manager at any stage. At no stage was I aware of any issues relating to the RHI scheme which were flagged in Technical Consultant’s Reports which would have required discussion with my line Manager.”
- 20.61 Mr Larmour has stated that he does not believe that Mr Clarke raised any issues or complications with the NI RHI scheme prior to July 2015, when he mentioned that he was going to contact DETI RHI team about clarification of rumoured changes to the scheme.¹¹²⁷
- 20.62 When it was put to Mr Clarke by the Inquiry that, effectively, a Government Department was introducing and delivering a scheme which was running counter to one of the basic legislative functions of Invest NI (namely, promotion of the efficient use of energy in industry) he accepted that, reading through the various technical consultant reports, the only conclusion that could be made was that the system was de-incentivising energy efficiency. However, Mr Clarke emphasised that it was not Invest NI that was delivering the scheme. He agreed that the reports from the technical consultants repeatedly demonstrated interconnected themes of heat waste, high return and manipulation/gaming.¹¹²⁸
- 20.63 Mr Clarke further said that in 2015, in the course of reading the publications that he regularly received, he read a concise article about similar schemes in Britain, Germany and Austria which included the use of a tiered tariff and cost controls. He said that, once he had read that article, it occurred to him that perhaps the DETI policy had not been modelled correctly or set up or structured correctly.¹¹²⁹

1124 TRA-13419

1125 TRA-13421 to TRA-13422

1126 TRA-13427

1127 WIT-307545 to WIT-307546; WIT-308356

1128 TRA-13442 to TRA-13446

1129 TRA-13449 to TRA-13450

- 20.64 Around June 2015 Mr Clarke had noticed an increased number of clients showing a particular interest in biomass and RHI who had mentioned that they were aware of anticipated changes in the NI RHI scheme. After learning of the deficiencies in the DETI scheme Mr Clarke was concerned about a rush on the part of applicants to obtain the benefits of RHI accreditation regardless of technical merit.¹¹³⁰
- 20.65 In the event, he decided to contact DETI at the end of July 2015. He had no difficulty in contacting Mr Hughes and an exchange of emails then took place. Mr Clarke advised that the current RHI tariff structure obviously favoured 20-99kW and that there was now a rush to install such boilers in many businesses “regardless of technical feasibility just to maximise payments.”¹¹³¹ However during the course of the email exchanges, which subsequently also involved his technical adviser colleague, Mr Batch, as well as Mr Larmour, Mr Clarke did not mention any of the trends that had emerged from the reports of technical consultants such as those of Mr Nicol and others over the course of the preceding two years. There was no reference to the absence of tiering, exploitation of multiple boilers, the perverse incentive, two/three-year paybacks, returns in excess of 30%, or the adverse impact upon energy efficient use of heat.¹¹³² When questioned by the Inquiry, Mr Clarke said that he had assumed at the time that DETI “were fully aware of the issues.”¹¹³³
- 20.66 The net result was that Invest NI, a Government body that was legislatively empowered to promote the efficient use of energy in industry and subject to the rules and principles governing the expenditure of public money, was actively engaged in projects that were found by its own commercially experienced technical consultants to be very financially attractive but technically sub-optimal solutions in terms of energy efficiency. None of the scheme’s obvious flaws/loopholes were communicated to DETI, its sponsor Department, despite regular accountability meetings taking place between both bodies.
- 20.67 The Inquiry found an almost total absence of a cooperative, open relationship between DETI and Invest NI over the NI RHI scheme. The relationship did not involve good communication, nor common purpose with regard to the practical operation of scheme. In the context of the public receiving value for money in the expenditure of public funds, the Inquiry found this to be a major failing.

Action Renewables

- 20.68 Mr Michael Doran, then Managing Director of Action Renewables, gave evidence about that organisation and its interaction with the NI non-domestic RHI scheme. He told the Inquiry that it was a body created by DETI in 2003 in response to European, UK and Northern Ireland Government commitments to renewable energy as one strand of a policy to combat climate change and environmental pollution and to increase fuel diversity.
- 20.69 The DETI Reconnect scheme (the grant funding scheme in respect of domestic renewable energy installations mentioned elsewhere in this Report) was managed by Action Renewables, which also was responsible for disbursement of payments to the applicants.

1130 WIT-306529 to WIT-306530

1131 WIT-307596

1132 OPB-00010 to OPB-00012

1133 TRA-13445 to TRA-13456

- 20.70 Mr Doran took up his role with Action Renewables in 2009, at which time the DETI representative on the board of Action Renewables was Ms Clydesdale. As a DETI Third Party Organisation (TPO) for the period 2003 to 2011 Action Renewables received funding from DETI. From 2009 to 2011 that funding was reduced until Action Renewables ceased to be a TPO and moved out of the public sector in 2011.
- 20.71 Action Renewables continued as a registered charity and the organisation shifted towards commercial activities, and the profits were given back to the charity to enable it to continue to deliver on its charitable objectives. As a charity, Action Renewables has a board of trustees. The first charitable objective of Action Renewables is to “advance to the benefit of the public the protection and improvement of the environment through the promotion of energy efficiency and renewable energy.” The second charitable objective is to “advance the education of the public in energy efficiency and renewable energy.”¹¹³⁴ Mr Doran agreed with Inquiry Counsel that, in broad terms, there was a significant focus on the promotion of energy efficiency.¹¹³⁵
- 20.72 While Action Renewables was funded by DETI it had an ongoing relationship with Invest NI Renewable Energy Group and occasionally contributed to seminars and conferences to promote awareness of renewable energy and climate change.¹¹³⁶ Subsequent to the end of funding from DETI in 2011 and as part of its commercial activities, Action Renewables assisted applicants to become accredited to the NI RHI scheme in approximately one quarter of all RHI applications. The organisation charged for this service, which provided a revenue stream for it. Action Renewables also provided approximately 40 technical reports to Invest NI and its client businesses relating to renewable projects.¹¹³⁷ Mr Doran confirmed that Action Renewables always had a fairly close relationship with DARD, the predecessor to DAERA, with regard to what DARD was doing with biomass strategy particularly in the years 2010, 2013 and 2014.¹¹³⁸
- 20.73 In July 2012 the ETI Committee secured DETI’s permission to release papers to, and seek the views of, Action Renewables with regard to the draft NI RHI regulations. This may provide some indication of the esteem in which the organisation was held for its expertise in relation to such matters. In the course of its response to the ETI Committee, Action Renewables expressed itself to be generally very supportive of the proposal but continued:
- “With regards to the rate proposed, the significant drop in biomass support from 5.9p to 1.5p at the 100kWth level, will create distortion in the market. It will lead to applicants installing boilers with a smaller capacity than is required, at the 100kW level and supplementing their heat from oil generation, as it will be the most remunerative way of exploiting the scheme.”¹¹³⁹
- 20.74 Action Renewables also responded to the 2011 DETI RHI consultation in September 2011 but, in doing so, omitted to give any clear recommendation or warning that tiering should be introduced in the scheme.¹¹⁴⁰
- 20.75 In the course of giving his evidence to the Inquiry Mr Doran accepted that in 2012, when asked to give advice to the ETI Committee, Action Renewables had known that the proposed

1134 WIT-185016 to WIT-185017

1135 TRA-14454

1136 WIT-185022

1137 TRA-14455

1138 TRA-14458

1139 ETI-06318 to ETI-06319

1140 CEP-05236 to CEP-05241

tariff level in the 2012 CEPA addendum for the 20-99kW band was 5.9p/kWh, that the price of fuel was less than 5.9p/kWh, that Action Renewables was aware of the purpose of tiering, and that the tiering that had been adopted in the GB RHI scheme had not been included in the proposed NI RHI scheme. In such circumstances, he agreed that Action Renewables ought to have advised DETI to consider the need for tiering and he did not know why he had not raised the matter with the ETI Committee. Mr Doran had no recollection of making a decision not to raise the issue of tiering with the ETI Committee, although he speculated that it might have been a desire to avoid further delay in launching the NI RHI scheme.¹¹⁴¹

- 20.76 On 25 September 2012, two months prior to the launch of the NI RHI scheme in November, Action Renewables made a presentation at Dimplex Renewables, a member of the Action Renewables Association (an association, membership of which was open to commercial and public sector bodies, which provided to its members seminars, conferences and information on renewable energy).¹¹⁴² Included in the presentation were slides showing a comparison between a 99kW woodchip boiler and a 110kW boiler running 3,000 full-load hours per annum. The capital cost of the former was given as £40,000 while the latter had a capital cost of £43,000. Running the 99kW boiler for 3,000 full-load hours at the tariff of 5.9p/kWh produced £17,523 RHI subsidy per annum whereas running the 110kW boiler for the same full-load hours at the tariff of 1.5p/kWh produced £4,950. The payback time for the former was 2.28 years, and the latter 8.7 years. In the course of his oral evidence Mr Doran accepted that there was a very fine line between simply explaining the construction of the scheme to potential scheme applicants and encouraging the use of 99kW boilers to optimise financial returns.¹¹⁴³
- 20.77 Mr Doran and Action Renewables also organised a conference on 20 June 2013, some seven months after the NI RHI regulations came into force to raise awareness about the scheme. The document advertising the conference was headed '**Book now to find out how to generate heat and get paid for it! The Renewable Heat Incentive explained.**' (the Inquiry's emphasis).¹¹⁴⁴
- 20.78 At that conference Ms Gaynor Hartnell, the CEO of the not-for-profit trade association known as the Renewable Energy Association, gave a talk about the GB RHI regulations. She explained why her association had advocated tiered tariffs to limit the perverse incentive to size projects to fall just below a threshold and/or divide a single installation into several smaller entities.¹¹⁴⁵ In the course of her talk Ms Hartnell also emphasised the need to give the scheme administrator (Ofgem) clear guidance, to avoid perverse incentives and, if there were such perversities, to warn the Government.¹¹⁴⁶
- 20.79 At the same event Mr Connel McMullan of Alternative Heat, which was a private company involved in renewable heat, gave a presentation in the course of which he set out what income could be obtained with the different sizes of boiler in terms of tariff income and fuel savings depending upon how many full-load hours the boiler was to run during a year. He then presented a number of case studies, including a hotel which was on target to save £11,420 on fuel cost in the first year and generate more than £17,000 of RHI income, making a total annual saving of £28,720 with a payback of the investment in three years. A second example was a

1141 TRA-14483 to TRA-14486

1142 TRA-14450

1143 TRA-14512 to TRA-14515

1144 DAE-13503

1145 DAE-17796 to DAE-17816

1146 DAE-17811 to DAE-17813

poultry house using two 99kW boilers with separate hydraulic systems, therefore attracting two separate RHI accreditations, which was on target to save £6,320 on fuel cost and generate £23,480 RHI income per annum, representing a total annual saving of £29,800 and payback of the capital investment within three years.¹¹⁴⁷ The Inquiry heard oral evidence from Mr McMullan which is discussed in the next chapter of this Report.

- 20.80 During his oral evidence Mr Doran accepted before the Inquiry that the examples provided in Mr McMullan's presentation at the conference demonstrated how lucrative the NI RHI scheme was and he accepted that he had not communicated any of the relevant material to DETI. When referred specifically to Ms Hartnell's advice that DETI should be told about perversities, Mr Doran responded "Yes. Again I accept, in hindsight, I should have done that, and, if criticism is levelled at me over that, I accept that fully."¹¹⁴⁸ Mr Doran accepted that he had been actively promoting the NI RHI scheme at the event of 20 June 2013.¹¹⁴⁹
- 20.81 As mentioned above, between 2013 and 2016, Action Renewables, just like Alastair Nicol, provided Invest NI and its client businesses with technical consultancy reports in respect of renewable heat technologies. In total, Action Renewables provided approximately 40 such reports, many of which addressed biomass heating. The reports were provided in accordance with the consultancy framework agreement operated by Invest NI for this purpose. Most of the Action Renewable reports were signed off with a template which bore the names of Mr Doran or Mr Jonathan Buick or both, although Mr Doran told the Inquiry that their names on such a template did not necessarily mean that either of them had written the full report. Nonetheless, in the course of giving oral evidence to the Inquiry, Mr Doran confirmed that he stood over all the reports.¹¹⁵⁰ In a subsequent written statement, Mr Doran confirmed that either he or Mr Buick had responsibility for the initiation and final approval of each technical report.¹¹⁵¹ The dates and significant recommendations of a number of reports were discussed with Mr Doran in his oral evidence by Inquiry Counsel.
- 20.82 A report dated February 2013 demonstrated that a woodchip boiler provided a substantial fuel cost saving as compared with oil.¹¹⁵² The estimated installation cost came to £86,400, with the cost of annual maintenance at £3,000. The use of woodchip would provide a fuel cost saving of £21,000 and the RHI income was estimated at £23,600. The annual saving was said to be £28,791 producing a simple payback period of three years. Mr Doran agreed that such a payback figure would represent a much better rate of return than 12%.¹¹⁵³ The report recommended that a 99kW biomass boiler installation represented the fastest payback at around three years.
- 20.83 Another report dated March 2013 again considered the installation of a 99kW biomass boiler compared to oil.¹¹⁵⁴ In this case, the use of woodchip represented an annual cost saving of £27,800 and the income from RHI subsidies totalled £27,376. The annual saving was estimated at £37,326 with a simple payback period of 2.3 years. At paragraph 3 of this report Action Renewables recorded that:

1147 DAE-17730 to DAE-17752

1148 TRA-14527

1149 TRA-14531

1150 TRA-14537

1151 WIT-187516 to WIT-187517

1152 WIT-144701 to WIT-144746

1153 TRA-14539

1154 WIT-144803 to WIT-144827

“A biomass boiler could supply the primary heating with a buffer tank, in the range of 100kW. Such a system would maximise returns from the Northern Ireland RHI.”¹¹⁵⁵

20.84 A third report dated March 2014 recorded that the site in question:

“...appears suitable for the installation of a 179 kW biomass system, consisting of 2 boilers smaller than 99 kW to maximise the RHI incentive, with a simple payback on 1.7 years, if self-financed.”¹¹⁵⁶

Under the heading “Optimum Sizing” this report recorded that:

“The NIRHI payments artificially encourage large biomass systems to be installed. Because of the payments, made per kWh of heat generated, these systems are operated longer than necessary, generating more heat and making significant returns on investment. This however requires large capital investments and high fuel costs, but allows for receiving high RHI payments. While this philosophy is not wrong, it is not considered the most ‘cost-effective’ due to higher capital outlay.”¹¹⁵⁷

20.85 Mr Doran accepted that paragraph was repeated in very many of the reports.¹¹⁵⁸ When asked to comment upon that paragraph, Mr Doran agreed that it was incorrect and should not have been written. He went on to say to the Inquiry:

“The philosophy is wrong if you’re going to burn heat which is not required, so that is incorrect. Having said that, that’s not what we recommended in this case. And it’s cut and pasted into several reports, and I fully accept we should not have written that because, whilst this philosophy is not wrong, that is completely inaccurate. That philosophy is wrong and it’s probably also illegal.”¹¹⁵⁹

20.86 The report proceeded to record that, to make sure the maximum heat load of 178kW could be supplied to the building, two biomass boilers should be installed. The system required two hydraulically separate biomass boilers qualifying them each to receive the RHI at a higher tariff. Mr Doran agreed that such advice was given in order to maximise RHI payment.¹¹⁶⁰ He also accepted that the phenomenal rate of return at some 60% could fairly be described as a “windfall”.¹¹⁶¹

20.87 Another report, dated December 2014, referred to the site as:

“Suitable for the installation of a 150kW biomass system, consisting of two boilers smaller than 99kW to maximise the RHI incentive, with a simple payback on 3.2 years, if self-financed.”¹¹⁶²

At paragraph 7.52 of that December 2014 report under the heading “System Design” Action Renewables referred to two “philosophies” to consider when sizing biomass boilers for heat load. One was to maximise RHI payment using boilers sized below 99kW and the second was

1155 WIT-144809

1156 WIT-149814 to WIT-149867

1157 WIT-149829

1158 TRA-14546 to TRA-14547

1159 TRA-14547 to TRA-14550

1160 TRA-14551

1161 TRA-14553

1162 WIT-148683 to WIT-148737

to maximise system efficiency and reduce capital costs, which would require the installation of one large biomass boiler sized at 150kW. The report continued:

“A system to maximise the financial return from the RHI will be modelled in this study, with two hydraulically separate biomass boilers modelled with a total installed capacity (TIC) of 150kW. It will be necessary to install two separate biomass boilers with individual heat exchangers...It is proposed that both boilers are housed in one contained unit. The boilers are not hydraulically linked through pipework and the heat produced is metered by two heat meters, qualifying them to receive the RHI.”¹¹⁶³

20.88 Inquiry Counsel put to Mr Doran that: “It very much looks like you’re saying ‘don’t worry about efficiency. Go for the one that maximises revenue.’” To which Mr Doran responded: “That’s not actually what we were saying, but it’s poorly worded, and I accept that it’s poorly worded.”¹¹⁶⁴

20.89 In a report dated February 2015, concerning the installation of a 99kW biomass boiler at a cost of £55,000, RHI income was estimated to offer a potential payback period of 1.7 years, equivalent to a return of 58%.¹¹⁶⁵

20.90 Finally, in a report dated September 2015 Action Renewables recorded the following observations with regard to payback in accordance with the existing RHI tariff:

“The two biomass heating systems (sized at 99kW and 50kW) are hydraulically separate. Both biomass systems generate heat for the building. The heat will be released through existing blow heaters... In comparison to the alternative option of installing a new gas boiler that would avail of a seasonal efficiency of 90%, the biomass option will have a seasonal efficiency of approximately 85%. This will lead to annual fuel cost savings of £1,000 as the client would use pellets instead of natural gas. In addition the client would receive £24,476 for the annual heat load of 382,432kW hours at the current incentive rate of 6.4p/kWh.”¹¹⁶⁶

20.91 In the course of his oral evidence to the Inquiry, after being referred to the above reports, Mr Doran agreed that the fact that the RHI tariff income was higher than the fuel cost, coupled with the absence of tiering, was a clear flaw in the scheme and that the reports had highlighted that if the desire was to maximise returns, separate systems under 99kW were better than one larger system.¹¹⁶⁷

20.92 Mr Doran was also asked by Inquiry Counsel why neither his initial written statement of evidence nor his response to the section 21 Notice served upon him by the Inquiry made any reference to Action Renewables providing technical consultancy reports to Invest NI (in the first instance). The Inquiry was only made aware of the existence of such technical consultants’ reports by Invest NI and none of the reports were provided to the Inquiry by Action Renewables itself until the Monday of the week in which Mr Doran gave his evidence.

20.93 Mr Doran agreed that, prior to his oral evidence, the Inquiry had not received any explanation from Action Renewables about the failure to provide such reports.¹¹⁶⁸ As noted above, Mr Doran

1163 WIT-148702

1164 TRA-14556 to TRA-14558

1165 WIT-149761 to WIT-149789

1166 WIT-295526 to WIT-295562 at WIT-295552

1167 TRA-14567 to TRA-14568

1168 TRA-14575

himself had made no mention of any such reports in the course of his response to the section 21 Notice. He accepted and apologised for his response being “substantially misleading.”¹¹⁶⁹ Mr Doran agreed that he had been served with section 21 Notices requiring a written statement of evidence and disclosure of all potentially relevant documents on 1 June 2017, to which replies were made on 3 July. He denied that Action Renewables had been trying to hide anything but accepted criticism for his failure, for which he apologised, pointing out that: “We shouldn’t have done this and I accept that the witness statement is completely inaccurate in places.”¹¹⁷⁰

20.94 For example, Mr Doran’s answer to question 10 of the section 21 notice was that Action Renewables did not carry out any calculations for clients in respect of returns on investment or assessing the financial aspects of schemes.¹¹⁷¹ That reply was flatly contradicted by the technical reports prepared by Action Renewables for Invest NI.

20.95 Mr Doran also accepted that he had not passed on to the Inquiry any of the information contained in the technical consultancy reports to DETI, providing as a reason that they were being compiled for Invest NI and he thought that informing that body (Invest NI) was sufficient. He also accepted that, in the course of completing some 500 accreditation applications to the RHI scheme, Action Renewables had become aware of certain trends including the use of multiple hydraulically separate small boilers with very high load factors.¹¹⁷²

20.96 Mr Doran was also asked about an interview that had taken place between him and a journalist acting for the *Irish News* which had appeared in the edition of the newspaper on 26 January 2017.¹¹⁷³ After referring to the large number of accreditation applications which Action Renewables processed, the *Irish News* article continued in the following terms:

“Action Renewables Managing Director Michael Doran last year appeared on a BBC Spotlight programme outlining flaws in the RHI scheme.

However, when asked last week why no-one within the charity relayed the concerns to the Government, he told the *Irish News*: ‘That’s not what we were employed to do. If you are employed on behalf of a client to make an application it would be ethically improper to then undermine that application by trying to have it withdrawn. The fact that the Government created the scheme that some people now think is over incentivised is not our responsibility.’”

20.97 Mr Doran explained that he had been interviewed over the telephone when he was standing in a security queue in Frankfurt airport at about 10.00am and that he didn’t have any media training. He accepted that: “I shouldn’t have taken the call. And I said something that was wrong and inappropriate, on the hoof.”¹¹⁷⁴

20.98 Action Renewables were also made the subject of an investigation by the Charity Commission, which recorded that, at a meeting with the Commission, the charity trustees of Action Renewables, including Mr Doran and Mr Buick, stated that they were not aware of anything

1169 TRA-14576

1170 TRA-14578

1171 WIT-185030 to WIT-185031

1172 TRA-14581 to TRA-14583

1173 INQ-100972 to INQ-100973

1174 TRA-14597 to TRA-14598

being wrong with the scheme when it was in operation.¹¹⁷⁵ However, Mr Doran agreed with Inquiry Counsel that Action Renewables had in fact been aware at all material times that there were certain things wrong with the NI RHI scheme, in particular the absence of tiering, the use of multiple boilers and the potential for overcompensation.¹¹⁷⁶

Department of Agriculture and Rural Development (DARD) (DAERA from May 2016)

20.99 In the course of his evidence to the Inquiry Mr Sterling indicated that the Northern Ireland Civil Service has been “investing in building a more collaborative and joined-up culture across departments and agencies in recent years” and that this work was already underway before the RHI Inquiry was established.¹¹⁷⁷ However, several elements of the evidence which the Inquiry heard have given rise to concern about the effectiveness of such purported collaboration.

20.100 In that context the Inquiry notes the remarks of Ms Michelle O’Neill, the DARD Minister between 2011 and 2016, who stated in written evidence that:

“It was for the DETI Minister and Department to ensure the scheme was fit for purpose and value for money. It is not the role of a Minister or Department to scrutinise the work of another Minister or Department. Such an approach would be impractical and necessitate the duplication of expertise across all government departments.¹¹⁷⁸ The reality is that the specialisation and expertise was available in the sponsoring department.”¹¹⁷⁹

20.101 Although it is correct that, generally, it is not the role of a Department to scrutinise the work of another, certainly in relation to policy functions, there is plainly a role for information-sharing, knowledge exchange and dialogue between Departments and their officials where responsibilities overlap or converge, including (where appropriate) the provision of challenge and warnings.

20.102 The Inquiry notes that DARD had been represented at Director level on the SEIDWG group and had representation on a number of the sub-groups. The structure and purpose of SEIDWG is set out in detail earlier in this chapter at paragraph 20.7 but its basic purpose was to produce a co-ordinated approach and ensure that departmental energy related policies were in concert.

20.103 It is also interesting to compare Minister O’Neill’s fairly robust statement with Minister Foster’s evidence to the Inquiry. When asked about the apparent lack of co-operation between the Departments she said:

“Certainly I had thought, at official levels, that they were co-operating. Certainly, through the sustainable interdepartmental working group, there was some synergies there between Departments, and they should’ve had information between themselves there.”

1175 WIT-144117 to WIT-144120

1176 TRA-14601 to TRA-14602

1177 INQ-101307

1178 WIT-163509

1179 WIT-163512

- 20.104 Minister Foster accepted that the important word in that answer was **should've** (the Inquiry's emphasis). Minister Foster also told the Inquiry that she had not been aware of DARD's activities as early adopters and demonstrators of the RHI scheme.¹¹⁸⁰
- 20.105 The evidence considered by the Inquiry has disclosed, however, that DARD officials were in a position to, and did, understand a good deal about how the RHI scheme worked and how beneficial it could be to claimants, particularly those in the agricultural industry with high heat requirements.

CAFRE's Cathal Ellis

- 20.106 In February 1974, during a period of direct rule, Cathal Ellis joined the Department of Agriculture for Northern Ireland as an official within that Department's College of Agriculture, Food and Rural Enterprise (CAFRE). He continued to work for CAFRE when it came under the control of, initially, DARD and, subsequently, DAERA until December 2017. From September 2012 until the date of his retirement in December 2017 Mr Ellis was engaged as a renewable energy technologist. That role involved him in the investigation and promotion of potential renewable energy technologies which could be applied across the agricultural sector. He had responsibility for establishing and operating CAFRE's renewable energy installations such as biomass boilers, wind turbines and solar panels. He also had responsibility for CAFRE's Heat from Biomass Technology Project, the aim of which was to increase the knowledge of the potential for biomass heat within the agricultural industry.
- 20.107 As a renewable energy technologist, Mr Ellis was at the agricultural inspector grade 3 level, which equates in Northern Ireland Civil Service terminology to the grade of staff officer. He had experience in the horticultural and mushroom production sectors. Frequent contact with renewable heat boiler installers and fuel suppliers was a major component of Mr Ellis's work between 2007 and 2015. During that period, CAFRE installed biomass boilers on three of its campuses: Greenmount in Antrim, Loughry in Cookstown and the Enniskillen campus.
- 20.108 Mr Ellis met installers of biomass boilers in the course of running Practical On-Farm Renewable Energy (POFRE) events and he was also responsible for the trade show side of the event, contacting relevant firms and inviting them to attend. Mr Ellis's main contact with DETI officials was with Mr Hutchinson, while he was in post, and both he and Mr Hutchinson delivered lectures at POFRE events. Mr Ellis's main role in relation to the DETI officials was to relay questions raised about the NI RHI scheme by farmers and agricultural business owners to Mr Hutchinson or, subsequently, Mr Hughes, thereby opening up lines of communication.¹¹⁸¹
- 20.109 Mr Ellis first became aware of the NI RHI scheme as a consequence of the 2011 DETI RHI public consultation. Mr Ellis confirmed that he took the consultation documents off the Internet and scan-read them, but he himself had not been involved in any formal response to the consultation.¹¹⁸²
- 20.110 Mr Ellis recalled, in oral evidence to the Inquiry, reading about the NI RHI tariff in documents used by Mr Hutchinson for a presentation in February 2013 at the first POFRE presentation after the implementation of the RHI regulations.¹¹⁸³ In broad terms, he understood the tariff

1180 TRA-08502 to TRA-08503

1181 WIT-88026 to WIT-88079

1182 TRA-07268 to TRA-07269

1183 WIT-86415 to WIT-86454

to cover the cost difference between generating heat with fossil fuel and generating heat with renewable technology.¹¹⁸⁴ He told the Inquiry that he was not aware of details such as a presumed load factor of 17% and a rate of return of 12% and simply made the assumption that DETI had used its own technical staff and its own economist to assist in preparing the RHI scheme.¹¹⁸⁵ While he could not remember the details, he was almost certain that he had spoken to Mr Hutchinson about the mushroom sector being interested in the scheme.¹¹⁸⁶

- 20.111 The Inquiry asked Mr Ellis about certain internal documentation in DARD which indicated that the capital expended upon the biomass installation could be repaid very quickly within the first two to four years of the 20-year period of tariff payments. He accepted that such a result obviously provided scope for very large returns and that was something that would have been obvious to DARD but was not drawn to the attention of DETI.¹¹⁸⁷ He agreed that he had been aware of the potential for people to see the scope to generate heat to earn tariff income as a result of the tariff payments for the key banding – the 20-99kW band – being higher than the cost of fuel.¹¹⁸⁸ However, he told the Inquiry that he had not been aware of tiering as a means of protecting against the perverse incentive until 2015, when rumours began to circulate about potential changes to the scheme and the reasons behind such changes.¹¹⁸⁹
- 20.112 CAFRE organised some 58 renewable energy events in which reference was made to the NI RHI scheme between November 2011 and October 2015. Those events were attended by 2,358 individuals.¹¹⁹⁰ Mr Ellis pointed out that a number of the events would have been concerned with the general review of renewable energy, including different technologies, and that a much more limited number would have specifically targeted renewable heat from biomass.¹¹⁹¹ Mr Ellis agreed that he was involved in approximately 27 of the events, which would have included 12 specific ‘heat from biomass events’¹¹⁹² and that he had produced a slide presentation used at POFRE events on 29 October 2013 and 26 February 2014.¹¹⁹³ That presentation included fuel prices for biomass, tariffs for biomass, a case study and a worked example.¹¹⁹⁴ The case study involved the installation of two 99kW pellet boilers and four 60kW pellet boilers in June and September 2013. The installation produced a saving of £6,000 per annum in terms of fuel and an income of RHI tariffs of some £23,000 per annum with a payback period of less than three years. The worked example produced similar results with regard to two hydraulically separate 99kW biomass boilers resulting in a payback period of approximately two years.¹¹⁹⁵
- 20.113 Each October CAFRE produced a POFRE booklet for farmers. The 2013-14 booklet produced in October 2013 showed that, as of September 2013, there had been 46 applications to join the NI RHI scheme. The booklet prepared with regard to the 2014-15 year showed that, as of 4 September 2014, there had been a total of 264 applications for the NI RHI scheme.

1184 TRA-07275

1185 TRA-07276 to TRA-07277

1186 TRA-07278

1187 TRA-07293 to TRA-07294

1188 TRA-07295 to TRA-07297

1189 TRA-07299

1190 WIT-84090

1191 TRA-07301

1192 TRA-07305

1193 TRA-07307

1194 WIT-86730 to WIT-86784

1195 TRA-07308 to TRA-07313

20.114 A case study in the September 2014 booklet featured a pig producer who had installed a wood pellet boiler in his farrowing unit in January 2014. The potential savings from the NI RHI scheme included approximately £5,500 in respect of fuel costs and £21,097 RHI income per annum based on the 6.3p/kWh tariff. Thus the overall annual saving on heating was some £26,602 and, taking into account the capital cost of the boiler system at £34,500, the payback time was estimated to be 1.3 years.

20.115 Mr Hutchinson contributed an article on the NI RHI to the 2013-14 booklet and Mr Wightman similarly contributed to the 2014-15 booklet.¹¹⁹⁶

20.116 Inquiry Counsel showed Mr Ellis a leaflet dating from 2015 produced by Solmatix Renewables, a private company engaged, amongst other things, in the installation of biomass heating systems.¹¹⁹⁷ That leaflet included the following reference:

“Our wood pellet-burning Biomass Boilers offer a cost-effective heating solution that can massively reduce your heating bills. And when you factor in your guaranteed quarterly RHI income, you’re effectively benefitting from FREE heat plus a significant financial reward. It’s cash...for ash.”¹¹⁹⁸

20.117 At the same time Mr Ellis was referred by Inquiry Counsel to the evidence given to the Inquiry by Mr Neil Elliott, whose business designed and installed biomass systems. Mr Elliott had attended many of the POFRE events as a trade exhibitor. Mr Elliott had said that, at such events, promotional materials were on the stalls of suppliers and installers which were in similar terms to the leaflets from Solmatix referred to above, and these materials included posters and pop-up stands. Mr Elliott agreed in his oral evidence to the Inquiry that such materials would have promoted things like the level of return, the payback periods and exhibited slogans such as “Cash for Ash”.¹¹⁹⁹

20.118 Mr Ellis confirmed that he would have been through the event hall but that he had not seen the Solmatix leaflet until the day before giving oral evidence to the Inquiry and he could not recall the display of any similar posters or displays at those events.¹²⁰⁰ Mr Ellis was reminded that when he commenced his oral evidence he had confirmed that, with regard to renewable heat, his primary role had been contact with the providers, installers and fuel suppliers and he was asked how he had apparently failed to notice everything that other people at the event appeared to have seen. Mr Ellis pointed out that his dealings with the installers were primarily on technical issues and did not encompass any financial details. He said that his “gut feeling” was that he represented a Government Department and that consequently the people he spoke to may have been wary of highlighting those issues to him because:

“We would have been duty-bound to, you know, bring that forward, or I would have felt that I would have had to make a much stronger case to my management to bring that forward to DETI.”¹²⁰¹

20.119 Mr Ellis stated that he had no commercial or business background but he was unable to explain why neither he nor Mr Hutchinson, who had also attended the POFRE events in question, and

1196 WIT-86132 to WIT-86349

1197 TRA-07346

1198 COM-06308 to COM-06309

1199 TRA-04648

1200 TRA-07350

1201 TRA-07356 to TRA-07357

whose evidence on this issue is considered elsewhere in the Report, became aware of the information that had been picked up by the industry. Speaking for himself, he said “we didn’t feel, at my level, didn’t feel the responsibility to, you know, question what DETI were doing.”¹²⁰²

20.120 Mr Ellis attended a meeting with representatives of Moy Park on 24 September 2014. He was asked to attend as an independent person with technical expertise to advise with regard to the installation of boilers for heating systems installed in poultry houses. A number of installers and heating engineers also attended. Immediately after the meeting Mr Ellis made a note of relevant matters.¹²⁰³ He listed a number of points relevant to the relationship between CAFRE and Moy Park including:

- “All new Moy Park houses will be fitted with hot water heating, biomass boilers with gas backup.
- The cost per house for biomass hot water system is £30k
- Payback from RHI is estimated at £10k per year.
- To date 104 farms have installed biomass hot water systems.
- A further 180 farms have committed to installing biomass hot water systems.
- The total number of installs by the end of 2015 has been estimated at 320 -340
- Moy Park have their own payback calculator for biomass hot water systems.”

20.121 In the course of giving oral evidence Mr Ellis confirmed that at the time, in September 2014, he realised that Moy Park’s poultry farmers were likely to opt for the NI RHI scheme in large numbers. That could mean many hundreds of additional RHI applications, with every boiler on a separate system.¹²⁰⁴ Mr Ellis explained that the information contained in the note had only been passed to his own line management and that he had not recommended that it should be provided to DETI despite the potential for hundreds of further applications. Mr Ellis agreed that he knew that there had been a relatively low number of applications to that point. He told the Inquiry that he would be surprised if he had not mentioned it to Mr Hughes, but he was unable to say that such a conversation had taken place. Mr Ellis accepted that the information ought to have been passed on to DETI.¹²⁰⁵ It would not be until the end of February 2015 that DETI official Stuart Wightman learnt that there were likely to be 200 applications in 2015 from Moy Park suppliers. He received this information directly from Moy Park when discussing planned changes to the NI RHI scheme. As discussed later in this Report, it caused him to realise that DETI did not have sufficient budget for the number of applications that were to come, and take steps in relation to the availability of RHI funding.¹²⁰⁶

20.122 On 9 June 2015 DETI’s Mr Hughes sent Mr Ellis an email asking for assistance with an undertaking to assess the average heat required for poultry houses to help in identifying future RHI budget requirements. He noted that Mr Ellis would have access to colleagues within CAFRE who worked within the poultry sector.¹²⁰⁷

1202 TRA-07357 to TRA-07360

1203 WIT-86594

1204 TRA-07366

1205 TRA-07371

1206 DFE-331197; DFE-118570

1207 DFE-107020 to DFE-107021

- 20.123 Mr Ellis assumed that DETI wanted information about how the interest from the poultry sector might impact on the budget for the scheme, since he appreciated that DETI was considering introducing tiering, similar to the arrangement in GB. In the circumstances he understood the importance of the information being sought and the reliance that DETI might put upon his paper.¹²⁰⁸ Mr Ellis confirmed to Mr Hughes that he would carry out the work and that in doing so he would consult installers. He contacted three – R&S Biomass, Original Heating and Alternative Heat – and told them of DETI’s request for information.
- 20.124 Around this time in July 2015, it is clear that Mr Hughes and Mr Wightman at DETI were also in contact with some installers and they too informed them about the CAFRE work. A consequence of this was described in an email of 9 July 2015 from Fergal Hegarty of Alternative Heat to John Smyth of CHP Mechanical who described how he had put Tom Forgrave in touch with Mr Ellis. Mr Forgrave was a poultry farmer who, by that stage, was an RHI scheme member with a number of accredited boilers and who was also a representative on both the Moy Park growers committee and the poultry committee of the Ulster Farmers’ Union. He went on to provide data from his poultry sheds for Mr Ellis to use. Mr Hegarty noted in his email that “Tom was pretty happy that the information that will now be provided to DETI will echo the UFU’s recommendations.”¹²⁰⁹
- 20.125 In the course of his oral evidence to the Inquiry Mr Ellis confirmed that he had discussed the draft of his paper with Mr Forgrave and that, at about the same time he spoke to Mr Forgrave, Mr Ellis also ran his figures past David Mark of Moy Park during a telephone conversation.¹²¹⁰
- 20.126 In the course of his oral evidence to the Inquiry Mr Ellis confirmed that on 10 July 2015 he emailed a draft of the paper to Mr Forgrave for comment.¹²¹¹ No additional comments appear to have been made. In a further email to Mr Forgrave on 17 July 2017, Mr Ellis wrote:
- “Please find attached final version of the document on heating as sent to DETI. Happy for you to share with UFU Poultry Committee, but probably wise if DETI don’t know you have seen final version. Good luck with your meeting, and many thanks for all your assistance.”¹²¹²
- 20.127 Mr Forgrave shared the paper he received from Mr Ellis with others in the UFU. After forwarding copies of the paper to them, Mr Forgrave was asked if it could be discussed with UFU’s Chris Osborne, to which he replied “Yes, no problem but DETI can’t know that we have seen this!”¹²¹³
- 20.128 On 17 July 2015 Mr Ellis had also provided DETI with the final paper.¹²¹⁴
- 20.129 Mr Forgrave and Mr Osborne subsequently received an official copy of the paper in an email of 22 July 2015 from Mr Hughes to Mr Osborne, copied to Mr Forgrave and Mr Wightman, which referred to the upcoming meeting between DETI and the UFU on 22 July and attached Mr Ellis’ paper and commented that CAFRE is “happy for us to share this with you.”¹²¹⁵

1208 TRA-07377 to TRA-07378

1209 WIT-195366

1210 TRA-07415 to TRA-07418

1211 TRA-07393 to TRA-07394

1212 COM-00653

1213 COM-00652

1214 DFE-120760 to DFE-120763; DAE-04928 to DAE-04932

1215 COM-00603

- 20.130 Mr Ellis accepted that the paper he provided to DETI contained no reference to Mr Forgrave, the UFU or Moy Park as a source of any information contained therein,¹²¹⁶ and he was unable to provide the Inquiry with any logical reason why he was so concerned about letting DETI know that there had been an input from Mr Forgrave/UFU.¹²¹⁷ Looking back, he accepted that he ought to have made it clear to DETI that the paper had included input from Mr Forgrave and any input that there may have been from Moy Park.¹²¹⁸
- 20.131 Mr Wightman told the Inquiry that it was not until he was preparing for the Inquiry that he first appreciated how Mr Forgrave had been a major contributor to the CAFRE paper.¹²¹⁹ He had assumed that the paper had been produced by an independent but fellow Government agency. He told the Inquiry that he now felt as if “we had been sort of taken for a ride.”¹²²⁰

1216 TRA-07398

1217 TRA-07406

1218 TRA-07417 to TRA-07418

1219 TRA-10431

1220 TRA-10432

Findings

114. Officials in the Department of Justice (DOJ) were made aware of a potential loophole with the non-domestic RHI scheme less than a month after the NI RHI regulations had been implemented. Given that DOJ recognised this as a potential loophole and a possible deliberate attempt to circumvent the intent of the NI RHI scheme, this should have been communicated to DETI and not just raised with Ofgem (if indeed it was raised with Ofgem).
115. When Brian Hood sought clarification from Mr Hutchinson about whether it was permissible to install multiple boilers in separate buildings, and bearing in mind Ofgem's November 2011 legal review warning, this represented a missed opportunity for DETI to recognise the real risk that heating system design might be influenced or even distorted in order to attract the most generous RHI tariffs and to give the issue some further consideration at that point.
116. The work carried out over several years by and on behalf of Invest NI clearly showed the distortive impact of the RHI scheme on the design and development of efficient renewable heat biomass projects. The Inquiry found that there was a major failing in cooperation between Invest NI, a body accountable to DETI, and DETI, its parent organisation. This meant that the very clear emerging picture within Invest NI was never communicated by Invest NI to DETI or questioned with colleagues responsible for the RHI scheme in DETI.
117. The Inquiry finds that, in its interaction with both DETI and the ETI Committee in 2012, Action Renewables failed to draw attention to the need for tiering of the 20-99kW biomass tariff, even though Action Renewables was aware that tiering was necessary. This represented a significant failing on the part of Action Renewables, a body whom both DETI and the public could reasonably have expected to have warned DETI and the ETI Committee of this flaw in the scheme, not least because of Action Renewables' charitable objects, its close ties to DETI up until 2011, and the fact that the ETI Committee had, as part of its consideration of the draft RHI regulations during 2012, specifically sought its views.
118. Action Renewables failed to advise DETI of the trends it was observing through its technical consultancy work for Invest NI. These trends included the very high returns that were available under the scheme and how it could be exploited or abused through the installation of multiple, hydraulically separate, biomass heating systems.
119. The Terms of Reference of the Inquiry provide that it shall have access to all the documentation it seeks and the cooperation of all relevant witnesses to enable the Inquiry to produce a comprehensive report in the course of seeking to restore public confidence in the workings of Government. However the Inquiry finds that Action Renewables failed to provide the Inquiry with relevant documents, namely technical consultants' reports, until shortly before Mr Doran gave oral evidence and only after the Inquiry prompted Mr Doran for them after becoming aware of their existence from Invest NI's witness statement. Action Renewables also supplied an incomplete, inaccurate witness statement as well as misleading responses to the Inquiry's section 21 notices. Mr Doran, the Managing Director of Action Renewables, accepted that

inaccurate evidence was also given to an investigation by the Charity Commissioners. In fairness to Mr Doran, the Inquiry acknowledges that the evidence given to the Inquiry and the Charity Commissioners was the subject of a very careful and thorough investigation by both Senior and Junior Counsel appointed by Action Renewables. The report of that investigation concluded that neither Mr Doran nor Action Renewables had intended to suppress or give incorrect/misleading evidence to the Commissioners or the Inquiry.

120. In relation to DARD, the Inquiry observes that no great degree of expertise or specialisation would have been required by DARD officials concerned with the development and promotion of renewables simply to draw DETI's attention to what was happening on the ground. Cathal Ellis of CAFRE had many contacts with providers, installers and fuel suppliers and he accepted that he was aware of the very rapid payback and large returns produced by the NI RHI which he did not draw to the attention of DETI. He also agreed that he knew that Moy Park's poultry farmers were likely to opt for the RHI scheme in large numbers and also be attracted to multiple boiler solutions. He passed that information to his line management without recommending that it should be provided to DETI.
121. Mr Ellis was quite unable to provide the Inquiry with any logical reason why he was so concerned about not revealing to DETI that the paper he had provided to Mr Hughes, on reasonable heat use in poultry broiler houses, had an input from Mr Forgrave, who was an RHI scheme member with roles on behalf of Moy Park growers and the UFU. That paper had also been 'run past' Mr Mark of Moy Park. The Inquiry finds that Mr Ellis's evidence confirmed a clear failure to ensure inter-departmental co-operation in the interest of guarding against the excessive expenditure of public funds. The Inquiry is satisfied that DETI ought to have been made fully aware of the discussions with, and any input from, Mr Forgrave, UFU and Moy Park as part of preserving open and transparent relations between Government Departments which is so much in the public interest. Such relations are essential, particularly when evidence has been sought from one Department to assist another Department in making an informed policy decision.
122. The Inquiry considers that the remarks of DARD Minister O'Neill in her written evidence to the Inquiry quoted in this chapter, that it was not for her to scrutinise the work of another Minister, do not seem to deal with the need for basic departmental cooperation in the interest of avoiding excessive expenditure of public funds. The Inquiry has no difficulty in accepting the primary liability of DETI for the implementation and development of the NI RHI scheme. However, no particular degree of technological expertise or specialisation was required in order for officials on the ground at many public events and presentations to appreciate the potential for the scheme to provide excessively generous rewards. Effective departmental cooperation would have required making those facts known to DETI.

Chapter 21 – Emerging awareness in the private sector of the RHI and its flaws

- 21.1 In the last chapter the Inquiry looked at some examples of emerging awareness within the public sector of flaws with the NI RHI scheme. Had that steady volume of important information been communicated to the relevant DETI officials at least they would have had the opportunity to be confronted by it and, potentially, react appropriately to it.
- 21.2 However, it will also have been apparent from the previous chapter that some of the information received by public sector bodies or organisations came from private sector organisations, particularly from companies operating in the renewable heat market. In this chapter the Inquiry looks at some of the evidence it received relating to the private sector. Other examples will also be found elsewhere in this Report.
- 21.3 The Inquiry wishes to make clear that the examples that are given below are only a representative selection of a larger body of evidence received by it, including in written statements from a wide variety of heating plant installers and suppliers who were required to provide evidence to the Inquiry, and whose statements have been published by it.
- 21.4 The evidence the Inquiry received demonstrated that it did not take long for the business world to appreciate the attractions of the NI RHI scheme. Almost from the outset it was clear that biomass was the technology of choice and that installations around 99kW capacity were prevalent, since they were at the upper limit of the band with the potentially lucrative medium biomass tariff of 5.9p/kWh.

Sheridan & Hood

- 21.5 As set out in the previous chapter, within three weeks of the scheme launch in November 2012, Sheridan & Hood (a private company which designed and delivered biomass boiler systems), and its associate companies, had understood the opportunities offered by the NI RHI scheme.
- 21.6 The company was entirely open about what it, correctly, considered were the permissible multiple boiler configurations that could be accredited under the NI RHI scheme. It checked its understanding with DETI, the Government Department responsible for the NI RHI scheme, and Ofgem, the scheme administrator. It presented a Government Department, the Department of Justice, which it hoped might ultimately engage its services, with the information as to how the NI RHI benefits might be maximised. In the course of this exchange, Sheridan & Hood explained clearly, as outlined in the previous chapter, how the scheme could be used to generate an income after heating costs had been paid for.
- 21.7 The Inquiry heard oral evidence from Mr Brian Hood, the managing director of Sheridan & Hood and another company, BS Holdings (BSH), which manufactured package plant including biomass plant. Sheridan & Hood in particular seemed to be an ‘early adopter’ of the NI RHI scheme. It was awarded with a certificate by the DETI Minister for being the first company to attain accreditation under the scheme.¹²²¹
- 21.8 In addition to the letter to the Department of Justice, which has already been discussed, Sheridan & Hood also provided promotional literature to a range of others, including the

1221 WIT-197218; TRA-04510

Department of Finance and Personnel, in an attempt to promote its business through uptake of the NI RHI scheme. This literature was produced towards the end of 2012, at or shortly after the time when the scheme was introduced, and again clearly explained to readers the potential benefits of the scheme and its potential to generate profit.

- 21.9 In very simple terms, the Sheridan & Hood promotional literature explained that use of biomass heating systems could lead to both savings on fuel costs and the receipt of public funding as well. It set out that, with boilers up to 99kW capacity, a scheme participant could spend £1,000 on fuel but receive £1,475 in subsidy.¹²²² Mr Hood told the Inquiry that it took only days for his company, which was involved in this market, to figure out that the NI RHI scheme worked in this way.¹²²³ He also explained to the Inquiry that hundreds of leaflets setting out this analysis were produced and dispersed as marketing material by means of mail shots to prospective clients and industry.¹²²⁴ He considered that his company may have been “ahead of the game” in some respects in realising the extent of the benefits, but his competitors “twigged it on fairly quickly” and caught up.¹²²⁵
- 21.10 Other promotional material produced by Mr Hood’s companies referred to the NI RHI scheme allowing clients to have “free heat”. Indeed, BSH later ran an advertising campaign based around the slogan “20 years of free heat”, including having some of the company’s vehicles branded with that message.¹²²⁶
- 21.11 BSH also informed Janette O’Hagan in communications with her in September 2013 (which, in part, prompted her interaction with DETI discussed in chapter 23) that BSH was promoting “twenty years of free heat to suit your needs”.¹²²⁷ Mr Cullen of the company provided her with a promotional leaflet produced by BSH which set out clearly what has come to be described as the ‘perverse incentive’ which gave rise to these benefits:
- “This is possible as the government has introduced an incentive which is greater than the fuel cost – government incentive of 5.9ppkwh, set against Biomass fuel cost of 3.9ppkwh.”¹²²⁸
- 21.12 Again, the evidence suggests that the leaflet, including this stark explanation, is likely to have been in wide circulation. In discussing this particular piece of marketing, Mr Hood said that potential clients did not always have time to read down through whole screeds of information and so:
- “You want to hit them with the bullet points, and the bullet points were, ‘You’re getting a higher tariff paid than your fuel costs, and that’s how you’re making your return on investment’.”¹²²⁹
- 21.13 Mr Hood also emphasised, however, that, from his companies’ point of view, they were “simply implementing the regulations as they [DETI] had laid them down”¹²³⁰ and they were not “exploiting” the scheme in any way (as had been suggested in the response to their letter

1222 WIT-197229 to WIT-197230

1223 TRA-04559

1224 WIT-200043; TRA-04562 to TRA-04563

1225 TRA-04570 to TRA-04571

1226 See, for example, WIT-197240; INQ-12507; INQ-12515; TRA-04568

1227 WIT-264963

1228 WIT-264975

1229 TRA-04579

1230 TRA-04517

to DOJ). Rather, they considered that they were merely correctly representing what DETI itself had marketed and confirmed to them in relation to the scheme's operation.¹²³¹ He also gave evidence that he had thought that, in due course, after initially very attractive tariffs had generated scheme uptake, the tariffs payable would gradually be reduced as occurred with depression in the GB RHI scheme.¹²³²

Renewable Energy Manufacturing

21.14 On 13 January 2013, some two months after the 2012 NI RHI regulations came into force, the Managing Director of Renewable Energy Manufacturing Limited (REM), Colin Turkington, wrote to the Private Office of the Department of Environment (DOE) referring to a recent meeting with DOE Minister Attwood and seeking assistance in relation to a number of items.¹²³³ The letter contained the following passage:

“Northern Ireland

There are two tariffs for ‘biomass boilers’ in Northern Ireland. The first is 5.9p per kWh for all such units under 100kW. The second tariff is 1.5p per kWh for those that are 100kW and over. This simply means that a farmer who installs two 99kW biomass (woodchip) boilers (total output = 198kWh) will receive nearly four times more incentives than a farmer who installs just one of bhsi's 200kWh energy systems based on our fluidised bed combustion technology (FBC) for using poultry litter to generate heat on their farm.

The result is a ‘perverse incentive’ for farmers needing more heat than a 198kW unit will produce to install a number of small woodchip boilers rather than one larger PM2E System. The inevitable distortion in the market for the installation of single units over 100kW in capacity that create energy/heat from the use of poultry manure is a barrier to encouraging this single ‘alternative use’ thereby reducing the amount being land spread.

That is why we highlighted to Minister Attwood the unfortunate, but self-evident fact that a heating unit that has the capacity to use only woodchip is not making **any** contribution to the challenge being presented to Northern Ireland in implementing the EU Nitrates Directives.

Therefore as the setting of rates for the RHI Scheme is a responsibility of DETI, you are also involved in running the SBR1 competition to find an alternative use to land spreading of PM, there is a [sic] evident absence of joined up thinking that needs to be urgently addressed and eliminated with some re-balancing by the responsible Minister, Arlene Foster MLA.”

21.15 DOE passed the correspondence to DETI on 3 April 2013. That correspondence was sent to Ms Hepper by DETI Private Office and, on 10 April 2013, a submission from Ms McCutcheon, with a draft response to the REM letter attached, was sent to the Private Office.¹²³⁴

1231 TRA-04519; TRA-04533

1232 TRA-04582

1233 DFE-33475 to DFE-33477

1234 DFE-33471 to DFE-33479

- 21.16 The Minister was advised by Ms McCutcheon that Mr Turkington’s concern that RHI installers were incentivised to install multiple smaller boilers instead of a single large boiler was “not the case”. It was pointed out that the regulations underpinning the scheme stated that where two or more boilers were used in the same heating system the total heat capacity was used to determine the tariff rather than incentives paid for the individual boilers. The advice continued: “This prevents an applicant installing multiple boilers in place of a single larger system.” The draft letter of response on behalf of the DETI Minister to be sent to Mr Turkington referred to the potential use of two or more smaller systems to receive a higher incentive than a single system and continued in the following terms:
- “I can assure you that this is not the case and that under the Regulations where two or more plants are using the same energy source and form part of the same heating system that they are treated as a ‘component plant’ and the total capacity is assessed. This means that two biomass 99kW systems that form the same heating system would receive the tariff appropriate for a 198kW system.”¹²³⁵
- 21.17 That response, which completely misunderstood the point raised, was forwarded to Mr Turkington by Glynis Aiken, Private Secretary to Minister Foster.¹²³⁶ It recorded that the DETI Minister had considered the letter and had asked Ms Aiken to respond on her behalf.
- 21.18 The Inquiry notes that on the annotated version of the submission¹²³⁷ Minister Foster’s SpAd, Dr Crawford, raised the question as to what would happen if two boilers were installed at different times and whether such an arrangement would attract greater support than a single boiler.
- 21.19 On the same day that Dr Crawford’s enquiry was received, 16 April 2013, Ms Hepper sent her response to him¹²³⁸ advising that she considered that the matter had been adequately covered in the original submission and draft letter of response, asserting at the end of her email: “...the Regulation prevents scenarios where applicants seek to install a number of smaller boilers in an attempt to receive higher incentive payments.” Ms Hepper’s email closed with a reference to the July 2011 Consultation and to Volume 2 of the guidance documents relating to the regulations.
- 21.20 The Inquiry notes that Ms Hepper’s response to Dr Crawford did not deal with the potential to maximise subsidy by installing several separate 99kW boilers in the same premises, a risk that had been originally raised by Ofgem in its legal review of the draft NI RHI regulations in November 2011. As mentioned previously, under the heading “Potential perverse outcomes at section 4d” Ofgem referred to the fact that: “Some participants may install additional pipework and multiple smaller (and potentially less efficient) units in order to meet eligibility or higher-tariff thresholds.” Ofgem suggested that a solution might be “...imposing a requirement that where separate heating systems serve the same end heat use purpose, they are considered to be part of the same heating system.”¹²³⁹
- 21.21 The problems associated with particular types of multiple boiler installations, and the exploitation that the NI RHI scheme facilitated in respect of them, is dealt with in considerable detail later in this Report.

1235 DFE-33471 to DFE-33479

1236 DFE-33473 to DFE-33479

1237 DFE-33525

1238 DFE-33512

1239 WIT-01243; DFE-314497 to DFE-314526 section 4d at DFE-314505 to DFE-314506

Future Renewables

- 21.22 Future Renewables was another company that became involved in the NI RHI scheme at an early stage. The Inquiry heard oral evidence from Neil Elliott who set up his firm in Fermanagh in August 2009. The firm was concerned with the supply, installation and maintenance of a range of renewable products including biomass boilers, heat pumps and solar technologies.
- 21.23 The firm had been involved in the Reconnect grant scheme (mentioned earlier in this Report) which, in the opinion of Mr Elliott, had not proved successful. Mr Elliott had taken part in the subsequent DETI investigation and report into Reconnect carried out by KPMG.¹²⁴⁰
- 21.24 During the development period for the NI RHI scheme Mr Elliott had attended public meetings at Stormont and in Armagh and had been in regular contact with Mr Hutchinson.¹²⁴¹ He had also been aware of the development of the equivalent scheme in GB and had assumed that the NI RHI scheme would be similar, possibly with some slight amendments for the Northern Ireland jurisdiction.
- 21.25 Mr Elliott told the Inquiry that he had not fully understood the scheme until the 2012 NI RHI regulations had been published. In his written statement to the Inquiry he said:

“Like most of the renewable industry we were aware that the NI scheme was flawed not long after it was launched. No actions were taken as we thought that DETI would cap the scheme or amend the scheme to the same scheme as the UK mainland.”¹²⁴²

- 21.26 He told the Inquiry that, as time passed, there was widespread knowledge that the scheme was “too good to be true”.¹²⁴³ Mr Elliott said that Future Renewables used an individual who had been an installer in GB who could not believe that tiering had not been included in the NI RHI scheme.¹²⁴⁴ Mr Elliott said that his firm had promoted the scheme in print, on Facebook and during the course of trade events.¹²⁴⁵ At such events, posters and advertising with slogans such as: “Cash for Ash” and “earn as you burn” were regularly displayed by installers and Mr Elliott described how his firm would have used promotional materials similar to that used by Solmatix (and described in more detail later in this chapter).¹²⁴⁶
- 21.27 Mr Elliott produced to the Inquiry a typical Future Renewables client quotation in respect of a biomass boiler installation eligible for RHI accreditation. The quotation in question was dated 12 February 2015 and referred to an annual saving on current electrical heating costs of £2,337. It then continued with the following analysis of the potential returns available under the NI RHI scheme:

“RHI 20 Year Contract Payments. The UK government pay 6.3p for every kWh of biomass heat produced under their incentives for businesses to reduce their carbon foot print and reliance on fossil fuels.

RHI per annum 179,439.24 kWh X by 6.3p = £11,304.67.

1240 TRA-04627

1241 WIT-195710

1242 WIT-195710

1243 WIT-195711

1244 TRA-04633 to TRA-04634

1245 WIT-195711

1246 TRA-04648

Total return per annum

Project is worth saving of £2,337.00 and a payment of £11,304.00.

Total Return per year £13,642.00

Return over 20 years **£272,843.44**".¹²⁴⁷

- 21.28 Mr Elliott explained that most of his target market was the agricultural sector and that CAFRE led training in renewables from November 2011 to October 2015.¹²⁴⁸ In this regard, Noel Lavery, then Permanent Secretary of DAERA, who provided a written statement of evidence to the Inquiry on behalf of that Department, stated that between November 2011 and October 2015 there had been 58 relevant training events which had included information on the NI RHI scheme.¹²⁴⁹ These included twice-yearly POFRE events (organised by CAFRE and addressed in more detail earlier in this Report), all but one of which Mr Elliott believed that his firm had attended.¹²⁵⁰
- 21.29 Mr Elliott referred the Inquiry to an invitation, from the Crops and Horticulture Development Branch on behalf of the then DARD Minister, Michelle O'Neill MLA, to a renewables open day at the Enniskillen campus of CAFRE on 22 February 2012.¹²⁵¹ Part of the purpose of the event was to present DARD's Renewable Energy Action Plan 2010–13.¹²⁵² Mr Elliott told the Inquiry that the event had proved so successful that a marquee was required to house the many installers and suppliers exhibiting at it.
- 21.30 Mr Elliott explained that, at POFRE events after the launch of the NI RHI scheme, slogans such as "Cash for Ash" appeared on various exhibitors' leaflets, posters and pop-up stands.¹²⁵³ Mr Hutchinson, who delivered lectures regarding the NI RHI scheme at a number of these events, explained to the Inquiry that, although he would have spent some time in the rooms where the exhibitors' stalls were located, he did not recall seeing any promotional material regarding the NI RHI scheme which caused him concern.¹²⁵⁴
- 21.31 Mr Elliott stated that 90% of his firm's work was the installation of biomass boilers, predominantly 99kW boilers. Many of these were multiple boiler installations, on the same site, but not hydraulically interconnected.¹²⁵⁵ He confirmed that, throughout the life of the scheme, the price of biomass fuel had been less than that of oil and that buying in bulk was particularly economical.¹²⁵⁶ He also said that some of the installations made by his firm were audited by Ofgem but that the process appeared to him to be very simple and fairly superficial. The inspector would check that the name and address were correct but did not appear to be interested in heat load or the purpose for which heat was being generated. There did not appear, to Mr Elliott, to be a great deal of continuity between inspections, and audit staff were simply asking for the same information again.¹²⁵⁷

1247 COM-07001 to COM-07009 at COM-07005

1248 TRA-04644

1249 WIT-84090

1250 WIT-86523; TRA-04645

1251 TRA-04646

1252 WIT-86528 to WIT-86540

1253 TRA-04648

1254 TRA-04974 to TRA-04975

1255 TRA-04654

1256 TRA-04657

1257 TRA-04668 to TRA-04669

Alternative Heat

- 21.32 As noted in the last chapter, one of the presentations at the Action Renewables RHI conference on 20 June 2013 was delivered by Connel McMullan, a director of a company named Alternative Heat, based in County Down. Mr McMullan told the Inquiry how his company, established in 2003, was involved in the design, supply and installation of renewable heating systems, including biomass boilers, in both GB and Northern Ireland.
- 21.33 In his oral evidence to the Inquiry he described how his business supplied biomass boilers to a number of installers (including Solmatix)¹²⁵⁸ and, in his written statement to the Inquiry, provided a useful table showing how, during the three financial years 2013-14 to 2015-16, Alternative Heat supplied a total of 610 biomass boilers to Northern Ireland clients.¹²⁵⁹
- 21.34 Mr McMullan explained that he had been aware of the GB RHI scheme from his company's work in GB and, upon the introduction of the NI RHI scheme, was aware of the differences between the two schemes.¹²⁶⁰ In this regard Mr McMullan told the Inquiry that he was surprised at the absence of tiering in respect of biomass tariffs in the NI RHI scheme and, although he assumed this omission was deliberate, found it difficult to understand.¹²⁶¹
- 21.35 As his company mainly supplied biomass boilers to, and/or installed them for, other companies in the renewable heat market, they were generally not “client-facing”,¹²⁶² but Mr McMullan was aware that biomass boilers eligible for accreditation under the NI RHI scheme were generally promoted to potential customers by reference to payback periods.¹²⁶³ In this regard, he believed that the expected payback under the GB RHI scheme was generally under 5 years whereas under the NI scheme it was less than 3 years in many cases. He also pointed out that, in his experience, payback of 7 years or more was “a harder sell”.¹²⁶⁴
- 21.36 Unlike Mr Elliott, Mr McMullan did not believe that he realised how lucrative the NI RHI scheme could be at its outset, but that this was something he realised gradually during 2014.¹²⁶⁵ That said, he had no difficulty acknowledging to the Inquiry that he had actively promoted the NI RHI scheme, as early as June 2013 at the Action Renewables RHI conference, with slides showing NI RHI case studies in which the payback periods were as low as 3 years or less.¹²⁶⁶ Indeed, similar slides presented by him at another conference, the ‘Smart ECO Hub’ event on 26 March 2014, were seen by Peter Hutchinson of DETI on that date and formed one of the pieces of evidence that led him to the conclusion, expressed in his May 2014 handover note,¹²⁶⁷ that the medium biomass tariff could become over-generous for those with high heat loads, thereby creating a need for tiering of tariffs.¹²⁶⁸

1258 TRA-14345

1259 WIT-195112

1260 TRA-14346 to TRA-14348

1261 TRA-14349 to TRA-14350

1262 TRA-14365

1263 TRA-14359

1264 TRA-14360

1265 TRA-14364

1266 TRA-14367; DAE-17730 to DAE-17752 at DAE-17745

1267 WIT-07601

1268 TRA-05049 to TRA-05052

Hegan Biomass

- 21.37 The Inquiry also heard oral evidence from Mr Alan Hegan, a director of Hegan Biomass Ltd, another company which was in the business of the supply, installation and maintenance of biomass boilers (as well as the promotion and production of woody energy crops).
- 21.38 Mr Hegan’s evidence was to the effect that he was of the view from a very early stage that the tariff bands used in the NI RHI scheme were poorly thought out and that, in particular, the medium band (from 20kW to 99kW) should have been up to 199kW, since the way in which the scheme was set up would lead to multiple installations of 99kW boilers servicing essentially the same heat requirement. His evidence was that the renewable heat industry as a whole was widely aware of this feature of the RHI scheme from an early stage, as also, in his view, were DETI and DARD.¹²⁶⁹
- 21.39 In Mr Hegan’s view, the way in which the scheme was set up meant that installing boilers above 99kW capacity was not viable and did not make economic sense.¹²⁷⁰ This was a cause of concern for Mr Hegan’s company because they had been trying to market boilers with a capacity exceeding 99kW, since those were generally more suitable for burning woodchip rather than wood pellets. For that reason, Mr Hegan said that he had repeatedly asked the Department in late 2014 and 2015 when tariffs would be amended (as they ultimately were in November 2015) to increase the medium biomass tariff band to include boilers up to 199kW capacity, but he felt that he got no meaningful response.¹²⁷¹
- 21.40 Mr Hegan’s father (Mr Tom Hegan) was also involved in the Hegan family business and also gave written evidence to the Inquiry. His evidence was that he would have been aware “from the inception of the scheme” that subsidies payable under it exceeded the cost of biomass fuel used to produce heat so that there was an incentive in some cases to produce heat merely to make profit from the scheme, and that “this was not a secret and was widely known”.¹²⁷² In Alan Hegan’s oral evidence he made the same point.¹²⁷³
- 21.41 Mr Hegan made a presentation in late 2013 at an open day run by Northern Bio Energy, a company formed between his father and other local farmers to grow energy crops and market woodchip. This event was held on 3 October 2013 in conjunction with CAFRE.¹²⁷⁴ In the course of his presentation, Mr Hegan drew attention to the proposals, recently consulted upon in DETI’s July 2013 consultation, to introduce a district heating tariff (a centralised system serving multiple users). Mr Hegan observed that this would then be the “only option above 100kW boiler size that will yield guaranteed higher returns than fuel cost”, drawing attention to the fact that this was already the case in the 20-99kW band.¹²⁷⁵ He also explicitly drew attention to the fact that the cost of both wood pellets (at 4.2p/kWh) and woodchip was less than the subsidy payable for a 20-99kW capacity boiler (at 6.1p/kWh).¹²⁷⁶

1269 WIT-196012; TRA-14272

1270 WIT-196012; TRA-14261

1271 WIT-196012; TRA-14275

1272 WIT-216124

1273 TRA-14287

1274 WIT-204563

1275 WIT-204556

1276 WIT-204559

21.42 As with BSH, Hegan Biomass also produced marketing material which advertised “free heat for 20 years” adding “plus a £100k profit”.¹²⁷⁷ Also like Mr Hood, Mr Hegan’s evidence was that he understood the NI RHI scheme would be generous to begin with to incentivise rapid early uptake but that deggression would follow in due course.¹²⁷⁸

Solmatix

21.43 Solmatix, another renewable energy installation company, installed its first biomass boiler in December 2014.

21.44 It was responsible for the “cash for ash” advertising material example that was set out in the previous chapter. The advertising material could not have been clearer:

“Our wood pellet-burning Biomass Boilers offer a cost-effective heating solution that can massively reduce your heating bills. And when you factor in your guaranteed quarterly RHI grant income, you’re effectively benefiting from FREE heat plus a significant financial reward. Its cash...for ash.”¹²⁷⁹

21.45 That particular document included a case study involving a nursing home in respect of which the following points were also emphasised:

- “£2,300.00 saving on oil
- £11,700.00 RHI grant income
- CASH for ASH
- £14,000.00 income per annum!
- This effectively means FREE HEAT for 20 years ...”¹²⁸⁰

21.46 Neville Bell, the managing director of Solmatix, confirmed in his evidence to the Inquiry that Solmatix had these leaflets printed in March 2015.¹²⁸¹ He explained to the Inquiry that Solmatix was initially involved in other forms of renewable energy and was a late adopter of biomass boiler installations. He said to the Inquiry that it was “common knowledge in the industry at the time that the scheme effectively amounted to the provision of free heat for scheme members.”

21.47 Richard Bell, also of Solmatix at the material time, told the Inquiry that: “Everyone in the biomass installation business marketed the scheme in this way. Solmatix was slower to be involved than most companies.” He went on to explain that he could recall members of Solmatix staff telling him the NI RHI scheme “was such an amazing deal that they found it hard to sell as people thought it was too good to be true.”¹²⁸²

21.48 As will be mentioned later in this Report in the context of an examination of the 2015 engagement between DETI officials and those involved with the renewable heat industry, within a number of months of becoming involved with RHI installations, Solmatix pointed out to DETI that the NI RHI scheme was the subject of exploitation. On 10 July 2015 Frank McCullagh, the Business

1277 WIT-204773; COM-114898

1278 TRA-14266; TRA-14280

1279 COM-06308

1280 COM-06307 to COM-06308

1281 WIT-202501

1282 WIT-201508 to WIT-201509

Development Manager of Solmatix, emailed Seamus Hughes at DETI and expressed concerns about the proposed start date for the Phase 2 changes to the NI RHI scheme. He also stated:

“We also appreciate that a number of unscrupulous beneficiaries are not only taking advantage of RHI support, but in many cases, notably within the poultry sector, appear to be actively exploiting it.”¹²⁸³

Findings

- 123.** The Inquiry heard compelling evidence that the design characteristics and flaws of the RHI were very quickly observed and understood outside DETI, particularly in the private sector.
- 124.** The same information that allowed others to understand the scheme was available to DETI.
- 125.** There was no “conspiracy of silence”, as originally alleged by DfE in its opening submission to the Inquiry.¹²⁸⁴ This was acknowledged by senior DfE officials in their evidence to the Inquiry, including Dr McCormick.¹²⁸⁵ Private sector organisations, from virtually the outset of the NI RHI, openly advertised how lucrative the NI RHI scheme was.

1284 TRA-00343

1285 TRA-16692

Chapter 22 – National media coverage

- 22.1 The last two chapters demonstrate the type of information from the public and private sector concerning the NI RHI scheme that could have come to the attention of DETI officials. That information was primarily known to those connected in some way with the scheme itself.
- 22.2 However, it was also the case that, from time to time, stories were published in the UK national media about potential exploitation of RHI. The stories related to the operation of the GB RHI, however they had an obvious general relevance to the NI RHI given the similarities between the two schemes.
- 22.3 There does not seem to have been any reticence on the part of the UK national media about bringing what were said to be the financial advantages of the GB RHI scheme to the attention of the public. The following are examples.
- 22.4 In March 2012 the magazine *Private Eye* published an article about boiler sizing in the GB RHI scheme.¹²⁸⁶ Ofgem was aware of that article, and of the fact that it had been seen by the DECC Minister. The draft of the proposed DETI NI RHI regulations was still under consideration; the NI RHI scheme itself would not be launched for a further 8 months. Ofgem did not tell DETI about the article, and it does not appear to have come to DETI’s attention by any other route.
- 22.5 In May 2013, some 6 months after the NI RHI regulations came into force, the magazine *Farmers Weekly* published an interview with an English farmer who extolled the virtues of installing multiple small boilers to maximise RHI returns.¹²⁸⁷ Ofgem was also aware of this article but did not draw it to DETI’s attention. It also does not appear to have come to DETI’s attention by any other route. The article is dealt with in greater detail at chapter 47 of this Report.
- 22.6 In June 2013 *Private Eye* published a further article about the GB RHI.¹²⁸⁸ It had the headline “Keeping the Lights On”. It began by referencing its article from 2012 when it revealed what it described as a “scam that exploits sloppy Renewable Heat Incentive (RHI) legislation”. It referred to the ability, in the context of oversizing of boilers, to “claim far more cash subsidy than was intended”. It set out some of the views expressed on the subject before concluding that “official complacency serves only to line the pockets of cowboy boiler firms and their greedy customers”. The article referred to Ofgem, and the article came to its attention.¹²⁸⁹ It was not provided to DETI, and DETI does not appear to have been alerted to it from any other quarter.
- 22.7 On 10 November 2014 the *Daily Mirror* carried an article entitled “Rich enjoy free fuel AND taxpayer’s cash while millions must choose between heating and eating.” The article referred to biomass boilers attracting Government subsidies for 20 years while the installation paid for itself in five years and quoted one user as reporting that he was expecting £23,000 per annum profit, adding: “The bizarre thing is the more energy you use, the more money it makes you.”¹²⁹⁰ The article went on to quote an installer “We hear of companies installing boilers that are larger

1286 OFG-260435

1287 INQ-100759

1288 OFG-260161

1289 OFG-260156 to OFG 260157

1290 MED-05966 to MED-05970

than required. They leave the boiler running and their windows open.” The report also quoted DECC, responsible for the GB RHI scheme, as saying: “the high tariffs are needed to ‘kick-start’ the renewable energy market but a ‘tiering’ tariff system is in place to deter people from generating excess heat.” The point made by DECC in relation to tiering was of course of critical importance to the NI RHI, which did not have tiering. This article again came to the attention of Ofgem, but was not passed on.¹²⁹¹

22.8 A similar article appeared in *The Guardian* newspaper on 14 January 2015 under the heading “Green biomass boilers may waste billions in public money.”¹²⁹² This article came to the attention of Ofgem, but was not passed on.¹²⁹³

22.9 A further article in *The Guardian* on 23 January 2015,¹²⁹⁴ referencing their article of the previous week, which had drawn attention to wealthy landowners said to be taking advantage of the GB RHI went on to say:

“The rich have been encouraged through amazingly generous incentives to install biomass boilers so inefficient that they don’t meet the official definition of renewable energy, under a scheme which encourages as much waste as possible. The bigger the boiler and the more fuel you burn, the more money you are given. So rich people now run their oversized boilers at full steam, and leave the windows open to cool the house. The returns are astonishing: 20, 30, sometimes 40%.

I’m told there are farmers who have used this incentive to install biomass-fired grain dryers, which would normally operate for just a few weeks a year. But because the scheme pays them to burn wood pellets, they keep the empty dryers running year-round.”¹²⁹⁵

22.10 In the next chapter the Inquiry will examine a very similar message, about heat waste and excessive returns, which DETI did receive about the NI RHI from Janette O’Hagan.

22.11 Unfortunately, DETI appeared to have remained unaware of the reporting in the national media. For instance, in his evidence to the Inquiry, Dr Crawford confirmed he had no recollection of seeing either the *Daily Mirror* or *The Guardian* articles, or having them drawn to his attention.¹²⁹⁶ When these same articles were drawn to the attention of Mr Wightman by the Inquiry he confirmed that he had not seen them before either, despite the existence of the Executive Information Service and centralised Press Office in DETI.¹²⁹⁷

1291 OFG-135819 to OFG-135820

1292 MED-05947 to MED-05951

1293 OFG-135857

1294 MED-05956 to MED-05961

1295 MED-05960

1296 TRA-09883 to TRA-09885; TRA-09945

1297 TRA-10315 to TRA-10320

Chapter 23 – Janette O’Hagan and her attempts to warn about the problems with RHI

23.1 As alluded to in chapter 21, the Inquiry received significant evidence from Janette O’Hagan. Ms O’Hagan operated a private business. She went out of her way to alert DETI officials to the problems she discovered relating to the NI RHI scheme. The Inquiry examines interactions with Ms O’Hagan in this chapter.

Ms O’Hagan’s initial contact in June 2013

23.2 On 26 August 2013 Ms Janette O’Hagan emailed the generic DETI email address, ‘information@detini.gov.uk’, at 11.17am. The email was marked for the attention of Minister Foster. Ms O’Hagan introduced herself and explained that she was a co-founder of a local company called ‘Okotech’ that had developed a system of innovative energy efficient heating controls called ‘Heatboss’. She informed the Minister that, by using Heatboss, current customers of her firm were saving on average 30% of their heating bill.

23.3 She stated that the business had been focusing on the local care home market but that they had further plans to branch into adjacent markets such as hospitality, education and other healthcare and government buildings. Ms O’Hagan enquired as to whether the Minister would be free to hear about the activities of her company and she enclosed a recent case study.

23.4 A few minutes later, having become concerned that an email to the DETI office might not reach Minister Foster, at 11.22am Ms O’Hagan sent a similar email to Minister Foster’s MLA constituency address in which she explained that “Given the benefits of RHI” many of their potential customers were “no longer worried about becoming more efficient.”¹²⁹⁸

23.5 Ms O’Hagan told the Inquiry that, prior to sending the emails, she had been attending various marketing events, listening to people from different areas and attempting to network with those who might be interested in her product. In the course of doing so she had noted a distinct lack of interest in energy efficiency among those who had installed biomass fired boilers.¹²⁹⁹

23.6 She used the internet to research both the NI RHI scheme and the GB RHI scheme instituted by DECC. She noted that the DECC March 2011 RHI policy document¹³⁰⁰ had established tiering of subsidies for the small and medium sized categories of biomass boilers but that such a precaution had not been adopted by DETI.¹³⁰¹

23.7 It seems that Ms O’Hagan’s first email of 26 August 2013, the one sent to Minister Foster at DETI, was forwarded to DETI Energy Division by Private Office for consideration and advice.¹³⁰² Private Office did not provide any indication that Minister Foster wished to meet Ms O’Hagan. In the circumstances, in keeping with the practice of the time, Renewable Heat Branch made a recommendation that officials should meet Ms O’Hagan and furnished a draft reply to the Minister.¹³⁰³

1298 WIT-264844 to WIT-264845

1299 WIT-264821

1300 INQ-21023

1301 WIT-264822

1302 DFE-183315 to DFE-183316

1303 DFE-382800 to DFE-382803

- 23.8 The Minister herself forwarded the second email of 26 August 2013, which had gone to her constituency office email account, to her DETI Private Secretary, Ms Aiken. Ms Aiken then sent it to Renewable Heat Branch.¹³⁰⁴
- 23.9 Ms O’Hagan had received no response to her 26 August 2013 emails by the time she sent a further email to the MLA constituency office of Minister Foster on 3 September 2013. On this occasion she added the following information:
- “Given the benefits of RHI we find that many of our potential customers are no longer worried about becoming more efficient, in fact it pays them to use as much as they can – in fact the incentive to use more is leading to misuse in some cases. I firmly believe that the energy efficiency and sustainability should go hand [sic] and I’d really appreciate 20-30 minutes of your time to see what you think.”¹³⁰⁵
- 23.10 By this time Ms O’Hagan had met representatives of BSH, a sister company of Sheridan & Hood, and she had been informed by an email from Mr Cullen that BSH was promoting “20 years of free heat to suit your needs.” Mr Cullen had enclosed promotional material from BSH with his email.¹³⁰⁶
- 23.11 When Minister Foster received the 3 September email to her constituency office she checked, the following day, with her DETI Private Office and was told that a meeting was to be arranged between Ms O’Hagan and officials.¹³⁰⁷ The email of 3 September had been received by the Minister on her iPad and she told the Inquiry that, because she assumed that it was just a reminder, it would have been subsequently deleted. As she thought it was just a reminder, sent by Ms O’Hagan because she had not received a response to her earlier communications, Minister Foster told the Inquiry that she did not read the email in detail, but merely scanned it, and did not forward it to DETI for the attention of her officials.¹³⁰⁸ Consequently Minister Foster did not notice the significance of the allegation of misuse contained in the third email.¹³⁰⁹ Ms O’Hagan did have an opportunity to air her concerns at the subsequent meeting with officials, but it is unfortunate that the Minister did not read the third email with more care – she told the Inquiry that, had she done so, she might have arranged to meet Ms O’Hagan in person.¹³¹⁰

The October 2013 meeting

- 23.12 On 5 September 2013 Ms O’Hagan received a response from the Private Office of Minister Foster to her initial email of 26 August. The response indicated that, unfortunately, due to diary commitments, the Minister herself was unable to meet Ms O’Hagan, but by way of alternative she was offered a meeting with Ms Hepper, then head of Energy Division.¹³¹¹
- 23.13 A meeting was duly arranged for 8 October 2013 to be attended by Ms O’Hagan and, on behalf of DETI, by Ms Hepper, Ms McCutcheon and Mr Hutchinson.¹³¹² In anticipation of the

1304 DFE-382804 to DFE-382805

1305 WIT-264846

1306 WIT-264965 to WIT-264968

1307 TRA-08438 to TRA-08441

1308 TRA-08438

1309 WIT-20624

1310 TRA-08442

1311 DFE-382798

1312 TRA-04699

meeting Ms O’Hagan drafted a proposed agenda dealing with: an overview of Heatboss and its impact on the energy efficiency of commercial buildings; the impact of the RHI scheme on energy efficiency; a discussion of the potential opportunities to align RHI and energy efficiency measures; and a discussion on the potential for future incentives for energy efficiency measures in commercial and public buildings.¹³¹³ The agenda was forwarded to DETI, but Ms O’Hagan was unable to recall whether it was specifically referred to during the course of the meeting.¹³¹⁴

- 23.14 It is important to note that no official minute, record or note was made of the meeting.¹³¹⁵ According to Ms Hepper it would have been normal practice at that time, given the number of meetings that would have been occurring, for officials to take informal notes in their notebooks and record action points. However, no notebook entries have been submitted to the Inquiry. This is perhaps unsurprising as the Inquiry heard evidence that such informal notes were usually destroyed after a short period of time or when the official left their role. Ms Hepper’s recollection in her evidence to the Inquiry was that the main action point in this case was to send Ms O’Hagan a link to the July 2013 RHI Phase 2 consultation document after the meeting.¹³¹⁶
- 23.15 In late 2016, after she had been approached by both the PAC and PwC, Ms O’Hagan put together a note of the October 2013 meeting, which appears to have been based on her account of the meeting in her email to DETI of 12 May 2014, (discussed below), in which she recollected a number of matters that were discussed.¹³¹⁷ Her note indicated that she had told the Department’s representatives that the flat, un-tiered rate of subsidy meant that there was no incentive at all to be efficient, and it was more likely that the heating would be kept on in buildings all year round with the windows open everywhere.
- 23.16 She further recalled that departmental officials informed her that they did not believe this to be the case as, in their view, “people would not do this.” Ms O’Hagan advised them that it was happening and that it made it impossible to sell energy efficiency equipment, even when such equipment should be installed, and would be in GB. She was advised by the officials that she should feed her thoughts into the current RHI consultation on the proposal to extend the scheme to the domestic sector and to consider new tariffs/technologies for the non-domestic sector. Ms O’Hagan told the Inquiry that subsequent to the meeting in 2013 she read the July 2013 NI RHI Phase 2 consultation document but was unable to find therein any mention of amending the subsidy to tiered payments in line with GB.
- 23.17 Ms O’Hagan left the meeting with a feeling of frustration, believing that it had been a waste of her time, since the officials did not seem to acknowledge the issue.¹³¹⁸
- 23.18 Subsequent to the meeting on 8 October 2013 Mr Hutchinson wrote to Ms O’Hagan suggesting that she should contact DFP as they had responsibility for energy efficiency and energy usage in the public estate.¹³¹⁹
- 23.19 Both Mr Hutchinson and Ms Hepper have referred to the evidence given by Ms O’Hagan, as to what she had to say at the meeting, as “anecdotal”¹³²⁰ and to the effect that suppliers were

1313 WIT-264852

1314 TRA-04719

1315 WIT-264856

1316 WIT-16752

1317 WIT-264856; WIT-264862

1318 TRA-04713 to TRA-04714

1319 WIT-264857

1320 WIT-15140; WIT-06209

discouraging energy efficiency products. Ms O’Hagan emphasised to the Inquiry that she had informed the officials that, for example, one biomass company had asked her to remove the note in her promotional material relating to efficiency and that other installers had told her that efficiency was not in their interest.¹³²¹ She emphasised that the officials did not ask for the identities of those who were doing this and that her own experience was that exploitation of the system would have been apparent to a “blind man on a galloping horse”.¹³²²

23.20 Ms O’Hagan accepted that she did not volunteer the identities and/or specific promotional materials to the DETI officials, but she was somewhat disillusioned and did not receive the impression from the meeting that there was sufficient interest in the information that she provided.¹³²³

23.21 The Inquiry notes that Ms O’Hagan’s information did not stimulate any further consideration of the comparative amount of subsidy and the price of biomass, whether tiering might actually be required in Northern Ireland or how the scheme was being sold and promoted in practice. When she emailed DETI again, in May 2014,¹³²⁴ Mr Hutchinson saw fit to raise the issue of possible overcompensation with Dr Ward of Ofgem¹³²⁵ and include it in his handover note.¹³²⁶

23.22 Ms O’Hagan’s engagement was not limited to DETI. In August 2013 Ms O’Hagan had contacted Mr Stephen Agnew, MLA for the Green Party, and went on to meet him at his office in September.¹³²⁷ At her prompting, Mr Agnew tabled an Assembly question on 7 October 2013 in the following terms:

“To ask the Minister of Enterprise, Trade and Investment for her assessment of whether subsidies for biomass disincentivises [sic] energy efficiency; and if so, what measures can be taken to combat this?”¹³²⁸

23.23 The DETI Minister’s answer asserted that the Department was very keen to promote energy efficiency alongside incentives for renewable heat technology, such as biomass, and concluded with the following sentence:

“Again, within the existing RHI for commercial premises it is assumed that the installation of a biomass boiler, or another renewable technology, would be the final action taken by a business seeking to become ‘low-carbon’, with the costs involved in installing renewable heating much greater than those involved with simple energy efficiency measures.”¹³²⁹

Ms O’Hagan’s 2014 emails

23.24 As mentioned above, on 12 May 2014 Ms O’Hagan again emailed Mr Hutchinson. She reminded him of the representations that she had made at the meeting in October 2013 and continued in the following terms:

1321 TRA-04724; TRA-04729

1322 TRA-04730 to TRA-04731

1323 TRA-04730

1324 WIT-264862

1325 WIT-06068 to WIT-06069; WIT-06214

1326 WIT-07596 to WIT-07609; WIT-07601

1327 WIT-264832 to WIT-264834

1328 WIT-264859

1329 WIT-264859

“As I had said then, what we are seeing on the ground in Northern Ireland is that buildings are using more energy than before because it pays them to do so. The flat rate means that there is no incentive at all to be efficient so the heat in the buildings is all year round with the windows open everywhere. When we had spoken, you did not believe that people would do this, but please believe me that it is happening with almost everyone that we approached. It’s making it impossible for us to sell energy efficiency equipment to these buildings, even when that’s exactly what should be happening as the first step and indeed what is happening in GB. The building owners there know that it’s in their interest to be efficient, in Northern Ireland it is not – it’s in their interest to be wasteful with what’s strictly not a renewable energy source.

We have been told by a well-established biomass Company here to remove the saving detail on our products literature because their clients were no longer interested in making any savings. I think that you’d agree that there is something inherently wrong with that approach to funding and it’s going to put Companies like ours out of business.”

23.25 She concluded by asking what the future plans were for RHI tariffs in the non-domestic scheme and confirmed that she would be happy to provide information. By that time Ms O’Hagan had attended more events and spoken to more people on the ground concerned in businesses such as hotels and care homes etc. The final sentence of her email read, perhaps understandably, that; “it’s got to a stage now where it simply cannot be ignored any longer.”¹³³⁰ The Inquiry notes that, while he included a reference to her email communication in his handover note, Mr Hutchinson had not, before leaving DETI a few days later, replied to Ms O’Hagan.

23.26 On 9 June 2014 Ms O’Hagan made a third attempt to draw the situation to the attention of the relevant DETI officials. She sent an email to DETI for the attention of Ms Hepper who, by this time, had left the Department. Mr Mills was copied into this email when it was forwarded to Ms McCay for consideration.¹³³¹ He told the Inquiry that he did not think that he would have read it on the basis that: “Davina could deal with it”.¹³³²

23.27 On 11 June Ms O’Hagan received a reply from Ms McCay, who informed her that both Mr Hutchinson and Ms Hepper had moved to areas of work outside Energy Division and DETI, and continued:

“I am now looking after Renewable Heat and we intend to review elements of the non-domestic RHI, including tariffs within the next few months. I am sorry I can’t tell you anything more definitive than that at the moment, but I wanted to let you know that the issues you have raised are on our radar.”

Ms O’Hagan received this email with a degree of relief and was hopeful that change might come about.¹³³³

1330 WIT-264862

1331 DFE-382925 to DFE-382926

1332 TRA-09617

1333 DFE-04532 to DFE-04534

Ms O’Hagan’s 2015 emails

- 23.28 However, by Spring of 2015, realising that nothing had changed, she sent a further email to Ms McCay on 11 March 2015. In it she reminded Ms McCay that no change had taken place in tariffs and confirmed that the attitude of biomass installers and companies remained the same; they were not interested in making any efficiencies. She gave an example of a company explaining to their client about running its biomass boiler 24/7 (168 hours per week), rather than the 40 hours the company actually needed its boiler to run, in order to ensure a quicker payback (2 years rather than 3). She said: “In anyone’s eyes this is completely wrong and motivates further waste.” She concluded her email by explaining that she was passionate about the issue not just because the position impacted her business, “but because of its impact on the environment – unnecessary waste of any resource should not be allowed and it should certainly not be encouraged.”
- 23.29 It is also important to record that this email included, as part of its following ‘chain’, a number of earlier emails including the email to Ms Hepper of 9 June 2014 discussed above (to which Ms McCay had replied).¹³³⁴
- 23.30 Ms O’Hagan’s 11 March 2015 email was referred by Ms McCay (who had ceased her short acting up period working on RHI at the end of June 2014 at the time when Mr Wightman and Mr Hughes took up their posts) to Mr Hughes. Mr Hughes replied to Ms O’Hagan on 12 March 2015, copying in Mr Wightman. Mr Hughes referred to the review of Phase 2 of the NI RHI scheme and stated that: “With regard to tiered funding, whilst this is not being proposed as a specific issue under the review it may be introduced at a later date as a budgetary control measure.”¹³³⁵
- 23.31 In the course of her final reply to Mr Hughes, sent on the same date, and which was also copied to Mr Wightman, Ms O’Hagan said:

“I believe that the tiered funding in NI needs to ensure that people who avail of non-domestic RHI don’t just waste fuel for the sake of earning money on the RHI repayments. I have spoken to Fiona Hepper and her team about this two years ago. She advised me then that they didn’t think that businesses would abuse the system, but we see it time and time again when out on client’s sites. That this is happening is not acceptable in my view. This doesn’t happen in GB as the higher rate RHI repayment only covers a certain amount (around 75% of a 40 hour week) of their usage and their remainder of usage is of a lower rate – thus encouraging efficiencies.

I have tried to speak to each person who has subsequently taken on the RHI role and Davina had acknowledged that when she was looking after Renewable Heat she intended to review elements of the non-domestic RHI, including tariffs. She had said that the issues that I was raising were on the RHI Team’s radar and would be dealt with. It is really disappointing to hear that’s not the case anymore, other than possibly in the future for budgetary controls. The rest of us, who are actually trying to save energy, money and the environment have an uphill struggle against such legislation. I understand that it is a renewable resource, if replanted, but really should it be wasted for profit?”¹³³⁶

Ms O’Hagan received no further response from DETI.

1334 DFE-106879 to DFE-106888

1335 DFE-106879

1336 DFE-106889 to DFE-106899

23.32 It does not appear that any link was made by officials between Ms O’Hagan’s initial emails to Minister Foster in 2013 and Ms O’Hagan’s subsequent communications. This is particularly difficult to understand given that Ms O’Hagan’s email of 11 March 2015 included a chain of the earlier emails, at least one of which confirmed contact with Minister Foster in 2013 who had agreed to the original 2013 meeting with officials.¹³³⁷ None of Ms O’Hagan’s communications in 2014 and 2015 were brought to the attention of the Minister. The Minister was not told about the issues Ms O’Hagan was raising in detail and in writing over heat being wasted in order for scheme members to earn money, and the need for the NI RHI to have tiering. Indeed, later in 2015, when tiering was put forward as the solution to be adopted for the NI RHI scheme, no mention was made of Ms O’Hagan’s representations on the subject.

Unjustifiably in the eye of the storm

23.33 Unfortunately, Ms O’Hagan’s adverse experience over RHI was far from over. As part of the media storm developing around the NI RHI scheme towards the end of 2016 Ms O’Hagan took part in an interview broadcast in the course of the BBC’s Stephen Nolan radio programme. During that interview she, understandably, referred to her early attempts to draw the attention of DETI, and the then DETI Minister Foster, to the circumstances in which it appeared that the scheme was at risk of being exploited.¹³³⁸

23.34 Subsequent to the broadcast Ms O’Hagan was contacted by Brendan McCann of the DfE Corporate Governance Directorate (DETI having become DfE in May 2016) and asked if her email to Minister Foster of 26 August 2013 could be released – an email that, in itself, made no specific criticism of the NI RHI scheme. Such criticism was contained in the email to Ms Foster of 3 September 2013, which she had not retained.

23.35 Ms O’Hagan was prepared to agree to the email being released by DfE provided that her identity was effectively concealed by redaction and that she was given an opportunity to check her computer, to which she did not have access at the time of the request, for any other relevant emails.

23.36 Unfortunately, she was not afforded such an opportunity.¹³³⁹ DETI officials provided the First Minister’s Office (by this time, late 2016, Ms Foster was the First Minister), with a copy of Ms O’Hagan’s initial 26 August 2013 email to DETI. However, as a consequence of acting hastily under media pressure, the DETI officials omitted to ensure that the conditions sought by Ms O’Hagan were effectively communicated.

23.37 As a result, the email was not effectively or sufficiently redacted to prevent her identity being discovered. The email, having been provided to the First Minister’s office, was released, not by DfE as anticipated by Ms O’Hagan, but on a DUP twitter account. However, it is important to record that the DETI officials were responding to requests from Government Ministers and not on behalf of any political party.¹³⁴⁰

23.38 Dr McCormick, Permanent Secretary in DfE at the time of these events, expressed an unreserved apology to Ms O’Hagan for the Department’s part in the event which inevitably caused her

1337 DFE-106886

1338 DOF-43745 to DOF-43755

1339 WIT-264835 to WIT-264836

1340 WIT-03339 to WIT-03342

entirely understandable distress.¹³⁴¹ The Inquiry considers he was quite right to do so. In the course of her statement to the Assembly on 19 December 2016 in relation to the RHI, First Minister Foster also stated that Ms O’Hagan should be thanked and that she: “...deserves our highest respect and a sincere apology on behalf of my former Department which should not have dismissed her claims with disbelief, but examined them with diligence.”¹³⁴² More recently, in giving oral evidence to the Inquiry, Ms Foster accepted that it was totally understandable that Ms O’Hagan was upset at being caught in the ‘political crossfire’ in December 2016; that the circumstances surrounding the release of Ms O’Hagan’s email at that time were not acceptable; and, in her capacity as DUP party leader, Ms Foster said that she was sorry that Ms O’Hagan had been caught up in the middle of it all.¹³⁴³

23.39 As it happens, DETI officials did not see the email of 3 September 2013 that Ms O’Hagan had sent to Ms Foster’s constituency office until 27 March 2017. However, DUP SpAds became aware of its existence from DUP members on the PAC on 18 December 2016. This issue was then addressed in Ms Foster’s speech to the Assembly in relation to the RHI scheme on 19 December 2016. In a draft of that speech prepared by Mr Bullick, an initial attempt was made to describe the criticism that Ms O’Hagan’s 3 September 2013 email contained as a “passing reference” to concerns about the RHI scheme.¹³⁴⁴ Upon receipt of this draft Dr McCormick advised that the word “passing” should be left out. The relevant passage from the September 2013 email seeking a meeting with Minister Foster was quoted earlier in this Report. It said:

“Customers are no longer worried about becoming more efficient, in fact it pays them to use as much as they can – in fact the incentive to use more is leading to misuse in some cases.”¹³⁴⁵

23.40 The Inquiry considers that this clear reference to the perverse incentive – namely that it paid scheme members to use as much heat as they could, which was leading to misuse – could not reasonably be described as a mere “passing reference” to concerns about the RHI scheme, either on its own or in the context of the rest of the email. Indeed, after considering the issue further, the word “passing” was dropped by Mr Bullick from the text of the draft speech and did not feature in the address which First Minister Foster in fact delivered.¹³⁴⁶

23.41 Whether it was the mind-set that “people would not do this” or over reliance on the CEPA analysis with regard to there being no need for tiered tariffs or simply being badly under-resourced, it seems that no attempt was made to check Ms O’Hagan’s concerns with Ofgem, DARD or any of the major stakeholders. Indeed, as demonstrated by the NIAO investigation of 2016, it would have been relatively simple to perform a trawl of online information available on the website of the installers of biomass boilers.¹³⁴⁷

1341 WIT-03337; WIT-03343

1342 INQ-00118

1343 TRA-08455

1344 WIT-03343; DFE-183322 to DFE-183326

1345 WIT-264846

1346 See the email from Mr Bullick of 7.27 pm on 18 December 2016 with revised text at DFE-183322 to DFE-183323, which Dr McCormick was content to clear; and the relevant portion of the Hansard transcript of First Minister Foster’s speech at INQ-00118.

1347 WIT-115014

Findings

126. The Inquiry considered Ms O’Hagan to be an impressive witness and it was not difficult to sympathise with her sense of frustration at the apparent inaction of a Government Department for some two years, even failing to carry out any investigation into the evidence that she had provided with regard to the perverse incentive to waste public funds. Accepting that she did not provide identities or promotional materials after her interview with DETI officials in October 2013, nonetheless her evidence was clearly and rationally presented and entirely consistent with other representations as well as with the activities and promotional materials available to stakeholders on the ground.
127. While Ms O’Hagan had no difficulty in conceding that her initial interest was, to some degree, stimulated by her own business, Mr Hutchinson told the Inquiry that the officials “did not believe that she was speaking out of self-interest” and he agreed that he and colleagues had expressed the view, with regard to exploitation of the scheme, that they “didn’t think that it would happen.”¹³⁴⁸
128. The Inquiry bears in mind that regardless of how he perceived Ms O’Hagan’s motivation, at least Mr Hutchinson considered it important enough to include a reference to her concern in his handover document in May 2014. In doing so, Mr Hutchinson made a specific reference to the email from Ms O’Hagan of 12 May. He was also aware of Ofgem’s advice of 13 May and made a recommendation that tiering of tariffs should be considered “as a matter of urgency” for biomass boilers under 100kW since higher demand was leading to over-generous tariffs.¹³⁴⁹ Sadly, as Ms O’Hagan’s email of the following year confirmed, no action in respect of tiering appears to have been taken even when she emailed Energy Division officials again in the spring of 2015.
129. The Inquiry notes that guidance on whistleblowing arrangements for DETI staff was published in May 2009 and updated to reflect changes in job titles in July 2012. No guidance existed on handling concerns raised by a concerned member of the public until June 2016 following the conversion of DETI to DfE; the Inquiry received no evidence as to why this was not done earlier.¹³⁵⁰ The Inquiry notes that Ms O’Hagan does not consider herself a whistle-blower.¹³⁵¹ Regardless of what official guidelines said on whistleblowing, any member of the public bringing forward a serious concern was entitled to have those concerns taken seriously. The treatment of both Ms O’Hagan and her attempts at communicating her concerns fell well below the standard that she was entitled to expect from the Department.
130. While she herself was not one of Minister Foster’s constituents, Ms O’Hagan did send emails to her constituency office in an attempt to ensure that communication was achieved. The system for handling correspondence to Ms Foster’s constituency office, where matters were raised relevant to DETI business, was not adequate in this case. Having received two similar emails to her constituency email address, Minister Foster’s assumption that the email she received on 3 September was just a reminder is perhaps understandable in the circumstances. However, the unfortunate

1348 TRA-05032

1349 WIT-07601

1350 DFE-399238 to DFE-399289

1351 WIT-264825

situation that arose in respect of that email could quite easily have been avoided by implementing a secondary check system, such as ensuring that all emails to the constituency office on departmental business were also referred to the ministerial Private Office.

131. Ms O’Hagan met officials on 8 October 2013; given the content of the meeting and the information she provided, it is the Inquiry’s view that the officials’ response was completely inadequate. At best, it was naïve. Apart from the reference by Mr Hutchinson in his handover note no further steps were taken by the officials concerned to raise independent enquiries with the commercial sector or relevant Government bodies and no steps were taken to escalate her concerns. An even more basic step would have been to check the comparison between the tariffs and the price of the fuel. Ms O’Hagan’s reaction to the attitude of the officials with whom she met was both appropriate and entirely understandable.
132. There does not appear to have been any recognised system for managing and collating correspondence of the type received from Ms O’Hagan in 2014 and 2015. Minister Foster said that, with hindsight, the correspondence and issues raised by Ms O’Hagan in 2014 and 2015 should have been collated and escalated within DETI by officials to at least her SpAd if not to herself.¹³⁵² The Inquiry has no doubt that this sorry sequence of events fell well below what a citizen of this jurisdiction, concerned about potential waste of public funds, was entitled to expect.
133. Ms O’Hagan deserved better and had every right to feel aggrieved particularly when, in December 2016, her email of 26 August 2013 was released in an inadequately redacted form, contrary to her clear instruction and her request that her identity be protected.
134. Without probing or testing the accuracy of what they had been told, in terms of potential waste on, or abuse of, the NI RHI scheme, officials simply believed that “people wouldn’t do that”. A culture which allows such blinkered belief in the correctness of their approach is of significant concern to the Inquiry and must not be allowed to continue, if such a situation is to be avoided in the future.

Chapter 24 – Initial work on Phase 2 of the non-domestic RHI scheme in early 2015

- 24.1 Following the launch of the NI domestic RHI scheme in December 2014, the attention of the relevant officials working on RHI in DETI Energy Division’s Energy Efficiency Branch, primarily Mr Wightman and Mr Hughes, turned again to the non-domestic NI RHI scheme.
- 24.2 According to the Energy Efficiency Branch Team Plan for 2014-15, from as early as July 2014 the team had set themselves the target of introducing Phase 2 of the non-domestic RHI scheme by 31 March 2015.¹³⁵³ The specific tasks, set out in paragraph 4I of the 28 July 2014 version of the plan, indicated that the intention was to review and finalise the policy proposals, including conducting a review of the biomass tariffs for boilers under 100kW and considering tiered tariffs to prevent excessive payments.¹³⁵⁴ The same paragraph in the 17 December 2014 version of the plan contained an identical list of tasks, indicating (in keeping with the evidence received by the Inquiry) that none of the tasks had been progressed to that point.¹³⁵⁵ The evidence the Inquiry received from the relevant officials was to the effect that, before January 2015, there simply had not been the capacity to progress any other elements of the Phase 2 proposals beyond the domestic RHI scheme itself.
- 24.3 During 2014 and into early 2015, uptake of the non-domestic scheme was beginning to accelerate and concerns about the adequacy of the budget to cover commitments initially emerged within Energy Efficiency Branch, and subsequently grew amongst senior managers in DETI, leading to a series of actions and reactions throughout the course of the year.¹³⁵⁶ Summaries of the developments are outlined in the following sections.

Initial development of the response to the non-domestic element of the 2013 Phase 2 consultation

- 24.4 In January 2015 Mr Hughes commenced work on a document entitled “The Northern Ireland Non Domestic Renewable Heat Incentive Response to consultation and final policy”.¹³⁵⁷ It appears to have been intended to be the Government response to DETI’s July 2013 Phase 2 consultation. This response document covered some 18 issues, including the expansion of the non-domestic scheme and cost controls. Ultimately there would be 25 versions of this document by the time work stopped on it on 20 May 2015. Most of the substantive work appears to have been carried out in April 2015.
- 24.5 It is not entirely clear who decided how to proceed. Mr Wightman thought that there might have been some discussion with Mr Mills but, for all practical purposes, it appears that the Energy Efficiency Branch officials were left to their own devices.¹³⁵⁸ Mr Hughes told the Inquiry that they took guidance from the July 2013 consultation document and responses thereto, rather than researching any of the other materials stored in TRIM.¹³⁵⁹ Without proper background

1353 DFE-419557 to DFE-419565

1354 DFE-419562

1355 DFE-419306 to DFE-419318

1356 DFE-117331 to DFE-117347

1357 DFE-117331 to DFE-117347

1358 TRA-09249 to TRA-09261

1359 TRA-05886; TRA-05944 to TRA-05945

knowledge or research this meant that they were ill-equipped to deal with major aspects of the scheme:

- (i) Neither Mr Wightman nor Mr Hughes were aware of the unusual form of AME by which the schemes were funded, despite Mr Wightman having unearthed the April 2011 email from HMT’s Jon Parker during exchanges with DFP over the domestic business case in September 2014. Mr Wightman told the Inquiry that he was under the impression that any AME forecast would be met and any increase in applications confirmed that the schemes were “taking off”.¹³⁶⁰
- (ii) They were not aware that DFP approval of the non-domestic RHI scheme required to be renewed in March 2015, nor that a scheme review should have been carried out in 2014 and the results thereof implemented by April 2015.¹³⁶¹
- (iii) Mr Hughes explained that his attention was not drawn to the original non-domestic RHI scheme risk register of 2012 and he was not advised to monitor load factors or fuel prices but only uptake in terms of ascertaining how that could be **increased** (the Inquiry’s emphasis).¹³⁶²

The 2015 policy templates

- 24.6 As part of his work on developing the policy response, Mr Hughes prepared a number of template documents setting out DETI’s proposals for Phase 2 of the NI non-domestic RHI scheme. Each template covered a different policy proposal. The purpose of these template documents was to seek Ofgem’s initial comments on each area, which could then be factored into any ultimate recommendation to the Minister as to future developments. Mr Hughes told the Inquiry that Ofgem’s views were sought because it was the body charged with administering the scheme.¹³⁶³
- 24.7 Eleven of the templates were forwarded to Ofgem on 26 February 2015, with a further three (including one entitled “Cost Control”) being sent on 25 March 2015.¹³⁶⁴ The position was formalised on 1 April 2015 when Mr Hughes emailed a letter from Mr Wightman to Dr Ward of Ofgem inviting Ofgem to commence a short feasibility study on a number of the proposals that they wanted to include in Phase 2 of the non-domestic RHI scheme.¹³⁶⁵
- 24.8 The templates that Mr Hughes sent through in February and March 2015 related to a myriad of different issues, some of which had not been the subject of public consultation and some of which, had they been implemented, would have put further pressure on the available RHI budget. They included, but were not limited to the following:
- (i) a proposal to extend the band of the potentially lucrative medium biomass tariff, then 6.3p/kWh, from 20 to 99kW to 20 to 199kW;
 - (ii) a new tariff for large biomass boilers over 1MW;
 - (iii) introducing a possible uplift tariff for district heating;

1360 TRA-05830 to TRA-05831; TRA-05866 to TRA-05867; TRA-06856 to TRA-06858

1361 TRA-05828 to TRA-05830; TRA-05844 to TRA-05848; TRA-05887 to TRA-05889; TRA-06956 to TRA-06957

1362 TRA-05861 to TRA-05864; TRA-08535

1363 TRA-05941

1364 DFE-118542 to DFE-118559; DFE-118583 to DFE-118589

1365 DFE-118632 to DFE-118651

- (iv) work on some definitions such as “an installation”, and whether a process had to occur within a building; and
 - (v) cost control.
- 24.9 The proposal to extend the band for medium biomass had not been consulted on in 2013. It noted that, by January 2015, over half of the applications to the non-domestic NI RHI scheme related to 99kW installations, each qualifying for the higher tariff of 6.3p/kWh. It is evident from the policy proposal that, as will be discussed elsewhere in this Report when dealing with multiple boilers, Mr Hughes was trying to come up with a means to reduce the extent of multiple boiler RHI applications. He had already expressed the view to Ofgem in January 2015 that what was occurring in this regard was not in line with the policy intent for the scheme.
- 24.10 The re-banding proposal did recognise that the GB RHI scheme had a tiered tariff, but Mr Hughes confirmed that at that time, 26 February 2015, it was not proposed to introduce tiering in Northern Ireland.¹³⁶⁶ As has already been seen in the last chapter, that position was re-stated to Janette O’Hagan in 2015.
- 24.11 The proposal was to extend the medium biomass tariff up to and including 199kW boilers, which, Mr Hughes suggested, “should not increase RHI payments”. It does not seem to have been appreciated that this might simply exchange ‘gaming’ at one level for ‘gaming’ at another.¹³⁶⁷

The 2015 cost control proposal

- 24.12 Mr Hughes sent the cost control policy template to Ofgem on 25 March 2015.¹³⁶⁸ By this point, as will be discussed later in this Report, Mr Wightman and Mr Hughes were starting to realise that there was likely to be insufficient budget for the number of likely applicants to the NI RHI scheme. In his covering email Mr Hughes drew Ofgem’s attention to the cost control template and summarised the approach as “future tariff reductions are being considered for the Regulations as a budgetary control measure.”¹³⁶⁹
- 24.13 The attached March 2015 template detailed the trigger method of cost control that Mr Hutchinson had designed (the Inquiry has already said it considers this would be more accurately referred to as a budget control), which was to operate across both the non-domestic and domestic RHI schemes, and about which the public were consulted in 2013.¹³⁷⁰ The initial text of the template setting out the trigger mechanism appears to have been taken from the July 2013 consultation document itself.
- 24.14 The template then set out what were said to be the consultation responses to that 2013 proposal. It was indicated that the consultation responses suggested that the proposed trigger points could be viewed as a disincentive and could cause further uncertainty in the market.
- 24.15 In the “Discussion” section of the template it was stated that the trigger points were “too proscriptive” and that DETI should have flexibility and control to restrict/close the scheme to new applicants at any given point to help manage the budget. It was recognised in the template that the power to restrict or close membership to the scheme required “to be provided for in

1366 DFE-118542 to DFE-118544; TRA-08612

1367 DFE-118543 to DFE-118544; TRA-05942 to TRA-05944

1368 DFE-118583; DFE-118586 to DFE-118587

1369 DFE-118583

1370 DFE-118584 to DFE-118585

the Regulations”, but no further steps appear to have been taken to advance that issue as part of the initial cost control work.¹³⁷¹ A subsequent version of the cost control template sent to Ofgem in May 2015 simply contained the same statements.¹³⁷²

- 24.16 The discussion section went on to state: “on the wider issue of affordability/future tariff levels there is a lack of clarity over RHI funding beyond March 2015”. It then said that “consideration should be given to plan for reduced tariffs now as part of the phase 2 review” and that “the most popular tariff, (6.3 pence biomass), should be reduced at different intervals.”
- 24.17 The template then set out the DETI recommendation “to include tariff reduction for biomass in April 2017 and April 2018. The level of reduction to be determined, (probably looks like about 33% reduction on each occasion)”.
- 24.18 Evidence of the proposal being developed and refined was available to the Inquiry. The Inquiry was provided with all the versions of the draft entitled: “The Northern Ireland Non Domestic Renewable Heat Incentive Response to consultation and Final Policy” that Mr Hughes worked on between January and May 2015, when, as the extent of the difficulties with RHI started to become apparent to DETI officials, there was a significant change of approach. When Mr Hughes sent a draft of the policy document to Mr Wightman on 12 May 2015¹³⁷³ it said that “provision will be made in the scheme legislation to reduce the most popular tariff, (6.3 pence biomass), in April 2017 and again in April 2018.”¹³⁷⁴ The previous reference to a 33% reduction had been changed to a specific reduction of “2.1p/kWh on each occasion”.¹³⁷⁵
- 24.19 By 12 May 2015 Mr Wightman and Mr Hughes were also discussing adding tiering to their cost control proposal.¹³⁷⁶ Email communication between them on that date indicates that work was ongoing to try to establish what the appropriate Tier 1 threshold might be in terms of the number of hours before which you would move to the lower Tier 2 tariff. It would appear that questions on the issue were being asked of both DECC and Ofgem, and Mr Wightman explained to the Inquiry in oral evidence that he himself had been looking at the question of tiering.¹³⁷⁷
- 24.20 As mentioned previously, it is the case that the Energy Efficiency Branch Team Plan 2014-15, dated 28 July 2014, had originally included, as one of the necessary activities: “consideration of tiered tariffs to prevent excessive payments. Check understanding with Mr Hutchinson.”¹³⁷⁸ However, Mr Hughes was clear in his oral evidence that the only meeting that he had with Mr Hutchinson, in August 2014, was limited to a discussion of the domestic scheme.¹³⁷⁹ That recollection was consistent with that of Mr Hutchinson.¹³⁸⁰ Further, the potential usefulness of tiering appears to have arisen in a discussion with Ofgem on 27 March 2015¹³⁸¹ over the district heating proposal which Ofgem considered could be open to fraud or ‘gaming’.¹³⁸²

1371 DFE-118586 to DFE-118587

1372 DFE-119483 to DFE-119485

1373 DFE-119036 to DFE-119037

1374 DFE-117161 to DFE-117177 at DFE-117175

1375 DFE-117175

1376 DFE-119036

1377 TRA-10338

1378 DFE-419562

1379 TRA-08541

1380 TRA-05169 to TRA-05170

1381 DFE-385814; TRA-10330

1382 OFG-18516

- However, Mr Wightman told the Inquiry that, for him, the vital importance of tiering was not a “eureka moment” until May 2015.¹³⁸³
- 24.21 By 15 May 2015 Mr Hughes had adopted, in his version 23 of the draft policy document, the GB tiering thresholds: that the first 1,314 hours of use would be paid at the Tier 1 (higher tariff), with hours used thereafter being paid at the Tier 2 (lower tariff), which was going to be 1.5p/kWh.¹³⁸⁴
- 24.22 When, on 22 May 2015, Mr Hughes sent Ofgem a revised cost control policy template it included the previous proposal of the annual drop in the medium biomass tariff, now set at 2.1p/kWh on each occasion, but also the introduction of tiering (at that stage the date for it to be introduced was from 1 April 2016).¹³⁸⁵
- 24.23 By then, the final version of the wider 18 issue policy document that Mr Hughes had been working on, version 25 of 20 May 2015, also contained the tiering proposal. As will be discussed later in this Report, it was on that same day, 20 May 2015, that DETI Finance told Mr Wightman that Energy Division would have to stop entering into any further RHI commitments, and the RHI problem started to escalate. The policy that was subsequently brought forward, and ultimately reflected in the November 2015 RHI amendment regulations, dealt with a much more limited number of issues.
- 24.24 The amalgam of stepped annual tariff reductions and tiering remained in a further version of the cost control template sent to Ofgem on 17 June 2015,¹³⁸⁶ though the date for implementation had been brought forward and the document said that a consultation on the proposals would be conducted during the summer of 2015. The final version of the cost control template from 7 July 2015 only had tiering, but with a suggestion for the consideration of depression.¹³⁸⁷
- 24.25 It is important to consider the development of the 2015 cost control proposal in the context of the original trigger system of cost control proposed in the 2013 public consultation.
- 24.26 It is the case that when Mr Wightman and Mr Hughes took up their posts at the end of June 2014 there was no cost control aspect to the domestic scheme that they took forward. Mr Wightman told the Inquiry in oral evidence that before he arrived in DETI a policy decision must have been taken to remove the cost controls proposed in the 2013 consultation, as they were not part of the domestic policy papers he inherited and took forward.¹³⁸⁸ Whilst this may be a reasonable assumption to make, the evidence available to the Inquiry indicates that there was no specific formal decision to do so.
- 24.27 As discussed earlier in this Report, Mr Hutchinson had devised the “trigger” mechanism of budget control during 2013. That “trigger” mechanism was designed to apply to both the domestic and the non-domestic RHI schemes.¹³⁸⁹ The 2013 consultation included the “trigger” mechanism under its section 4 on “Setting Standards, Improving Performance and Cost Control”.¹³⁹⁰

1383 TRA-10334

1384 DFE-117110 to DFE-117124; DFE-424043 to DFE-424053

1385 DFE-119483 to DFE-119485

1386 DFE-120415

1387 DFE-120426 to DFE-120433

1388 TRA-06906 to TRA-06909

1389 DFE-97607

1390 DFE-97604

- 24.28 When the business case for the introduction of the domestic RHI was originally drafted by Mr Hutchinson in the early part of 2014 it did not contain the proposal to introduce the 2013 ‘trigger’ mechanism through the domestic RHI regulations. In his written evidence to the Inquiry.¹³⁹¹ Mr Hutchinson suggested that the reason for this omission was that he “may have felt” that the business case, and the other papers being drafted for the relevant Casework Committee, were designed to secure approval for the domestic scheme rather than addressing other administrative issues, which were for senior management to decide upon and take forward.
- 24.29 Nonetheless, it was the proposal that had gone out to the public by way of consultation, and the alternatives discussed above that were being developed in 2015 had not. Mr Wightman accepted that he was ultimately responsible for the policy development that was reflected in the discussion section of the templates.¹³⁹² He said the templates would not have reached the desk of Mr Mills, though he may have discussed the general approach with him.¹³⁹³
- 24.30 Mr Hughes accepted that he and Mr Wightman had not liked the ‘trigger’ mechanism proposed in the 2013 public consultation and that they came up with what they thought was a better idea. He accepted in the course of questioning by the Inquiry panel that this proposal bore no relation to that which had been the subject of the consultation.¹³⁹⁴ He also agreed that their proposal was not supported by any clear evidence and, at that time, had not been the subject of a ministerial submission.¹³⁹⁵
- 24.31 Mr Wightman confirmed to the Inquiry in his oral evidence that the work was primarily his,¹³⁹⁶ and he thought the ‘trigger’ mechanism set out in the 2013 consultation document, when he came to work on the cost control question in the initial part of 2015, was “effectively a queueing system”. His concern was that:
- “...if you basically stopped and the applications started to pile up on the desk, you still, whenever you opened up the following year, you were just putting off the problem, so you might have already breached the following year’s budget by the time you reopened for applications.”¹³⁹⁷
- 24.32 Although the 2015 proposals were being framed as budget controls, and while they could have had an impact on how much money was paid out to individual scheme members, they could not, of themselves, regulate how many applicants could enter the scheme in the way that would have been possible with the proposed ‘trigger’ mechanism from the public consultation and consequently would not of themselves have been able to keep the scheme within budget.
- 24.33 When giving oral evidence to the Inquiry Mr Mills accepted that the focus had shifted to tiering “...because it could be done quickly”, and he agreed that Energy Division officials “...had abandoned a mechanism for budget control... [and] had rejected degression and the whole focus was on tiering, which is not a means of budget control.”¹³⁹⁸ The Inquiry notes that tiering, which was adopted by DETI officials, had also not been the subject of public consultation.

1391 WIT-09327 to WIT-09328

1392 TRA-09247 to TRA-09249

1393 TRA-10346

1394 TRA-05944 to TRA-05948

1395 TRA-08662 to TRA-08664

1396 TRA-09247

1397 TRA-09248

1398 TRA-11098

Findings

- 135.** The Inquiry has not been presented with any evidence that a formal policy decision had been taken to remove the budget controls prior to Mr Wightman's arrival in DETI, but notes the 'trigger' system of budget control, consulted on in 2013, was not present within the domestic RHI business case proposal that Mr Wightman inherited when he took up post on 30 June 2014.
- 136.** The alternative cost control proposal from Mr Wightman and Mr Hughes to replace the 'trigger' system of budget control, which had been devised in 2013 by Mr Hutchinson with the help of his long experience and about which the public had been consulted, was seriously flawed. The Inquiry finds that neither Mr Hughes nor Mr Wightman properly understood the distinction between budget control and tiering.
- 137.** It appears to the Inquiry that neither Mr Wightman nor Mr Hughes properly understood the mechanism of tiering and its potential role in reducing overproduction and protecting value for money until the summer of 2015. That was certainly the case in respect of Mr Mills, who conceded as much in the course of his oral evidence.¹³⁹⁹
- 138.** As noted earlier in this Report, the public consultation of 2013 did not include any proposal to include reduction or tiering of tariffs. Yet, the belief in 2015 that tiering of tariffs was the most appropriate means of budget control led to no further efforts or research and prevented any further consideration (including, for instance, the introduction of the cost control mechanism which had been consulted upon and was actually a budget control measure). Largely because of the perceived speed with which it could be done, this approach persisted throughout 2015, allowing, as will be considered elsewhere in this Report, the volume of applications to continue unchecked and continuing budget overspend.
- 139.** Crucially, the fact that the subsidy was in excess of the biomass fuel cost was never appreciated and, consequently, was not the subject of consideration. That lack of appreciation on the part of officials was unsatisfactory, not least because, in March 2015, Mr Hughes and Mr Wightman had been copied into the earlier email chain between Ms O'Hagan and DETI officials.¹⁴⁰⁰ At least two of those emails, dated 9 June 2014 and 11 March 2015, emphasised that the clients were no longer interested in efficient heat in the context of the absence of tiering but were using heat in Northern Ireland "because it pays them to do so"¹⁴⁰¹ – the so-called 'perverse incentive'.

1399 TRA-09569 to TRA-09570; TRA-09625; TRA-10991 to TRA-11003

1400 DFE-04530 to DFE-04539

1401 DFE-04531 to DFE-04534

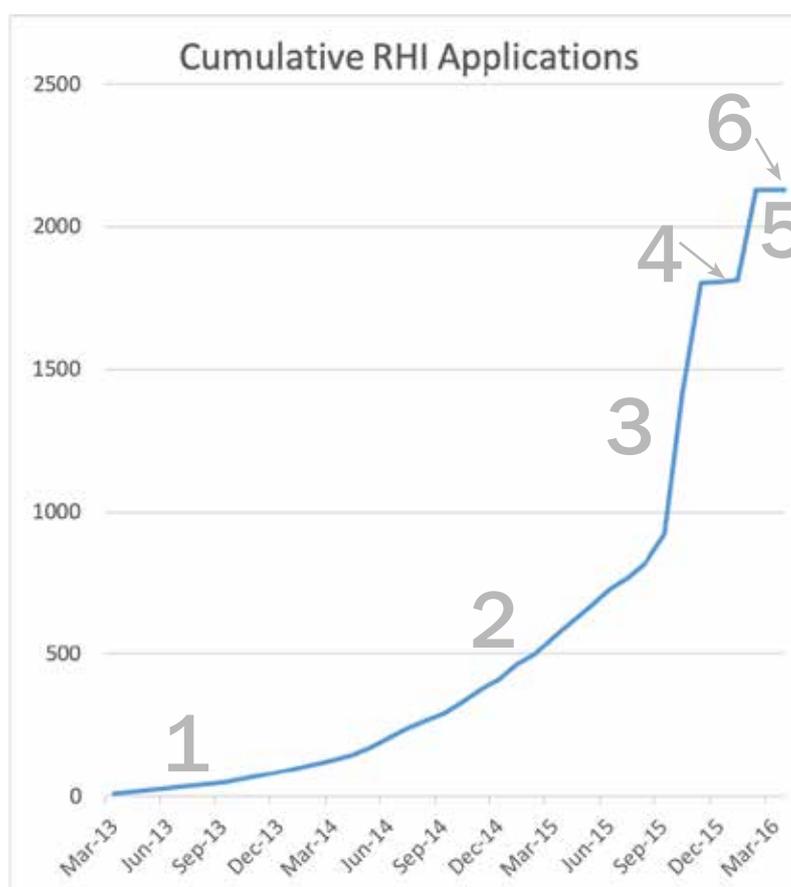
Chapter 25 – Increasing uptake levels

25.1 The Inquiry pauses at this point in the Report to look at the specific issue of the rapidly increasing number of accreditations on the NI RHI scheme, particularly from mid-2014 onwards. Some of the information contained in this chapter will take the reader beyond the point the Inquiry has reached in the chronological examination of the RHI story, but examining the theme here will ultimately assist the understanding of the reader in respect of the issues addressed in the forthcoming chapters.

An illustration of the uptake levels

25.2 As previously noted, the initial uptake levels for the non-domestic NI RHI scheme had been low. The table of “Monthly data in relation to the NI RHI Scheme”, provided to the Inquiry by Ofgem as Exhibit DJN3 to Mr Nolan’s first witness statement,¹⁴⁰² sets out a summary of all monthly applications and accreditations for the lifetime of the scheme. The Inquiry has drawn from this table as the basis for Figure 4 below, prepared by the Inquiry, which shows cumulative applications (not accreditations)¹⁴⁰³ throughout the lifetime of the scheme.

Figure 4 – Cumulative RHI Applications



1402 WIT-95150 to WIT-95151

1403 Accreditations followed a similar pattern as applications albeit with a slight time delay.

- 25.3 The graph illustrates six distinct phases in the life of the NI RHI scheme. The numbers marked on the graph from one to six correspond with the 6 stages described below.
- 1 The initial uptake levels until March 2014, while the market was still unsure about the scheme and the supply chain was beginning to develop.
 - 2 A steadily increasing uptake between March 2014 and September 2015, as the market realised how attractive the scheme was and the supply chain became established.
 - 3 A significant spike in October and November 2015 as the market tried to secure access to the scheme before rumoured, and then confirmed, tariff changes were made.
 - 4 A short period of relative inactivity in December 2015 and January 2016.
 - 5 A resurgence in applications in February 2016 as the market recognised the continuing attractiveness of the scheme with the new tariffs, and tried to secure accreditation before the scheme was closed.
 - 6 Scheme closure.

Awareness of uptake levels

- 25.4 From early 2015 officials in Energy Efficiency Branch were aware of the increasing uptake.
- 25.5 In a handwritten note relating to a teleconference with Ofgem on 27 January 2015 Mr Hughes recorded that “NI RHI applicants (51) for Jan as high as GB!”¹⁴⁰⁴ In theory, the number of applications to the NI scheme should have been tracking at around 3% of the number of applications in GB.
- 25.6 In an email he sent to HMT’s Jon Parker of 12 March 2015 (Mr Parker was, by that time, no longer with HMT) Mr Hughes referred to RHI uptake as “good and increasing”.¹⁴⁰⁵
- 25.7 Arising from information he had received from David Mark of Moy Park, on 25 March 2015 Mr Wightman sent an email to Sandra Thompson of Energy Division’s Energy Co-Ordination Branch, in which he said:
- “As you are aware, the level of uptake has increased significantly over the last few months and we’re expecting uptake to remain high with over 200 new applications for biomass heating systems from the poultry industry (linked to Moy Park’s expansion) expected over the coming 12 months.”¹⁴⁰⁶
- 25.8 On 14 April 2015 Mr Hughes passed on to Mr Wightman the details of a conversation that he had with Mr Mark at Moy Park. He said that he had been informed that, to that point, 360 of the 782 Moy Park poultry sheds had converted to biomass with the expectation that they would achieve 60% by the end of the year (a further 109). Moy Park was also planning to build 45 new poultry sheds in Northern Ireland before the end of 2015, which would operate on biomass. Mr Wightman assumed that, as things currently stood, all these sheds were likely to install 99kW biomass boilers and he asked Mr Hughes to pass the information to Ofgem.

1404 DFE-385810

1405 DFE-153167

1406 DFE-153164

- 25.9 Mr Hughes passed the information to Nadia Carpenter at Ofgem informing her that a significant number of RHI applications should be expected before the end of 2015 and beyond “as Moy Park seek to move all growers to biomass heating.”¹⁴⁰⁷
- 25.10 In an update for an Energy Division heads of branch meeting scheduled for 16 April 2015 Energy Efficiency Branch explained that the rolling monthly expenditure on RHI was now close to £1 million and that its officials were now working with DETI Finance to obtain clarity around future RHI budgets. The meeting was also told that, in the circumstances, consideration was being given to including future reductions of the most popular biomass tariffs as part of the Phase 2 proposals.¹⁴⁰⁸
- 25.11 In the course of his 2016 PwC interview Mr Hughes accepted that his monitoring of the April/ May 2015 returns from Ofgem confirmed that applications were increasing.¹⁴⁰⁹
- 25.12 In a further update for the heads of branch meeting scheduled for 14 May 2015 Energy Efficiency Branch recorded that uptake of the non-domestic scheme had increased over recent months with Northern Ireland applications running at 5% of GB figures in January. Rolling monthly expenditure was around £1.2 million in March 2015 (as compared to £129,000 for the same month in 2014) and consideration was being given to future tariff reductions. Mr Wightman reported that uptake of the non-domestic scheme had increased dramatically with 470 applications in 2014-15 as compared to 130 in 2013-14. Further, over £22 million of RHI expenditure was now forecast for 2015-16, and the current AME profile, assumed at £11 million, would consequently run out in September, only 6 months into the financial year.¹⁴¹⁰
- 25.13 Mr Mills, Mr Wightman and Mr Hughes of Energy Division as well as Mr Rooney and Mr Cooper of Finance Division met Paul McGinn, of the Departmental Solicitor’s Office, at Adelaide House in May 2015 in order to seek legal advice in relation to the NI RHI scheme. There was discussion about the fact that the RHI budget had been exceeded but no reference, at that stage, to any possible impact upon the DETI DEL budget. Mr McGinn was sceptical as to whether the scheme could be suspended other than through legislative amendment, which would require a number of months given the fact that section 113 of the Energy Act 2011 required a draft of the regulations to be laid before, and approved by, a resolution of the Assembly. Mr McGinn also recalled, in his Inquiry witness statement of 17 December 2018, reference at the meeting to very high use by some operators of small and medium boilers to generate heat and that, accordingly, payment to the owners was significantly higher than anticipated.¹⁴¹¹
- 25.14 The energy efficiency update for the heads of branch meeting scheduled for 28 May informed the reader that there had been an unprecedented increase in uptake of the non-domestic RHI scheme with the total number of applications at 22 May 2015 being more than triple what it had been in June 2014.¹⁴¹² However, monthly expenditure was by then running at £1.5 million and the total forecast expenditure for 2015-16 was £23.2 million against an expected available budget of approximately £13 million.¹⁴¹³

1407 DFE-106906 to DFE-106907

1408 DFE-410275

1409 PWC-04643

1410 DFE-410283 to DFE-410284

1411 WIT-28740 to WIT-28741

1412 DFE-410290

1413 DFE-410290 to DFE-410291

Identifying or understanding the reasons behind the increasing uptake

- 25.15 A significant issue for the Inquiry was why it appeared to take so long for officials in DETI properly to understand why there was such a large uptake on the RHI scheme.
- 25.16 Following a senior management team meeting on 29 May 2015, a meeting about RHI took place on 3 June 2015. The meeting was attended by Dr McCormick, Mr Mills, Mr Wightman, Mr Rooney and Mr Cooper. It was noted that there had been no review of tariffs, that there was no tiering of tariffs and there was now a high level of use in the poultry sector. Mr Cooper told the Inquiry that “the big problems were all discussed”, which he thought included value for money and appropriate control of costs.¹⁴¹⁴
- 25.17 On 12 June 2015 Mr Wightman provided Mr Cooper with a briefing paper on RHI to assist Mr Cooper with a meeting he was to have with DFP. The paper, amongst other things, stated that the NI RHI “still provides value for money”. As a result of considering the paper Mr Cooper sent an email to Mr Murphy, on the same day, in which he expressed the view that there was “a fair bit of naivety around the issues.” The email referred to assurances around reviews of the RHI scheme and tariff having been “glossed over” and, with reference to Energy Division officials, continued:
- “There is no self-awareness that the reason they may be delivering greater renewables than GB counterparts is the simple fact that they may be overcompensating so it’s not actually over-performing indeed potentially quite the contrary.”¹⁴¹⁵
- 25.18 Mr Cooper said that he had also mentioned the risk of overcompensation and potential breach of the State Aid approval at a further meeting of the senior officials engaged with RHI on 17 June 2015, which was attended by Dr McCormick, Mr Rooney, Mr Mills and Mr Wightman. In a written statement of evidence to the Inquiry, Mr Cooper stated that a proposal by Mr Murphy for a quick review of the whole non-domestic scheme, including all tariffs, which he had discussed earlier with Mr Murphy, was rejected by the DETI Permanent Secretary, Dr McCormick, on the basis of legal advice that any changes beyond the introduction of tiering of tariffs would take a long time to do.¹⁴¹⁶
- 25.19 None of the foregoing concerns were apparently drawn to the attention of Michael Woods, then head of DETI Internal Audit Branch, with a view to stimulating an early audit of the scheme. In a written statement of evidence to the Inquiry Mr Cooper stated that at some point between July and November 2015 he did discuss whether Internal Audit should review Energy Division’s failure to seek the March 2015 reapproval of the scheme from DFP, but that such a review had not been initiated because of the “virtually complete turnover in staff within Energy Division.”¹⁴¹⁷ The involvement of Internal Audit is dealt with in greater detail elsewhere in this Report.
- 25.20 On 24 June 2015 a Governance Statement, which would appear in the published departmental accounts for the financial year 2014-15 and which was signed off by Dr McCormick, was presented at a meeting of the Departmental Audit Committee (DAC). Paragraph 50 simply stated, with regard to the non-domestic RHI scheme, that “The Department is currently working to address governance and financial requirement issues arising with the scheme.”¹⁴¹⁸ The

1414 TRA-15830

1415 WIT-18759 to WIT-18765

1416 WIT-18544

1417 WIT-18547

1418 DFE-394652 to DFE-394660

Inquiry acknowledges that at the time this public statement was made there had been concern expressed within DETI that being more specific may have caused an unwanted spike of further RHI applications.¹⁴¹⁹

- 25.21 Paragraph 19 of the minutes of the DAC meeting of 24 June 2015¹⁴²⁰ record Mr Cooper referring to “financial and governance issues that had emerged in connection with the Non-Domestic Renewable Heat Incentive (RHI) Scheme”. The RHI funding is described as AME, without qualification. There are then a number of references to budgets and approvals.¹⁴²¹ However, there was no reference in the minutes to any discussion of issues of control, potential abuse, overcompensation or the need for tiering of tariffs.
- 25.22 In a 1 July 2015 memo¹⁴²² to Michelle Scott, the Supply Officer at DFP, Mr Cooper stated on behalf of DETI, in paragraph 7, that uptake for the non-domestic RHI scheme had “taken off” from late 2014 and forecast expenditure had roughly doubled from the previous forecast made in November 2014. He explained that the overwhelming majority of renewable heating installations in Northern Ireland, supported under both non-domestic and domestic RHI schemes, had been for biomass and that the rapid increase was due to the Northern Ireland poultry industry adopting biomass heating technologies for its chicken houses. While the memo referred to the “consideration of measures to control expenditure and maximise value for money”, it did not suggest that there were underlying difficulties with the RHI scheme that might explain the extent of the uptake.
- 25.23 A draft that began as the ‘Supplementary Business Case’, and which would later become the ‘Business Case Addendum’ for the NI Renewable Heat Incentive, of October 2015, was sent by Mr Wightman to Mr Mills, Mr Cooper and Mr Murphy on 27 July 2015. It recorded at paragraph 5.13 that the introduction of tiered tariffs would reduce “the risk of ‘gaming’ and installations being operated over and above the required kilowatt hours just to gain RHI income.”¹⁴²³ The document did not say this was in fact what was already happening, and that, consequently, this may be the reason for the significant uptake. Indeed, Mr Wightman told the Inquiry that he did not know, in July 2015, that this was the case. Mr Cooper had apparently sought and received an assurance from Mr Wightman that it was not possible to make money from the scheme.¹⁴²⁴ However, it did raise the issue as a risk.
- 25.24 Having raised naivety and lack of self-awareness about potential overcompensation on 12 June 2015, neither Mr Cooper nor Mr Murphy seem to have undertaken, or caused to be undertaken, a detailed investigation into whether the scheme was in fact overcompensating applicants, or whether the risk referred to in the 27 July 2015 draft was in fact much more than a risk, but what in fact was occurring on the NI RHI scheme. Mr Cooper agreed that the reference should have set off an alarm bell at that stage, “but it didn’t”.¹⁴²⁵

1419 DFE-146867 to DFE-146870

1420 DFE-394723

1421 DFE-394720 to DFE-394725

1422 WIT-30268 to WIT-30270

1423 DFE-147524 to DFE-147549

1424 WIT-18544; TRA-15886 to TRA-15887

1425 TRA-15885 to TRA-15887

Findings

- 140.** There was clear evidence available to DETI officials, particularly in Energy Division, of the increasing uptake on the NI RHI scheme from at least January 2015 onwards, including when compared to the uptake in GB.
- 141.** Insufficient steps were taken by officials, particularly in Energy Division, or by the Department, to understand the underlying reason for the increased uptake.
- 142.** On 12 June the DETI Finance Director identified to a senior colleague that Energy Division's approach appeared naïve, and that the reason for the increase in uptake might be because the scheme was overcompensating its members. That possibility, that the increased uptake could be due to overcompensation, should have been the subject of thorough and detailed scrutiny in June 2015.

Chapter 26 – The developing budget problem

- 26.1 With increasing uptake levels, and without any proper understanding that the increase may be due to underlying problems with the NI RHI scheme being overgenerous and encouraging the generation of unnecessary heat, the need to secure greater levels of funding became a priority.
- 26.2 By 24 February 2015 Mr Wightman had worked out that there was going to be a funding issue for RHI.¹⁴²⁶ He had been speaking to Moy Park’s David Mark about proposed RHI Phase 2 changes, as envisaged at that point. It appears, from Mr Mark’s record of the discussion, that Mr Wightman had indicated that the forthcoming legislation, then scheduled for October 2015, would contain a mechanism to reduce RHI payments from 6.3p/kWh (the then tariff for the most popular medium biomass boilers) depending on overall uptake.¹⁴²⁷
- 26.3 Mr Wightman, as evidenced by his post-conversation email to Mr Hughes, had worked out that the 200 poultry broiler houses, each with a 99kW boiler, which Mr Mark had explained would be coming forward to the NI RHI scheme from Moy Park growers, would equate to £4.4 million a year of additional RHI expenditure. Mr Wightman ended his email to Mr Hughes by indicating, “We will need to liaise with DECC about future RHI funding asap.”¹⁴²⁸

The March 2015 attempts to gain clarity

- 26.4 On 12 March 2015 Mr Hughes had addressed an email to Jon Parker at HMT, attaching a copy of the correspondence between DECC Minister Barker and Minister Foster from January 2014¹⁴²⁹ in an attempt to clarify the ongoing budget for the NI RHI scheme. It will be recalled that Mr Parker had been the author of the April 2011 funding email that had been stored in TRIM, and which Mr Wightman had unearthed in September 2014 when dealing with the domestic RHI scheme business case.
- 26.5 In his evidence to the Inquiry, Mr Hughes was uncertain of the source from which he had obtained a copy of the Parker email of 15 April 2011.¹⁴³⁰ In response to a question from Inquiry Counsel he said “It would have been passed to me. There is no way I would have had that on my system.”¹⁴³¹ It transpires that by the time of Mr Hughes’ email Mr Parker had left HMT and the email from Mr Hughes “bounced back”.¹⁴³²
- 26.6 On 13 March, after advice from Nadia Carpenter of Ofgem, Mr Hughes redirected his enquiries to Nicola Barbour at DECC.¹⁴³³ On 16 March she responded by directing him to the DECC funding contact at HMT, Sam Smyth-Murray.¹⁴³⁴ Mr Hughes duly emailed him. On 20 March Mr Smyth-Murray informed Mr Hughes that he covered the GB RHI at HMT and advised him to speak to DFP NI “in the first instance”.¹⁴³⁵ Mr Hughes confirmed in his evidence to the Inquiry

1426 DFE 106830; DFE-331197; WIT 263925; TRA 08593

1427 WIT 263925

1428 DFE 106830; DFE-331197

1429 WIT-18713

1430 TRA-08626

1431 TRA-08626 to TRA-08627

1432 TRA-08628

1433 TRA-08631

1434 TRA-08632

1435 TRA-08632

that he was not aware of the unwritten protocol in Northern Ireland that DFP should lead in any engagement with HMT on behalf of Northern Ireland Departments.¹⁴³⁶

- 26.7 The Energy Division officials' sense of a need for cost control was clearly increasing in the context of growing demand and the Moy Park prediction, which may have been a significant underestimate of applications from the poultry industry. On 23 March 2015 Mr Wightman emailed Sandra Thompson who worked on the finance payments in the Co-Ordination Branch of DETI Energy Division.¹⁴³⁷ The email's ultimate intended destination was DETI Finance Branch, and a slightly altered version of Mr Wightman's email, sent by Mr Wightman on 25 March, was forwarded by Ms Thompson to DETI Finance's Jeff Partridge on 26 March 2015.¹⁴³⁸
- 26.8 In his 25 March email,¹⁴³⁹ Mr Wightman pointed out that the level of uptake of the non-domestic RHI scheme had increased significantly over the previous few months and stated they expected uptake to remain high, with over 200 new applications for biomass heating systems from the poultry industry (linked to Moy Park's expansion) anticipated over the coming twelve months. He said there was also the added pressure of annual payments under the domestic RHI scheme, which had been introduced in December 2014.¹⁴⁴⁰
- 26.9 Mr Wightman noted, in the email of 25 March to Ms Thompson, that the RHI budget had originally been £25 million for the four financial years from 2011 to 2015. He said the recent increase in uptake had resulted in the rolling monthly spend rising to £928,000, with an additional £64,000 being added for new accreditations each month. He estimated the projected annual spend for 2015-16 at £16 million and for 2016-17 at £25.5 million. He explained that he was "therefore keen to identify the total RHI budget going forward to ascertain if any tariff reductions will be needed." Mr Wightman suggested that if it was possible to carry over the remaining £17 million of the original £25 million 2011 to 2015 funding allocation, as it had not been spent, it might be possible to cover payments for 2015-16, but he expressed himself to be "much happier" if they also had the 2015-16 allocation on top.¹⁴⁴¹
- 26.10 Included in the email chain beneath Mr Wightman's email was the exchange between Mr Parker of HMT and Ms Clydesdale of 15 April 2011 in which, as discussed earlier, Mr Parker had set out, in 2011, the position between HMT and DECC over RHI, explaining that the funding was not standard AME, but instead there was a risk sharing arrangement as a consequence of which any spending in excess of the annual profile would have to be borne by DECC's DEL budget, if not recovered through the RHI. Mr Parker said those rules would be applied in equivalent fashion in Northern Ireland.¹⁴⁴² Mr Wightman told the Inquiry this was the first time he realised that the RHI AME funding was unusual and may have had "...potential strings attached or restrictions".¹⁴⁴³ Mr Wightman said to the Inquiry that prior to this point he regarded the funding as standard AME in the sense that if forecasts had to be increased due to uptake, then the alteration of the forecasting would see the funding provided. He recounted that he was "starting to panic", given he was almost at the start of the new financial year and yet was already seeking clarity over a potential funding gap.¹⁴⁴⁴

1436 TRA-08630 to TRA-08631

1437 DFE-118567

1438 DFE-118602 to DFE-118610

1439 DFE-119012 to DFE-119013

1440 DFE-118567 to DFE-118571

1441 DFE-118567 to DFE-118571

1442 DFE-118568 to DFE-118571

1443 TRA-09453

1444 TRA-09453 to TRA-09455

26.11 As previously indicated, on 26 March 2015, following a conversation between them, Ms Thompson forwarded Mr Wightman’s 25 March email, and its previous email chain together with the Barker 7 January 2014 letter, to Mr Partridge at DETI Finance Division. Ms Thompson’s email read as follows:

“Hi Jeff – As discussed please see below (and attached) re our concerns re RHI/ AME budget going forward. I appreciate that we basically secure our budget via AME profiling but it would be helpful if we could establish some parameters as non-domestic commitments made now/in next couple of years will have implications for the next 20 years.”¹⁴⁴⁵

26.12 There had not been a response to Ms Thompson’s 26 March email by the time she sent a monitoring round email to Finance Branch, copying in the policy grade 3 Deputy Secretary, Chris Stewart, and head of Energy Division grade 5 John Mills, on 30 April 2015 about the forthcoming June 2015 monitoring round. Ms Thompson explained in her covering email¹⁴⁴⁶ that, as the monitoring round did not include AME re-profiling, it was necessary for her to:

“...flag a significant increased requirement for AME (RHI). Non-Domestic applications in 2014/15 are approximately 430 compared with 130 total for the previous 18 months. We have just completed a major review of current applications including a reassessment of the expected monthly uptake. The expected uptake – including accruals – for 2015/16 is now almost £25m (£3m capital + £22m resource). Based on this profile we will run out of money approx. mid Sep and would be grateful for advice as to how/if this can be managed. We would also be grateful for clarification of the total AME budget available in NI – my earlier e-mail refers.”

The frustration within Energy Division

26.13 The lack of response by DETI Finance Branch was also reflected in the 1 May 2015 Energy Division assurance statement for the six months ending 31 March 2015, which was sent by Mr Mills to Mr Stewart on that date.¹⁴⁴⁷ This document was part of a wider package of assurance statements that Mr Stewart would send to the Permanent Secretary, along with his own, on 29 May 2015. Mr Mills told the Inquiry that he drafted the assurance statement of 1 May 2015 as “one way to raise the matter” since Energy Division was not getting a reply. Clarity had been sought on 26 March and, at the time of sending the assurance statement, it was the end of April.¹⁴⁴⁸ The original draft of Mr Mill’s part of the assurance statement pointed out the need for clarity around AME budgets for RHI (2015-16), and beyond, in the following context:

“During the first 18 months of the Non-Domestic RHI scheme around 130 applications were processed. During 2014/15 a further 470 applications have been received. The NI scheme is currently outperforming the GB scheme with application numbers over the last few months running at 5% of the GB total. This unprecedented increase in uptake over the last 12 months has impacted on our funding requirement with over £20 million now forecast for 2015/16. **Despite**

1445 DFE-118602 to DFE-118603

1446 WIT-24254

1447 WIT-14889 to WIT-14939; DFE-312395 to DFE-312464 at DFE-312464

1448 TRA-11034 to TRA-11035

*repeated requests for information from Finance Division (and DFP) the Division has yet to receive any clarity around the maximum available going forward. This is essential for future planning in terms of tariff reductions etc. Without this clarification, both schemes may need to be closed to prevent overspends.*¹⁴⁴⁹
(the Inquiry's emphasis).

- 26.14 In between Mr Mills submitting the Energy Division assurance statement on 1 May, and Mr Stewart finalising the Policy Group's package of assurance statements, plus his own, and submitting them to the Permanent Secretary on 29 May 2015, Mr Wightman, still having received no response to his 26 March email, communicated directly with Mr Cooper, the Finance Director.
- 26.15 Mr Wightman had mentioned RHI to Mr Cooper in a meeting about another subject on 7 May 2015 and followed up that conversation with a detailed email of the same date. The email Mr Wightman sent included, as part of its chain, the email he had sent to Ms Thompson on 25 March, and hers to Mr Partridge of 26 March. It also included the previous email chain back to the April 2011 HMT Parker email. He further attached a DECC GB RHI forecast prepared for the Office for Budget Responsibility (OBR) that Mr Hughes had obtained from DECC.
- 26.16 Mr Wightman explained in his email his difficulty in trying to get some clarity around future AME budgets for the RHI and his concern about the dramatic increase in uptake of the non-domestic scheme.¹⁴⁵⁰ He repeated the same uptake figures quoted by Ms Thompson and set out above, and drew attention to the fact that the current AME profile forecast for 2015-16 was only £11 million whereas it appeared that £22 million would now be required to fund both domestic and non-domestic schemes.
- 26.17 Mr Wightman recorded that Energy Efficiency Branch had not been given an opportunity to submit a revised AME profile as part of the June monitoring and the branch was keen to revise the AME profile as soon as possible, otherwise they would run out of funds by mid-September. He concluded his email by saying he was keen to take the opportunity afforded by Phase 2 of the non-domestic RHI scheme to include a number of future tariff reductions to help manage the budget and indicating that any clarity that could be provided as to future AME budgets would be greatly welcomed.¹⁴⁵¹

The 20 May 2015 “stop entering commitments” instruction

- 26.18 On 19 May 2015, almost two months after Ms Thompson had forwarded the email from Mr Wightman with its accompanying chain, Mr Partridge at DETI Finance finally replied to Ms Thompson, copying in Mr Wightman and Mr Hughes.
- 26.19 In response to the Inquiry's questions about why it had taken so long to reply to Ms Thompson, Mr Partridge explained that following their initial conversation in March he had been under considerable pressure of work, with other exercises ongoing coupled with staff absence, but the bottom line was that he had not prioritised Ms Thompson's email over other work because he considered that the approved forecasts from the most recent profiling exercise matched the most recent budget profile received from Energy Division. He said that in normal circumstances

1449 WIT-14890

1450 DFE-119011

1451 DFE-119011 to DFE-110019

- he would have responded within a week to ten days.¹⁴⁵² He had not spoken to Ms Brankin about the issue until she raised it with him on 19 May.
- 26.20 His explanation for the delay, according to Ms Brankin, was that he must have opened the email but, before reading it, been diverted to another task without labelling it as “unread”, which would have prompted him to return and read it.¹⁴⁵³
- 26.21 Mr Cooper was clear in his evidence that the 26 March email from Ms Thompson should have been escalated onwards by Finance Division to the Permanent Secretary at the time it was received “because, potentially, it could’ve resulted in a breach of our budget — DEL budget.”¹⁴⁵⁴ He considered that the effect of escalating the matter at the end of March would have been to bring forward the point in time at which the issues began to be addressed, as opposed to necessarily changing how they were addressed.¹⁴⁵⁵
- 26.22 In his reply of 19 May Mr Partridge stated that he would contact DFP regarding the questions raised about Northern Ireland’s RHI AME allocation for 2015-16, noting the warning in the Parker email of April 2011 that RHI AME was not treated as standard AME, and of overspending consequences for the DEL budget. He advised that Energy Efficiency Branch should take steps to curtail spending to “keep within the likely ceiling of £12.8 million until such times as we obtain clarification from DFP.”¹⁴⁵⁶
- 26.23 Mr Wightman who, to use his own words, was now entering “panic mode,” replied to Jeff Partridge on the same date emphasising how successful the scheme had proved in terms of take-up with monthly expenditure having effectively tripled since he had joined DETI.¹⁴⁵⁷ Monthly applications had effectively doubled in the six-month period April–September 2014, as compared to October 2013–March 2014. That was why the AME profile had changed so much. He pointed out that once installations had been accredited, annual payments were committed for 20 years, and emphasised current committed annual spend was already at £17 million (a potential overspend of about £4.2 million). He said that closing the RHI schemes would be very damaging and should be a very last resort, and that the “performance of the NI RHI is a success story and should be taken as positive”. His email concluded: “We should surely be making the case for more RHI AME money from HMT/DECC rather than curtailing the scheme.”¹⁴⁵⁸ The fact Mr Wightman expressed himself in this way evidences the issues discussed in the last chapter, i.e. that there was not, by 20 May 2015, an understanding within DETI of the reason why the scheme was so popular. The issue was considered to be a budget question.
- 26.24 Mr Wightman had copied Mr Cooper, the DETI Finance Director, into his 19 May 2015 email to Jeff Partridge. Mr Cooper forwarded the Wightman email to Ms Brankin at DETI Finance Branch on 20 May 2015. Shortly thereafter, on the same day, Ms Brankin emailed Mr Wightman with the succinct instruction “Please stop entering commitments immediately to ensure that monthly cumulative expenditure does not increase.”¹⁴⁵⁹

1452 WIT-18235

1453 WIT-24034

1454 TRA-15728 to TRA-15729

1455 TRA-15729 to TRA-15731

1456 DFE-277098 to DFE-277103

1457 TRA-10360

1458 DFE-277098 to DFE-277103

1459 DFE-277180

26.25 It will be recalled that Ms Brankin had been the grade 7 in DETI Finance Branch who, in May 2011, had confirmed during a telephone conversation with Mr Stevenson, the DFP DETI Supply Officer that RHI AME was not standard AME but rather a form of risk-sharing funding and that any overspending could impact the DEL budget. Such impact might, or might not, be by way of a limited penalty but the fail-safe approach, which she had advised Energy Division officials to adopt at the time, in order to protect DEL spending, was to treat it like DEL and stay within budget.

The late May 2015 flurry of activity

26.26 Leading up to a DETI Senior Management Team (SMT) meeting on 29 May 2015 a flurry of activity occurred. Mr Hughes began a new sequence of what turned out to be circular emails with DECC over RHI funding; it led Mr Hughes to tell Mr Partridge (and copy in Mr Cooper) on 27 May 2015 that the question of the RHI budget was “clearly an issue for DFP and HMT to resolve going forward”.¹⁴⁶⁰ Further work was done to try more accurately to forecast likely RHI expenditure¹⁴⁶¹ Mr Wightman engaged in an ultimately aborted attempt to have Ofgem queue applications to RHI.¹⁴⁶² A revised cost control template was sent through to Ofgem by Mr Hughes which now included tiering to be introduced by 1 April 2016, or possibly October 2015 if there was sufficient time for the legislative process.¹⁴⁶³

26.27 On 27 May 2015 Mr Wightman forwarded to Mr Mills a briefing for the DETI Permanent Secretary, Dr McCormick, who was due to meet a DECC official with regard to the NIRO scheme in London on the following day.¹⁴⁶⁴ In addition it was hoped that some assistance might be obtained in relation to the NI RHI budget in the context of the unprecedented increase in applications largely attributed to the poultry industry switching from LPG to biomass heating systems supported through the NI RHI scheme. The briefing did not specifically refer to a potential impact on the DEL budget of RHI overspend, although it did state that the scheme was funded by “a form” of AME, but Mr Wightman told the Inquiry that it was hoped to obtain some further clarity with regard to that issue.¹⁴⁶⁵ The Permanent Secretary subsequently informed Mr Mills that “on RHI the steer was that, as an AME issue, it should not be limited by Barnett and the key was to give HMT early warning of the increased demand.”¹⁴⁶⁶

26.28 Mr Wightman had also forwarded the briefing note to Mr Partridge, Mr Cooper and Ms Brankin at DETI Finance Division on 27 May with an explanatory email which referred to the need for DFP to liaise with HMT with regard to whether there were opportunities to carry over previous RHI AME underspends and whether the budget for 2015-16 could be based on the £23.2 million then forecast, which would represent “5% of DECC’s allocation rather than 2.98%.”¹⁴⁶⁷

1460 DFE-277205

1461 DFE-277199

1462 OFG-61743 to OFG-61744; OFG-61780

1463 OFG-32332

1464 DFE-119486 to DFE-119488

1465 DFE-119487; TRA-10721 to TRA-10722

1466 WIT-10587

1467 DFE-119489 to DFE-119492

The 29 May 2015 SMT meeting

- 26.29 On 29 May 2015 there was a sharp exchange between Mr Mills and Mr Cooper over RHI at the DETI SMT meeting. SMT meetings were attended by all grade 5s and above; so the meeting would have potentially involved 13 people.¹⁴⁶⁸
- 26.30 Mr Mills told the Inquiry that during the exchange he expressed frustration at Finance not taking the matter seriously.¹⁴⁶⁹ For his part Mr Cooper explained in his evidence to the Inquiry that at this meeting he was not yet aware of the additional problem that the DFP RHI approval had lapsed, nor the content of the assurance statement, but he said that he pointed out to Mr Mills the scheme had already overspent and that there were more control issues than just securing more budget.¹⁴⁷⁰
- 26.31 As there had been “...a bit of a shouting match” the Permanent Secretary closed the discussion down.¹⁴⁷¹ He explained to the Inquiry that he was of the view there was a shared collective responsibility to solve the problems. He called a special urgent meeting on RHI to take place on 3 June.¹⁴⁷²

The assurance statement

- 26.32 As mentioned previously, and also on 29 May 2015, Mr Stewart submitted the Policy Group six-monthly assurance statements to the Permanent Secretary.¹⁴⁷³ Accompanying this was his own assurance statement, where at paragraph 10 he had transposed the same content as that which Mr Mills had sent him on 1 May 2015 in the Energy Division assurance statement:
- “Despite repeated requests for information from Finance Division (and DFP) the Division has yet to receive any clarity around the maximum available going forward. This is essential for future planning in terms of tariff reductions etc. Without this clarification, both schemes may need to be closed to prevent overspends.”
- 26.33 The assurance statements, which were then being summarised for the Departmental Audit Committee, were drawn to the attention of Mr Cooper¹⁴⁷⁴ on 29 May 2015, though after the SMT meeting had occurred.¹⁴⁷⁵ Reading the criticism of Finance Division led him to seek an explanation from Mr Partridge as to what had occurred.¹⁴⁷⁶ In response Mr Partridge produced a detailed timeline of events.¹⁴⁷⁷ It did not contain any reference to the DFP approval having expired, as the requirements of the approval had not yet re-surfaced.
- 26.34 Discussions took place between Finance Division and Energy Division and ultimately the assurance statement was amended with regard to the reference to repeated requests for information from Finance and DFP. Alternative drafts were circulated on 3,¹⁴⁷⁸ 5¹⁴⁷⁹ and

1468 TRA-15642

1469 TRA-11037

1470 TRA-15770

1471 TRA-12075

1472 WIT-26231

1473 DFE-387511 to DFE-387513

1474 DFE-277236 to DFE-277239

1475 TRA-15770

1476 DFE-277258

1477 DFE-278003 to DFE-278005

1478 DFE-387532; DFE-387557; DFE-387559

1479 DFE-387558

17 June¹⁴⁸⁰ until a final version was agreed and submitted on 22 June.¹⁴⁸¹ The final version of the statement was modified to state that: “Energy officials were working with Finance and DFP to ensure appropriate approvals and revised funding requirements were in place...”.

26.35 It seems that the amendment was made at the request of Mr Stewart, following representations from Finance Division, and Mr Mills accepted that it was not the done thing to record internal criticism of colleagues in formal documents.”¹⁴⁸² He assumed that such documents would have gone to the Departmental Board and Audit Committee and agreed that Finance Division might see it as a ‘bad mark’.¹⁴⁸³

26.36 In a written statement of evidence provided to the Inquiry Dr McCormick said of this amendment to the assurance statement:

“On the specific issue of the Assurance Statement, I think that it is important to stress that it is not appropriate for an Assurance Statement to raise an unresolved difference of view between Divisions.”¹⁴⁸⁴

26.37 When the Inquiry raised the consequences of the amendment with Mr Cooper and suggested that the amendment was concealing the problem he accepted that it was “not a model of plain speaking”.¹⁴⁸⁵ In his oral evidence Dr McCormick was asked by the Inquiry what was wrong with telling the truth; to which he replied that there was nothing wrong, continuing:

“Again, my sensitivity on this is that the emergence of that as an issue should not have been confined to the assurance statement. It should’ve come another way before and, therefore been acted on such that we could then get to a place where there’s some resolution. Now, of course, even by the time we reached accounts, we were far from resolution, but I think- I stand by what I said that this wasn’t the right context and place for a dispute to be highlighted.”¹⁴⁸⁶

26.38 The Inquiry would not wish to make too much of this substitution of a negative statement for a positive interpretation and acknowledges that the Deputy and Permanent Secretary were aware of DETI’s difficulties in obtaining responses from Finance Division, which undoubtedly led to delay, but the evidence did little to support the confidence placed in the assurance statement system by senior leaders within DETI.

The 3 June 2015 RHI meeting

26.39 The 3 June 2015 meeting of senior DETI officials about RHI was arranged by Dr McCormick following the sharp exchange between Messrs Cooper and Mills referred to above. It was to allow more detailed discussion, of the issues which had arisen with the NI RHI scheme, to occur outside the confines of the more general SMT meeting. The 3 June meeting was attended by Dr McCormick, Mr Rooney, (Deputy Secretary and Senior Finance Director), Mr Cooper from Finance Division, and Mr Mills and Mr Wightman from Energy Division.¹⁴⁸⁷ Although Mr Stewart

1480 DFE-387562; DFE-387568

1481 DFE-387570; DFE-387596

1482 TRA-11039

1483 TRA-11040

1484 WIT-26232

1485 TRA-15786

1486 TRA-12170

1487 WIT-10588

might ordinarily have been expected to attend such a meeting, he did not attend on this occasion as he was in Dublin that day.¹⁴⁸⁸

26.40 It was the day before this meeting, 2 June 2015, that Mr Cooper had sought the DFP approval letter and, from it, identified that the April 2012 DFP approval for the NI RHI scheme had lapsed on 31 March 2015.¹⁴⁸⁹ That, and the fact that spending on the RHI scheme after that date was therefore irregular, were discussed at the meeting. Indeed, Mr Stewart noted in his oral evidence to the Inquiry that, when the lapse in approval was discovered:

“We had moved from something which was important but not a serious threat — that is, uncertainty around a budget — to something that was a very serious matter indeed: irregularity.”¹⁴⁹⁰

26.41 There is no formal note or minute of the meeting of 3 June but Dr McCormick did make “informal notes” which he “jotted down” on his iPad at the meeting.¹⁴⁹¹ From these notes Dr McCormick was able to say, in his written evidence to the Inquiry, that it was discussed at this meeting that there was a high number of applications in the poultry sector; that the recommended review of tariffs had not taken place; that, unlike in GB, tariffs were not tiered; and that there was no mechanism to alter tariffs apart from new legislation. There was still no appreciation of, or reference to, the fact that the subsidy was higher than the cost of fuel.¹⁴⁹²

26.42 Dr McCormick also explained to the Inquiry that the direction he gave when appraised of the problems, as they were then understood, was to act to ensure value for money, accompanied by appropriate control on costs, as these would be essential to secure DFP approval.¹⁴⁹³ There were three tasks identified at the meeting for urgent action in this regard, namely

- (i) to engage further with DECC and DFP to seek additional budgetary cover;
- (ii) to identify and take the steps necessary to secure a new DFP approval for the scheme, by drawing up a new business case (which would include the introduction of new cost controls and the reduction of the incentive in order to provide evidence of both value for money and effective control of expenditure); and
- (iii) to seek to resolve the irregularity of the expenditure, ongoing from 1 April 2015, as soon as possible.¹⁴⁹⁴

26.43 In an email of 8 June 2015 to Mr Mills (giving feedback on a Ministerial Issues Meeting which had occurred that day) Mr Stewart referred to “the three strands of remedial action” in relation to the RHI scheme in slightly different (albeit not inconsistent) terms to those identified in Dr McCormick’s evidence to the Inquiry, namely “securing budget cover (or addressing the consequences of not securing it); seeking approval from DFP; and legislation to pursue tariff changes/controls.”¹⁴⁹⁵

1488 WIT-11534 to WIT-11535

1489 DFE-10097

1490 TRA-11615

1491 WIT-10513; WIT-10588

1492 WIT-10513

1493 WIT-10514

1494 WIT-10513; see also Dr McCormick’s oral evidence to the Inquiry at TRA-12176

1495 WIT-27553

26.44 Dr McCormick candidly accepted in his evidence to the Inquiry, however, that, albeit there were a number of problems which needed to be addressed at this time, early June 2015, the point which was not addressed:

“Was the major issue of the increase in the expenditure on the Scheme – the fact that the tariff was higher than the cost of fuel, and hence the absence of tiering, high usage (above the level required to compensate for the up-front capital investment) was excessively rewarded.”¹⁴⁹⁶

26.45 Dr McCormick said to the Inquiry that he did not ask for a detailed technical explanation as to how the RHI scheme worked until May 2016, and, looking back at events, told the Inquiry that in his view it was now very clear that “we were not focused on the potential risks to value for money and far too focused on seeking additional budget cover.”¹⁴⁹⁷

26.46 In a later witness statement to the Inquiry, Dr McCormick also said:

“My personal regret, which is with the benefit of hindsight, is that I did not ask more fundamental questions about the Scheme at the meeting on 3 June 2015. I accepted too readily the perspective that we only had three problems... – a shortage of budget cover, and the need for prospective and retrospective approval of the expenditure.”¹⁴⁹⁸

26.47 In the same statement, Dr McCormick also said that he regretted not asking more basic questions about the scheme at this stage.¹⁴⁹⁹ Dr McCormick supplemented these views in his written evidence when he gave oral evidence in the course of the Inquiry hearings. He indicated that, by the time this meeting occurred on 3 June, the context was that “we’ve now got a crisis”,¹⁵⁰⁰ particularly with a spending irregularity having arisen. He said that there was “... maybe a trap I fell into, possibly, of focusing just on solving the presenting problem, rather than taking the opportunity to step back and do a more fundamental review”,¹⁵⁰¹ including a “mistake” of not re-opening Energy Division’s plans as to the introduction of tiering and the raising of the upper limit of the medium biomass tariff from 99kW to 199kW.¹⁵⁰²

26.48 Dr McCormick also agreed that, with what was known about the difficulties with the NI RHI scheme at that point, this was “a classic opportunity for a step-back moment” but said that that did not happen “because we were too focused on solving what we thought were the problems.”¹⁵⁰³

26.49 The three identified actions, arising from the meeting of 3 June mentioned above, were described by Dr McCormick as “conjoined triplets” – each requiring to be dealt with together in order to achieve a total solution¹⁵⁰⁴ – with no particular priority between them.¹⁵⁰⁵ Dr McCormick considered that these actions were at one level quite rational in light of the position in which the Department found itself but said “the opportunity to step back is very clear now.”¹⁵⁰⁶

1496 WIT-10513 to WIT-10514

1497 WIT-10514

1498 WIT-26230

1499 WIT-26231

1500 TRA-12177

1501 TRA-12177

1502 TRA-12178

1503 TRA-12182 to TRA-12183

1504 TRA-12177

1505 TRA-12177; TRA-12179

1506 TRA-12183

- 26.50 Although Dr McCormick found it difficult to answer whether that opportunity should have been identified without the benefit of hindsight (and that is something which the Inquiry has had to carefully consider), he did concede that, in light of what was known about previous departmental failings, he could not argue with the suggestion that a Gateway review in relation to the scheme should have happened at this point.¹⁵⁰⁷ He also gave evidence that, in light of the attempts to move forward in problem-solving mode, the Department did not look backwards enough in order to determine how the NI RHI scheme had come to be in the position in which it was, and whether there was “something more below the surface”.¹⁵⁰⁸
- 26.51 Mr Cooper, in his oral evidence to the Inquiry, broadly agreed with Dr McCormick’s recollection of the 3 June meeting. He felt there had been an in-depth discussion of the big issues as they were understood at that time, with concern about how long it would take to sort them because legislation was required.¹⁵⁰⁹
- 26.52 Mr Mills does not appear to have a clear recollection of the 3 June meeting in particular, given that there were a range of such meetings during this period, but described it as a briefing session in which, in his view, there was a good deal of “wandering discussion”. For his part, however, he told the Inquiry that at this stage he “wanted to introduce the tiered tariff as soon as possible” as he “saw this as solving most of the problem in the short term”.¹⁵¹⁰ His evidence to the Inquiry was also consistent with that of others, referred to above, as to the three strands of work emerging from the meeting.¹⁵¹¹

The 17 June 2015 RHI meeting

- 26.53 Between the 3 June meeting and when the senior officials next met specifically about RHI on 17 June 2015, there had been much work undertaken and many meetings held. This included:
- The Permanent Secretary raising RHI at an Issues Meeting with the DETI Minister on 8 June 2015;
 - Mr Cooper meeting with DFP, but also expressing his views to Mr Murphy that there may be value for money issues with the scheme spend,¹⁵¹² and, as discussed in the previous chapter, that there was naivety in Energy Division around the issues and that the NI RHI scheme may in fact be overcompensating;¹⁵¹³
 - Mr Wightman preparing and circulating a draft submission which suggested that DETI needed to ensure that DECC/HMT “don’t continue to restrict NI funding by the Barnett’s formula”¹⁵¹⁴ and proposing consultation on the introduction of the then cost control plan of tiering and annual tariff reductions;
 - Mr Hughes seeking legal advice from DSO on whether the NI RHI regulations would provide for “temporary suspension of the scheme for new applications until budget confirmation has been obtained”;¹⁵¹⁵ and

1507 TRA-12185

1508 TRA-12185 to TRA-12186

1509 TRA-15830

1510 WIT-14557; see also TRA-11092

1511 WIT-26023

1512 DFE-146538

1513 WIT-18759 to WIT-18765

1514 DFE-278171 to DFE-278177

1515 DFE-349919 to DFE-349923

- Mr Cooper circulating the first draft of what would become the 1 July 2015 memo from DETI to DFP¹⁵¹⁶

26.54 The meeting on 17 June 2015 was attended by Dr McCormick, Mr Rooney, Mr Cooper, Mr Murphy, Mr Mills and Mr Wightman. The Inquiry has received a considerable amount of evidence as to what is said to have been discussed at the meeting. Some of this is discussed in further detail elsewhere in this Report, but at this remove it is impossible to determine with confidence precisely what was said, or in what terms, by the various participants.

26.55 As with the meeting on 3 June 2015, Dr McCormick again made an informal note during the course of the meeting on his iPad¹⁵¹⁷ which records headline subjects of the DFP approval, the available budget, and value for money. The note also suggests that action had to be taken “to minimise costs asap”; that the legal advice Mr Hughes had been seeking was discussed, summarised by the phrase that “we have no means to put the brakes on” before legislative change was properly introduced; and that tiering was discussed as a change to the scheme which could be made quickly whereas “more complex change may be more difficult”. There also appears to have been some discussion about the fact that a power to suspend the GB scheme had been included by DECC in earlier legislation, albeit that had then been revoked (or, more accurately, replaced by the degression mechanism).

26.56 Most witnesses appear to agree that, during the course of this meeting, Mr Murphy suggested that a swift scheme review be undertaken, which was not taken forward.

26.57 Ultimately, Mr Rooney circulated a memo the following day¹⁵¹⁸ setting out the actions required arising from the meeting. The memo recorded that actions were required on three elements, namely to regularise the approvals for the scheme; budget provision; and value for money improvements (reflecting the three headline points in Dr McCormick’s note). As to these:

- (i) On the issue of regularising the expenditure position, four steps were identified to be taken. These included seeking prospective and retrospective approval from DFP; clarifying RHI AME profiling arrangements with DFP; reviewing the governance statement for the DETI annual accounts for 2015-16 with a proposed amendment to the governance statement to be provided to the Departmental Audit Committee (discussed later in this Report); and discussion with the NIAO about the actions being taken and to agree the changes in order for the DETI annual accounts to be finalised.
- (ii) On the issue of budget provision two actions were to be taken. Firstly, DETI was to “approach DECC on the 2015/16 RHI funding allocation and projected position”. It was noted that “An AME allocation would suggest that DECC regularly review projected demand and can adjust profile”. Secondly, DETI was to explore options with DFP to get the RHI AME allocation adjusted to match the anticipated spend profile for 2015-16.
- (iii) On the issue of value for money improvements, two steps were to be taken. Firstly, a “revised (supplementary) business case” was to be urgently produced on proposed changes to improve value for money to support the case for DFP approvals and inform consultation. Secondly, Energy Division was to develop proposals for legislative change. In respect of the latter the memo recorded two questions, namely “what could be done quickly (e.g. step down on hours; tariff changes?)” and “what needs consultation?”¹⁵¹⁹

1516 DFE-146623 to DFE-146625

1517 WIT-10599; and see Dr McCormick’s written evidence at WIT-10516

1518 DFE-146865 to DFE-146866

1519 DFE-146866

- 26.58 While Mr Rooney’s memo, through the sub-title “value for money improvements” and its corresponding narrative about “proposed changes to improve value for money” does imply a recognition on the part of officials that there were problems that needed to be addressed in this regard, the memo itself does not clearly articulate what those problems were, nor record the putting in train of any investigation of them. It also did not make specific reference to the issue of overcompensation which Mr Cooper had raised in his 12 June 2015 email to Mr Murphy.
- 26.59 Mr Cooper’s evidence to the Inquiry was that, at this meeting, he “formally escalated [his] concerns around the potential overcompensation issue by explaining [his] view that payments under the Scheme could be in breach of State Aid rules...”.¹⁵²⁰ In his evidence, Dr McCormick explained that he does not believe that this issue was formally escalated,¹⁵²¹ albeit he has no conscious memory of the meeting,¹⁵²² He indicated that he could not dispute that the issue of State Aid was raised at the meeting but he had no memory of precisely in what terms it was raised and it did not “stand out”.¹⁵²³ Nonetheless, Dr McCormick did accept that he and others ought to have “pushed back harder” in relation to the view taken by Energy Division at that time that the RHI scheme was a good scheme which was finally succeeding.¹⁵²⁴
- 26.60 For his part, Mr Murphy has told the Inquiry that he has “a very clear recollection” about State Aid issues being raised at meetings in relation to the RHI scheme in June 2015, in relation to the Department not having lived up to its commitments around keeping tariff levels under review and up-to-date,¹⁵²⁵ including at the meeting of 17 June. However, he could not say whether something was specifically raised by Mr Cooper during that meeting in relation to the possibility of overcompensation being a factor that might be at play within the scheme.¹⁵²⁶ He does recall Mr Cooper raising a question about overcompensation with Energy Division around this time and being assured that this was not occurring. Although he could not be specific about when this exchange occurred, he thought that this was at an earlier meeting with Energy Division than the meeting of senior officials on 17 June.¹⁵²⁷ Mr Wightman, with whom this exchange is said to have occurred, has indicated that he has a vague recollection of Mr Cooper asking him whether someone could make money from the scheme around this time (early June 2015). He cannot recall the detail of the conversation and does not believe that he would have provided as firm a reassurance as suggested; but also acknowledges that his understanding at that point about whether money could be made from the scheme was wrong.¹⁵²⁸
- 26.61 In any event, Dr McCormick’s evidence was that there was consensus at the 17 June meeting, on the basis of what Energy Division was saying and its understanding of the legal advice which it had received, that there was nothing else that could be done urgently other than the identified actions referred to above.¹⁵²⁹ This is also consistent with Mr Murphy’s evidence that, although other options such as scheme suspension or closure and tariff reviews were raised, the response from Energy Division was that the various suggested courses of action were either

1520 WIT-19058

1521 TRA-15152

1522 TRA-15157

1523 TRA-15153

1524 TRA-15152 to TRA-15155

1525 WIT-19649 to WIT-19650

1526 WIT-19654

1527 WIT-19650; WIT-19654

1528 WIT-17903

1529 TRA-15156

not legally feasible or would take far too long and that the only plausible or available course of action was to tier the tariffs and so dampen demand. His recollection is that the advice from Energy Division, in particular around what was legally feasible, “was pivotal in the Department’s decision making in early June of 2015.”¹⁵³⁰

Engaging with DFP, DECC and HMT

26.62 Prior to the above meeting on 17 June 2015 Mr Cooper had met with DFP Supply Officer, Michelle Scott, on 12 June 2015 to discuss RHI. The records of the meeting indicate that there was not a proper understanding in DFP Supply of the RHI funding position. Ms Scott recorded in the aftermath of the meeting that, in the context of funding and affordability, she had “asked DETI to clarify the agreement between themselves and DECC on the AME available.”¹⁵³¹ There was of course no such agreement.

26.63 Following the meeting, on 17 June 2015, Ms Brankin provided Ms Scott with the Barker/Foster correspondence of late 2013/early 2014, discussed elsewhere in this Report, and said: “From these letters, it would not seem likely that we could approach DECC for additional funding.”¹⁵³² Mr Cooper followed that up with an email to Ms Scott on the same day saying:

“We will still engage with DECC around where they stand in overall terms ref the scheme and their uptake as regards potential for any funding not taken up to be applied here. But we don’t believe we can square all of the circles on this without dfp [sic] assistance in terms of possible engagement with treasury [sic] as required.”¹⁵³³

26.64 Mr Cooper had already sent¹⁵³⁴ a brief summary to colleagues in respect of his meeting with DFP, along with an initial draft of the formal memo from DETI to DFP that would eventually be sent on 1 July. The original draft did not refer to engaging with DECC or HMT. Following the 17 June DETI RHI meeting involving senior officials, Mr Mills sought clarity on what the memo to DFP was to include as a result of the discussion at the meeting. Mr Mills set out his understanding of the issues to be included, and how they were to be framed. In respect of the “budgetary position and the issues around DECC/HMT” he recorded that the point to be made was that DETI “have contacted DECC but need you to contact HMT”.¹⁵³⁵ Mr Rooney confirmed that Mr Mills’ email covered the points and asked him to send through drafting changes for the memo.¹⁵³⁶

26.65 When Mr Mills did that on 29 June¹⁵³⁷ his redraft included the following statement in the budget section of the memo:

“We are in the process of writing formally to DECC, following verbal and email exchange at all levels to explore the position. From DECC’s perspective, NI expenditure on RHI has nothing to do with them. They advise that AME expenditure for RHI should not be subject to any Barnett consequential type arrangement and

1530 WIT-19651

1531 DOF-03309

1532 DFE-146814 to DFE-146818

1533 WIT-18766

1534 DFE-146623 to DFE-146625

1535 DFE-146893

1536 DFE-146893

1537 DFE-147422 to DFE-147423

that the matter should be pursued with HMT via DFP. Although we will continue to engage with DECC we would be grateful if you could also explore with HMT.”

- 26.66 Various exchanges on the draft then occurred with Dr McCormick¹⁵³⁸ which resulted in a revision to the above statement, though the central point about needing DFP to engage with HMT remained. Dr McCormick and Mr Stewart¹⁵³⁹ then expressed themselves content.
- 26.67 However, Mr Cooper revised the draft¹⁵⁴⁰ before he sent it, and his revisions included the removal of the statement that DETI needed DFP to engage with HMT about RHI funding. The result was that, in spite of the circular correspondence that DETI had already engaged in with DECC in March and May, and the previous emails from Ms Brankin and Mr Cooper to DFP in June, the formal memo that DETI sent to DFP on 1 July¹⁵⁴¹ did not ask DFP to engage with HMT over the budget but simply indicated that DETI were writing to DECC as a means of getting further clarity on the exact nature of the funding arrangement and that Mr Cooper would revert to Ms Scott as soon as possible. When Mr Cooper provided his colleagues with the final version of the memo¹⁵⁴² after he had sent it, he explained that he had made some changes particularly in the section relating to budgets because DFP had been clear that it wanted DETI to “firstly engage with DECC and revert”.
- 26.68 Mr Cooper was questioned on this issue during his oral evidence to the Inquiry and he explained that he had taken out the request for DFP to engage with HMT “in good faith” and that “what I was actually trying to do was move it forward”.¹⁵⁴³ This was because he had been the recipient of the strong view expressed by DFP, through its then Supply Officer, that DETI first needed to go to DECC. Mr Cooper thought he could achieve that quickly, despite all the previous clear communications that there had been from DECC to DETI that this was an issue for HMT, and then return to DFP.¹⁵⁴⁴
- 26.69 However, Mr Mills told the Inquiry that his perception was that there was in DETI “a desire not to challenge DFP”, which was “sort of cultural”.¹⁵⁴⁵ He said that he did not really understand what the problem was with going back to DFP.¹⁵⁴⁶ In his written evidence, Mr Mills said:
- “Rightly or wrongly, at the time, my perception was that he (Andrew McCormick) and finance colleagues did not wish to challenge DFP or imply that they might somehow be remiss. As far as I am aware, a straightforward letter asking for budgetary clarity was never sent.”¹⁵⁴⁷
- 26.70 For his part, although he thought there was more fault on DETI’s side, Dr McCormick accepted that, having asked for help, there was no clear answer coming from DFP. DFP would not go to HMT until DETI got its house in order. Dr McCormick saw that as a “cultural norm” and suspected that it was probably “an attempt to be a sort of mini-me of the Treasury”.¹⁵⁴⁸ On

1538 DFE-147405 to DFE-147424

1539 DFE-147425

1540 DFE-278344 to DFE-278350; DFE-278375 to DFE-278379

1541 DFE-147438 to DFE147441

1542 DFE-278390

1543 TRA-15949

1544 TRA-15948 to TRA-15953

1545 TRA-11043

1546 TRA-11043

1547 TRA-11042

1548 TRA-12151 to TRA-12152

the other hand he also maintained in oral evidence that “I am very clear in my own mind that I’d no difficulty with approaching DFP and the Treasury”.¹⁵⁴⁹ In the course of his oral evidence Dr McCormick agreed that if ever there was a classic moment for standing back and setting up some form of Gateway review it was May/June 2015.¹⁵⁵⁰

1549 TRA-12151

1550 TRA-12043 to TRA-12044

Findings

143. The events of 2015 revealed one of the many consequences of poor staff handover in 2014: the complete failure to ensure that knowledge of the conditional, non-standard nature of the RHI AME funding was effectively transferred to and absorbed by DETI staff responsible for the NI RHI scheme.
144. It is difficult to understand why Mr Hughes' initial enquiries with regard to budget were made to HMT and DECC, rather than to the Finance Division in DETI. Both Mr Cooper and Ms Brankin who still worked in DETI, had been sighted on the original 2011 HMT email exchange about the budget; regrettably at the time this was not known to Mr Hughes.
145. On 26 March Ms Thompson from Energy Division emailed Mr Partridge at DETI Finance.¹⁵⁵¹ Mr Partridge did not reply or raise the matter with anyone until Ms Brankin spoke to him about RHI on 19 May. The Inquiry finds it unacceptable that DETI systems and personnel allowed such important correspondence to go nearly two months unanswered.
146. The Inquiry agrees with Mr Cooper that the matters raised in the 26 March 2015 email merited escalation by Finance Division to the Permanent Secretary at that time, and that had this happened it might have brought forward the point in time when matters started to be addressed.
147. In view of the communications that DETI already had with DECC and HMT in March and May 2015 there was no good reason why a direct clear communication to HMT, seeking clarity about RHI funding, could not have been sent by DFP before the end of June 2015.
148. To the extent that Mr Mills' perception of a reluctance to challenge DFP (whom he described as "the real people who run the show")¹⁵⁵² is correct, there was no good reason for any such reluctance. The Inquiry finds that there was some such reluctance within DETI and that this was a factor in leading to the delay in clarifying the issue of funding.
149. The Inquiry agrees with Dr McCormick's expressions of personal regret that he did not ask more fundamental questions about the scheme at the meeting on 3 June 2015, and accepted too readily the perspective that there were only three problems.¹⁵⁵³ As a result, officials only focused upon solving the three identified problems and thereby trying to deal with the symptoms of the flawed scheme rather than stepping back and undertaking the necessary fundamental reassessment.

1551 DFE-118602

1552 TRA-11042 to TRA-11043

1553 WIT-26230

Chapter 27 – The new DETI Minister and his Special Adviser

The appointment of Minister Bell

- 27.1 Following a DUP ministerial reshuffle in May 2015 Ms Foster left DETI to become the Minister at the Department of Finance and Personnel (DFP). Jonathan Bell, who had been a Junior Minister in the Office of First Minister and deputy First Minister, became the Minister at DETI. Just like Ms Foster, Mr Bell did not have any energy-related qualifications and no specific experience in the area.
- 27.2 The Inquiry notes that the only reference to the non-domestic RHI scheme in the new Minister's first-day brief, a fairly lengthy document approaching 300 pages, was just over a single page prepared by Mr Mills and Mr Wightman. With regard to RHI funding, an incomplete if not inaccurate picture was presented. The entry read:

“The allocated DETI budget for 2011-14 was £25 million. Work is ongoing to get clarity on future RHI budgets for 2015/16 onwards. Current RHI forecasts are that annual RHI expenditure in 2015/16 will be around £22 million.”¹⁵⁵⁴

There was nothing in the brief to suggest there were problems with the NI RHI scheme, much less any major or urgent one (although this is perhaps not surprising as the issue had not yet been escalated to the Permanent Secretary for his attention). The Minister was not therefore told about any of the concerns set out in the Energy Division communications to Finance Division (Mr Wightman's emails of 25 March 2015,¹⁵⁵⁵ Ms Thompson's email of 30 April 2015,¹⁵⁵⁶ or Mr Wightman's email of 7 May 2015),¹⁵⁵⁷ in particular that the then current RHI spending forecast for 2015-16 amounted to some £22 million, whereas the then available funding for the same period was only some £11 million, and that this meant, if the RHI AME profile could not be increased, that the RHI scheme would “run out of funds in mid September”.¹⁵⁵⁸

The appointment of Timothy Cairns

- 27.3 Dr Crawford had followed Ms Foster to DFP as her SpAd, and in his place Timothy Cairns was appointed to act as Mr Bell's SpAd at DETI. Mr Cairns had been a SpAd to Jonathan Bell during his time in OFMDFM. He confirmed to the Inquiry that, for the purpose of his initial appointment as a SpAd in June 2012, there had been no application or competition. Mr Cairns said he had been attending a DUP Party Executive meeting when he was approached by the then First Minister, Peter Robinson, who said he would like to have a private word. He was then invited to succeed Gavin Robinson as SpAd for Mr Bell. Mr Cairns accepted the offer and he then had a brief conversation with Timothy Johnston, who was a SpAd to DUP First Ministers Paisley and Robinson from 2007 to 2016, who told him to report to Stormont Castle.¹⁵⁵⁹
- 27.4 In May 2015, on the day that Mr Bell was appointed to DETI, Mr Cairns was brought in to the First Minister's office five minutes before the announcement of the ministerial reshuffle and

1554 DFE-416349

1555 DFE-118602 to DFE-118603

1556 WIT-24254

1557 DFE-119011

1558 DFE-119011

1559 TRA-12596 to TRA-12598

told that he would be moving as a SpAd to DETI with Minister Bell.¹⁵⁶⁰ Mr Cairns also had no qualifications, nor any meaningful experience, in energy matters.

27.5 Mr Cairns made it clear to the Inquiry that he was not enthusiastic about being reappointed as a SpAd to Mr Bell. He told the Inquiry that Mr Bell did not read his briefs in detail and civil servants would have to go through the material from A to Z in brief pre-meetings. He also described Mr Bell as ‘volatile’ and referred to an incident relating to Valentine’s Day 2013 when he had advised Mr Bell to take his wife out rather than attend an event. He said that when Mr Bell was teased about it by another SpAd he became very angry and aggressive with Mr Cairns which made Mr Cairns feel apprehensive.¹⁵⁶¹

27.6 A number of witnesses gave evidence to the Inquiry supporting Mr Cairns’ view of what he considered were Mr Bell’s shortcomings, even though, according to First Minister Foster, Minister Bell appears to have enjoyed a very close relationship with First Minister Robinson.¹⁵⁶²

27.7 In his written evidence to the Inquiry, Mr Timothy Johnston made the following comments in respect of Mr Cairns’ appointment:

“It would be fair to say that in general terms there would not have been great enthusiasm for an offer of working for Jonathan Bell.”¹⁵⁶³

Mr Johnston also expressed concern about the competence of Minister Bell as DETI Minister.¹⁵⁶⁴

27.8 Dr McCormick told the Inquiry that Mr Cairns’ evidence about Mr Bell’s shortcomings as a Minister “made sense” and struck him as sound.¹⁵⁶⁵ He also agreed that he had stated in witness statements to the Inquiry that after an incident involving Minister Bell and Mr Cairns in London in June 2015 (also considered later in this Report) there was, in the relationship between Minister Bell and Mr Cairns, a “degree of distrust which made the difficult RHI issue significantly harder to resolve” and, in his view, that difficult relationship “did have an adverse effect on the Department dealing effectively with the RHI issue.”¹⁵⁶⁶

27.9 In a written statement of evidence to the Inquiry Mr Stewart described the relationship between Minister Bell and Mr Cairns, subsequent to the events in London described in greater detail in the remainder of this chapter, as “at times, strained” and that the root cause of tension “appeared to be resentment on the part of Minister Bell to Mr Cairns’ ‘party liaison’ role and how it was exercised.” He agreed with Senior Counsel to the Inquiry that the disagreement in London was the most obvious example of this tension.¹⁵⁶⁷

27.10 Mr Cairns expressed the view to the Inquiry that every SpAd in OFMDFM had experienced Mr Bell’s reluctance to make himself effectively familiar with his brief.¹⁵⁶⁸ In written evidence Sean Kerr, Minister Bell’s Private Secretary in DETI, confirmed that on several occasions the Minister had told him that he had not read all the detail in a submission or annex but was guided by the SpAd’s comments.¹⁵⁶⁹

1560 WIT-20172

1561 WIT-20174; TRA-12614 to TRA-12618

1562 TRA-13592

1563 WIT-74108

1564 WIT-74127 to WIT-74128

1565 TRA-15304

1566 TRA-12235

1567 TRA-11637 to TRA-11638

1568 TRA-12613

1569 WIT-25822

27.11 For his part, Mr Bell gave evidence to the Inquiry that Mr Cairns would not have been his “first choice” and that, even though he had worked for him before, there were other SpAds with “superior skill sets”.¹⁵⁷⁰ When giving oral evidence he told the Inquiry:

“In the course of four years of working with Gavin Robinson, Emma Little, Timothy Johnston, Richard Bullick, I would have chosen any of those in advance, and there were also several highly qualified distinguished people in outside life that I would have chosen for the job if I had’ve been allowed to make a choice on it.”¹⁵⁷¹

The June 2015 London meeting and its aftermath

27.12 It is perhaps not surprising that the potential tensions that existed in the relationship between Mr Cairns and Minister Bell did not take long to become manifest. On 9 June 2015, the day after potential problems with RHI were first raised with him by Dr McCormick, Minister Bell travelled to London in advance of meeting the Rt Hon Amber Rudd MP, then DECC Secretary of State. He was accompanied by Mr Cairns, Dr McCormick, Mr Mills and his private secretary, Mr Kerr.¹⁵⁷²

27.13 The purpose of the meeting was an attempt to persuade Ms Rudd not to curtail the life of the NIRO, the support scheme to encourage the increase of renewable electricity generation. It seems that a number of Northern Ireland businesses had invested on the basis that there was a working understanding from Government that the scheme would continue for two years plus a one-year period of grace. Subsequent to the 2015 general election, the new DECC Secretary of State, Amber Rudd, had indicated the intention to reduce this period by a year.¹⁵⁷³

27.14 The meeting had been arranged for 10 June and on 9 June Minister Bell, Mr Kerr and Mr Cairns attended an Indian restaurant in London for an evening meal.¹⁵⁷⁴ During the course of the meal it seems that there was a discussion about the approach to be adopted at the following day’s meeting with the DECC Secretary of State, one of the main points discussed being the circumstances in which any resultant decision would be taken. Minister Bell, as the Minister in charge of DETI, emphasised that the decision would be his alone, while Mr Cairns advised that any decision should be tentative and would need to be formally affirmed by “party officials” and First Minister Robinson. Mr Bell told the Inquiry that whenever he indicated his line of reasoning and the nature of the decision at which he was likely to arrive, Mr Cairns interjected with observations such as “oh, we need to watch that...You may not be able to – you’ll not be able to make a decision on that.” Minister Bell responded by emphasising that the decision was for him to take and that “the buck rests with me”.¹⁵⁷⁵ Minister Bell told the Inquiry that he thought it was a deliberate attempt by Mr Cairns to limit his powers in accordance with the maxim “Ministers come and go – SpAds remain.”¹⁵⁷⁶

27.15 On the following morning Mr Kerr had arranged a breakfast pre-meeting with Minister Bell, Mr Cairns, Dr McCormick and Mr Mills.¹⁵⁷⁷ During that meeting Minister Bell told the Inquiry that

1570 WIT-22624

1571 TRA-12319

1572 TRA-12664

1573 TRA-12286 to TRA-12287

1574 WIT-25827; TRA-12664

1575 TRA-12288

1576 TRA-12290

1577 WIT-25826

Mr Cairns again spoke across him and contradicted the various suggestions that he made.¹⁵⁷⁸ Mr Kerr told the Inquiry that he recalled Dr McCormick and Mr Mills pressing the Minister to make a decision on the future of NIRO at the very latest some time during that day.

- 27.16 Mr Cairns advised Dr McCormick and Mr Mills that, before making such a major policy decision, it was customary that the Minister would consult some of his party colleagues and, therefore, it was unlikely that a decision could be made that day. Mr Kerr observed that this approach infuriated Minister Bell who interpreted it as an attempt by Mr Cairns to undermine his authority. According to Mr Kerr, the disagreement became very heated and the meeting came to an abrupt conclusion, without agreement, when the Minister dismissed Dr McCormick, Mr Mills and Mr Kerr from the table.¹⁵⁷⁹
- 27.17 Dr McCormick confirmed that there had been some “fierce exchanges” although he was unable to remember who had been initially responsible. He agreed that the extent of Minister Bell’s authority appeared to be at issue and that Mr Cairns intervened, talked over the Minister and emphasised that the ultimate decision would need to go to “party colleagues”. Dr McCormick said that the interventions were tense, that they jarred and were “a sharper rebuke to a Minister from a special adviser than I’d seen before.”¹⁵⁸⁰
- 27.18 In the course of his oral evidence to the Inquiry, Mr Cairns accepted that this was not “a savoury incident” nor the “proudest moment in my career”.¹⁵⁸¹ He accepted that he was frustrated and that there were sharp exchanges between him and Minister Bell. Mr Cairns said he felt very frustrated because the Department appeared to want to close the NIRO scheme while he was aware that the DUP wanted a number of concessions from DECC.¹⁵⁸² Mr Cairns knew that Minister Bell had a very close relationship with Mr Robinson and advised that he should speak to him on the basis that he, as First Minister, would be able to express the views of the Party.¹⁵⁸³
- 27.19 After the others had left the dining table, Minister Bell summoned Mr Cairns to return alone and demanded that he apologise for his conduct in public. Mr Cairns accepted that there were further heated exchanges at this point, that he had been wagging his finger at Minister Bell and he had used inappropriate language. Mr Cairns refused to make a public apology and Minister Bell told him that he was sacked.
- 27.20 For his part, Mr Cairns gave evidence to the Inquiry that Minister Bell threatened to break his, that is, Mr Cairns’, finger. That allegation was emphatically denied before the Inquiry by Mr Bell. Following their altercation Mr Cairns did not attend the meeting with the Secretary of State but travelled home to Belfast alone believing himself to have been sacked.¹⁵⁸⁴
- 27.21 On the same day, 10 June, Mr Cairns entered into a text message exchange with Emma Little-Pengelly, then a SpAd to First Minister Robinson, about these events. In the course of that exchange, referring to Minister Bell, Mr Cairns wrote:

“...I now owe him nothing and will report his every transgression to TJ [Timothy

1578 WIT-22617

1579 WIT-25826

1580 TRA-12226 to TRA-12227

1581 TRA-12670

1582 TRA-12672 to TRA-12673

1583 TRA-12677

1584 WIT-20160 to WIT-20161

Johnston] who wants him out. Also I've made sure Andrew and Arlene know that he is messing up their department."¹⁵⁸⁵

27.22 When asked by the Inquiry about his impression that his authority was being limited by Mr Cairns' interventions, Minister Bell said:

"Yes, I think it was a limitation of ministerial authority because I think, to be fair to him [Timothy Cairns], he felt responsible to the other senior SpAds; more responsible to them than he did to his Minister."¹⁵⁸⁶

27.23 Mr Bell later added "I think it – on reflection, I think, on many occasions, it was SpAds that were taking decisions."¹⁵⁸⁷ He explained to the Inquiry that it was always assumed that there could be differences of opinion between the Minister and the SpAd, but they were usually passed to the Minister quietly in the form of a note after which it was up to the Minister to make the decision. The SpAd would not be held accountable by the Party for the political advice he gave if he gave the advice and the Minister took a different position. Here the context was clearly important. Mr Bell continued in the following terms:

"But what was difficult in these meetings was Timothy Cairns was openly, in front of my Permanent Secretary, in front of some of my Senior Management Team, saying 'no, the Minister won't make that decision. We'll make that decision' and that's where the difficulties came. And when I was stating that I would fulfil my function as a Minister, he was saying 'you won't', and that's when it became very uncomfortable, even for Andrew McCormick and my Senior Management Team, cos [sic] the SpAd was saying they would make the decision."¹⁵⁸⁸

27.24 Mr Johnston, the First Minister's SpAd, was involved in the aftermath of the events in London. In the course of his oral evidence to the Inquiry he accepted that the incident constituted evidence of a highly dysfunctional relationship.¹⁵⁸⁹

27.25 Whatever may have been the truth of the London incident and the allegations that arose as a result, it is clear that these interactions served to underline the absence of the personal relationship of trust and rapport between Minister Bell and Mr Cairns that the Code for appointment of SpAds sought to ensure existed.

27.26 Mr Cairns went to Stormont Castle on his return to Belfast that day where he met Mr Johnston and Mr Bullick, another of the First Minister's SpAds.¹⁵⁹⁰ Mr Cairns described Mr Johnston to the Inquiry as being at the top of the SpAd hierarchy and the most important person in the DUP after the party leader.¹⁵⁹¹

27.27 The following day Mr Cairns spoke to First Minister Robinson and Mr Johnston and accepted his responsibility.¹⁵⁹² He was informed that Mr Johnston had telephoned Minister Bell to inform him that he did not have the authority to sack his SpAd.¹⁵⁹³ Mr Cairns told the Inquiry that it

1585 IND-25375

1586 TRA-12291

1587 TRA-12291

1588 TRA-12295

1589 TRA-14768 to TRA-14769

1590 WIT-20161

1591 TRA-12636 to TRA-12641

1592 TRA-12680

1593 WIT-20161

was an extremely stressful experience and that, as a consequence, he went to see his doctor and was certified unfit for work for a period of two weeks.¹⁵⁹⁴

The 26 June 2015 meetings

27.28 On 26 June 2015 a series of meetings were held in an attempt to resolve the damage to the relationship that had resulted from the London events. Mr Cairns and Minister Bell were separately interviewed by First Minister Robinson and Mr Johnston and, subsequently, there was a joint meeting between Minister Bell and Mr Cairns in the presence of Mr Johnston. Mr Cairns recognised both the inappropriateness and seriousness of his conduct and made a full apology. It appears that he was also expecting Minister Bell to make some form of apology but said to the Inquiry that Minister Bell refused to do so because he maintained that he had done nothing wrong.¹⁵⁹⁵ No record or minute was made of the meeting.¹⁵⁹⁶

27.29 Mr Cairns' sense of resentment at the lack of an apology may be seen in subsequent text messages that he sent to Mr Johnston in which he expressed frustration at the failure to deal with Minister Bell's temper.¹⁵⁹⁷ Mr Johnston told the Inquiry that he was both surprised and disappointed by the content of the text message from Mr Cairns the following day.¹⁵⁹⁸ Mr Johnston responded to Mr Cairns that "you will both be left a little dissatisfied" and, essentially, he appears to have believed that they were both as bad as each other.¹⁵⁹⁹

27.30 In his written evidence to the Inquiry, Mr Johnston stated that:

"The working relationship between Mr Cairns and Mr Bell appeared to get back on track after those events, however, with hindsight trust appeared in short supply between the two men and neither appeared to respect the other."¹⁶⁰⁰

He continued:

"In my view it is highly likely that the aforementioned may have had an adverse impact on both Mr Cairns and Mr Bell on matters pertaining to the RHI... looking back the two men did not appear to like one another much less trust one another."¹⁶⁰¹

27.31 In his written evidence to the Inquiry Minister Bell stated that, apart from the incidents dealt with above, there were many other occasions when Mr Cairns spoke over him and contradicted him and the perspective that he was taking at ministerial meetings. He stated that, after the incidents in London and the apology, the adverse behaviour significantly decreased but did not end. Minister Bell believed that Mr Cairns saw himself as working for the other SpAds rather than his Minister.¹⁶⁰²

1594 TRA-12687 to TRA-12688

1595 WIT-20162 to WIT-20164; WIT-74118 to WIT-74119

1596 TRA-14166

1597 IND-31977 to IND-31978

1598 TRA-14181

1599 IND-31978

1600 WIT-74096

1601 WIT-74097

1602 WIT-22616

- 27.32 Towards the end of the 26 June meeting with Minister Bell and Mr Cairns, Mr Johnston asked Mr Cairns to liaise with Dr Crawford with regard to energy matters, including RHI, in order to benefit from the considerable experience the latter had gained as Minister Foster’s SpAd during her long service as DETI Minister.¹⁶⁰³
- 27.33 According to Mr Cairns, Mr Johnston also stated that “tariff controls would not be introduced.”¹⁶⁰⁴ Mr Johnston has firmly denied making such a statement and given evidence that he suggested that Mr Cairns should liaise with Dr Crawford about “general matters” rather than specifically the RHI scheme.¹⁶⁰⁵
- 27.34 However, less than 2 months later following a chance meeting and brief conversation with Mr Johnston at Portrush, Mr Cairns sent Mr Johnston an email on 17 August 2015 enclosing the latest information on the NIRO scheme and including the sentences: “We also need to get a catch up on renewable heat. If we are to deviate from GB policy it will require a ministerial direction.”¹⁶⁰⁶

Mr Bell’s claim that RHI was kept off the agenda

- 27.35 As mentioned previously, RHI appears to have been first raised with Minister Bell by DETI officials at one of the Issues Meetings between the Minister and his officials. Issues Meetings would happen on a reasonably regular basis, and would be used by senior officials to highlight and discuss certain topics with the DETI Minister.
- 27.36 At the Issues Meeting on 8 June 2015 the Minister, Mr Cairns, Dr McCormick, and Mr Stewart were present. A number of issues regarding the NI RHI scheme were mentioned briefly by officials. Mr Cairns acknowledged that these issues were the missed DFP reapproval deadline, budget issues and the need for legislative amendment to introduce cost controls. Mr Cairns recalled that officials stated that a submission on RHI would follow shortly for the Minister’s attention.¹⁶⁰⁷
- 27.37 Minister Bell maintained that after that meeting on 8 June, whenever the subject of the RHI scheme was raised, Mr Cairns would interject to state that he was discussing RHI with other SpAds and that it was not to be discussed.¹⁶⁰⁸ Mr Bell added that Mr Cairns prevented discussion of the topic being included in the agenda of several meetings.¹⁶⁰⁹
- 27.38 That evidence is not supported by Mr Kerr, Minister Bell’s DETI Private Secretary, who, having examined DETI archived email records, confirmed to the Inquiry that RHI was on the agenda of the Issues Meetings on 8 June, 24 August, 7 September, 3, 9 and 16 November, 8 December 2015 and 1 and 15 February 2016 – a list which is not exhaustive. Mr Kerr has confirmed that these Issues Meetings were requested by officials and the agendas were set by the Permanent Secretary’s office.¹⁶¹⁰

1603 WIT-20057 to WIT-20058; WIT-20164 to WIT-20165; TRA-12707 to TRA-12708

1604 WIT-20058

1605 WIT-74102; TRA-14228 to TRA-14235

1606 WIT-20363 to WIT-20364; IND-25403

1607 TRA-12649 to TRA-12653

1608 TRA-12255

1609 TRA-12329

1610 WIT-25824

27.39 Mr Bell also alleged that, generally, Mr Cairns “filtered and filleted” communications between himself and the Department with regard to RHI.¹⁶¹¹ The Inquiry did not find any evidence to support this assertion in respect of events in 2015.

Findings

- 150.** In the circumstances, it appears that Mr Cairns felt that he had no choice but to agree to become Minister Bell’s SpAd and Minister Bell felt that he had no choice but to accept the appointment of Mr Cairns, a situation that fundamentally undermined the personal nature of the appointment and the “high degree of rapport and trust” between a Minister and his/her Special Adviser recognised as being required by the Code governing the appointment of Special Advisers.¹⁶¹²
- 151.** The Inquiry is satisfied that after the events of June 2015 the high degree of rapport and trust contemplated by the Code did not exist between Minister Bell and Mr Cairns at least as far as Mr Cairns was concerned.
- 152.** The Inquiry agrees with the view expressed by Dr McCormick and Mr Johnston that the breakdown in trust between Mr Cairns and Minister Bell probably made resolution of the RHI problems more difficult.¹⁶¹³
- 153.** While Mr Johnston has given evidence that his request for Mr Cairns to work with Dr Crawford was “generally about DETI matters”, rather than specifically the RHI scheme, the Inquiry is satisfied that, in practical terms, it was in respect of energy matters such as NIRO and the RHI scheme that Mr Cairns and Dr Crawford understood guidance was to be given and received.¹⁶¹⁴
- 154.** The Inquiry found no objective evidence to support Mr Bell’s allegation that Mr Cairns or others intervened to keep RHI matters “off the agenda” at meetings.¹⁶¹⁵

1612 DOF-00632 to DOF-00634

1613 WIT-10516

1614 WIT-74125; TRA-14820

1615 TRA-12326 to TRA-12328

Chapter 28 – Developing the revised RHI policy and the 8 July 2015 submission

The nature of ministerial submissions

- 28.1 During the course of this Report the Inquiry has referred to submissions which officials provided to Ministers about the subject matter which the Inquiry has investigated. Ministerial submissions are clearly important documents as they contain the basis for Ministers' decisions.
- 28.2 During the course of the Inquiry's investigation it was evident that submissions often went through many drafts before the final version was submitted to the Minister. The important submission of 8 July 2015 is one such example. The Inquiry recognises that this is an entirely normal process within organisations.
- 28.3 It may be that some draft versions arise as a result of someone saving their work on the TRIM electronic system used by DETI, without the draft necessarily being circulated for the comment of others. In other instances, drafts of a submission (to the point that the draft had reached) are circulated amongst colleagues for comment.
- 28.4 It was often possible for the Inquiry to trace the development of documents like submissions, and indeed other documents (such as business cases) which were stored in the TRIM document management system, through the Department making available to the Inquiry the TRIM document records (or metadata) relating to a particular record. This was the case with the submission of 8 July 2015, the development of which will be examined shortly.

Policy work leading up to the 8 July 2015 submission

- 28.5 As discussed earlier, by mid-May 2015, during the work on the wider 18-point RHI Phase 2 policy response, Mr Wightman and Mr Hughes had already begun building tiering into their RHI proposals. Following the DETI Finance instruction of 20 May 2015, to stop entering financial commitments on the NI RHI scheme, work on the wider 18-point Phase 2 policy document stopped and the focus moved to a much narrower policy as attempts were made to address the perceived problems.
- 28.6 The Inquiry has already noted that it was on 29 May 2015 that emerging problems over RHI featured in a DETI Senior Management Team meeting. This led, amongst other things, to RHI-specific meetings among DETI officials on 3 and 17 June, to RHI being raised at the DETI ministerial Issues Meeting on 8 June, and to DETI Finance having an RHI-specific meeting with DFP Supply on 12 June 2015.
- 28.7 During this period officials in DETI's Energy Efficiency Branch worked on the development of four key documents: a draft RHI submission for the Minister; a draft consultation paper on cost control (which was subsequently abandoned when DETI decided not to consult further); a much narrower draft DETI policy response to the 2013 RHI consultation; and an early draft of an RHI Business Case Addendum. Ultimately, it was not until 8 July 2015 that the Minister was sent the submission with a suggested final RHI policy document and other related material.¹⁶¹⁶

- 28.8 Work on drafting that submission had begun on 29 May. On that date Mr Hughes began drafting both the submission¹⁶¹⁷ and the revised response to the 2013 public consultation, which was to reduce radically the number of topics covered by the earlier draft consultation response from 18 to two, namely tariffs for combined heat and power installations ('CHP') and cost control measures.¹⁶¹⁸
- 28.9 By the time the public consultation response was finalised towards the end of August 2015 there had been some 15 draft versions of it.¹⁶¹⁹ At the point when the draft public consultation response was provided to the Minister with the 8 July 2015 submission,¹⁶²⁰ it was in its ninth draft version¹⁶²¹ and then stated that work was ongoing to develop a system of tariff degression suitable for the NI RHI scheme and that, in the interim, a tiered tariff would be introduced for biomass heating systems from 1 October 2015.¹⁶²² The first 1,314 hours (or equivalent in kWh) of use would attract the standard tariff, which would then reduce to 1.5p/kWh thereafter. The higher tier was intended to cover the capital cost and the lower tier the ongoing running costs.¹⁶²³ DETI also intended to extend the existing medium biomass tariff to installations above 99kW in size up to and including 199kW from October 2015.¹⁶²⁴
- 28.10 On 11 June 2015 Mr Wightman provided DETI Finance colleagues with what he described as a "discussion/briefing paper" to assist with an RHI meeting DETI Finance was having the following day with DFP Supply.¹⁶²⁵ The document was entitled "Renewable Heat Incentive – Business Case Addendum", though it was a very different document from the subsequently developed 'Business Case Addendum for the NI Renewable Heat Incentive' that DETI would eventually submit to DFP in October 2015. As noted earlier, this 11 June 2015 briefing document from Mr Wightman had led the DETI Finance Director, Mr Cooper, to comment to a senior colleague on 12 June 2015 that it demonstrated "a fair bit of naivety around the issues" and that the RHI scheme may be "overcompensating".¹⁶²⁶

The draft 15 June 2015 submission proposing to consult over tiering

- 28.11 On 15 June 2015 Mr Wightman circulated to colleagues a draft of a proposed submission for Minister Bell. This was entitled "Phase 2 Deferral, consultation on cost control proposals and engagement with [then DECC Secretary of State] Amber Rudd MP on NI RHI budgets."¹⁶²⁷ The eventual submission to the Minister on the 8 July 2015 submission advocated a very different approach from that proposed in this June 2015 document.
- 28.12 The 15 June draft submission outlined the recent pressures on the non-domestic RHI budget said to have been driven largely by the move in the poultry sector away from LPG heating systems to biomass heating systems for broiler houses, and the consequent need to ensure DECC/HMT approval of the revised AME forecast for 2015-16 (which was, at that point, said

1617 DFE-119513 to DFE-119516; DFE-119509 to DFE-119512; DFE 424438 to DFE-424442

1618 DFE-119539

1619 DFE-119539 to DFE-119633; DFE-424232 to DFE-424241

1620 DFE-120439 to DFE-120457

1621 DFE-119581 to DFE-119587; DFE-120439 to DFE-120457

1622 DFE-119586; DFE-120439 to DFE-120445

1623 DFE-119586; DFE-120439 to DFE-120445

1624 DFE-120454 to DFE-120455

1625 DFE-146558 to DFE-146564

1626 DFE-146565

1627 DFE-146592 to DFE-146598

to be twice the previous 2015-16 forecast).¹⁶²⁸ Also enclosed was a draft letter to the DECC Secretary of State highlighting the need to move away from the Barnett formula and seeking additional AME funding.¹⁶²⁹ The draft suggested that the first step in getting HMT to agree additional AME funding was to get DECC to agree to that course.

- 28.13 The 15 June draft also proposed the introduction, in October 2015, of tiering for biomass after the peak 1,314 hours, together with future proposed fixed value reductions¹⁶³⁰ of tariff in 2016 and 2017.¹⁶³¹ Paragraph 8 of the draft submission at this stage stated that because of the “financial implications of the non-domestic RHI’s success it is proposed to consult on cost control proposals to manage the available budget both now and in the future.”¹⁶³²
- 28.14 The draft went on to explain that, aside from the introduction of a new CHP tariff, the rest of the Phase 2 proposals (consulted on by DETI in 2013) would be deferred until 2016, pending clarity on future RHI budgets and an assessment of the effectiveness of the cost control measures to be introduced.
- 28.15 Following the RHI meeting of DETI officials on 17 June 2015 a different intended course emerged, which would ultimately come to be reflected in the documents that formed part of the submission sent to the Minister on 8 July 2015. The first draft of what was to become the 8 July 2015 submission was saved into the TRIM system at lunchtime on 6 July 2015.¹⁶³³

The development of the 8 July 2015 submission

- 28.16 The development of this submission saw the previously proposed periodic tariff reductions removed to leave tiering as the sole proposed cost control. There was now to be no consultation on the tiering proposal, even though tiering had not been part of the 2013 Phase 2 consultation (which had instead contained the budget protecting trigger mechanism applicable to both non-domestic and domestic schemes).
- 28.17 Importantly, under the “Financial Implications” summary on the first page of the first draft of the 8 July submission, it said “Forecast RHI expenditure in 2015-16 is £23m – almost twice current AME allocation of £11.6m.”¹⁶³⁴
- 28.18 However, by the time the submission was filed with the Minister’s Private Office at 18.23 on 8 July 2015¹⁶³⁵ the “Financial Implications” summary on the front page had been altered to state simply, “We are currently seeking extra funding as forecast scheme expenditure is [sic] exceeds previous funding allocations.”
- 28.19 Another stark statement, about the doubling of previous forecasts, was found in the 6 July draft of paragraph 6 of the submission¹⁶³⁶ which also explained that if additional funding could not be secured, then “the funding shortfall will have to be met by DETI and taken from other investment programmes.”¹⁶³⁷

1628 DFE-146595

1629 DFE-146597 to DFE-146598

1630 See section 7.1 of the report and the discussion about the cost control template.

1631 DFE-146595

1632 DFE-146595

1633 WIT-03390; WIT-03392

1634 WIT-03401

1635 DFE-120439 to DFE-120457. When the submission was lodged with the Minister’s Private Office it was on its 8th version; see WIT-03392 and WIT-03464 to WIT-03469

1636 WIT-03403

1637 WIT-03403

- 28.20 In the final version filed with the Minister two days later, paragraph 6, whilst acknowledging that forecast expenditure exceeded previous funding allocations, no longer made plain that the extent of the required additional funding was essentially 100%, and the warning of the potential consequences of the shortfall having to be met by DETI from its other programmes was removed entirely.¹⁶³⁸
- 28.21 As appears in the findings below, in the Inquiry’s view the stark and clear message of the extent of the RHI funding problem and its potential consequences, as articulated in the 6 July draft of what became the 8 July 2015 submission, should not have been altered so as to deprive the Minister of the opportunity of reading the submission and consequently knowing, or being reminded, that there was a potential £13 million shortfall in funding in that year alone that may have to be met from some other part of the DETI budget.
- 28.22 The DETI Finance Director, Mr Cooper, initially provided a written statement to the Inquiry that, on one reading, suggested that the clear language of the initial draft of the submission referred to above was that of DETI Finance, and that it had been removed by others “at the eleventh hour”.¹⁶³⁹ However, Mr Cooper later accepted in his oral evidence to the Inquiry that he, and other more senior colleagues, had been copied into the email exchanges on 7 July 2015 relating to the changes,¹⁶⁴⁰ and that he should have replied raising his concerns.¹⁶⁴¹
- 28.23 For his part, Mr Mills accepted that he had directed Mr Wightman to make the above changes to the submission¹⁶⁴² They were made on the evening of 7 July 2015.¹⁶⁴³ Mr Mills was on leave at the time and travelling in a taxi into central London from an airport.¹⁶⁴⁴ In oral evidence, Mr Mills explained that he had advised the amendments because of the uncertainty about the precise amount of the expenditure and the specific nature of the funding, referring to “caution not to mention specific figures.”¹⁶⁴⁵
- 28.24 With the benefit of hindsight, he agreed that the amendments made the submission much less explicit and reduced the sense of urgency.¹⁶⁴⁶ Looking back, he accepted that the submission should have referred to a risk to the DEL budget, but he added that the risk had been removed in July¹⁶⁴⁷ by the additional HMT funding that was made available (albeit that he would not have been aware of this on 7 July 2015).¹⁶⁴⁸ He had been working from a Blackberry without seeing the whole document and never thought that the changes would have the significance which later emerged.¹⁶⁴⁹
- 28.25 The fact that changes were being made at the request of Mr Mills was pointed out by Mr Wightman on the evening of 7 July 2015 to the two grade 3 civil servants in DETI, Mr Stewart

1638 DFE-120454

1639 WIT-18545

1640 TRA-15953 to TRA-15959

1641 TRA-15956

1642 TRA-11069; TRA-10790 DFE-278452

1643 DFE-278452

1644 TRA-11069 to TRA-11070

1645 TRA-11070

1646 TRA-11071

1647 DETI had sought additional 2015/2016 AME funding for RHI (approximately £11.3 million) through the June 2015 monitoring round in line with its then 2015-16 forecast RHI expenditure. DFP indicated to DETI on 9 July 2015 that the additional funding was available to match its new RHI forecast for 2015/16 (£23.179 million); DFE-176363 to DFE-176365 and DFE Spreadsheet DFE-179394. This was confirmed by DETI on 10 July 2015; see, again, the references above. DFP then provided a confirmation print confirming the allocation on or about 20 July 2015; see WIT-43755; DFE 176378 to DFE-176379; WIT-37016; DFE-279008; DFE-147605 to DFE-147607; and DFE-462956.

1648 TRA-11074

1649 TRA-11073 to TRA-11074

and Mr Rooney, and grade 5 Mr Cooper, with an indication to those individuals that they would be able to view the tracked changes on the draft submission stored in TRIM.

28.26 Mr Stewart subsequently replied, later the same evening, confirming he was content with the changes, save for an issue unrelated to the above.¹⁶⁵⁰ He did not take issue with the changes Mr Mills had instructed, and which altered the nature of the message being communicated about the extent of the financial problem, and its potential consequences. The other individuals raised no issue with the above changes either.

28.27 In addition to what was removed, in paragraph 4 of the version of the submission that was submitted to the Minister's Private Office, it positively stated that: "RHI funding is provided from the Treasury via Annually Managed Expenditure (AME) **so does not impact directly on NI Departmental budgets.**" (the Inquiry's emphasis). Dr McCormick, then Permanent Secretary at DETI, informed the Inquiry that he regarded this statement as "incorrect and misleading" for the Minister because his officials did have the 2011 Parker email, which spoke of DEL consequences for RHI overspends.¹⁶⁵¹

28.28 The references in this submission, and other DETI documents, to RHI AME funding having no impact on the Northern Ireland block grant or DEL departmental budgets were simply incorrect and were contrary to the then available evidence. For instance, aside from having knowledge of the 2011 HMT Parker email itself, Mr Wightman was copied in to an email from DETI Finance's Mr Partridge of 19 May 2015 which pointed out that:

"The email from Jon Parker (HMT) in April 2011 specified that RHI was not treated as standard AME, and overspending would have consequences for Resource DEL budgets."¹⁶⁵²

Mr Partridge's 19 May 2015 email formed part of a chain of emails into which more senior colleagues to Mr Wightman were copied into on 20 May 2015.¹⁶⁵³

28.29 Mr Cairns, the DETI SpAd in July 2015, was asked during his oral evidence about the omissions from the final draft of the 8 July submission, and their potential effect on the course of events. Prior to the Inquiry he had not seen the earlier draft in which they had been included. He doubted if it would have interfered with the process adopted by officials or Mr Bell going on holiday, but accepted that it was clearly significant information which would have affected his conversations with Dr Crawford. He agreed that the passages, had they been included, might have altered his inclination to enquire as to the latest date at which the changes to the scheme could be made.¹⁶⁵⁴

28.30 The primary thrust of the submission was to emphasise the need for Phase 2 cost control measures – "Given these budget pressures, we need to urgently implement cost control measures to manage future RHI expenditure."¹⁶⁵⁵ However, despite being reviewed by senior officials including Mr Cooper, the submission did not refer to the risk of overcompensation, a topic Mr Cooper had earlier raised in an email sent to Mr Murphy on 12 June.¹⁶⁵⁶

1650 WIT-03456

1651 TRA-15225

1652 DFE-277174

1653 DFE-277173 to DFE-277174

1654 TRA-12762

1655 DFE-120454

1656 DFE-146565

- 28.31 The submission confirmed that changes to the scheme would require legislation.¹⁶⁵⁷ The submission recommended the extension of the capacity band and the tiered biomass tariff, ostensibly on the basis that such a change could be legislatively introduced by 1 October whereas the other options would require more work and might take more than six months to implement.¹⁶⁵⁸
- 28.32 With regard to the need for legal changes, Mr Hughes had telephoned Mr McGinn at DSO for further advice on the Department’s legal powers to manage and amend the scheme.¹⁶⁵⁹ Mr McGinn provided written legal advice on 25 June in the course of which he noted that the 2012 NI RHI regulations were drafted in mandatory rather than discretionary terms and that amending the legislation to introduce a power to suspend the scheme would constitute a clear change of policy. In such circumstances, legal issues of substantive and/or procedural legitimate expectation would arise in favour of a right of any affected person, at the very least, to be consulted.¹⁶⁶⁰
- 28.33 In the version of the submission sent to the Minister, in its paragraph 7, it also drew attention to the failure to secure DFP approval in March 2015 and confirmed that the Department was urgently working to rectify that situation.¹⁶⁶¹
- 28.34 The submission, marked “Urgent”, was forwarded to the DETI Private Office for clearance by the SpAd and Minister Bell by Mr Wightman at 6.23pm on 8 July 2015.¹⁶⁶² Included along with the submission was the draft final policy document on the proposals, a draft SL1 letter to the ETI Committee and ‘Lines to Take’ in response to any objections.¹⁶⁶³
- 28.35 The lodged submission was copied to, amongst others, the then Permanent Secretary Dr McCormick, his deputies Mr Stewart and Mr Rooney, as well as to other officials Mr Cooper, Mr Mills, Mr Hughes and Mr Alan Smith. Mr Smith had been employed as an economist by Energy Division to carry out a dedicated policy advisory role on energy projects. Mr Smith would subsequently also assist Mr Wightman with the development of what became the October 2015 RHI Business Case Addendum.
- 28.36 The 8 July submission focused on the introduction of tiering as a means, which ultimately did not prove to be effective, of controlling the overall scheme budget. That was clearly linked to seeking to secure DFP approval for the scheme going forward, such approval having lapsed. However, it seems clear that the further issues of potential overcompensation of scheme participants, possible breach of State Aid approval due to such over-compensation and/or lack of adequate review of the scheme, discovery of the perverse incentive and appreciation of the possible disastrous consequences of significant overspend for DEL budgets were not probed and investigated with the rigour or determination that they might have been.
- 28.37 In short, no effective process was undertaken to stand back and examine all the circumstances of the NI RHI scheme and examine forensically and critically exactly why and how the presenting problems had developed. The 8 July submission focused on what was considered to be an expeditious way of addressing the problem, but this was really treating the symptom rather

1657 DFE-120454

1658 DFE-120455

1659 WIT-14184; DFE-349922

1660 DFE-149496 to DFE-149499

1661 DFE-120452 to DFE-120457

1662 DFE-120439 to DFE-120457; DFE-278429 to DFE-278449

1663 DFE-120439 to DFE-120457

than undertaking a full diagnosis. As appears in the findings below, the Inquiry believes that there was a significant lack of effective leadership within DETI in the early weeks of June 2015 (described earlier in this Report) when the process which led to the preparation and drafting of the 8 July submission was set in train.

28.38 In its representations to the Inquiry in relation to the Inquiry’s draft findings, DfE indicated that, in light of the evidence which has been presented in the course of the Inquiry, it now has a much more detailed and comprehensive understanding of what was happening before, during and after the summer of 2015. However, DfE has stated that it remains of the view that, without the benefit of hindsight:

“It was reasonable for the leadership of DETI to rely on the knowledge of those who were responsible for the day-to-day operation, and the monitoring, of the Scheme and to expect that they would: (a) have a good grasp of the fundamental tenets of the Scheme, including knowledge of the foundation documents; and (b) be alert to, and pass on any knowledge of, risks of overcompensation.”

28.39 The Inquiry accepts that in June and July 2015 the ability to identify the full extent of the developing crisis was inevitably hampered because there was information of which the leadership of DETI was not aware. The Inquiry nonetheless considers that greater steps ought to have been taken to probe the reasons why matters had developed as they had, what the underlying issues with the NI RHI scheme were or may have been, and what steps were necessary to address them. By early June 2015, there were significant budgetary problems, there was a lack of clarity about the funding position and financial approval for the scheme had lapsed. These were sufficiently serious matters that the senior civil service leadership of DETI ought to have taken further steps to investigate more deeply. Indeed, they ought not to have placed significant further reliance on those junior officials directly responsible for the scheme which was now presenting with these issues without ensuring that some further, more independent, enquiry was undertaken. The Department’s continued justification of its reliance on those who were directly responsible for the scheme at the time serves to underline, rather than assuage, the Inquiry’s concerns in this regard.

28.40 In his representations to the Inquiry Dr McCormick, albeit maintaining that it was reasonable for him to place his trust in and to rely on the advice of the officials who were responsible for the day-to-day running of the scheme and to expect that those officials were fully up to speed with the detail of the scheme and any possible difficulties – a view which the Inquiry cannot fully support – nonetheless has accepted that he “could have taken a step back from the serious failings that had emerged by June 2015 and undertaken a more fundamental review” and has indicated that he “regrets not seeing and taking that opportunity.”

Findings

155. An initial draft submission about introducing cost controls commenced in late May 2015 but there is no clear or acceptable explanation as to why it did not commence earlier or why it took until 8 July 2015 for a submission to be finalised and lodged with the DETI Minister’s Private Office.
156. In the context of the uncertainty about the RHI budget, the expiry of DFP approval, potential overcompensation and the increase in applications, the bureaucratic, protocol-bound and apparently circular communication between DETI, DFP, HMT and DECC caused unjustifiable delay.
157. The warnings in the initial draft of what became the 8 July 2015 submission with regard to the extent of the increase of forecast expenditure and potential impact upon DEL budgets were removed as a consequence of changes instructed by Mr Mills during a telephone conversation between Mr Wightman and Mr Mills on 7 July.¹⁶⁶⁴ This was one example of what the Inquiry believes may have been a more general inclination on the part of the officials responsible for the NI RHI scheme to emphasise positive aspects of the scheme and downplay any potential risks or adverse outcomes.
158. The stark and clear message of the extent of the RHI funding problem and its potential consequences, as articulated in the initial draft of what became the 8 July 2015 submission, should not have been altered so as to deprive the Minister (or any other subsequent reader) of the opportunity of reading the submission and consequently knowing, or being reminded, that there was a potential £13 million shortfall in funding for the year 2015-16 that may have to be met from some other part of the DETI budget.
159. If an appropriate system of project management had been instituted at the start of the NI RHI scheme it should have been possible to clarify the significant issues in 2015 with a degree of expedition.
160. The Inquiry believes that there was a significant lack of effective leadership within DETI in the early weeks of June 2015. Dr McCormick agreed that May/June 2015 would have been a ‘classic’ moment to conduct a Gateway process and that such a process should also have been carried out in 2011 prior to taking on the NI RHI scheme.¹⁶⁶⁵ This was a lost opportunity for a moment to “stand back and examine all the circumstances of the scheme” along Gateway lines. An independent individual/committee could have easily been provided with relevant documentation and information relating to the implementation and administration of the GB and NI RHI schemes for review including, for example, the unusual nature of the RHI AME funding with the potential to impact upon the DEL budget, the fact that concerns had been raised about the scheme such as those from Ms O’Hagan, the need for and the relevance of the absence of tiering, the requirement for budget controls etc.

1664 TRA-11069 to TRA-11070

1665 TRA-12044; TRA-12097 to TRA-12098

Chapter 29 – The consideration of the 8 July 2015 submission

- 29.1 What happened to the 8 July 2015 submission during the course of the summer of 2015, and how it was dealt with, was a key issue investigated by the Inquiry.
- 29.2 When it was lodged it was marked “Urgent”. Mr Kerr, the DETI Minister’s then Private Secretary, explained that “Urgent” was used on submissions when they required clearance within three working days. “Immediate” or “Desk Immediate” required a response within 24 hours.¹⁶⁶⁶ In the course of giving oral evidence, Mr Cairns suggested that the terms “urgent” and “desk immediate” had become overused and, as a consequence, taken somewhat for granted.¹⁶⁶⁷
- 29.3 The operative DETI Private Office guidance provided that the SpAd should clear all papers before they were submitted to the Minister, and the evidence to the Inquiry confirmed the general practice to have been that the submission would proceed to the SpAd for clearance before reaching the Minister.¹⁶⁶⁸ In his written evidence to the Inquiry Mr Kerr, explained that, after it had been received electronically, the submission would be recorded in the Private Office information management system and a hard copy prepared.¹⁶⁶⁹ The submission would then be passed on to the SpAd. In due course the SpAd would return it, usually in hard copy form bearing his comments, to the Private Secretary to be passed to the Minister.¹⁶⁷⁰
- 29.4 The submission, which subsequently became SUB1075-2015, went to the Minister’s Private Office in the evening of 8 July,¹⁶⁷¹ and without the important information as to the extent of what was a potential £13 million shortfall in funding for 2015-16 that may have to be met from some other part of the DETI budget being spelt out.
- 29.5 As mentioned previously, it is the case that Minister Bell had received a first-day brief when he became DETI Minister in May 2015. Although it was very generalised, it did record that the allocated RHI budget for 2011-15 had been £25 million whereas the then current forecast for 2015-16 alone was around £22 million.¹⁶⁷² Further, in a written statement of evidence to the Inquiry Dr McCormick said that Minister Bell was later told that the projected spend for 2015-16 was now £23 million at the previously mentioned Issues Meeting of 8 June 2015¹⁶⁷³ although, in oral evidence, he, Dr McCormick, said that he did not remember the meeting vividly.¹⁶⁷⁴ On the same day, Mr Stewart who was also at that meeting sent an email to Mr Mills confirming that Minister Bell had noted the position and asked to be kept informed about the three strands, which included the lack of budget cover. However, Minister Bell was not formally reminded of these facts in the submission of 8 July. Nor did the submission of 8 July apprise him of any risk of potential impact on the other DETI DEL budgets. The Inquiry believes that this was another unacceptable example where a Minister was inadequately briefed and advised by officials.¹⁶⁷⁵

1666 WIT-25851

1667 TRA-12734

1668 DFE-416560; See for example WIT-25822

1669 WIT-25821

1670 WIT-25822

1671 DFE-120439 to DFE-120457

1672 DFE-416349

1673 WIT-10515

1674 TRA-12206

1675 The Inquiry has previously dealt with the inadequate information provided to Ms Foster in respect of the nature of RHI funding and the risks it posed. This subject is further dealt with in chapter 14.

The lodged version of the submission of 8 July 2015

29.6 The lodged submission¹⁶⁷⁶ informed the Minister of the following material aspects:

- The issue was described as “the introduction of cost control measures to manage RHI expenditure and ensuring effective administration of domestic scheme” and was said to be urgent;
- Under “scheme performance” in paragraph 4 it explained that “RHI funding is provided from the Treasury via Annually Managed Expenditure (AME) so does not impact directly on NI Departmental budgets”;
- It was said that the focus had been on improving performance and ensuring RHI allocations were spent and invested in Northern Ireland and not returned to Treasury;
- Applications had increased and DETI was on course to meet its interim target for renewable heat;
- The recent success of the scheme had put pressure on the RHI budget and officials were working with DFP to try to secure additional funding as forecast scheme expenditure now exceeded previous funding allocations;
- The demand had been driven by the poultry sector with nearly 99% of RHI applications being for biomass heating systems;
- Approval from DFP for expenditure beyond 31 March 2015 had not been sought and work was ongoing to regularise the position;
- Due to the budget pressures there was a “need to urgently implement cost control measures to manage future RHI expenditure” and the changes would require legislation. Three options were presented to the Minister:
 - o first, do nothing;
 - o second, introduce tiering *for new applications post October 2015* (the Inquiry’s emphasis) and extend the medium biomass boiler band up to 199kW which was said to be required to help reduce multiple installations, reduce future application numbers and payments. It was said these changes could be brought into effect from 1 October 2015 as legislation was in any event required to introduce a new RHI tariff for CHP; and
 - o third, introduce potentially one of two different forms of a degression mechanism but the Minister was told that the work required would take longer than 6 months.
- It was recommended to the Minister in paragraph 9 of the submission that he proceed with option 2; tiering and extending the medium biomass band, and that officials would also work on a degression mechanism which was also said to be required for the longer term;
- A draft final policy reflecting the recommended option was attached; and
- Separately from the issues with the non-domestic RHI scheme, problems with the in-house administration of the domestic RHI scheme, including the inability to recruit necessary staff, were set out.

1676 DFE-120439 to DFE-120457. The actual lodged submission document can be found at DFE-120452 to DFE-120456.

- 29.7 The submission, and the draft policy document attached to it, did not contain any reference to a capped number of hours for which RHI payments would be made on the medium biomass tariff. It would be introduced later in the summer of 2015.
- 29.8 Minister Bell was involved in ministerial meetings and functions until Friday 10 July, when he left for a couple of week’s holiday.¹⁶⁷⁷ Mr Cairns gave evidence that he sat beside Minister Bell and went through the submission with him on 9 July (and again on 30 July after the Minister had returned from holiday).¹⁶⁷⁸ He said that he had the submission in a folder but the Minister did not ask for, and was not given, a copy at that stage.¹⁶⁷⁹ Mr Kerr stated that he could not confirm that evidence and pointed out such discussions could be private, but he confirmed that where Mr Cairns considered a submission to be technically complex/politically sensitive such a discussion would take place with Minister Bell.¹⁶⁸⁰
- 29.9 Mr Cairns stated that Minister Bell did not wish to sign off the submission at that time, on 9 July, and maintained that the Minister was fully aware that the submission would be forwarded to Dr Crawford.¹⁶⁸¹
- 29.10 For his part, Minister Bell gave evidence to the Inquiry that he had no recollection of such a meeting on 9 July 2015; that the normal procedure would be for him to be provided with a copy of the written submission, with the SpAd’s comments added to it, rather than the type of process described by Mr Cairns; and that the meeting as described by Mr Cairns did not happen because, had he been presented with an urgent submission, he would have dealt with it urgently – albeit he left open the possibility (which he did not recall) that Mr Cairns may have had “a chat about it” with him.¹⁶⁸² Indeed, in relation to Mr Cairns’ evidence that sitting beside Minister Bell and going through a submission with him was “the usual way in which Minister Bell was briefed”, Mr Bell gave evidence that, as far as he was concerned, this was “completely made up”.¹⁶⁸³
- 29.11 Nonetheless, Mr Bell’s evidence was also that, at some point (when, he could not recall precisely, so that it might have been in the summer of 2015 or later in 2016) he had been made aware by Mr Cairns that other DUP SpAds were involved in the process of considering the issue. Although Mr Bell’s written evidence clearly suggested that this had been in the summer of 2015, in his oral evidence he suggested it may have been more likely to have been in 2016.¹⁶⁸⁴
- 29.12 Notwithstanding this evidence, Mr Bell also maintained that he was not aware of Mr Cairns sharing the 8 July submission with either Mr Brimstone or Dr Crawford and, indeed, was “completely unaware” of the exchanges between Dr Crawford and Mr Cairns during the summer of 2015.¹⁶⁸⁵

1677 TRA-12332 to TRA-12333

1678 WIT-20204 to WIT-20206; TRA-12741 to TRA-12750

1679 TRA-12743 to TRA-12745

1680 WIT-25853

1681 TRA-12746 to TRA-12747

1682 TRA-12354 to TRA-12355; TRA-12362

1683 TRA-12356

1684 See generally TRA-12364 to TRA-12374

1685 TRA-12395 to TRA-12397

- 29.13 On 9 July the proposed draft NI RHI amendment regulations were sent to the Departmental Solicitor’s Office for consideration.¹⁶⁸⁶ Mr McGinn was asked by DETI to scrutinise the draft amendment legislation that was said to introduce tiering in order “to manage budgets and affordability.”¹⁶⁸⁷ He was subsequently asked to comment upon “capping”, “retrospective capping” and a number of other potential amendments.¹⁶⁸⁸
- 29.14 On 10 July Ofgem provided a feasibility study on its ability to administer the proposed amendments.¹⁶⁸⁹

Mr Cairns involving Dr Crawford and Mr Johnston

- 29.15 On 16 July Mr Cairns, following a short conversation he had with Dr Crawford and Mr Brimstone (at this time a SpAd to First Minister Robinson), forwarded the 8 July submission to Dr Crawford by email sent to his DFP email account,¹⁶⁹⁰ and to Mr Brimstone.¹⁶⁹¹ On the same date Dr Crawford forwarded the submission to Mr Johnston.¹⁶⁹² Mr Johnston told the Inquiry that he had neither opened nor read the attached submission since the subject was not one in which he had any expertise.¹⁶⁹³ In oral evidence to the Inquiry he accepted that he did not have an understanding of the NI RHI scheme:

“And, I mean, I would say, just for completeness, I mean, looking back on it again – you may well say, you know, it should’ve been the case at the time – I think things might have been different had I acquainted myself with the sub and read the sub. I think that was a missed opportunity from my point of view.”¹⁶⁹⁴

- 29.16 He also said that if he had opened the submission and email, he would have had knowledge which he did not otherwise have, adding: “I mean, that’s not anybody else’s fault; that’s my fault. It’s a, it is a missed opportunity in that sense.” Had he opened the document he would have been asking more questions and joining the discussion.¹⁶⁹⁵
- 29.17 Mr Cairns sent an additional email to Mr Johnston on 17 August enclosing material relating to the impending closure of the NIRO scheme, which included the sentences: “We also need to catch up on renewable heat. If we deviate from GB policy it will require a ministerial direction.”¹⁶⁹⁶ Mr Cairns told the Inquiry in written evidence that, bearing in mind that the introduction of tariff controls was the main focus of the 8 July ministerial submission, he believed that, at this point, he was referring back to the statement that “tariff controls will not be introduced” that he believed had been made by Mr Johnston at the 26 June

1686 DFE-120643 to DFE-120649

1687 DFE-120644

1688 DSO-01339 to DSO-01347; DSO-01361 to DSO-01372; DSO-01393 to DSO-01402

1689 DFE-120664 to DFE-120705

1690 DFE-293132; TRA-12766 to TRA-12767

1691 Stephen Brimstone, having replied to Mr Cairns on 16 July 2015 to say he would take a read over the submission (IND-25562), responded substantively to Mr Cairns on 20 July 2015 in which he said the submission was: “*Hard to argue with in light of the suggested changes reflecting GB position*” (IND-25559). Mr Brimstone told the Inquiry during his oral evidence that he regretted not withdrawing from any discussion on the subject despite agreeing with the content of the submission and informing Mr Cairns of that fact on 20 July 2015. This was because, by the time the submission was sent to Mr Brimstone, he already had a boiler ordered that, when installed, was going to lead to an application to the RHI scheme. Mr Brimstone accepted this created a conflict of interest for him concerning the RHI scheme (TRA-13940; TRA-14010 to TRA-14023).

1692 DOF-35520

1693 TRA-14247 to TRA-14248; TRA-14716 to TRA-14717

1694 TRA-14719

1695 TRA-14723 to TRA-14724

1696 IND-25403

attempted reconciliation meeting between Minister Bell and Mr Cairns after their London confrontation.¹⁶⁹⁷

- 29.18 When asked to comment upon this 17 August email, which raised the very serious possibility of a ministerial direction, Mr Johnston told the Inquiry that the sentences “wouldn’t have jumped out or meant anything to me” and suggested that perhaps Mr Cairns assumed that he had “more knowledge than I had” because of his, that is Mr Cairns’, exchanges with Dr Crawford.¹⁶⁹⁸ Mr Johnston accepted that he had not replied to the email asking Mr Cairns to explain the words in question and that he should have done so.¹⁶⁹⁹ He explained that “there was no interest in the RHI scheme at the castle”¹⁷⁰⁰ and that in the first week and a half of August 2015:

“This place is on life support at that stage. You’re in a position where it’s not clear that the devolution process is going to continue and therefore through that the RHI piece gets effectively lost in the floorboards.”¹⁷⁰¹

The Inquiry understands that to have been a reference to the political and media turbulence following the murder of Kevin McGuigan in August 2015.

- 29.19 Meanwhile, on 17 July Mr Wightman sent the following email to Mr Mills who had expressed concern to Mr Wightman about the urgent nature of the submission before going on holiday:

“I have spoken to the Minister’s PS about our Submission on tariff changes to the Non-Domestic RHI scheme. He has confirmed that the SpAd has read this Submission and is seeking advice (presumably from their Party) before passing to the Minister. We should hopefully expect a decision during the last week in July when the Minister returns.”¹⁷⁰²

- 29.20 On 20 July Dr Crawford replied to Mr Cairns’ email of 16 July enclosing the 8 July submission. He pointed out that the main problem was that “DETI have been caught out by the profile of applications”. He said the recent spike in applications was the result of Moy Park suppliers buying biomass boilers before the end of the tax year so they could benefit from both the RHI subsidies and the relevant tax allowances. He thought the majority of Moy Park producers would already have converted to biomass by that point but Dr Crawford suggested that Mr Cairns, if he wanted to “get a handle on what is happening” should contact Mr Mark at Moy Park and he also offered to set up a meeting with one of the main biomass installers. He continued:

“The word on the street is that there is going to be changes made in October and you are going to get a massive spike in applications before this date...”¹⁷⁰³

- 29.21 Dr Crawford went on to state in his email that he was a little confused “over what the problem is for the non-domestic scheme” and expressed the view that, since the scheme was AME funded, exceeding the Northern Ireland interim target of 4% of heat from renewable sources by 2015 would simply mean that “we will get more than our fair share of the UK pot.”¹⁷⁰⁴ This response indicated that, as of 20 July 2015, Dr Crawford was not aware of the potential

1697 WIT-20365 to WIT-20366

1698 TRA-14749 to TRA-14751

1699 TRA-14760

1700 This is a reference to Stormont Castle where the office of OFMDFM is based.

1701 TRA-14753 to TRA-14754

1702 DFE-10176

1703 IND-27555

1704 IND-27555

for any overspend beyond RHI AME allocations to impact on DETI's DEL budget. The Inquiry has already found that the potential consequences of the 2011 HMT Parker email were not communicated to Dr Crawford, or his then Minister, when he was the SpAd in DETI dealing with RHI. Dr Crawford indicated that he suspected: "that the problem is that we have only got a guarantee of funding for the next couple of years and long term we may have to pay for the scheme out of the NI block". He said he would check the issue out with DFP, but suggested it was something that Mr Cairns might want to query.

29.22 Dr Crawford sent Mr Cairns a further email on 21 July confirming that he had spoken to DFP.¹⁷⁰⁵ In his written evidence Dr Crawford stated that he had spoken to Mike Brennan who confirmed that there were no concerns about any impact on the DEL budget.¹⁷⁰⁶

29.23 That is disputed by Michelle Scott of DFP, who recalled a telephone conversation with Dr Crawford in which she says he was told that DFP did not know if the scheme was fully AME funded but they were making enquiries.¹⁷⁰⁷ Mr Brennan has given evidence that he does not recall a specific conversation with Dr Crawford about RHI during the summer of 2015 and, in particular, he has no recollection of being told of the possibility of "a massive spike" in RHI applications.¹⁷⁰⁸

29.24 On 20 July Mr Stewart emailed Mr Wightman for an update on the latest RHI position.¹⁷⁰⁹ In the course of his reply Mr Wightman addressed five issues:

- he confirmed firstly that they had completed an economic assessment that demonstrated the continued value for money of new non-domestic RHI scheme commitments for the period April-Sep 2015;
- he confirmed secondly that as far as proposed tariff changes by October 2015 were concerned, the submission was with the SpAd/Minister for clearance, the draft legislation was with DSO and Ofgem was making the necessary changes to its systems;
- they had been in contact with DECC about RHI budget clarification;
- as far as securing additional RHI budget for 2015-16 was concerned, they had submitted an increased AME profile in late May to inform the July budget and were awaiting confirmation; and
- finally, relating to the 'Supplementary Business Case', he had just started work on the draft which would seek: retrospective approval for the irregular expenditure between April 2015 and the expected date of changes in October 2015 by demonstrating continued value for money; prospective approval from October 2015 for five years as he said the scheme would definitely close in March 2020; approval for the continuing use of Ofgem to administer the scheme; and approval for a five-year expenditure profile based on the current forecasts (although he appreciated that RHI budget approval/confirmation from DFP/HMT would need to be sorted out separately).¹⁷¹⁰

29.25 On 23 July Mr Stewart emailed Mr Wightman to confirm that Mr Cairns had spoken to him about the 8 July submission. Mr Stewart recorded that Mr Cairns had expressed concern that

1705 IND-27966

1706 WIT-21627

1707 WIT-43027

1708 WIT-43241 to WIT-43243

1709 IND-05707

1710 IND-05707

the adoption of tariff control legislation in October might lead to a further spike in demand and suggested to Mr Stewart that the changes might be delayed.¹⁷¹¹ Mr Stewart informed Mr Wightman that he countered by observing that there already was a spike in demand, which a well-informed industry would ensure would remain at a high level pending the introduction of controls.

- 29.26 Mr Wightman responded to Mr Stewart confirming that the industry knew that tariff changes were likely to happen in the autumn and that installations were already being accelerated to beat the deadline. He stated that 60-70% of all poultry houses had switched to biomass and delay might allow the remaining 30-40% to access the scheme at the higher rates prior to the proposed tariff changes coming into effect.¹⁷¹²

The 28 July 2015 meeting

- 29.27 On 28 July Mr Cairns called in to Mr Stewart's office where Mr Mills was also present. It appears that Mr Cairns wanted to discuss with Mr Stewart another submission unrelated to RHI. However, upon arriving he found that Mr Stewart was engaged in a meeting with Mr Mills. Rather than ask Mr Cairns to return later, it appears that Mr Stewart asked him to join the meeting because he and Mr Mills were discussing RHI.¹⁷¹³ Mr Cairns recalled that points were made by the officials during that meeting which he did not recall having seen in the 8 July submission (the proposed 400,000 kWh annual cap on heat eligible for tariff payments may have been one such point; this proposal was not included in the submission or the draft policy document sent to the Minister on 8 July). He therefore asked that they submit them to him in writing. Mr Stewart suggested that Mr Cairns evinced a degree of resistance to the proposals set out in the submission and expressed the view that any controls should be no more than was necessary to control the scheme.¹⁷¹⁴
- 29.28 Mr Mills gave evidence to the Inquiry that he formed the view that Mr Cairns was deliberately delaying the matter but he also stated his belief that Mr Cairns was asking officials to provide something in writing that Mr Cairns could then use to persuade others within his party.¹⁷¹⁵ He also noted in a subsequent email (considered further below) that Mr Cairns had expressed the view that there was virtue in making sure Northern Ireland was able to make the best use of the available AME funding to achieve the Northern Ireland Executive's renewable heat targets.¹⁷¹⁶
- 29.29 In his oral evidence Mr Cairns explained that he had not been opposed to cost controls as such, but he was interested in pursuing the latest possible date to which the officials were prepared to work.¹⁷¹⁷ Mr Cairns told the Inquiry that his strategy was informed after a meeting, which he thought might have been in July, with representatives of the Ulster Farmers' Union that he and Minister Bell attended.¹⁷¹⁸ The meeting was not to do with RHI, but Mr Cairns' recollection was that the subject of RHI was raised in the margins. He stated in oral evidence that it was unusual in his experience for officials, a SpAd and his Minister to become involved in an

1711 DFE-10131

1712 DFE-10131

1713 WIT-20212; TRA-12823 to TRA-12827

1714 WIT-11536

1715 TRA-11129 to TRA-11130

1716 WIT-11730

1717 TRA-12789 to TRA-12791

1718 WIT-20024; TRA-12771 to TRA-12775

interaction with an interested group of commercial stakeholders.¹⁷¹⁹ The Inquiry acknowledges that such meetings with stakeholders may be appropriate as part of a carefully managed process of engagement and consultation. However, as noted elsewhere in this Report, the process of engagement with stakeholders during the spring and summer of 2015 was neither conducted appropriately nor subject to adequate management.

29.30 On 30 July Mr Mills sent Mr Cairns a lengthy email,¹⁷²⁰ copying in Mr Stewart and Mr Hughes. It referred to the 28 July discussion that had taken place between them with regard to the submission and complying with his promise made at the 28 July meeting to provide a short note on arrangements that needed to be brought into operation by 1 October. He emphasised that both he and Mr Stewart believed there was:

“An urgent need to put appropriate measures in place to ensure proper control of budgets and comply with approvals. Part of this means introducing measures set out in the submission.”

29.31 He noted that, during the recent discussions, Mr Cairns had cautioned that introducing restrictions too suddenly might be seen as overreaction and lead to a return of the previous underperformance. Mr Mills accepted that “while we need to take action urgently we do not necessarily need to try to do everything at once”. While there was a sound case that degression arrangements might require longer consideration, the introduction of a tiered tariff structure for the medium sized biomass technology was required to manage NI RHI spending and bring NI RHI more into line with the GB RHI scheme.

29.32 In such circumstance he repeated the detailed proposals for a tiering threshold at 1,314 hours and set out the new proposal of an overall tariff cap at 400,000kWh as a maximum annual heat payment. In addition to the urgent need for cost controls Mr Mills reminded Mr Cairns that Mr Stewart had expressed concern that the AME funding might have “additional caveats”.

29.33 The email from Mr Mills was forwarded by Mr Cairns to Dr Crawford during the evening of 30 July with the explanation:

“It’s an introduction of tariff controls to stop misuse rather than full reform from 1 October.”¹⁷²¹

Dr Crawford’s email of 31 July 2015

29.34 On 31 July Dr Crawford replied to Mr Cairns stating “I think you will need to make changes from the 1st October as the system at the moment has no upper limit to the amount of support.”¹⁷²² He suggested that one thing to consider was whether the tiering proposal should be altered so that the proposed initial tier, which would be paid at the higher tariff, should include the first 3,000 hours of use, rather than the proposed 1,314 hours. His email said:

“One thing to consider if increasing the number of hours from [sic] moving from the higher to lower tariff. Moy Park houses currently run for approximately 6000 hrs for a 99kW boiler when in their normal production cycle. The current problem is that it pays producers to heat houses when their houses are empty as the rates

1719 TRA-12776 to TRA-12777

1720 WIT-02756

1721 IND-27958

1722 IND-27957

are attractive and some use boilers for more than 6000 hrs per annum.

If a Moy Park producer puts in a 199kW boiler he can expect to run it for approximately 3000 hours. From these calculations you can see why Moy Park producers will be in a rush to refit their houses before the 1 October. If you increased the step from 1314 to 3000 there will be no incentive for producers to install before 1 October.

There is going to be a massive spike in applications before the 1 October. There is currently a shortage of the necessary pipe work required to install boilers.”¹⁷²³

- 29.35 The Inquiry notes that this proposal was not discussed by Dr Crawford with his Minister, Ms Foster, who was then at DFP, and related to a very substantial commercial enterprise for which he appeared, at times, to be a key personal point of contact within the Northern Ireland Executive and with which members of his family were involved. The Inquiry notes that Mr Cairns did not forward Dr Crawford’s email to DETI officials (nor indeed Dr Crawford’s earlier email of 20 July). Mr Cairns does however appear to have raised concerns about the scheme with Mr Stewart.
- 29.36 In the course of giving oral evidence to the Inquiry Dr McCormick was initially very critical of the apparent failure by Dr Crawford and Mr Cairns to pass on the relevant information, particularly with regard to the ‘perverse incentive’ that was reflected in Dr Crawford’s email of 31 July 2015 when he referred to the current problem being that “it pays producers to heat houses when their houses are empty”, and told the Inquiry that “It seems very clear to me that it is withholding information that was relevant to the submission that they both had.”¹⁷²⁴ Inquiry Counsel referred Dr McCormick to the evidence of Mr Stewart confirming that Mr Cairns had raised issues with him more than once, although it remains unclear in precisely what terms.
- 29.37 The Inquiry also notes that, as early as 9 June 2015,¹⁷²⁵ Mr Hughes had emailed Cathal Ellis at CAFRE, copying in Mr Wightman. The communication, seeking assistance with the heat needs of the poultry sector, included the statement “anecdotally we are led to believe that some houses are running 24/7 and if this is the case we are seeking an understanding of why this is happening.” Mr Ellis had replied that there were such rumours, but he didn’t think they applied to Northern Ireland yet.
- 29.38 Mr Stewart’s recollection was that the concerns Mr Cairns raised with him were clearly serious and needed to be looked at, but that they were not specific or based upon any specific evidence. Mr Stewart thought these concerns were discussed with him some time during the summer of 2015, although he could not be more specific than that. Mr Stewart had asked Mr Wightman to check with Ofgem whether any similar developments had been disclosed by its inspection scheme. However, according to Mr Stewart, the response, relayed by Mr Wightman, had been that in the findings by the Ofgem team “only a small number of isolated issues had arisen” and the inspection scheme was not picking up evidence of heating empty sheds or heaters being run for excessive periods. In his oral evidence to the Inquiry Mr Stewart acknowledged that Mr Cairns’ information had raised concerns of fraud and abuse of the scheme with him and he accepted that he should have sought further information from Mr Cairns.¹⁷²⁶

1723 IND-27957

1724 TRA-15264 to TRA-15266

1725 DFE-107021

1726 TRA-11723 to TRA-11725

- 29.39 While accepting the evidence given to the Inquiry by Mr Stewart, Dr McCormick remained critical of Mr Cairns for not passing on Dr Crawford’s “precise and clear understanding” and for not forwarding the email of 31 July.¹⁷²⁷ The Inquiry notes that Dr McCormick and Mr Mills had both been copied in to the email of 23 July from Mr Stewart to Mr Wightman recording his conversation with Mr Cairns in which the latter had referred to tariff control legislation as likely to lead to a further spike in demand.¹⁷²⁸ Mr Cairns accepted that the 31 July email he received contained a clear recognition of the ‘perverse incentive’ by Dr Crawford.¹⁷²⁹
- 29.40 Dr Crawford was also being informed about matters relating to the RHI scheme. For example, on 3 August 2015 Dr Howard Hastings, Managing Director of Hastings Hotels, forwarded an email to Dr Crawford providing him with “a heads up” about talk that DETI was making moves towards “impeding the abuse” of the NI RHI scheme taking place within the poultry sector where “they are being blamed for running their system night and day even without poultry present.” The abuse was said to centre on the “common no-limit RHI tariff in NI”, which it was being proposed should be changed for a “two-tier tariff similar to UK”.¹⁷³⁰

The August 2015 communications

- 29.41 RHI had arisen for discussion during a DETI SMT meeting on the morning of 7 August 2015. Updates on a number of issues were provided,¹⁷³¹ and it led Mr Stewart, on 7 August 2015, to forward the 8 July 2015 submission to Mr Cairns and say the following:

“Grateful for an update on the position in relation to this submission. You will appreciate that it deals with some very significant financial and Accounting Officer matters, and Andrew [McCormick] is keen to have an early decision.”¹⁷³²

About one hour later Mr Cairns sent Dr Crawford an email saying that:

“I think officials view is that we need to move on the tariff changes by 1st October and I am exploring how we can put the tariff limits up to 3000. I understand DFP are pressing for some change and efforts to be made. I will see what comes of this internally.”¹⁷³³

- 29.42 Mr Stewart had sought a further update on RHI from Mr Wightman on 11 August indicating that he wanted to relay to him the content of a further conversation that he had conducted with Mr Cairns. As Mr Wightman was on leave Mr Mills replied¹⁷³⁴ explaining that additional AME funding had appeared in the RHI baseline; that DECC had no spare funding and arrangements would have to be made with HMT; that the lack of clearance of the submission was preventing DETI notifying the public on the essential tariff change (though the documents were prepared); and that preparation of the business case was ongoing and was close to being finalised. Mr Mills said a positive NPV could be shown for the RHI scheme, but the response to DFP was hampered by not being able to give an assurance on the introduction of the further control measures.

1727 TRA-15271 to TRA-15273

1728 DFE-10131

1729 TRA-12843

1730 DOF-02264

1731 DFE-383257 to DFE-383260

1732 DFE-343944

1733 IND-27552

1734 DFE-278984

- 29.43 Mr Stewart replied indicating that he had spoken to Mr Cairns on the submission¹⁷³⁵ and, while Mr Cairns accepted the need for early control measures, he also asked whether a 3,000 hours limit would be more appropriate for the Tier 1 threshold. Mr Stewart sought some quick advice from Mr Mills on the value for money of that proposal.
- 29.44 Mr Mills responded on the same day pointing out that the 1,314 hours was taken from DECC, which supported parity with GB, thereby ensuring acceptance. Mr Mills advised that it equated to 15% of the maximum possible annual running hours for a boiler, which, given his understanding of the poultry sector, could be defended in value for money terms, before stating “Obviously, suggestions of heating empty sheds cannot.” He said DETI would have no basis for 3,000 hours (or indeed any other figure).¹⁷³⁶ One interpretation of the reference to “suggestions of heating empty sheds” in this email may be that Mr Mills had been informed of such suggestions, perhaps as a result of Dr Crawford’s reference to this in his email to Mr Cairns of 31 July (discussed above). In his evidence to the Inquiry, Mr Mills said that he was not aware of any such suggestion being made and considered that this reference in his email arose simply by nature of the “cyclical nature” of the poultry industry (i.e. that poultry houses would be vacant for periods between crops).¹⁷³⁷
- 29.45 Mr Stewart forwarded Mr Mills’ email to Mr Cairns on the same day, emphasising the difficulty which 3,000 hours would represent and advising that it would raise an Accounting Officer issue for Dr McCormick, meaning he would require to seek a ministerial direction to adopt a proposal which did not seem to represent value for money.¹⁷³⁸
- 29.46 On 12 August Mr Cairns forwarded the email chain to Dr Crawford which recorded the rejection of his suggestion. Mr Cairns’ covering email said:
- “Seems we have no choice but to proceed on the previous sub from early July i.e. follow GB policy from 1 Oct.”¹⁷³⁹
- 29.47 Mr Stewart also spoke to DFP about the question of a ministerial direction. DFP confirmed that a course of action that would not provide value for money would require a direction from the Minister; DFP officials would then be in a similar position and would have to be directed by the Finance Minister to approve the proposal. That further information was transmitted to Mr Cairns on 13 August.¹⁷⁴⁰
- 29.48 Minister Bell had returned to work from 28 to 31 July, which was during some of the interactions discussed earlier in this chapter. He had attended meetings on 28 and 30 July together with Dr McCormick, Mr Stewart and Mr Mills before leaving again to spend some time in his holiday home in Portstewart, but no decision on the submission was forthcoming.¹⁷⁴¹
- 29.49 In the course of giving oral evidence Mr Cairns confirmed that Minister Bell’s Private Secretary, Mr Kerr, had been pressing Mr Cairns about a number of urgent submissions during August, including that of 8 July.¹⁷⁴² It seems that Minister Bell had left an instruction that there were to

1735 TRA-12845 to TRA-12846

1736 DFE-278983 to DFE-278984

1737 TRA-11137 to TRA-11138

1738 DFE-278983

1739 IND-27660

1740 DFE-278983

1741 DFE-423823; TRA-12382 to TRA-12384

1742 TRA-12862 to TRA-12863

be no appointments in the first three weeks of August.¹⁷⁴³ Mr Cairns accepted that he could have arranged for the submission to be sent to Minister Bell in Portstewart but, in view of the complexity and significance of the issues concerned, he believed that, by that stage, the RHI submission required an oral briefing from the relevant officials.

29.50 On 20 August Mr Mills sent an email to Dr McCormick and Mr Stewart setting out the current position with regard to the various RHI workstreams. He advised:

“We have effectively done everything we can and now await clearance of the Submission. The team is fielding daily telephone queries on when our proposed changes will happen. Even if we receive clearance this week and publish the final policy, we’re only effectively giving the industry 6 weeks’ notice and risking legal challenge. Stuart has been speaking informally to Moy Park who are supportive of our proposals for a tariff tier and cap. It is the individual applicants and installers where we are liable to receive flak.”¹⁷⁴⁴

29.51 He addressed five distinct issues and pointed out that they had responded to various SpAd queries, noting that Mr Stewart had highlighted the need for the submission to be cleared as soon as possible, but they were still waiting for ministerial clearance on the proposals.¹⁷⁴⁵ He also recorded that the DSO was considering: the draft regulations; that the proposed changes had been relayed to Ofgem; that the business case had been taken as far as it could be and it showed a positive NPV for post 1 April 2015 commitments; and that the additional AME required for the current year had now appeared in their baseline. In the circumstances, Mr Mills indicated he was not sure how to take the matter forward and enquired whether the issues should be raised at the SMT meeting arranged for 24 August.¹⁷⁴⁶

29.52 Dr McCormick agreed that the issues should be raised and said he would speak to Mr Cairns himself as the “need for change is crystal clear”. He suggested he may need Mr Mills to come to the ministerial Issues Meeting also scheduled for 24 August.¹⁷⁴⁷

The 24 August 2015 meetings

29.53 On 24 August it appears that Minister Bell’s attendance at the Issues Meeting was somewhat delayed and that, accordingly, a pre-meeting discussion took place between Dr McCormick, Mr Mills and Mr Cairns.¹⁷⁴⁸ During the course of that discussion Mr Cairns enquired as to whether 1 October would be the latest date for the proposed changes to be put into operation.¹⁷⁴⁹ Mr Cairns told the Inquiry that this was a “gentle softball question” and that there was no possibility of advising the Minister to consider a ministerial direction.¹⁷⁵⁰ He explained to the Inquiry that, although several weeks earlier he and Dr Crawford had agreed that they had reached the end of the process of pursuing the latest date for the implementation of the proposed changes¹⁷⁵¹ (a process in respect of which Dr Crawford has, in his evidence to the

1743 TRA-12861

1744 DFE-10132

1745 DFE-10132

1746 DFE-10132

1747 DFE-10133

1748 WIT-20225

1749 WIT-20022

1750 TRA-12869

1751 TRA-12854 to TRA-12856

Inquiry, denied any involvement),¹⁷⁵² he had nonetheless been concerned to be able to show anyone subsequently questioning the tariff changes that every step had been taken properly. To use his own words:

“If Moy Park comes ranting and raving to the party, or, you know, an installer comes and says ‘My business is going bust because of the decision you made’ he would be able to say that the officials were interrogated but would not move on the date being 1 October.”¹⁷⁵³

- 29.54 Mr Cairns stated that, after some reflection, Mr Mills suggested an extension of a further month to 4 November.¹⁷⁵⁴ It seems that, by this stage, Mr Mills was anyway becoming concerned that complying with the 1 October date would not be practicable. Indeed, when he returned to colleagues in Energy Division to direct amendment of the submission he received advice that not only would 1 October have been impracticable but that 4 November was going to be a challenge.¹⁷⁵⁵ It seems that by that time Mr Mills was relieved simply to achieve agreement on a firm date.¹⁷⁵⁶
- 29.55 The Inquiry notes that Dr McCormick’s memory of this 24 August meeting, although limited, aligns with that of Mr Cairns.¹⁷⁵⁷ He told the Inquiry that no-one thought to ask Mr Cairns whether he had been influenced by others in making this request, but he had “the impression” that Dr Crawford had been involved.¹⁷⁵⁸ He was a bit surprised at the willingness of Mr Mills to volunteer the extension. He also told the Inquiry that he subsequently regretted not pressing him for reasons.¹⁷⁵⁹
- 29.56 Mr Cairns confirmed that when Minister Bell arrived at the 24 August meeting Dr McCormick took the lead in briefing him in relation to the submission proposals and the recent discussions in very clear and cogent terms. Mr Cairns also accepted that he had asked a number of questions to ensure that the Minister was fully and clearly informed. Minister Bell does not seem to have raised any significant difficulties or objections. According to Mr Cairns, the Minister asked him whether “others would be happy”, which Mr Cairns took to be a reference to Dr Crawford and Mr Johnston.¹⁷⁶⁰ Mr Cairns told the Inquiry that he subsequently passed on the outcome of this meeting to Dr Crawford and Mr Johnston.¹⁷⁶¹
- 29.57 The decision taken on 24 August 2015 was an important one in the context of the RHI Inquiry. However, as appears to have happened at other key points during the creation and operation of the NI RHI scheme, there was once again no minute of the meeting where this significant decision was taken.
- 29.58 When asked by the Inquiry about the failure to record this decision, Mr Mills’ attention was drawn to paragraphs 37 and 38 of the then operative DETI Private Office Guidance¹⁷⁶² about the

1752 WIT-21619 to WIT-21620; WIT-21608; WIT-21898; TRA-12973 to TRA-12979; TRA-13104 to TRA-13110; TRA-13137 to TRA-13139; TRA-13184 to TRA-13193

1753 TRA-12856

1754 TRA-12869 to TRA-12870

1755 TRA-11158 to TRA-11159

1756 TRA-11154

1757 WIT-11287

1758 TRA-15291

1759 WIT-11287

1760 WIT-20221 to WIT-20222; TRA-12875

1761 WIT-20227; TRA-12877

1762 DFE-423702

obligation directed by the Permanent Secretary that it was the relevant division’s responsibility to minute the meeting (discussed elsewhere in this Report) and Mr Mills was unable to recall if he had been aware of this at the time.¹⁷⁶³

- 29.59 Mr Stewart told the Inquiry that he was aware of the Private Office Guidance and that a record should have been made by the business area concerned since this was a decision taken by a Minister to approve a significant amendment to a submission.¹⁷⁶⁴
- 29.60 Dr McCormick told the Inquiry that the potential for “leakage” of information was the biggest single factor for the devolved administration at that time.¹⁷⁶⁵ The Inquiry has been told in the course of its representation process that this evidence was offered as a partial explanation of what happened rather than an excuse.
- 29.61 On the afternoon of the same day as the meeting with the Minister, Ms Brankin sent an email to Mr Mills, which was copied to a number of others including Dr McCormick, Mr Rooney, Mr Stewart, Mr Cooper and Mr Wightman.¹⁷⁶⁶ Ms Brankin stated that she had re-confirmed with DFP that the RHI budget for 2015-16 had in fact been increased to reflect the £23.178 million forecast (as DFP had previously indicated to DETI in July 2015),¹⁷⁶⁷ but went on to remind them that “RHI AME is not standard AME”, that penalties were applied for overspending and that enquiries were ongoing with DECC.¹⁷⁶⁸
- 29.62 Mr Wightman accepted that they were receiving feedback from the market confirming that hours of use were far in excess of the original CEPA 17% usage assumption, that the use of multiple boilers was being exploited and that people were making large sums of money from the scheme but, at the time, officials were still fairly confident that more funds would be released and that the RHI, in its entirety, was still a worthwhile venture.¹⁷⁶⁹ In this regard, on 16 June Chris Johnston of AFBI’s Environment and Renewable Energy Centre had emailed Mr Wightman and Mr Hughes pointing out that, on the basis of the information which they had provided to him, load factors appeared very high.¹⁷⁷⁰

The revised submission of 8 July 2015 and its approval on 3 September 2015

- 29.63 On 28 August Mr Wightman circulated a revised version of the submission amended to reflect the agreed change of dates.¹⁷⁷¹ The revised version continued to assert that the funding was provided by HMT via AME and so did not impact directly upon the NI departmental budgets.¹⁷⁷² In addition, the level of committed monthly payments had been corrected upwards from

1763 TRA-11152

1764 TRA-11692 to TRA-11694

1765 WIT-26327; TRA-15330

1766 DFE-194700

1767 DETI had sought additional 2015-16 AME funding for RHI (approximately £11.3 million) through the June 2015 monitoring round in line with its then 2015-16 forecast RHI expenditure. DFP indicated to DETI on 9 July 2015 that the additional funding was available to match its new RHI forecast for 2015-16 (£23.179 million); DFE-176363 to DFE-176365 and DFE spreadsheet DFE-179394. This was confirmed by DETI on 10 July 2015; DFE-176363 to DFE-176365 and DFE spreadsheet DFE-179394. DFP provided a confirmation print confirming the allocation on or about 20 July 2015; WIT-43755; DFE-176378 to DFE-176379 and WIT-37016. DFE-279008; DFE-147605 to DFE-147607 and DFE-462956

1768 DFE-194700

1769 TRA-10845

1770 DAE-15560

1771 DFE-279077 to DFE-279096

1772 DFE-279093

£1.4 million to £1.5 million.¹⁷⁷³ The revised submission itself did not mention the annual 400,000kWh cap, but the revised policy response document did.

- 29.64 On 3 September the submission was finally signed off by Minister Bell.¹⁷⁷⁴ On 8 September DETI issued a press release providing details of the proposed legislative amendment.¹⁷⁷⁵ Dr McCormick accepted that, in the circumstances, the press release was “probably not” helpful in the sense that it could, in theory at least, have contributed to a spike in applications.¹⁷⁷⁶ As it turned out, and as we will come on to consider later in this Report, there was already a high degree of knowledge in the market about DETI’s proposed RHI changes.

1773 DFE-279094

1774 DFE-279071 to DFE-279076

1775 DFE-279243 to DFE-279244

1776 TRA-15368 to TRA-15369

Findings

161. The Inquiry agrees with Mr Johnston that his omission in not even looking at the copy of the 8 July submission was, in his own words, “a missed opportunity” and that it was not very impressive on his part.¹⁷⁷⁷ This was sent to him in the context of Mr Johnston’s status as the SpAd to the First Minister. It was dealing with a need to control public expenditure and it followed his recent involvement with Mr Cairns and Minister Bell in seeking to resolve difficulties in their relationship.
162. The Inquiry has given careful consideration to the conflict of evidence between Mr Cairns and Mr Johnston as to whether Mr Johnston had expressed a view that tariff controls would not be introduced. On balance, taking into account the oral evidence given by both individuals and the email of 17 August 2015 from Mr Cairns to Mr Johnston (considered earlier), the Inquiry prefers the account given by Mr Cairns and finds that Mr Johnston was much more involved in the RHI scheme discussions, including on tariff controls, than Mr Johnston’s evidence to the Inquiry would suggest. In particular, the Inquiry considers that the contemporaneous email evidence was consistent with and supports the evidence of Mr Cairns that Mr Johnston had made a statement about not introducing tariff controls, however ill-informed Mr Johnston’s basis was for doing so.
163. The Inquiry has previously set out that DETI officials did not correctly explain the funding position to Minister Foster, or her then SpAd Dr Crawford, during their time in DETI. It is clear that up to at least 20 July 2015 Dr Crawford, then DFP Minister Foster’s SpAd, still wrongly believed that the RHI funding was standard AME with no potential impact on Northern Ireland’s DEL budget.
164. Dr Crawford alerted Mr Cairns by email on 20 and 31 July that there was likely to be a “massive spike in applications before October”.¹⁷⁷⁸ Minister Bell should have been informed but told the Inquiry that he was never advised of the anticipated spike.¹⁷⁷⁹ The Inquiry was not provided with any evidence to confirm that Minister Bell was informed of a potential for a spike by Mr Cairns, although the Inquiry acknowledges that Mr Cairns did notify Mr Stewart who, in turn, notified Mr Wightman, Dr McCormick and Mr Mills.
165. Dr Crawford, in his role as SpAd to the Finance Minister, did not pass on to Minister Foster his market intelligence about gaming or about “a massive spike” in applications.¹⁷⁸⁰ The Inquiry finds this unacceptable considering the potential financial impacts that would very clearly be of interest to Ms Foster as Minister for DFP.
166. Mr Cairns did not provide DETI officials with the email of 31 July from Dr Crawford but he did raise serious issues of fraud and abuse with Mr Stewart who ought to have pressed him further for any relevant details.

1777 TRA-14723 to TRA-14725

1778 IND-27957

1779 TRA-12438

1780 TRA-13620; TRA-13094

- 167. DETI officials were aware, from around the third week in July, of what they perceived to be a spike in applications. This should have reinforced the need to act with a sense of urgency in terms of cost controls.¹⁷⁸¹**
- 168. The Inquiry notes that despite this emerging awareness of the need for urgent action, when the DETI Minister was back at work in the last week of July he does not appear to have been reminded of the need for urgency or pressed for clearance of the 8 July submission by any of the Energy Division officials, Mr Stewart or the Permanent Secretary.¹⁷⁸²**
- 169. The Inquiry notes that in an email of 11 August 2015¹⁷⁸³ Mr Mills passed on the information that the additional RHI AME funding sought from HMT for 2015-16 had been secured¹⁷⁸⁴ and this positive response to the increased forecast may well have reinforced any misunderstanding that the scheme was funded by standard AME (i.e. that whatever the forecast it could be met). The Inquiry notes that HMT had, during the 2013 Spending Review (which dealt with expenditure for 2015-16), omitted to set a new cap in NI's RHI AME funding for 2015-16.¹⁷⁸⁵**
- 170. Once again, despite the importance of the meeting with the Minister, ultimately held on 24 August, to agree the proposed RHI scheme amendments and, in particular, the decision to postpone the introduction of tiering for a further month, no minute, note or record was kept.¹⁷⁸⁶ The Inquiry finds there was no reasonable justification for the neglect of the need to record meetings, ministerial decisions and the reasons behind them; this was unacceptable in that it undermined the proper conduct, record and transparency of Government business. Meetings with the Minister should have been recorded by DETI officials in compliance with their obligations under the applicable Private Office Guidance.**
- 171. The Inquiry finds that the process in the summer of 2015 in handling decision-making lacked management grip by Dr McCormick, Mr Stewart and Mr Mills. From the point at which the matter was escalated to the Permanent Secretary in May, until the Minister's decision in late August, given the context and the need for action, the process was allowed to drift.**
- 172. The Inquiry considers that there were probably a number of factors that played into the delay in signing off the 8 July submission.**
- **While the then operative Private Office Guidance provided that submissions should be referred to the SpAd ahead of the Minister, in the case of the 8 July submission this process took an inordinate length of time when the need for it to be agreed by the Minister was clearly urgent. Responsibility for this rests with Mr Bell and Mr Cairns.**

1781 DFE-10131

1782 TRA-12385

1783 DFE-278983 to DFE-278984

1784 DETI had sought additional 2015-16 AME funding for RHI (approximately £11.3 million) through June 2015 monitoring round in line with its then 2015-16 forecast RHI expenditure. DFP indicated to DETI on 9 July 2015 that the additional funding was available to match its new RHI forecast for 2015-16 (£23.179 million); DFE-176363 to DFE-176365 and DFE Spreadsheet DFE-179394. This was confirmed by DETI on 10 July 2015; DFE-176363 to DFE-176365 and DFE spreadsheet DFE-179394. DFP provided a confirmation print confirming the allocation on or about 20 July 2015; WIT-43755, DFE 176378 to DFE-176379 and WIT-37016. DFE-279008, DFE-147605 to DFE-147607 and DFE-462956.

1785 DOF-59030 to DOF-59036, as compared to DOF-02333 to DOF-02342 and DOF-42007 to DOF-42012

1786 WIT-26259

- The Minister could have been reached when he was in the office at the end of July or in Portstewart during August. He does not appear to have made any effort to contact his office during that period in relation to RHI issues; and no attempt was made by officials to contact him or bring the submission to him with an oral explanation.
- Mr Cairns may have been concerned that, given the recent adverse public reaction to changes to NIRO, any changes to the RHI scheme could go down badly. That concern, however, should not significantly have played into the urgency to deal with the (completely different) RHI scheme.

173. The Inquiry finds that Minister Bell was fully aware of the agreement for Mr Cairns to liaise with Dr Crawford. Despite Minister Bell's assurance that they had resumed a good relationship, the Inquiry is also satisfied that, at least for Mr Cairns, the evidence confirmed that the London experience continued to have an adverse effect on how they dealt with departmental business.
174. Dr Crawford's suggested amendment to the proposals contained in his email of 31 July¹⁷⁸⁷ was not discussed with Ms Foster, his Minister.¹⁷⁸⁸ While Dr Crawford has maintained that his intention with this proposal was to bring some cost control to the scheme, prevent a spike in applications, and limit payments to legitimate heat use,¹⁷⁸⁹ nonetheless the effect of the proposal, if it had been implemented, would have been to ensure that the scheme remained overgenerous to participants, and to poultry farmers in particular, thereby effectively undermining the intention motivating the objectives of the 8 July submission.
175. The Inquiry notes that Dr Crawford's suggestions made through Mr Cairns to officials were aimed at benefitting poultry farmers and, indirectly, Moy Park, an organisation that dominated the industry in Northern Ireland, an industry in which Dr Crawford's family were clearly involved.
176. Mr Cairns, referring to the meeting of 24 August, described his enquiry about 1 October being the latest possible date for action as a "softball question." However, the fact remains that he did ask the question. The Inquiry notes that Mr Cairns had been actively seeking guidance from Dr Crawford in accordance with the arrangement set up by Mr Johnston, the outcome of which had led him to believe that delay to the latest possible date was desirable. The Inquiry also notes that Mr Cairns maintained that he had no personal interest in the RHI or whether changes were delayed or not.
177. Ultimately the introduction of the changes was extended for a further month without any dissent on the part of Minister Bell or any of the officials present at the meeting on 24 August. The Inquiry accepts that, on the part of the officials, there may have been a degree of concern that, in practical terms, time was beginning to run out if the formalities were to be completed by 1 October and that they were simply grateful that a decision had finally been reached.

1787 DFE-293156

1788 IND-27957

1789 TRA-13173 to TRA-13179

178. Dr Crawford resigned in January 2017. This followed Dr McCormick’s appearance at the PAC where Dr McCormick said he thought Dr Crawford had been the cause of the delay, based on a telephone call he, Dr McCormick, had held with Mr Cairns. Dr Crawford has denied any wish to delay the changes. In his email of 31 July 2015, while suggesting a modification to the tiering proposal, he stated “I think you will need to make changes from 1 October 2015”. After considering the evidence, specifically the email from Dr Crawford to Mr Cairns of 31 July and Mr Cairns’ email to Dr Crawford of 12 August 2015, and hearing from Mr Cairns and Dr Crawford, the Inquiry finds that, ultimately, Dr Crawford did not deliberately delay the introduction of cost controls. This finding holds notwithstanding the Inquiry’s criticism of Dr Crawford for his suggested amendment to the proposals.

Chapter 30 – Communications with the market

- 30.1 One of the issues that the Inquiry had to consider related to officials working on the NI RHI and the communications they had with individuals, organisations and companies that had a commercial interest in RHI. It is the case that throughout the life of the NI RHI scheme officials working on RHI had interactions with external stakeholders, particularly, but not exclusively, through the RHI consultation processes.
- 30.2 This chapter, however, concentrates particularly on the period from late 2014 and examines communications which primarily involved Mr Wightman and Mr Hughes. The Inquiry was keen to understand what form the communications took, what their purpose was and whether they should have occurred. A further important question is whether the communications, inadvertently or otherwise, had helped fuel the ongoing increase in applications, particularly throughout the summer of 2015 onwards.
- 30.3 In December 2014 there was an exchange between Mr Hughes and a Mr David Hamilton about multiple boilers.¹⁷⁹⁰ Mr Hamilton was, at the time, a potential applicant to the NI RHI scheme. Mr Hamilton had been referred to Mr Hughes by Cathal Ellis and he wished to know whether five 99kW biomass boilers installed on separate pipework to heat the same building would each attract a separate subsidy in circumstances where expert assessment had advised the installation of one or two larger boilers. Mr Hughes referred him to Ofgem adding:
- “What I can say is that RHI tariff would be based on the total heat requirement in this instance 500kW and therefore the applicable tariff would be 0.015 pence per kWh [sic].”
- 30.4 If Mr Hughes’ understanding had been correct the tariff would in fact have been 1.5p/kWh, but the essential point was that Mr Hughes, perhaps understandably, considered it would be the combined capacity of the five boilers that would be used to determine the tariff, rather than the scheme permitting multiple boilers, owned by the same person, to each receive the attractive medium biomass tariff. As discussed elsewhere in this Report, when Mr Hughes was subsequently informed by Ofgem that in fact each boiler would receive a separate higher tariff he was clear that this was not DETI’s intention for the scheme and wanted the rules changed.
- 30.5 In any event, on 27 January 2015 Mr Hughes emailed Mr Hamilton to bring him up to date with regard to the Phase 2 review of RHI. Mr Hughes told Mr Hamilton that consideration was being given to extending the then current 20-99kW medium biomass tariff band up to 199kW and that, if agreed, any changes would be in place by October/November 2015.¹⁷⁹¹
- 30.6 On 24 February 2015, approximately a month before the first cost control template had been sent to Ofgem (reflecting the initial DETI suggestion of stepped annual reductions in the medium biomass tariff, rather than the budget control mechanism consulted on in 2013), Mr Wightman sent an email to Mr Hughes confirming that he had discussed their plans for Phase 2 of the NI RHI scheme with David Mark of Moy Park.
- 30.7 Mr Wightman had informed Mr Mark during their discussion of the DETI proposal to increase the upper end of the band for the medium biomass tariff from boilers of 99kW to boilers of

1790 DFE-106803 to DFE-106804

1791 DFE-106825

199kW.¹⁷⁹² Mr Mark subsequently passed on this information to colleagues, along with other information he had clearly been told by Mr Wightman relating to intended new legislation in October that would allow for a mechanism to reduce the medium biomass RHI tariff payment depending on uptake. Mr Mark's email to his colleagues concluded that:

"I think we have a firm basis for RHI investment going forward until at least October 2015 with a positive look forward after that."¹⁷⁹³

30.8 Mr Wightman recorded in his own email to Mr Hughes, summarising the discussion he had with Mr Mark, that he had been told that Moy Park could have up to 200 new broiler houses in 2015, each with 99kW boilers. The email continued:

"Assuming around 350MWh/boiler/yr this equates to an additional 70GWh of renewable heat (or £4.4 million/yr of RHI funding). We will need to liaise with DECC about future RHI funding a.s.a.p."¹⁷⁹⁴

30.9 Later the same day Dan Sinton, also working in the DETI Energy Efficiency Branch, but more with the domestic RHI scheme, received an email from a Mr Lyttle of Green Energy Engineering Limited, a private company, enquiring if there was a planned cut to the non-domestic RHI scheme coming in April because some of his competitors were said to be spooking some farmer clients. Mr Sinton replied that "happily" there were "currently no plans to reduce the RHI rates in N Ireland". A couple of days later Mr Lyttle sent Mr Mark the email exchange with the message: "Good news".¹⁷⁹⁵

30.10 This is one early example of the degree of co-ordination the Inquiry saw in communications between commercial entities over potential changes to RHI, and about which officials in DETI appeared to have been unaware. The DETI officials appear not to have realised that the information they gave to one individual had the potential to be, and often was, quickly disseminated to other commercial operators with an interest in RHI.

30.11 On 25 March 2015, the same day on which Mr Wightman had sent his updated email to Sandra Thompson documenting the potential RHI budget problem, and so that she could seek clarification about funding from DETI Finance Branch, Mr Hughes emailed Fergal Hegarty at Alternative Heat, the firm of boiler suppliers and installers run by Connel McMullan (referred to earlier in this Report). Mr Hughes had previously informed Mr Hegarty, on 3 March 2015, that there were no plans to introduce degeneration, and that in any event it would have a lead-in time of at least six months. In his email of 25 March 2015 Mr Hughes referred to a recent telephone conversation he had with Mr Hegarty and continued in the following terms: "I can confirm that proposals for the Phase 2 review of the non-domestic RHI are under active consideration."¹⁷⁹⁶ He referred to issues not addressed specifically in the consultation, such as extending the medium biomass tariff to boilers with a capacity up to and including 199kW as being one of the matters to be considered, and he informed Mr Hegarty that it was intended to have a final policy agreed and published by the early summer, with the scheme changes being put in place by October/November 2015 subject to the required legislation. He also volunteered to keep Mr Hegarty up to date on progress over the coming months.

1792 DFE-106830; WIT-263925

1793 COM-110837

1794 DFE-106830

1795 COM-110820 to COM-110821

1796 DFE-106905

- 30.12 The Inquiry notes that this information was passed on to others by Mr Hegarty, who was the business development manager in Alternative Heat, in an email dated 27 March 2015 in which he spoke of Mr Hughes in the following terms: “He hasn’t disclosed as much as I hoped he would.”¹⁷⁹⁷
- 30.13 As discussed earlier, on 9 June Mr Hughes sent an email to Mr Ellis at CAFRE seeking assistance with regard to uptake of the NI RHI scheme in the poultry sector, including, in particular, assistance with determining the reasonable heat demands of that sector. Mr Hughes also stated: “Anecdotaly we are led to believe that some houses are running 24/7...”. In the course of his reply, Mr Ellis confirmed the existence of rumours of houses running 24/7 but “(I don’t think in NI yet!) - the reason to maximise the output of the boiler for RHI.” In turn, Mr Ellis, without the knowledge of DETI officials at that time, started to communicate with a number of market participants including Tom Forgrave and David Mark.
- 30.14 On 9 July Mr Hegarty of Alternative Heat, installers of boilers, emailed a colleague reporting that we (the biomass industry) were approaching DETI while there was “still time to influence their decision”. He reported that Tom Forgrave, who was the head of the poultry section of the Ulster Farmers’ Union (UFU), had been talking to Mr Wightman but that Mr Wightman did not tell Mr Forgrave that DETI were waiting for a paper from CAFRE. Mr Hegarty passed on this information to Mr Forgrave and gave him Mr Ellis’s telephone number.
- 30.15 Mr Hegarty said that he had subsequently been told by Mr Forgrave that he had arranged with Mr Ellis to provide him with data derived from Mr Forgrave’s poultry sheds to form the recommendations to DETI. He recorded that: “Tom was pretty happy that the information that will now be provided to DETI will echo the UFU’s recommendations.” Mr Ellis told the Inquiry that he ran the figures contained in his draft paper past Mr Mark at Moy Park. Mr Ellis did not inform DETI that the contents of his paper had been considered by Mr Forgrave and Mr Mark and he accepted that DETI should have been informed.
- 30.16 On 17 July Mr Ellis provided a paper to DETI entitled “Environmental Control in Poultry (Broiler) units”. In a covering email Mr Ellis explained that the paper provided an explanation of why the production of broilers required the levels of heat suggested and confirming that Mr Hughes and his colleagues were free to disclose this information in a series of meetings that had been arranged.
- 30.17 On 22 July 2015 Mr Hughes met a number of representatives of the Ulster Farmers’ Union, including Mr Forgrave, Mr Ferguson and Mr Osborne, who have been discussed previously in this Report in relation to the poultry paper produced by Cathal Ellis. By the date of this meeting DETI officials had decided to introduce tiering and the 8 July 2015 RHI submission had been lodged with the Minister’s Private Office. They were informed the RHI budget was overspent and that changes would be coming in October with a tiered tariff, the higher rate of which would cease after 1,314 hours.¹⁷⁹⁸ Mr Forgrave maintained that 1,314 was too low for poultry. Mr Hughes subsequently circulated the CAFRE paper without being aware of the contribution made to it by Mr Forgrave.
- 30.18 On 19 June 2015 Mr Hughes met Mr Terence McCracken from Innasol, an English renewable energy company considering entry into the Northern Ireland biomass market. Mr McCracken’s email to colleagues of 22 June 2015, summarising the meeting, recorded that Mr Hughes

1797 COM-05087

1798 COM-00641

informed him that the biomass scheme was a “great success”, that growth in the last 12 months had “exploded”, with applications “tracking ahead of budget”, and that 700 applications were expected in the current year, almost entirely from the poultry sector.

- 30.19 Mr McCracken noted that the changes to the scheme were being proposed because applications were “way above forecast” and officials felt that there was a need to “cool the market down”. He was told that a concern had been raised by a finance official about the 20-year payment outflow and noted a review of the scheme was shortly to take place with a consultation document being issued “to myself and others”.¹⁷⁹⁹ Mr McCracken informed his colleague that he thought that there would be a rush to get measures (which the Inquiry equates to applications) through before re-banding with “a short-term opportunity for volume probably up to Nov 15.”¹⁸⁰⁰
- 30.20 When speaking of this exchange in his oral evidence to the Inquiry Mr Wightman accepted that the information Mr McCracken had gathered from Mr Hughes was “more open and frank” than he would have expected but emphasised that, to be fair to Mr Hughes, it was hard to strike a clear balance between assisting stakeholders and giving too much away to particular interested commercial parties.¹⁸⁰¹ He conceded that he had not provided Mr Hughes with clear and concise guidance. Mr Wightman confirmed that he himself had not received any such guidance.¹⁸⁰² He also conceded the officials had been “a bit too open” in their contacts with commercial operators and that, with hindsight, they had displayed “a sense of naivety” in sharing information.¹⁸⁰³
- 30.21 On 30 June Mr Hegarty of Alternative Heat circulated to his colleagues an email recounting a conversation with Mr Wightman. He said that he had been told that re-banding from 99kW to 199kW was still proposed for October 2015, that DETI had overspent their budget due to the operating hours of poultry sector boilers and that a two-tiered tariff would be introduced in line with GB. Mr Hegarty noted that they would have to “do all we can” to have the Moy Park boilers commissioned and RHI applications submitted before 1 October or any other date announced by DETI.¹⁸⁰⁴ He said that he had been told that “things were moving fast” and that “Stuart has welcomed that I call him weekly for an update so that we are aware of what way things are going to go.”¹⁸⁰⁵
- 30.22 On 1 July Mr Hegarty circulated the information that he had obtained from Mr Wightman to John Smyth who worked for CHP, a firm of installers, and to a number of other commercial colleagues.¹⁸⁰⁶ On the same date another commercial operator (FG Plumbing, Heating and Renewables Limited), which seems likely to have received the Hegarty update, circulated the same information to one of its customers, Dennison Commercials, drawing attention to the changes proposed by DETI to take place in October, including a possible consultation on degression and confirming that since such changes would only affect subsequent applications clients considering installing biomass systems should move “a.s.a.p. to avoid missing out on the best rates from RHI.”¹⁸⁰⁷

1799 WIT-198223

1800 WIT-198224

1801 TRA-10697 to TRA-10698

1802 TRA-10697; TRA-10702

1803 TRA-10703

1804 COM-05121

1805 COM-05121

1806 COM-05125 to COM-05128

1807 SCH-00421

- 30.23 On 2 and 3 July 2015 Mr Wightman and Mr Mark of Moy Park had another telephone conversation and subsequent email exchange. Mr Mark confirmed the up-to-date position in relation to expected RHI applications from Moy Park growers, and Mr Wightman shared the plan for re-banding the medium biomass tariff and introducing tiering by October 2015. Mr Mark noted that any reduction in support for the scheme was a concern but that the proposals would still allow the payback to work for most growers, although the payback would be reduced.¹⁸⁰⁸ In response to the suggestion of a transition period for the new rates Mr Wightman confirmed that there was severe budget pressures and the need to introduce cost control measures as soon as possible.¹⁸⁰⁹
- 30.24 When initially updating colleagues about his 2 July exchange with Mr Wightman, Mr Mark explained that the proposed changes would be “OK for normal use but restrictive for ‘opportunistic’ RHI harvesting.”¹⁸¹⁰ He went on to say that:
- “On a broader point it indicates the budget implications of RHI and I recon [sic] we only have 18 months of this left and towards the end of that 18 months rates may/ will fall further.”
- 30.25 The Inquiry notes that all of the foregoing information about scheme changes set out over preceding pages had been shared before the submission was sent to the Minister on 8 July 2015. Mr Wightman told the Inquiry that at the time of the telephone call from Mr Hegarty on 30 June he was putting together the policy proposals for the submission to the Minister on 8 July and he wanted to “sound out” Mr Hegarty.¹⁸¹¹ Mr Wightman said it was done in the context that he believed the scheme was still a worthwhile venture for Northern Ireland and that they were doing really well.¹⁸¹² He said that he had also run the proposals past Moy Park - “one of the big players”.¹⁸¹³ He told the Inquiry that he was not aware of the risk of over incentivisation nor did he expect the industry to be so mobile and act so quickly.¹⁸¹⁴
- 30.26 Two days after the lodgement of the submission of 8 July, on 10 July 2015, and as mentioned elsewhere in this Report, Mr Hughes received a letter from Solmatix informing him of “unscrupulous beneficiaries” not only taking advantage of the RHI scheme but “in many cases, notably in the poultry sector, actively exploiting it”.¹⁸¹⁵
- 30.27 The day before, on 9 July 2015, Mr Hegarty had a further conversation with Mr Wightman which included reference to potential changes to address multiple boilers and hydraulic separation (a subject covered in detail later in this Report). On 10 July Mr Hegarty sent an email to Mr Wightman seeking confirmation that he had understood the proposed changes correctly during their conversation.¹⁸¹⁶ Seamus Hughes replied to that email on 10 July confirming the intended changes, and stating that the current interpretation of hydraulic separation had not been the policy intent. In turn, Mr Hegarty disseminated that information almost immediately to his commercial contacts, including to FG Renewables.¹⁸¹⁷

1808 DFE-107109

1809 DFE-107108

1810 COM-112004

1811 TRA-10725

1812 TRA-10725

1813 TRA-10726

1814 TRA-10726

1815 DFE-107131 to DFE-107132

1816 DFE-107127 to DFE-107128

1817 WIT-199186

30.28 On the afternoon of 10 July FG Renewables again contacted Dennison to inform them of the expected changes relating to multiple boilers on separate hydraulic systems. That email concluded in the following terms:

“If you were thinking of proceeding with the biomass boilers, having them commissioned, RHI applications completed and with Ofgem before the 1st October '15 deadline, to allow you to receive 6.4p/kWh, we would need to order as soon as possible (preferably next week). I don't want to put you under pressure, but this has come to a head very quick and we are receiving multiple orders for boilers each day.”¹⁸¹⁸

30.29 The Inquiry notes that the installation of multiple separate 99kW boilers, each attracting the best subsidy in order to maximise return, was an extremely attractive commercial development. It is dealt with in detail in chapter 48 of this Report. By DETI informing suppliers and installers of its intention to change the NI RHI scheme in this regard, and prior to its having any definitive plan in place to do so and about which it might have to consult, it thereby increased the likelihood that it would receive more applications of this type before any changes could be introduced.

30.30 Dennison Commercials confirmed to the Inquiry that on 10 August 2015 it ordered eleven 99kW boilers which were commissioned just 19 days later on 29 August, with applications to the RHI scheme lodged in October.¹⁸¹⁹ Mr Wightman admitted in oral evidence that it had not been appreciated that becoming a participant in the RHI scheme could be achieved in such a short time.¹⁸²⁰

The communications with the market continued in August

30.31 On 26 August, less than 48 hours after Minister Bell had made the decision to amend the scheme from 4 November and prior to the amended submission being signed off by him on 3 September, Mr Hegan of Hegan Biomass, emailed Mr Hughes asking him if he could confirm a rumour that the current RHI tariff would be extended to 1 November. Mr Hughes replied that they were still awaiting clearance but “the legislative process in late October/November is now a more realistic timeline.”¹⁸²¹

30.32 On 28 August Mr Hughes, at the direction of Mr Wightman, sent emails to Mr Osborne and Mr Forgrave of UFU and Mr Mark of Moy Park providing them with the same information.¹⁸²² Similar emails went to Mr Hegarty of Alternative Heat and also to Future Renewables.¹⁸²³

30.33 Mr Wightman accepted that they could have waited but felt that it was a matter of courtesy to keep in contact with those interests with which they had been previously in communication.¹⁸²⁴ He emphasised that the officials were in receipt of many telephone calls from people anxious to know likely developments.¹⁸²⁵

1818 SCH-00422

1819 SCH-00419 to SCH-00420 TRA-10739

1820 TRA-10739

1821 DFE-107218

1822 DFE-107220 to DFE-107221

1823 DFE-107223

1824 TRA-10839 to TRA-10840

1825 TRA-10841

- 30.34 After being contacted by Mr Wightman on 3 September, shortly after the submission was signed off, the Managing Director of Alternative Heat, Connel McMullan, passed on the detailed information with the observation: “In short the paybacks still work fine but obviously not just as lucrative as they have been to date with 99kW boilers running for 6,000 & 7,000 hours.”¹⁸²⁶
- 30.35 In the course of the DfE statement of 19 May 2017 Mr Stephen McMurray stated that:
- “Whilst it is important for departmental officials to engage with stakeholders when developing policies, as set out in *A Practical Guide to Policy Making in Northern Ireland*,¹⁸²⁷ the nature and form of engagement needs to reflect the specific circumstances.”¹⁸²⁸
- 30.36 The Inquiry notes that the Standards of Conduct set out in section 6.01 of the Northern Ireland Civil Service handbook prohibit officials from misusing information acquired in the course of officials’ duties or disclosing information held in confidence within Government, and Annex 1 to that handbook specifically forbids the disclosure of official information without authority.¹⁸²⁹

1826 COM-05181 to COM-05182

1827 INQ-17496 to INQ-17565

1828 WIT-00118 to WIT-00119

1829 INQ-16095 to INQ-17495

Findings

- 179.** The extent of information passed on to some market participants by officials was wholly inappropriate. It was particularly unacceptable that external parties were being informed of plans before they had been seen or approved by the Minister.
- 180.** Officials appear to have had no commercial awareness about the potential impacts of the information that they were providing, both with regard to helping participants maximise their income from the scheme and to the damaging impact that this could have on uptake and the already difficult budget position.
- 181.** There appears to have been a total lack of senior management awareness, concern or involvement in deciding what information should be provided to whom and when. The Inquiry finds that it was the job of senior management in DETI to make themselves aware of the risks of commercially sensitive information being conveyed to the market and to provide guidance to staff to help them handle these risks in practice.
- 182.** The selective nature of the officials' contacts was capable of producing significant market distortion by providing commercially sensitive information to some parties and not others.
- 183.** Market participants were very quick to share the information that they had received with their industry colleagues. However, this too was a selective process.
- 184.** The communications were predominantly one-way to the market and officials' hopes that they would receive useful intelligence from the process remained dashed.

Chapter 31 – Dr Crawford’s other communications

31.1 One issue of concern that came to light during the course of the Inquiry’s work was the propensity of Dr Crawford, SpAd in DETI and later DFP, to disseminate confidential Government documentation to third parties who were outside of Government and who ought not to have received it.

31.2 By way of example:

- On 6 July 2013, and as mentioned previously, Dr Crawford sent his cousin, Richard Crawford, what, at that time, was only the draft RHI Phase 2 Consultation document that Dr Crawford had received as an annex to Ms Hepper’s 26 June 2013 RHI submission to Minister Foster. The submission, as far as it related to the consultation document, was not cleared until 18 July 2013, after there had been some revisions to the consultation document.¹⁸³⁰ Dr Crawford accepted in his oral evidence to the Inquiry that he was wrong to have sent his cousin the draft consultation document, and apologised for so doing.¹⁸³¹
- On 10 February 2015 Dr Crawford forwarded to a PR company operated by Gareth Robinson, the son of the then First Minister, Peter Robinson, a privileged letter DETI had received from its legal adviser on 23 January 2015 arising from litigation in which DETI was engaged. Dr Crawford told the Inquiry he should not have forwarded the privileged letter, but considered it was unlikely he had consciously done so.¹⁸³²
- On 20 March 2015 Dr Crawford forwarded, again to Gareth Robinson, and for the attention of two of Mr Robinson’s commercial clients, a DECC consultation document that DETI had received a number of days in advance of its publication date.¹⁸³³ Dr Crawford told the Inquiry he should not have sent the consultation document out and he regretted doing it.¹⁸³⁴

31.3 A similar issue arose over the ministerial submission of 8 July 2015, which was an important document in the context of this Inquiry. As previously mentioned, Dr Crawford and Mr Brimstone had received the submission from Mr Cairns by email in the afternoon of 16 July 2015 for “info and input”.¹⁸³⁵ Dr Crawford was the SpAd in DFP at that time.

31.4 Despite the fact that the draft submission of 8 July 2015 was a confidential Government document, and had not been signed off by Minister Bell, Dr Crawford:

- forwarded it by email to his cousin, Richard Crawford, on the evening of 16 July 2015. Dr Crawford’s email to his cousin read “Submission for info”. At the time of receipt of the submission Richard Crawford already had biomass boilers accredited on the NI RHI scheme.¹⁸³⁶ About 15 minutes after sending it to his cousin, Dr Crawford also forwarded

1830 DFE 97307 to 97317; DFE 97366 to 97371; WIT 266013; IND 27257 to 27298; WIT 266010 to 266012

1831 TRA 08172 to 08182

1832 INQ 61110; TRA 09955 to TRA-09960

1833 INQ 61153; TRA-09986

1834 TRA 09994

1835 IND-27555

1836 WIT-266013 to WIT-266045

Mr Cairn’s email, containing the 8 July submission, to Timothy Johnston.¹⁸³⁷ Dr Crawford’s email to Timothy Johnston contained no message from Dr Crawford;¹⁸³⁸

- on 20 July 2015 sent Mr Cairns’ email, and its attachment, to Dr Crawford’s own private email address.¹⁸³⁹ Dr Crawford would later reply to Mr Cairns on 20 July 2015, after he had read the submission. The Inquiry has examined that reply previously;
- on 23 July 2015 forwarded Mr Cairns’ email, attaching the submission, to his sister Joan Gregg for the attention of her husband, Wallace, a farmer who was said to be considering getting a biomass boiler installed. Dr Crawford’s covering email said: “Might find this submission of interest”.¹⁸⁴⁰

31.5 The Inquiry notes that each time Dr Crawford sent the submission to his relatives, he did so by forwarding the email he had received from Mr Cairns. Mr Cairns had originally forwarded to Dr Crawford the email that Mr Cairns had been copied into by Mr Wightman when Mr Wightman lodged the submission with the DETI Private Office. Mr Wightman’s email to DETI Private Office contained the subject “Urgent Cost Control and administrative changes to the NI Renewable Heat Incentive (RHI) Schemes”, and the list of civil servants receiving the email and submission, in addition to the Private Office, was also visible. This meant that not only did individuals outside of Government receive a copy of a confidential ministerial submission and draft policy document, but they also received the internal Government email communication lodging the submission, which included the list of names of those civil servants who also received the submission.

31.6 Dr Crawford in his oral evidence to the Inquiry, as he had in respect of the 2013 RHI consultation document he sent his cousin, accepted that he should not have sent Richard Crawford the 8 July submission. He said he was wrong to have done so, and apologised for it.¹⁸⁴¹ Equally, Dr Crawford accepted that he should not have sent the submission to his sister for the attention of his brother-in-law, that it was inappropriate for him to have done so and he sincerely regretted having done it.¹⁸⁴²

1837 DOF-35520

1838 TRA-13064 to TRA-13065

1839 IND-27555

1840 DOF-35518

1841 TRA-13058

1842 WIT-21621 to WIT-21622

Findings

185. The Inquiry finds it totally unacceptable that Dr Crawford provided confidential information to external parties, including his family.

Chapter 32 – Failure to review and secure reapproval of the scheme

The original DFP approval of the NI RHI scheme

32.1 As outlined in chapter 11 of this Report, the original 2012 DFP¹⁸⁴³ approval of the NI non-domestic RHI scheme was given on the basis that arrangements were put in place for scheduled reviews to allow the progress of the scheme to be monitored and noted, based on what had been outlined in the DETI business case that a first scheme review was scheduled to be carried out by DETI in 2014. The business case had said that any changes or revisions arising from the review would then be implemented by 2015.¹⁸⁴⁴ The DFP approval also stated that the approval was time limited to 31 March 2015 because, although the scheme was envisaged to be open to new applications to 2020, HMT funding had only been secured up to 31 March 2015. Consequently, any decision to continue the scheme beyond 2015 would require further separate approval.¹⁸⁴⁵

Realisation that reapproval had been missed and the “fig-leaf” review

32.2 As discussed earlier in this Report, the day before the 3 June 2015 RHI-specific meeting of senior officials, which arose out of the sharp exchange of views over RHI at the SMT meeting on 29 May 2015, Mr Cooper looked again at the 2012 DFP RHI approval.¹⁸⁴⁶ He then realised that the need to seek and obtain reapproval from DFP for the scheme to operate beyond 31 March 2015 had not happened, and therefore there would be irregularity in expenditure from that date until the approval problem was resolved.

The “fig leaf” review

32.3 Mr Cooper told the Inquiry that shortly after that discovery, during the 3 June meeting of senior DETI officials to discuss RHI, there was also discussion about why the review of the scheme that had been promised would commence in January 2014 had not taken place.¹⁸⁴⁷

32.4 Mr Cooper told the Inquiry that he believed that “everyone knew that there hadn’t been a review done”.¹⁸⁴⁸ He said that, at the 3 June meeting, Mr Wightman agreed they had not done such a review but noted that there had been a consultation in 2013 which could be portrayed as a review.¹⁸⁴⁹ Mr Cooper accepted in his evidence to the Inquiry that the suggestion that the 2013 Phase 2 public consultation constituted the review of the non-domestic RHI scheme in relation to which assurances had been given in both the casework and business case papers was a “fig leaf”.¹⁸⁵⁰ He said that no-one spoke up to say that such a misrepresentation was wrong: “There was no agreement to it, but there was no demurring.”¹⁸⁵¹ Mr Cooper told the Inquiry that the general tone of the 3 and 17 June meetings was “We’re not in a great place here”... “We need to put our best foot forward...”¹⁸⁵²

1843 DFE-171222 to DFE-171223

1844 DFE-82703

1845 DOF-03253 to DOF-03254

1846 DFE-10097; TRA-15769; TRA-15808; DFE-278096

1847 TRA-15827 to TRA-15828; WIT-10588

1848 TRA-15861; TRA-15867

1849 TRA-15865 to TRA-15866

1850 TRA-15864

1851 TRA-15864 to TRA-15865

1852 TRA-15867 to TRA-15868

- 32.5 Dr McCormick said in written evidence to the Inquiry that he has no recollection of this suggestion being raised at the 3 June meeting.¹⁸⁵³
- 32.6 Mr Wightman had very little recollection of this meeting but accepted in his written evidence to the Inquiry that, without any intention to mislead, he may have highlighted that a Phase 2 review had taken place in 2013.¹⁸⁵⁴
- 32.7 In a narrative he prepared to be given to DFP, and which he emailed to Ms Brankin on the following day, 4 June 2015, he referred to the April 2012 DFP approval conditions and said: “In October 2013, DETI commenced a Phase 2 review of the domestic and non-domestic RHI schemes and completed a public consultation in October 2013”. He did go on to say in the same paragraph: “Completion of the Phase 2 review for the non-domestic scheme and the Cost Control Proposals was deferred to 2015 until after the domestic RHI scheme was fully implemented and an effective marketing campaign had been completed.”¹⁸⁵⁵
- 32.8 Therefore, the 2013 consultation and ongoing policy development work was being referred to in terms of “review”. Mr Wightman, having had an opportunity to consider the documents, said in his written evidence to the Inquiry:¹⁸⁵⁶
- “I acknowledge that through the documentation provided by the Inquiry, it is evident that I was mistakenly suggesting that the Phase 2 Review was the ‘review’ referred to in the DFP approval letter.”
- 32.9 A similar but more detailed briefing paper headed ‘Renewable Heat Incentive – Business Case Addendum’ prepared by Mr Wightman on 11 June 2015 (not to be confused with the later October 2015 Business Case Addendum), for discussion with DFP, in an attempt to secure a further 12-months approval under the heading ‘Review of the RHI (RHI Phase 2)’ contained the statement that:
- “In line with the Business Case approval, officials commenced a Phase 2 review of the domestic and non-domestic RHI schemes in 2013...”¹⁸⁵⁷
- In the same document Mr Wightman confirmed that the scheme continued to provide value for money.¹⁸⁵⁸
- 32.10 Subsequent to the 3 June stocktake meeting and a meeting with Ms Scott of DFP on 12 June, Mr Cooper sent Ms Scott a memo on 1 July updating her on approvals in relation to the non-domestic RHI scheme which included the sentence: “The Department undertook work on a review of the non-domestic RHI with proposals being subject to public consultation in October 2013.”¹⁸⁵⁹ The Inquiry notes that, on 30 September, Mr Cooper sent an email to Mr Mills in which he had recorded that finance colleagues and DFP Supply had indicated that they would need information about the review “that was carried out in I believe 2014.”¹⁸⁶⁰
- 32.11 Further erroneous references to the ‘review’ continued, including in the October 2015 final version of the actual “Business Case Addendum for the NI Renewable Heat Incentive” submitted

1853 WIT-26436

1854 WIT-17876

1855 DFE-146513 to DFE-146514

1856 WIT-17876

1857 DFE-146558 to DFE-146564

1858 DFE-146560

1859 WIT-30268 to WIT-30270

1860 DFE-147640

- to DFP.¹⁸⁶¹ Paragraph 2.10 stated: “The Department undertook its first review of the RHI in 2013”.
- 32.12 During the Inquiry’s representations process Mr Cooper made a series of representations to the Inquiry in respect of the issue of how the promised review of the NI RHI scheme had been characterised. He emphasised that relevant officials were verbally made aware that the actual review, when properly described, had not taken place. The Inquiry accepts that the original “fig leaf” suggestion had not emanated from Mr Cooper but from Mr Wightman and has given careful consideration to Mr Cooper’s representations.
- 32.13 The Inquiry acknowledges that Angela Miller of DFP provided written evidence to the Inquiry that at the meetings between DETI and DFP of 3 and 12 June, where RHI had been discussed, and which she had attended with her line manager, Michelle Scott, Mr Cooper “advised that a review of the scheme, which was a condition of the DFP approval, had not been carried out.”¹⁸⁶²
- 32.14 In a reference to a telephone call that she received from Dr Crawford in the summer of 2015, Ms Scott gave written evidence to the Inquiry that: “At that point, I recall the lack of review and resulting lack of assurance on value for money being my greatest concern.”¹⁸⁶³
- 32.15 However, in such circumstances, the Inquiry finds it very difficult to understand why the representation that the 2013 public consultation had constituted the promised review of the non-domestic RHI scheme continued to feature, without amendment or clarification, in subsequent important documents which constituted the objective record.
- 32.16 These included paragraph 4 of the memo of 1 July 2015 referred to above from Trevor Cooper to Ms Scott concerning approvals, which stated “The Department undertook work on a review of the non-domestic RHI with proposals being subject to public consultation”; the DETI covering letter forwarding the RHI Business Case Addendum to Michelle Scott of 27 October 2015,¹⁸⁶⁴ which stated at paragraph 9 “A Phase 2 Review of the RHI was completed in 2013”; and the drafts and actual RHI Business Case Addendum itself which contained the assertion that “the Department undertook its first review of the RHI in 2013 to improve scheme performance.”¹⁸⁶⁵
- 32.17 When it was put to Mr Cooper that such inaccurate communications seemed to be acceptable his response was “It’s a very difficult one to answer, because there’s actually no defence.”¹⁸⁶⁶

1861 DFE-149798

1862 WIT-41718

1863 WIT-43027

1864 WIT-30801 to WIT-30802

1865 DFE-149798

1866 TRA-15863

Findings

- 186.** The Inquiry is satisfied that the public consultation in 2013 was not, and could not reasonably have been, considered to be the review referred to in the DFP approval of April 2012.
- 187.** In a number of DETI policy papers relating to the RHI scheme during 2015, the RHI Phase 2 proposals and the linked 2013 consultation were represented as constituting the review of the non-domestic RHI scheme, a review that was a condition for DFP approval of the scheme in 2012. To have employed what Mr Cooper characterised as this “fig leaf”, suggesting there had been compliance with the DFP condition, was incorrect and potentially misleading.
- 188.** During the representations process, carried out in advance of the publication of this Report, witnesses have said to the Inquiry that the evidence the Inquiry received indicated that no one was actually misled by the fact that there was an erroneous characterisation of the 2013 RHI consultation process as an RHI scheme review. Whilst the Inquiry accepts that this may be correct, the Inquiry considers there to be an important obligation on civil servants to ensure that the contents of documents they author are entirely accurate and adhere to standards of candour which are appropriate to the circumstances.

Making the Minister aware that the “ball had been dropped”

- 32.18 As mentioned earlier in this Report, on 8 June 2015 an Issues Meeting took place at which Minister Bell was briefed by Dr McCormick and others about, amongst a number of issues, the NI RHI scheme. Mr Cairns, Minister Bell’s SpAd, was present and told the Inquiry that it was at this meeting that Dr McCormick admitted that “We’ve dropped the ball” by failing to obtain DFP reapproval for the scheme in March 2015.¹⁸⁶⁷
- 32.19 Unfortunately, no detailed minute, note or record of this meeting seems to have been made. As a result, it remains unclear as to whether the Minister was fully briefed about the decision to discard the cost control which had been the subject of public consultation in 2013 and to “park” 16 of the 18 topics originally dealt with in the draft consultation response, although the contemporaneous evidence would suggest that this level of detail was not addressed in the briefing at the meeting. In the course of giving oral evidence to the Inquiry, Mr Wightman accepted that the issue of the missed reapproval could have been the subject of an earlier written submission, although he pointed out that it was contained in the ministerial submission of 8 July.¹⁸⁶⁸
- 32.20 According to Dr McCormick’s written evidence, and as outlined elsewhere in the Report, the Minister was told at the 8 June Issues Meeting that the projected spend for 2015-16 had risen to £23 million, that the planned review of tariff had not taken place and that urgent action was now needed. The manner in which the absence of a tiered tariff encouraged excessive heat production and resulting payments was still not clearly understood and, accordingly, was not discussed.¹⁸⁶⁹ It appears that, at this stage, despite the efforts of Janette O’Hagan, the ‘perverse incentive’ was still not clearly understood either.
- 32.21 Mr Bell does not accept that he was made aware of such information, although he did accept that he had been informed that RHI spend was already projected at £22 million in his first-day brief as a Minister in May 2015.¹⁸⁷⁰ The Inquiry has also considered the email from Mr Stewart to Mr Mills on 8 June, which included the following passage:
- “On Renewable Heat, the Minister noted the position and asked to be kept informed on the progress on the three strands of remedial action; i.e. securing budget cover (or addressing the consequences of not securing it); seeking approval from DFP; and legislation to pursue tariff changes/controls.”¹⁸⁷¹
- 32.22 It can be seen, therefore, that one of the necessary workstreams which was identified for action from early June involved seeking approval from DFP for the scheme. An email from Ms Thompson, dated 11 June 2015, to Mr Wightman and Mr Hughes reminded them of the need to secure renewed DFP approval for the non-domestic scheme before 31 March 2015.¹⁸⁷²
- 32.23 On the same day, in preparation for a meeting with DFP officials on 12 June, Mr Wightman forwarded a paper that he had prepared on the RHI scheme to Mr Cooper and Mr McFarlane at DETI’s Finance Division, copying in Mr Mills, Mr Stewart and Mr Hughes.¹⁸⁷³ That paper also

1867 TRA-12649 to TRA-12650

1868 TRA-10645 to TRA-10651

1869 WIT-10515

1870 TRA-12265 to TRA-12267; DFE-386035

1871 WIT-27553

1872 DFE-349875

1873 DFE-146558 to DFE-146564

highlighted the need to secure DFP approval to extend the scheme to the year 2015-16, but said the handover material had not referred to the need for such approval.¹⁸⁷⁴ It is not without significance that the briefing note still maintained that the scheme continued to provide value for money in terms of Government funding.¹⁸⁷⁵ As noted further below, it seems that this was a contention which had to be advanced by DETI in order to seek to secure the further DFP approval which was required to regularise spending on the scheme. The note also stated that “a review of the existing Non-Domestic tariff is ongoing” and recorded the intention to introduce a tiered tariff in October 2015. Reference was made to the need to obtain DFP approval for an increased AME profile, given forecast expenditure in 2015-16 was now twice that set out in the last forecast of November 2014. It also pointed out that “Both RHI schemes are demand led.”¹⁸⁷⁶ There was no suggestion of a potential impact on the DEL budget in the note.

32.24 As also noted previously in this Report, in an email the following day, 12 June 2015, to Mr Murphy (DETI’s senior principal economist and head of ASU) Mr Cooper commented that the paper drafted by Mr Wightman showed “a fair bit of naivety around the issues.” Referring to Energy Efficiency Branch, he went on to say:

“There is no self-awareness that the reason they may be delivering greater renewables than GB counterparts is the simple fact that they may be overcompensating so it’s not actually over performing indeed potentially quite the contrary.”¹⁸⁷⁷

32.25 An issue considered by the Inquiry and addressed further below is whether the concerns or doubts expressed in this email were subsequently conveyed to DFP, adequately or at all, in the Business Case Addendum which was submitted in October 2015 in an attempt to secure reapproval for the NI RHI scheme.

32.26 At a further meeting of senior officials in DETI in respect of RHI, held on 17 June 2015 and attended by Dr McCormick, Mr Stewart, Mr Cooper, Mr Murphy, Mr Rooney, Mr Mills and Mr Wightman it was agreed that action was needed to achieve both prospective and retrospective DFP approval, to clarify the budget provision with DECC and DFP and to produce a revised business case urgently to support legislative changes to improve value for money.¹⁸⁷⁸ The Inquiry has been told by a number of witnesses that these actions were linked, especially because DFP was unlikely to grant a further approval unless the legislative changes required to improve value for money were in prospect. A conundrum then faced by DETI, however, was how to present the NI RHI scheme (for the purposes of securing retrospective approval) as having provided value for money previously, at the same time as bringing forward proposals to improve the value for money the scheme was going to provide from then on.

32.27 Although it had already been discussed with DFP informally, on 1 July Mr Cooper officially notified Ms Scott at DFP of the failure to obtain DFP approval to continue the NI RHI scheme beyond 31 March 2015 in accordance with the original April 2012 DFP approval.¹⁸⁷⁹ He explained that the non-domestic RHI scheme uptake had taken off and that forecast expenditure for both schemes (at that point) had reached £23 million for 2015-16 (roughly double the previous forecast made in November 2014). He explained that the further funding was required to

1874 DFE-146559

1875 DFE-146560

1876 DFE-146561 to DFE-146562

1877 DFE-146565

1878 DFE-146865 to DFE-146866

1879 WIT-30268 to WIT-30270

meet unavoidable commitments and that the rapid increase in required funding was due to the Northern Ireland poultry industry adopting biomass heating technology for its chicken houses. He informed her that the Department was writing to DECC to get clarity on funding and that they were considering the introduction of cost control measures.¹⁸⁸⁰ As previously discussed in this Report, the formal memo did not ask DFP to engage with HMT.

1880 WIT-30269 to WIT-30270

Findings

- 189.** The Inquiry finds that Minister Bell was aware from 8 June 2015 that the “ball had been dropped” (Mr Cairns’ description of the message conveyed by Dr McCormick in relation to the RHI scheme at the meeting on that date) in that: approval for the scheme had lapsed; there was a significant overspend of the budget, an overspend that had increased by £1 million in the short time since his first-day briefing; and there was a need for urgent legislative control. Once again, in the absence of any minute or record of the meeting of 8 June, the Inquiry had to resolve an evidential conflict. However, given the content of the first-day brief, the contemporary email from Mr Stewart to Mr Mills of 8 June (which is consistent with Dr McCormick’s evidence), as well as the seriousness of the situation and the presence of both Minister and Permanent Secretary, the Inquiry cannot conceive of any reason for suppression of the facts. In the circumstances, it prefers the evidence of Dr McCormick that the Minister was briefed.
- 190.** Despite his observations to some colleagues that the overspend may have been due to the RHI scheme providing overcompensation, the Inquiry has not found any documentary evidence of Mr Cooper formally escalating that legitimate and ultimately correct concern.

Chapter 33 – The October 2015 Business Case Addendum

- 33.1 The Inquiry has previously mentioned Mr Wightman’s 20 July 2015 email¹⁸⁸¹ updating Mr Stewart on progress with RHI. In that communication Mr Wightman stated that he was just starting work on what he then called “a Supplementary Business Case”. By the time it was lodged with DFP in October 2015 it was called the “Business Case Addendum for the NI Renewable Heat Incentive”.
- 33.2 The Business Case Addendum was required to seek to secure reapproval of the scheme by DFP both retrospectively and prospectively. Retrospectively for expenditure incurred between 1 April 2015, when the previous approval lapsed, and the date when approval was next granted. Prospectively for the scheme from the point of the new approval and into the future. The prospective aspect would see the proposed introduction of tiering and other amendments.
- 33.3 Mr Wightman told the Inquiry that he understood that this was to be an addendum to justify the “preferred option”. Despite the lack of DFP approval from March 2015, the excessive expenditure, the suggestions of over-incentivisation/abuse and the need for tariff changes, it was not to be a ‘fresh look’ at the whole non-domestic RHI scheme from first principles, but simply an exercise to justify the existing, and proposed amended, scheme as being value for money (VFM).¹⁸⁸²
- 33.4 Mr Wightman was the main author of the Business Case Addendum but some of the work on the VFM aspect of it was carried out by Alan Smith, the Energy Division economist, with advice from Mr Cooper and Mr Murphy.¹⁸⁸³ Their approach was explained by Mr Murphy to DFP at a meeting of 12 August, when it was agreed that a draft would be shared for discussion.¹⁸⁸⁴
- 33.5 The Inquiry was presented with multiple versions of what ultimately became the “Business Case Addendum for the NI Renewable Heat Incentive”:
- A document entitled ‘Business Case – ND RHI Extension (230715)’ of 27 July 2015;¹⁸⁸⁵
 - A TRIM document entitled ‘DT1/15/0125105 – RHI Business Case – Version 1 (270715)’. This document had 23 drafts or revisions between 29 July 2015 and 17 September 2015;
 - A TRIM document entitled ‘DT1/15/0154562 – RHI Business Case – Version 2 (300915)’. This document had 7 drafts of revisions between 30 September 2015 and 2 October 2015;
 - A TRIM document entitled ‘DT1/15/0159903 – RHI Business Case Addendum (Version 3) (091015)’. This document had 12 drafts or revisions between 9 October 2015 and 19 October 2015. A draft of this version was shared with DFP on 13 October 2015 and used at the Casework Committee meeting on 16 October 2015;

1881 IND-05707

1882 TRA-10803

1883 TRA-10846 to TRA-10848

1884 DFE-278972

1885 DFE-147524 to DFE-147549

- A TRIM document entitled ‘DT1/15/0166478 – RHI Business Case Addendum (Version 4) – 221015’. This document had 8 drafts or revisions between 22 October 2015 and 26 October 2015;
- A TRIM document entitled ‘DT1/15/0168359 – RHI Business Case Addendum (V4) – Final’. This document had 3 drafts or revisions during 27 October 2015. A draft of this version was filed with DFP as the Business Case Addendum on which approval was sought; and
- A TRIM document entitled ‘DT1/15/0168363 – RHI Business Case Addendum (V4) Tracked Changes’. This document had 1 version of 27 October 2015.

33.6 The Inquiry had the opportunity to consider the development of the Business Case Addendum across the many thousands of pages that encompass the many drafts referred to above. For the purposes of this Report the Inquiry only refers to some key aspects.

33.7 A draft of Version 3 of the document was circulated to the Casework Committee on 16 October 2015¹⁸⁸⁶ for use at the DETI RHI Casework Committee meeting which was held on 21 October 2015. Evidence was presented to the Inquiry showing that there were a number of errors, inaccuracies, omissions, and/or potentially misleading or confusing statements (particularly when compared against the original 2012 RHI business case for the non-domestic scheme for consistency) which were contained within the document, including those listed below:

- (i) As discussed in the last chapter, the document at paragraph 2.8 incorrectly implied that a review of the non-domestic scheme had been carried out.¹⁸⁸⁷ Mr Wightman accepted that was not a correct statement and did not conform to the undertaking given in the original 2012 business case to begin a review in 2014, the primary focus of which was to be a review of the level of tariffs and the appropriate banding.¹⁸⁸⁸
- (ii) The document included, in paragraph 2.9, the statement that “the Minister prioritised introduction of the full domestic scheme over Phase 2 non-domestic RHI proposals.”¹⁸⁸⁹ Mr Wightman accepted that this was also inaccurate, based upon an incorrect assumption.¹⁸⁹⁰
- (iii) The document recorded, in paragraph 2.12, that the Department was seeking retrospective DFP approval from 1 April 2015 and prospective approval to December 2016.¹⁸⁹¹ It stated, in paragraph 3.1, that: “Both RHI schemes are demand led. It is therefore difficult to predict and manage future uptake and expenditure. For this reason, HMT agreed to fund the RHI through Annual Managed Expenditure (AME).”¹⁸⁹² This was an incomplete description of the funding position. By contrast, there was also a reference, in paragraph 3.14, to the 2012 correspondence with HMT officials indicating that the RHI funding might not be treated as normal AME and that there might be NI DEL consequences/penalties of “overspending”. That paragraph continued:

1886 DFE-284293 to DFE-284762

1887 DFE-284296

1888 TRA-10862 to TRA-10864

1889 DFE-284296

1890 TRA-10864 to TRA-10865

1891 DFE-284297

1892 DFE-284298

“In regard to the longer-term operation of the Scheme, clarification is needed from DFP/HMT on future funding and whether there could be any NI DEL consequences of ongoing provision of an RHI scheme. If there are penalties or consequences for the NI Block of spending more than the ‘Barnett’ allocation, both schemes may need to be closed in 2016.”¹⁸⁹³

- (iv) The document wrongly stated, in paragraph 3.8, that expenditure was within the five-year AME allocation – this incorrectly assumed that under and over-spends can be carried over, and there had not been a five-year AME allocation.¹⁸⁹⁴ There was no mention of the risk of overcompensation referred to in Mr Cooper’s email of 12 June 2015 and discussed at the meeting with Dr McCormick, Mr Rooney, Mr Mills and Mr Wightman on 17 June 2015 referred to earlier in this Report.
- (v) The introduction of employment benefits transformed the business case and reversed the economics from being a net cost to being a significant net benefit.¹⁸⁹⁵ Mr Wightman accepted that this was not comparable with the original scheme business case, in which the employment benefit was not quantified in calculating whether the original scheme represented value for money.¹⁸⁹⁶
- (vi) The net employment benefits resulted from a high estimate of the number and value of jobs created, as well as from a low allowance being made for jobs displaced in the LPG and oil sectors. Mr Wightman had “lifted” the estimates for new jobs from a study Alan Smith, Energy Division’s economist, had commissioned from Ricardo for biomass use in renewable *electricity* (the Inquiry’s emphasis).¹⁸⁹⁷ Mr Wightman accepted that electricity projects were very different in that they took some two years to design and construct, as compared to a few weeks for a biomass heating installation.¹⁸⁹⁸ He also admitted that he had removed the very clear warnings about these figures that had been provided to him as caveats to the input from Mr Smith.¹⁸⁹⁹ These very clearly stated:

“The estimate of employment benefits is very much reliant on assumptions taken with regard to the Northern Ireland electricity sector and further analysis would be needed to confirm these assumptions for the heat sector. Care should therefore be taken in quantifying the employment benefits however because of this degree of uncertainty and whether additionality of jobs has been fully tested.”¹⁹⁰⁰

33.8 It seems that the focus was very much upon achieving approval of the existing scheme rather than looking again to see if approval could be justified.¹⁹⁰¹ To use Mr Wightman’s own words to the Inquiry:

“I was under pressure to get a Business Case Addendum done in a relatively short space of time, along with other priorities. I was asked to do a Business Case

1893 DFE-284302

1894 DFE-284300 to DFE-284301

1895 DFE-284305 to DFE-284307

1896 TRA-10804

1897 TRA-10887

1898 TRA-10887 to TRA-10892

1899 WIT-17912

1900 DFE-278673

1901 TRA-10890

Addendum to demonstrate continuous and ongoing value for money. That was my brief...”.¹⁹⁰²

- 33.9 During the course of drafting the Business Case Addendum Mr Wightman was also required to be involved in another, even more complex, business case known as ‘EnergyWise’. This does not appear to have been a sensible use of already stretched resources in the circumstances.¹⁹⁰³

1902 TRA-10873

1903 WIT-17045

Findings

191. The Business Case Addendum contained numerous errors, inaccuracies, material omissions and potentially misleading or confusing statements.
192. There was an inadequate evidence base for the numerical assessments and for some of the claims made in the document, especially that the scheme represented “continuous and continuing value for money.”¹⁹⁰⁴
193. Little real attempt was made, as it should have been, to reconcile this business case with the work previously carried out by CEPA and DETI in 2011 and 2012.
194. The Inquiry finds that without legislative change the scheme would continue to run out of control, but legislative change was not possible without DFP approval of the new business case. DFP, in turn, would not give approval without DETI demonstrating value for money for something that, by that stage, did not appear to be value for money or, at least, would not have so appeared upon careful and objective evaluation. The Inquiry finds that, in the circumstances, DETI officials seem to have considered that they had little choice but to present material selectively and/or defensively in order to gain the necessary approval. Examples of such an approach included portraying the 2013 Phase 2 public consultation as constituting the review of the non-domestic scheme promised to the 2012 Casework Committee and required by the condition subsequently attached by DFP to the business case approval; and reliance upon the introduction of benefits to employment to support the proposition that the non-domestic scheme constituted value for money without including the clear warnings and caveats to such input provided by Alan Smith. The general attitude of DETI officials appears to have been to present the situation as positively as possible rather than to set out and analyse the unvarnished facts.

Chapter 34 – The 2015 RHI Casework Committee

- 34.1 As mentioned already, before submission of the Business Case Addendum to DFP, it was assessed by a Casework Committee in DETI on 21 October 2015. Previously in this Report, when examining the operation of the 2012 RHI Casework Committee, the Inquiry recorded that the purpose of any DETI Casework Committee was to apply a degree of independent scrutiny and challenge to a project on behalf of the DETI Accounting Officer before it was forwarded to DFP for consideration.
- 34.2 In fact Mr Murphy confirmed in his oral evidence to the Inquiry that in Casework Committees there should be sufficient separation between the advisory and challenge activities to ensure that DETI officials were not marking their own homework.¹⁹⁰⁵
- 34.3 However, this 2015 RHI Casework Committee included Mr Cooper and Mr Murphy, both of whom had been involved to a greater or lesser extent in advising on or drafting the Business Case Addendum the committee was then having to consider.
- 34.4 While, in his written evidence to the Inquiry, Mr Murphy did not consider that he formally worked on the Business Case Addendum, and that its preparation was the responsibility of Energy Division,¹⁹⁰⁶ it is the case that:
- (i) on 23 July 2015 he and Mr Cooper received the value for money assessment and NPV analysis that Alan Smith had prepared;¹⁹⁰⁷
 - (ii) on 27 July 2015 he and Mr Cooper received the early draft of the Business Case Addendum circulated by Mr Wightman;¹⁹⁰⁸
 - (iii) on 14 August 2015 Mr Cooper informed Mr Rooney that Mr Smith and Mr Murphy “have been working on numbers in terms of arriving at a positive NPV” and that “Shane [Mr Murphy] explained the approach to DFP in meeting [sic] on 12 August”;¹⁹⁰⁹
 - (iv) on 4 September 2015 Mr Cooper and Mr Murphy received the then latest draft of the Business Case Addendum and exchanged emails on 13 and 14 September 2015 identifying the deficiencies and gaps they considered it had, and that Eugene [Mr Rooney] was going to arrange a round table discussion about it;¹⁹¹⁰
 - (v) on 7 October 2015 Mr Murphy set out his views on an updated Business Case Addendum that Mr Cooper had sent him for comment. Mr Murphy indicated that he thought, recognising that a lot of effort and analysis had (by that time) gone into the document, that:

“...we have given ourselves a fighting chance on the NON Dom RHI, and there is enough for DFP to “hang their hat on” if they want (or are motivated) to find a way out of this situation.”¹⁹¹¹

1905 TRA-02411 to TRA-02412

1906 WIT-19655 to WIT-19656

1907 DFE-278671 to DFE-278673

1908 DFE-147524

1909 DFE-278972

1910 DFE-279369

1911 DFE-148114 to DFE-148115

- 34.5 Indeed, in Mr Cooper’s case, he performed some, albeit not terribly substantive,¹⁹¹² tracked changes to the Business Case Addendum in October 2015¹⁹¹³ during collaborative work with Mr Wightman shortly before the then draft was sent to DFP for its early consideration in advance of the DETI Casework Committee meeting. Mr Cooper explained to the Inquiry in his oral evidence that “my involvement would have been ensuring that the case actually had the things in it that DFP actually needed”,¹⁹¹⁴ and that he did still ask questions of the presenting officials during the Casework Committee meeting.¹⁹¹⁵ Mr Cooper also explained that no one suggested that he should stand aside and that did not occur to him as necessary.¹⁹¹⁶
- 34.6 On 30 September 2015 a meeting took place between DETI Finance and DFP Supply officials at which there was discussion of the draft Business Case Addendum.¹⁹¹⁷ On the same date, Mr Cooper sent an explanatory email to Mr Mills and others setting out areas that DFP suggested should be included in the business case.¹⁹¹⁸ On 13 October a draft was submitted informally by Mr Cooper to Ms Scott of DFP Supply.¹⁹¹⁹ Ms Scott subsequently provided, on 20 October 2015, views and comments seeking, in particular, further information as to why the cost control proposal in the DETI 2013 public consultation had not been implemented and whether, on the face of it, the 2013 document appeared to contradict paragraph 4.11 of the Business Case Addendum.¹⁹²⁰
- 34.7 On 16 October the Business Case Addendum, together with annexes, had been sent to the members of the Casework Committee¹⁹²¹ (who, in addition to Messrs Cooper and Murphy, included Eugene Rooney, the grade 3 Senior Finance Director, as Chair).
- 34.8 The Casework Committee meeting was due to take place on 21 October 2015, however the Casework Committee members appear to have had a pre-meeting on 20 October 2015 and considered the comments that Mr Cooper had received from Ms Scott.¹⁹²² On the morning of 21 October 2015 Mr Rooney emailed Mr Cooper and suggested it would be useful to have Energy Division’s view on the points DFP had raised. Further, Mr Rooney indicated:
- “I am wondering should we have a different approach to this Casework and a more interactive discussion with DFP than normal given the involvement of FD [Finance Division] and ASU [Analytical Services Unit] in the development of the approach in the papers. If so we should alert DFP in advance. What do you think?”
- 34.9 The RHI Casework Committee meeting did take place on 21 October 2015. According to the minutes, in addition to the three committee members, the presenting DETI Energy Division project team consisted of Mr Mills, Mr Wightman, Mr Hughes and the economist, Mr Smith.
- 34.10 There were also four representatives from DFP present: Ms Morelli (then head of DFP Supply), Ms Scott, Ms Miller and DFP economist, Mr McNally. The attendance of DFP representatives

1912 TRA-15915

1913 DFE-151260

1914 TRA-15899

1915 TRA-15900

1916 TRA-15901

1917 DOF-03323 to DOF-03329

1918 DFE-147640

1919 DFE-283192

1920 DOF-42019 to DOF-42020

1921 DFE-284293 to DFE-284762

1922 DFE-149575

at Casework Committee meetings was as observers, which would involve asking some points of clarification at the end of the meeting. In line with Mr Rooney’s suggestion quoted above, Ms Morelli confirmed in her oral evidence to the Inquiry that the 21 October 2015 Casework Committee meeting did have greater involvement from DFP officials:¹⁹²³

“The normal process for casework is that DOF would only have observer status. I suppose that role is really to get more of a contextual background to what we’re being asked to approve when it eventually does come to us. We are allowed to ask some points of clarification at normal casework at the very, very end. This is a different — this is — we have an equal opportunity to ask questions of the people presenting the case, and my understanding for that difference in approach was the limited time, because we are now up against a time for regulatory — for the regulations to be introduced, and we don’t have our normal three-week consideration period.”

34.11 The minutes of the Casework Committee meeting of 21 October 2015,¹⁹²⁴ which were not signed off until 10 March 2016, indicate that, amongst other things, the following matters were discussed:

- In answer to a question from head of DFP Supply, Ms Morelli, as to whether the proposals required consultation, Mr Wightman told the Committee that “a consultation had taken place in 2013”¹⁹²⁵ and that the final policy was in line with legal advice. Ms Morelli asked if Energy Division were relying on the 2013 consultation and John Mills confirmed that the legislative proposals DETI were bringing forward were being considered as the outworking of the 2013 consultation and that no additional public consultation would be carried out.¹⁹²⁶
- Ms Morelli also asked if the proposed tariff change was the most effective way to control the scheme at that time. She was assured by Mr Wightman that it was, pending further review and proposals for the next year.¹⁹²⁷
- Both Mr Mills and Mr Wightman told the Committee that discussions had taken place with representatives from the industry, including both suppliers and installers, and they had spoken to some clients after the notice had been issued some two months earlier to say the legislative changes would be made in early November.¹⁹²⁸
- Ms Scott, the DETI Supply Officer at DFP, asked why the trigger system of cost control included in the 2013 consultation had not been included. Mr Mills informed her that it had been a “Ministerial decision” to look at the domestic scheme rather than pushing through the trigger points on the non-domestic, which would have significantly delayed the implementation of the domestic scheme.¹⁹²⁹
- Ms Scott also enquired as to the reason that GB had implemented cost control measures in 2012. Mr Wightman said he was unsure and confirmed that they would check to

1923 TRA-15056 to TRA-15057

1924 DFE-122671 to DFE-122674

1925 DFE-122671

1926 DFE-122672

1927 DFE-122673

1928 DFE-122671 to DFE-122672

1929 DFE-122672

identify the trigger. That task was formally recorded as an action point.¹⁹³⁰ That appears to have led to the inaccurate passages on the subject in Version 4 of the Business Case Addendum referred to above.

- 34.12 The Inquiry notes that the minutes of the meeting do not record that the Casework Committee was informed that tiering of tariffs had not been included in the 2013 consultation. The minutes also do not suggest that the Casework Committee was referred to or discussed the reference under ‘Annual Payment Cap’, in paragraph 4.16 of version 3 of the Business Case Addendum before them, that the introduction of a tiered tariff would “reduce the risk of ‘gaming’ and installations being operated over and above the required kilowatt hours just to generate RHI income.”¹⁹³¹
- 34.13 The Casework Committee concluded that the proposed changes set out in the Business Case Addendum seemed to be the best way of approaching the non-domestic scheme in the short term.¹⁹³² Ms Morelli provided the Inquiry with some insight into her impression of the Casework Committee meeting stating to the Inquiry in oral evidence that she wanted to get an assurance: “What are we actually here for, for a start, and, if we are here, what are we being asked to approve, and how did you arrive at it?” She said the explanation that she received was: “This is where we are, we’ve consulted, we’re out there, this is going ahead, it’s happening in November, it will control the scheme, it will bring us back in line, over to you.”¹⁹³³

1930 DFE-122672

1931 DFE-284311

1932 DFE-122673

1933 TRA-15061

Findings

- 195.** The Inquiry finds that the 2015 Casework Committee was not constituted in a way that provided the required separation between the advisory and challenge functions and therefore it lacked the necessary degree of independent scrutiny.
- 196.** While the Inquiry acknowledges the pressure to implement speedily the changes so as to introduce tiering, the Committee did not pick up or deal with any of the significant errors, omissions or inconsistencies contained in the Business Case Addendum.
- 197.** As discussed previously in this Report, the Inquiry is satisfied that, contrary to what Mr Mills suggested at the Casework Committee meeting, there had been no ministerial decision to prioritise the domestic scheme over the introduction of cost controls or consciously to defer cost controls.
- 198.** The minutes of the Casework Committee were signed off by Mr Rooney on 10 March 2016, some five months after the meeting. The Inquiry finds that a delay of almost five months, with drawn out discussion over content, was unacceptable and clearly a practice that was not consistent either with efficient administration or the production of an accurate contemporary record of the meeting.¹⁹³⁴

1934 DFE-122669 to DFE-122674

Chapter 35 – Further DFP approval for RHI

DFP consideration of the Business Case Addendum

- 35.1 Following the Casework Committee meeting on 21 October, Mr Cooper formally submitted, on 27 October 2015, a copy of the Business Case Addendum to Ms Scott at DFP Supply Division for DFP approval.¹⁹³⁵ This was Version 4 of the Business Case Addendum.
- 35.2 The Business Case Addendum was sent with a covering letter from Mr Cooper.¹⁹³⁶ His covering letter asserted at paragraph 2 that “The scheme provides **continuing** (the Inquiry’s emphasis) value for money.”¹⁹³⁷
- 35.3 At paragraph 11 the letter stated that:
- “As regards reacting sooner to increased uptake, the Business Case Addendum confirms that the Department could not have reasonably acted sooner. A sustained increase in application numbers was not achieved until March and April 2015.”¹⁹³⁸
- 35.4 Paragraph 3 emphasised that, for legislation to proceed in early November, approval was needed on scheme expenditure.¹⁹³⁹ At paragraph 9 Mr Cooper stated that, with low levels of uptake and underspends against allocation the domestic scheme had been given precedence over extension of the non-domestic scheme and cost controls measures and that implementing all of the 2013 consultation proposals would have caused significant delays.¹⁹⁴⁰ He advised, at paragraph 13, that the most recent update from Ofgem had shown uptake to be 4 times that forecast for October but the DETI Analytical Services Unit (ASU) had confirmed that the additional expenditure was value for money (VFM) on the basis that VFM was “scaleable”.¹⁹⁴¹
- 35.5 The Business Case Addendum itself had a table included at paragraph 3.3 which showed that applications had risen from 9 in the year 2012-13 to 119 in the year 2013-14 and 435 in 2014-15.¹⁹⁴²
- 35.6 The Version 4 of the Business Case Addendum forwarded to DFP on 27 October, as discussed previously, had been modified from the Version 3 used at Casework Committee and informally shared with DFP on 16 October 2015. It now included the following at paragraph 2.5, presumably the product of the undertaking given to Ms Scott at the Casework Committee to address what had been the trigger for cost controls to be introduced on the GB RHI scheme in 2012:

“The NI Non-Domestic Scheme commenced one year after the GB scheme. But unlike the experience with the GB scheme where considerably higher tariffs triggered high levels of uptake from the outset, the performance of the NI scheme was poor. The high uptake on the GB scheme led DECC to consult on cost control

1935 DFE-149790 to DFE-149822

1936 DFE-149791 to DFE-149794

1937 DFE-149791

1938 DFE-149793

1939 DFE-149791

1940 DFE-149792

1941 DFE-149793 to DFE-149794

1942 DFE-149800

measures in Spring 2012 by which point the GB scheme had already received 533 applications (in six months) and forecast expenditure for 2012/2013 was £42 million. The NI scheme on the other hand had only received 21 applications in the first seven months. There was therefore no immediate need to follow DECC's proposals for budgetary control. In any event the 'budgetary controls' only related to deferral of applications and the measures were subsequently withdrawn by DECC. After two years DECC did introduce expenditure control measures in the form of digression [sic] arrangements."¹⁹⁴³

- 35.7 The statement in paragraph 2.5 of the Business Case Addendum was not accurate. The introduction of an "interim cost control" or "stand-by mechanism for budget management" by DECC in relation to the GB RHI scheme has been discussed previously in this Report. It followed a public consultation initiated on 26 March 2012, a few months after the implementation of the GB RHI scheme.¹⁹⁴⁴ The Ministerial Foreword to the relevant consultation document recorded that the scheme was funded from Government spending and emphasised the need to maintain value for money and protect annual budgets. It also noted that, despite the fact that uptake levels were very low relative to the available budget, assurance was needed that the scheme would not exceed budget; taking into account the fact that it was a new policy in an immature market with a high degree of uncertainty in the short term.¹⁹⁴⁵ The GB RHI interim cost controls were not withdrawn; they were replaced by legislative amendment bringing into operation a more sophisticated long-term system of degression, something which had been explained in the March 2012 consultation document.
- 35.8 The Business Case Addendum did record that the RHI AME funding might not be treated as normal AME and that there may be NI DEL consequences/penalties of "overspending".¹⁹⁴⁶ Clarification was needed from DFP/HMT, and if such consequences or penalties were to be visited upon the NI block for spending more than what was described as "the 'Barnett' allocation", then both schemes might need to be closed in 2016.¹⁹⁴⁷
- 35.9 Upon receipt, Ms Scott, the DETI Supply Officer in DFP, submitted the Business Case Addendum to Christine Finlay, Deputy Principal Economist with the Economic Appraisal Branch (EAB) within DFP making it clear that she was coming under pressure from DETI to respond/approve the case by 30 October.
- 35.10 Ms Finlay had in fact looked briefly at the Business Case Addendum on 21 October 2015¹⁹⁴⁸ when Version 3 was submitted informally to DFP. At that time she made the point, having looked at the risks section, that the original Outline Business Case looked at risk of incorrect subsidy level and the risk of insufficient budget for administration or future payments. She then stated: "These must not have been well mitigated." She also made the point "the cost of the new commitments are huge."

1943 DFE-149796

1944 DFE-53097 to DFE-53121

1945 DFE-53098

1946 DFE-149804

1947 DFE-149804

1948 DOF-04584

- 35.11 In light of the timetable expected of DFP to deal with the approval Ms Morelli, the head of DFP Supply, made clear, on the evening of 27 October 2015, that “all we can offer at this time is prospective approval as discussed.”¹⁹⁴⁹
- 35.12 Ms Finlay spoke to Ms Scott over the telephone and, having had what she described as “a really quick look over the RHI Addendum”, had her further comments transmitted to Ms Scott on 28 October.¹⁹⁵⁰
- 35.13 In her written statement of evidence to the Inquiry, Ms Finlay pointed out that:
- “If I had have had more time to quality assure the addendum I could have looked further into the assumptions behind the modelling and various other tariff levels. With limited time and considering the status quo, it was important to do something, if even on a temporary basis and review further options and additional analysis further down the line.”
- 35.14 Among other matters raised by Ms Finlay in her comments were: the fact that she was wary about employment benefits now being taken into account with regard to VFM; the need for continuous monitoring and a budget cap; the spike from poultry houses; and whether the scheme could be closed.

The DFP letter of 29 October 2015 granting prospective approval

- 35.15 Following a series of email exchanges between Ms Scott and Mr Cooper,¹⁹⁵¹ where a number of issues were clarified, a DFP approval letter from Ms Morelli was sent to DETI on the morning of 29 October 2015 granting prospective approval only, and on a time-limited basis to 31 March 2016.¹⁹⁵²
- 35.16 Ms Morelli recorded in the letter that the time allowed for DFP consideration was far from ideal to allow for scrutiny, especially since the intention to submit the addendum had first been discussed with DFP on 12 June.¹⁹⁵³ As noted earlier, Ms Morelli and other officials from DFP had been present at and participated in the Casework Committee discussion.
- 35.17 In her letter of approval Ms Morelli emphasised that, because of the very short time scale, DFP had prioritised the prospective element of the addendum and would return to the retrospective request (i.e. for the period from 1 April 2015 to the end of October 2015) in due course.¹⁹⁵⁴
- 35.18 Ms Morelli did not question whether, or how, the fact that expenditure had reached four times the forecast was relevant to the assessment of VFM. Nor did she enquire as to why employment benefits had now been introduced in the VFM assessment when that had not been done in the previous consultants’ studies, despite that concern having been raised earlier by Ms Finlay in her comments to Ms Scott. Ms Morelli told the Inquiry that “We weren’t looking at optimal value for money in reading this business case – even prospectively.” She said:

“We had two days, really, to look at this, and, if you’re asking should we have sought more information or challenged further or looked into this, I would say, “Yes,

1949 DOF-04582

1950 WIT-42617 to WIT-42622

1951 DOF-04579 to DOF-04581

1952 DFE-167354 to DFE-167356

1953 DFE-167354

1954 DFE-167354

we should have” to make sure that we were giving optimal value for money, but, on the information that was provided, we were looking to see, “Well, is this the best case that’s provided in this case?” and it was.”¹⁹⁵⁵

35.19 She accepted that she had not picked up or questioned the circumstances of the reference to reducing the risk of “gaming” mentioned under the heading ‘Annual Payment Cap’ in paragraph 4.16 of the Business Case Addendum stating:

“In the consideration of this case and the prospective way forward, we were looking forward, and I suppose it’s no excuse, but nobody -. Well, I personally didn’t read that and ask those questions.”¹⁹⁵⁶

35.20 In the letter of 29 October Ms Morelli noted that, while approval was requested to December 2016, no budget had been confirmed beyond 2015-16 and there would only be certainty as to future funding following the November 2015 Spending Review.¹⁹⁵⁷ It was for this reason, given this lack of certainty beyond the end of the 2015-16 financial year, and as mentioned earlier, that DFP approval for new installations was limited to 31 March 2016.

35.21 Approval was given subject to a number of conditions, including a review that should include a “comprehensive, evidence-based assessment of all aspects of the RHI intervention, including tariff levels, banding and the duration of tariff payments.”¹⁹⁵⁸

The DFP letter of 21 December 2015 refusing retrospective approval

35.22 The legislative changes to the NI RHI scheme were subsequently approved by the Northern Ireland Assembly on 17 November 2015, and came into effect on 18 November 2015.

35.23 On 7 December 2015¹⁹⁵⁹ Mr Cooper wrote to DFP to explain that there had been 983 applications to the NI RHI scheme in the two and a half months leading up to the tariff changes on 18 November, and that the previous forecast of £22.8 million for 2015-16 (in November 2014 it had been around £12 million), now had to be increased to £30 million for 2015-16, and it would be £42 million in 2016-17. He also pointed out that any decision to close or restrict the NI RHI scheme could trigger another spike in demand and committed expenditure.

35.24 On 21 December 2015 DFP issued its decision on DETI’s application for RHI retrospective approval for the period April to October 2015. DFP refused retrospective approval. The consequence of that decision was that all spending arising from the period not covered by an approval would remain “irregular” in Government accounting terms.

35.25 In the 21 December refusal letter¹⁹⁶⁰ Ms Morelli set out the rules relating to the grant of retrospective approval, and confirmed that, since DFP had not been afforded the opportunity to review or influence the policy decisions being taken at the time, March 2015, she could not conclude that DFP would have been satisfied with the decision not to amend the scheme and that, consequently, retrospective approval should be refused. The level of irregular expenditure would therefore be £17.7 million in 2015-16 and £355 million across the 20-year life of the scheme, to reflect the accreditations occurring between April and October 2015.

1955 TRA-15083

1956 TRA-15088

1957 DFE-167355

1958 DFE-167355 to DFE-167356

1959 DFE-152858 to DFE-152859

1960 DOF-04726 to DOF-04728

- 35.26 She explained that DFP Supply would write to the Audit Office to notify it of the refusal, indicating that DETI’s management of the NI RHI scheme had raised a number of concerns. This led to the involvement of the Northern Ireland Comptroller & Auditor General and the production of the NIAO report of June 2016.¹⁹⁶¹
- 35.27 In her letter refusing to grant retrospective approval Ms Morelli referred to the level of annual expenditure being around £10 million per annum higher than the costs reported in the October Business Case Addendum and that the number of applications received in October alone was double the amount of applications received in the first 20 months of the scheme. She expressed the view that such a development “clearly warrants further investigation to test both the origin and authenticity of the additional applications.”¹⁹⁶²
- 35.28 She noted that the level of irregular expenditure was “of considerable concern for DFP” but those concerns were “dwarfed by the very immediate and long term budgetary implications.”¹⁹⁶³ She explained that the HMT AME profile for the forthcoming Spending Review period was considerably lower than the level of expenditure DETI was now committed to, and, while discussions were ongoing, a possible and, indeed, probable outcome was that the Northern Ireland Executive would have to fund all costs above the HMT AME profile.
- 35.29 She concluded the letter in the following terms:
- “It would be useful to discuss the affordability concerns in more detail. My office will be in contact to arrange a suitable time to discuss both the budgetary and value for money implications of the operation of the non-domestic RHI scheme.”¹⁹⁶⁴
- 35.30 It appears to the Inquiry that the only reason why such reasonable enquiries were not made prior to approval was the concern about pressure of time.

1961 CAG-01680 to CAG-01697

1962 DOF-04727

1963 DOF-04727

1964 DOF-04728

Findings

199. The Inquiry takes into account the time pressures, the need to be fair to those concerned and the risks represented by hindsight. Nonetheless the Inquiry finds that although action was urgently needed in the autumn of 2015, the imperative of finding a solution outweighed the normal process within the civil service for independent scrutiny and challenge, and thus DFP approved the seriously flawed Business Case Addendum in circumstances in which it might not otherwise have done so.

Chapter 36 – Implementing the changes

Preparation for Assembly debate on amendment regulations

- 36.1 Following DFP approval of the revised scheme, DETI took forward the proposals and developed the necessary amendment regulations. This took more time than had originally been planned and the additional delay from 4 November 2015 (the implementation date agreed at the 24 August meeting between officials and Minister Bell and referenced in the resulting amended ministerial submission which was approved by the Minister on 3 September) until 17 November 2015 was later attributed to “the necessary legal and financial clearances”.¹⁹⁶⁵
- 36.2 It seems that this phrase came from an explanation provided to the ETI Committee by DETI officials. In Mr Stewart’s evidence he noted that, as the rate of applications had by that time risen very sharply, even a two week delay had very significant implications for the cost of the scheme.¹⁹⁶⁶ In view of this, on 12 December 2016 Dr McCormick asked him for an explanation for this additional delay. Mr Stewart’s reply was to the effect that it arose from the time required to draft and clear the regulations.¹⁹⁶⁷
- 36.3 Mr Stewart further explained that it took five iterations before DSO clearance of the draft regulations was obtained on 28 October 2015 (other evidence to the Inquiry also suggested that DSO was required to deal with work on urgent NIRO regulations at the same time).¹⁹⁶⁸ Strenuous efforts were then made to expedite approval by the Examiner of Statutory Rules (who gave the regulations prior informal consideration), which then required some further changes, with DSO approval of the final draft on 3 November 2015. Ministerial approval for the draft regulations was then sought in a submission of 6 November and obtained on 10 November 2015 (meaning that Minister Bell was never in a position to approve the draft regulations in time for debate on 4 November, as originally intended). This timescale meant that the earliest date for ETI Committee consideration was 17 November.
- 36.4 Mr Stewart informed Dr McCormick that, with hindsight, the Department ought to have decoupled the tariff changes made in the regulations and pursued them separately, in order to minimise the risk of such delay. Although he considered that the need to do so may not have been as clearly understood in July 2015 as it was later, he nevertheless considered that this was a missed opportunity.
- 36.5 In his written evidence to the Inquiry Mr Stewart further explained that:
- “The fundamental reason for the delay was that the legislation had taken longer to draft than had been expected, due to the inclusion of a range of measures in addition to the powers to change tariffs. This added to the complexity of the task. With hindsight, it would have been preferable to concentrate on the tariff changes alone, leaving other provisions for another day.”¹⁹⁶⁹

1965 DFE-122029

1966 WIT-11539

1967 WIT-11731

1968 See, for instance, TRA-11711

1969 WIT-11539

- 36.6 Mr Stewart also said that he was not directly involved in the oversight or drafting of the legislation, and was not aware of delays in the drafting until an advanced stage; but that, had he been aware of the delay and of the risk of a spike in demand, he would have asked that the legislation focus solely on the introduction of controls.¹⁹⁷⁰
- 36.7 Mr Mills also attributed the additional two week delay from 4 November to 17 November to the time taken to obtain legal clearance of the regulations from DSO.¹⁹⁷¹ In his oral evidence to the Inquiry, he said that he thought there was “some justice” in Mr Stewart’s view as to how clearance of the regulations might have been expedited and that it might have been wise to leave almost everything else out of the regulations, other than the introduction of tiering; although he said that when the other measures (such as the inclusion of CHP and the increase in the upper limit of the medium biomass band) were proposed in June 2015, it was so the Department could say that it was not merely constricting the scheme but improving it.¹⁹⁷²
- 36.8 Mr Stewart’s ultimate position on this additional two week delay in introducing the scheme changes was that “it may well have been that it was unavoidable and that the original timescale was too optimistic” but that it should not have been left to chance and the Department should have taken further steps to have “minimised the risk” of additional delay.¹⁹⁷³
- 36.9 As noted above, on 16 November, the day before the Assembly was to consider the amendment regulations which had been laid before it in draft, Minister Bell was presented with a submission from Mr Wightman in preparation for the Assembly debate, including a draft opening speech and speaking notes.¹⁹⁷⁴ In these materials, the increased uptake over the previous 12 months was portrayed as a successful reduction of CO² emissions and producing £23 million of annual investment in Northern Ireland. A caveat that was added to this apparent success was suggested in the following terms:
- “Of necessity this will include measures to curtail the scheme should Treasury funding be restricted.”¹⁹⁷⁵
- 36.10 In a pre-prepared answer to an anticipated question as to the cause of the increase in uptake, Mr Wightman suggested that the Minister should refer to the increase in demand from the poultry sector and say that that had led to an increase in the order of 100% over the previous six weeks.¹⁹⁷⁶
- 36.11 When questioned by Senior Counsel to the Inquiry as to why he did not interrogate officials about the failure to provide him earlier with this information, including putting himself on record in this regard by email or otherwise, Minister Bell accepted that perhaps he “should have pressed”.¹⁹⁷⁷ He also agreed that he should have raised the increase in uptake with Mr Cairns, his SpAd, who had sought the extension in which, at the relevant time, he had expressed no interest.¹⁹⁷⁸

1970 Again, see WIT-11539

1971 WIT-26035 to WIT-26036

1972 TRA-11168 to TRA-11169

1973 TRA-11716

1974 DFE-122020 to DFE-122041

1975 DFE-122026

1976 DFE-122032

1977 TRA-12461

1978 TRA-12463

Enquiry from Minister Foster about potential delay of the amendment regulations

- 36.12 On 13 November 2015 Minister Foster, then DFP Minister, telephoned the appropriate SpAd, whom she took to be Mr Cairns, and arranged for him to enquire, on behalf of a constituent of hers in Fermanagh, whether it would be possible to postpone implementation of the 2015 amendment regulations.¹⁹⁷⁹ She told the Inquiry that at the time she was not aware of the spike in demand or the overspend.¹⁹⁸⁰
- 36.13 In his oral evidence on this issue Mr Cairns stated that, when he passed the request on to Dr McCormick by telephone, it was in the nature of a “courtesy call”¹⁹⁸¹ and he did not believe there was any realistic prospect of officials acceding to it.¹⁹⁸² Similarly, he stated that his belief was that “Mrs Foster’s not expecting the request to be acceded to.”¹⁹⁸³
- 36.14 As to the detail of his conversation with Dr McCormick, Mr Cairns stated:
- “...that it was very much, from my end, like, ‘This isn’t happening. This is a courtesy call, Andrew. You know, you know the way these things go. Just tell me no, and I’ll get back to Arlene’.”¹⁹⁸⁴
- 36.15 However, Dr McCormick in his oral evidence stated that he perhaps failed to pick up on Mr Cairns’ “intonation or demeanour on this”¹⁹⁸⁵ and took the request “more seriously than [he] should’ve done”, thereby causing him some anxiety over the weekend between Friday 13 and Monday 16 November 2015.¹⁹⁸⁶
- 36.16 In any event, the matter was discussed by officials and Dr McCormick was advised by Mr Stewart that the current rate of applications was around 130 a week and that, in light of that, a postponement of one week would cost about £2.6 million per year for 20 years.¹⁹⁸⁷
- 36.17 That information was duly passed on to Minister Foster by Mr Cairns who told Dr McCormick that he “awaited her instructions.” On 16 November, he replied to Dr McCormick: “I think we are back from the brink! I think all will be well and let’s get this through tomorrow.”¹⁹⁸⁸ Before the Inquiry Mr Cairns described his use of the phrase “back from the brink” as a light-hearted attempt to reference what he perceived to be Dr McCormick’s very formal, military style and not in any way an acknowledgment that they had, in fact, been on the brink of an extension of the un-amended scheme.
- 36.18 Minister Foster gave evidence that her request to Mr Cairns was a fairly standard constituency enquiry, which she immediately dropped when informed of the cost.¹⁹⁸⁹

1979 WIT-20522

1980 TRA-13655 to TRA-13660

1981 TRA-12894

1982 TRA-12895; TRA-12898

1983 TRA-12897

1984 TRA-12895

1985 TRA-15428

1986 TRA-15428

1987 IND-02004

1988 IND-00005

1989 TRA-13658

36.19 Ultimately, Dr McCormick offered the following assessment of this episode: “I don’t think this amounts to anything at all in the great scheme of things.”¹⁹⁹⁰

Approval of the amendment regulations

36.20 The draft amendment regulations were laid before, and approved by, the Assembly on 17 November 2015. The Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2015 came into operation on 18 November 2015.¹⁹⁹¹ Regulation 10 and Schedule 4 applied a tiered tariff to medium biomass installations between 20kW and 199kW (increasing the upper limit of the medium biomass band from 99kW to 199kW), with tier 1 of 6.4p/kWh reducing to 1.5p/kWh after 1,314 hours and an overall cap of 400,000kWh in any 12-month period.¹⁹⁹²

36.21 The Inquiry notes that the amendment regulations did not include the suggestion from Mr McGinn, the DSO lawyer whose advice had been sought by DETI officials, for a specific amendment to allow the Department power to suspend operation of the scheme where it did not have, or was not likely to have, sufficient funds to accredit new installations.¹⁹⁹³ Trevor Cooper also raised the question as to what process and timescale would be involved to stop additional commitments under the RHI scheme.¹⁹⁹⁴ Mr Wightman sent an email to Mr Mills expressing support for the inclusion of such a power in the proposed regulations but pointed out that Ofgem had advised that they would need time to review such a power and in Mr Wightman’s opinion “time is something that we don’t have.” However he added that it would be worthwhile delaying the debate by a week if it meant that they could incorporate a provision to suspend or stop the scheme. It seems that Mr Mills raised the need to secure ministerial and ETI Committee clearance and he felt that there would not be time. Accordingly Mr Wightman told Mr Hughes that they would try to secure such approval in the New Year following DECC or HMT clarification over future funding.¹⁹⁹⁵

36.22 Meanwhile, some 800 applications had been received in the previous six weeks in contrast to the earlier departmental forecast of 150. Prior to the 2015 amendment regulations being made, Mr Wightman emailed Mr Stewart on 13 November informing him that the NI RHI had now “exceeded all expectations” and that this might result in an increase in NI RHI expenditure to more than £30 million in 2015-16 and over £40 million in 2016-17. The email continued:

“I feel that in the light of this situation regardless of what impact the amendment regulations might bring there is no choice now but to move to close both RHI schemes from 31 March 2016.”¹⁹⁹⁶

36.23 At least the perverse incentive had been reduced to some degree by the introduction of the 1,314 hour limit to the higher medium biomass tariff payments. However, by the time the 2015 amendment regulations started to be implemented the sheer scale of the market response to the attractiveness of the scheme and the resultant spike in applications was becoming very clear.

1990 TRA-15428

1991 DFE-107666 to DFE-107672

1992 DFE-107668; DFE-107671

1993 DSO-01408 to DSO-01409

1994 DFE-121289 to DFE-121290

1995 DFE-121289

1996 DFE-149917

36.24 At the Departmental Audit Committee meeting held on 2 December Mr Wightman presented a paper outlining the history and current position of the non-domestic NI RHI scheme and confirmed that amendments to the legislation had been brought into effect in November introducing tiering of tariffs and an annual cap on payments. He agreed that the GB RHI scheme had more flexibility through automatic degeneration. He also pointed out that officials had been working with DETI Finance and DFP to regularise matters and that retrospective approval was still being sought from DFP in respect of the period of irregular expenditure. He also informed the Committee that DFP had indicated that the RHI AME funding was likely to be capped in future and that discussions were taking place with HMT.¹⁹⁹⁷ The result of those discussions is dealt with in the following chapter.

Findings

- 200.** The Inquiry carefully considered the evidence relating to the telephone enquiry from a constituent to Minister Foster, in her capacity as MLA, including the oral evidence of Mr Cairns, and, having done so, finds it was not unreasonable of Ms Foster to ask a question on behalf of her constituent regarding postponement of scheme changes.¹⁹⁹⁸ The Inquiry finds that the response from officials upon this occasion was timely, effective and accepted.
- 201.** At the point the amendment regulations were implemented no review was carried out to confirm whether the revised tariffs were appropriate or with a view to including a method of overall budgetary control, such as degression or the suspension mechanism suggested by Mr McGinn of DSO. Calculations carried out for the purpose of the Inquiry by the DfE Task Force demonstrated that, after the amendment regulations came into force in November 2015, there was in reality little change in the average scheme subsidy for heat – from 6.3p/kWh down to 5.9p/kWh.¹⁹⁹⁹ As a result of the alteration of the medium biomass banding in the amended regulations however, the market's preference rapidly shifted from 99kW to 199kW boilers, thereby effectively doubling the amount of heat that would attract the higher Tier 1 subsidy. This shows the ineffectiveness of the measures taken to reduce spending levels.

1998 TRA-12893 to TRA-12899

1999 DFE-467803

Chapter 37 – 2015 Spending Review and HMT clarification of funding

- 37.1 Alongside the realisation within DETI that spending levels on the NI RHI schemes were likely to be much above the budgeted and forecast levels, discussions with HMT were soon going to make the situation even worse.
- 37.2 During significant, but relatively informal, engagement with HMT officials in November 2015 and early December 2015, in preparation for the Chief Secretary to the Treasury’s 2015 settlement letter, there remained a degree of ambiguity among the Northern Ireland officials on the level of, and arrangements for, the funding for RHI in Northern Ireland on the part of HMT.²⁰⁰⁰ On 26 November 2015 HMT’s devolution spending team informed DFP’s CED that the NI RHI spending profile for the period 2016-17 to 2019-20 would be “basically calculated using Barnett on the GB numbers”²⁰⁰¹ (consistent with the principles set out in the original Parker email of April 2011). If this were to be the position, given that DETI’s RHI commitments were considerably in excess of the population-based share of DECC’s funding for the GB RHI for 2015 to 2020, it was going to cause a serious problem for DETI and the Northern Ireland Executive.
- 37.3 On 7 December 2015 Mr Cooper formally notified Ms Scott of DFP that some 983 applications had been received in the two and a half months leading up to the legislative amendments on 17 November, resulting in a revised forecast for 2016-17 of £42 million in respect of the non-domestic scheme and £44.2 million for both schemes.²⁰⁰²
- 37.4 By later the same day DFP had informed Mr Cooper of the likely position, as indicated by HMT, as to what the NI RHI AME profile would look like for the years 2016-20. Mr Cooper informed Mr Rooney of the likely position and that Ms Scott was participating in a meeting with HMT to see if the position could be changed, but that as things stood there was a real prospect of an HMT cap on funding at £18.3 million for the year 2016-17, with any excess expenditure coming out of DETI’s DEL budget. He stated that the current DETI RHI forecast for that year was £44.2 million, assuming that both the non-domestic and domestic RHI schemes were immediately closed and that there was no further spike in applications.²⁰⁰³ He confirmed that if the HMT position did not change then there would be a DEL pressure of £25.9 million for 2016-17.
- 37.5 Arising from the DFP meeting with HMT on 8 December 2015 there was at least some good news for the 2015-16 financial year.²⁰⁰⁴ HMT’s settlement letter to the Northern Ireland Executive of 8 July 2013,²⁰⁰⁵ which dealt with the 2015-16 financial year, had been silent about RHI. Consequently HMT had not placed a specific (or any) limit on NI RHI AME for 2015–16. HMT confirmed to Mr Brennan that it would cover actual NI RHI scheme costs for the 2015-16 year. However, the then forthcoming settlement letter from the Chief Secretary to the Treasury, providing the outworking for Northern Ireland of the Chancellor’s 2015 UK Spending Review for the financial years 2015-16 to 2019-20, was still to set out the position beyond 2015-16.

2000 DFE-394964 to DFE-394965

2001 DOF-04640

2002 DFE-152857 to DFE-152859

2003 DFE-152861

2004 WIT-43219; WIT-43244

2005 INQ-53120 to INQ-53126

- 37.6 In contrast to the good news about the 2015-16 financial year, on 18 December Mr Brennan was informed²⁰⁰⁶ by HMT that, for the years beyond 2015-16, no additional monies would be available to the NI RHI scheme over and above the population share of DECC's RHI funding; and that the forthcoming settlement letter would state that the NI DEL allocation would have to "take the hit" on the excess RHI payments beyond the population share. It seems that DECC had never factored into the national renewable heat target the fact that Northern Ireland had been contributing above its approximately 3% population share. Consequently the argument of losing the additional Northern Ireland contribution (beyond 3%) to the national heat target could not be deployed. Mr Brennan made the DFP SpAd, Dr Crawford and DFP Permanent Secretary, Mr Sterling, aware of this information by email, suggesting that a letter should be issued to DETI advising them to take corrective action immediately.²⁰⁰⁷
- 37.7 As mentioned previously in the course of this Report, on 21 December Ms Morelli of DFP wrote to Mr Cooper refusing retrospective approval for DETI RHI expenditure from 1 April to 28 October 2015 and stating that, while it remained a matter of considerable concern, the level of irregular expenditure for that seven months period was dwarfed by the long-term budgetary implications.²⁰⁰⁸ Ms Morelli's letter also pointed out that while HMT was still considering the funding issue, the probable outcome was that the Northern Ireland Executive would have to fund all costs above the anticipated population-based share NI RHI AME profile (£18.3 million) from the Executive's DEL allocation. That profile had already been significantly reduced for the new Spending Review period and, in the circumstances, urgent action was required.²⁰⁰⁹
- 37.8 The Inquiry received a good deal of evidence, from a variety of witnesses, as to the concern and dismay caused by this outcome – which was soon confirmed formally by HMT – both in DETI and DFP, particularly given the likely impact on other Northern Ireland Executive spending priorities. Formal confirmation of the position was received by DFP in the settlement letter from the Chief Secretary to the Treasury on 13 January 2016,²⁰¹⁰ which David Sterling described as "the final nail in the coffin...when it come [sic] to any thought that there might be any additional funding."²⁰¹¹
- 37.9 In terms of how this news was met in December 2015, although Mr Stewart emphasised the seriousness of the projected overspend even if it was to be met by HMT out of AME funding, he said: "Once it reached the point where it had to be borne entirely from DEL, it's not that it suddenly started to matter, it suddenly became completely unaffordable." His evidence was also that: "the day that that realisation dawned on us was a day of complete dismay, because we realised the net effect of that was a huge opportunity cost to the Northern Ireland Executive."²⁰¹² Mr Stewart further described how, into early January 2016, "we were all a bit shell-shocked just at the situation that we'd found ourselves in"; and that there was a recognition on the part of the officials, the DETI Minister and his SpAd that "... this really was now a very, very serious situation. It was a catastrophe."²⁰¹³

2006 DOF-02272

2007 DOF-02272; WIT-43244 to WIT-43245

2008 DFE-152933 to DFE-152937

2009 DFE-152935 to DFE-152936

2010 DOF-42007 to DOF-42012 at DOF-42009

2011 TRA-16517

2012 TRA-11608 to TRA-11609

2013 TRA-11743

- 37.10 Mr Mills' evidence was that, when DFP confirmation was provided on 21 December 2015 that HMT had said that monies above the DECC RHI Barnett consequential budget ceiling would need to be met from the Northern Ireland block: "At that point I knew we had to close the scheme as soon as possible."²⁰¹⁴
- 37.11 Indeed, on 21 December, Mr Stewart emailed²⁰¹⁵ Mr Mills informing him that Mr Sterling had confirmed to Dr McCormick the HMT stance on RHI, namely that expenditure over and above the Barnett share would have to be found from within NI Resource DEL. He explained that, "DFP is very concerned, and will ask us formally for proposals to close/suspend the schemes as soon as possible", before asking Mr Mills to set out the options and a critical path for suspension or closure of the NI RHI scheme. In his oral evidence, Mr Mills summarised the message in this email as being "the game's up; we have to pay for this."²⁰¹⁶
- 37.12 In light of the developments in relation to the RHI funding position, on 31 December 2015 Mr Mills duly forwarded an urgent submission to Minister Bell seeking to deal with the future of the NI RHI scheme.²⁰¹⁷ The actions which followed this submission are addressed in detail in the next chapter. However, in the course of the submission, Mr Mills provided the Minister with information on the funding position as it then stood. The true funding position of the NI RHI scheme was now spelt out.
- 37.13 The submission noted that the recommended decision it contained (to close the NI RHI schemes) was likely to attract criticism, given the scale of the unapproved expenditure, and that HMT had confirmed that the cost overrun might need to be covered from the Executive's resource DEL budget.
- 37.14 The Minister was also advised that the matter should be referred to the Executive Committee in accordance with paragraph 2.4 of the Ministerial Code since the proposal had implications for the Programme for Government, would be "significant and controversial" and could be considered cross-cutting,²⁰¹⁸ (this feature of the required decision-making in relation to the proposal to close the RHI scheme is significant in light of what followed, as discussed in greater detail in the following chapters of this Report). The submission also contained a table illustrating the very substantial increase in applications in October/November 2015, together with the associated annual and 20-year costs.²⁰¹⁹
- 37.15 The submission, in paragraph 13, stated that the effect of the Chancellor's 2015 Autumn Statement had been to reduce the NI RHI budget. The same paragraph, incorrectly headed 'Change in HMT Policy' indicated that Northern Ireland would have to cover the full costs of any overspend, not just a penalty of 5% as some DETI and DFP officials had mistakenly thought.²⁰²⁰ The Minister was informed that the position created significant budgetary pressures.
- 37.16 The figure then forecast commitments to 31 March 2016 of some £42 million (which would then continue on an annual basis for many years) and was clearly in excess of what HMT was now going to cover in each year after 2015-16. The result of the Autumn Statement, therefore, was that it would create significant ongoing budgetary pressure with additional average annual

2014 WIT-14560; and see also TRA-11185 to TRA-11188

2015 WIT-11739

2016 TRA-11185

2017 DFE-294363 to DFE-294369

2018 DFE-294364

2019 DFE-294365

2020 DFE-294367

costs of around £15 million, to be paid out of the Northern Ireland block, even if there were no further applications after the end of the financial year.

37.17 The final recommendation in the submission of 31 December 2015 was as follows:

“To minimise further overspending and to meet the conditions of DFP approval, we now have no choice but to close both the non-domestic and domestic schemes as soon as possible.”²⁰²¹

Findings

- 202.** As discussed earlier in this Report, DETI ought to have had a fuller appreciation, and corporate memory, of the risks to its DEL budget which arose from the particular funding arrangements for the RHI scheme. Had it done so, the apparent ‘change’ in policy by HMT in December 2015 which in reality was a limited, if any, change from the position as it was explained in the 2011 email exchanges in relation to funding – would not have come as such a shock to officials.
- 203.** The failure to include effective budget control and/or appropriate powers to suspend the scheme in the 2015 Amended Regulations (as considered in the previous chapter of this Report) meant that DETI was not only particularly exposed to a further spike, but also to the ongoing lack of control in the scheme and to any decrease in the funding to be made available by HMT resulting from DECC’s revised forecasts, over which DETI had no control.

Chapter 38 – The initial submissions to close the scheme

The submission of 31 December 2015 to close the scheme in principle

- 38.1 As outlined in the previous chapter, on 31 December 2015 Mr Mills prepared a submission recommending closure of both the domestic and non-domestic RHI schemes as soon as possible. The purpose of this submission was to secure the Minister’s approval, in principle, to this course of action.
- 38.2 In accordance with practice at that time, the submission had been sent to the Minister’s Private Office on 31 December and then to Mr Cairns, his SpAd, who noted the following queries on the document:
- “Can we 1) consult or inform UFU & industry that this is happening now, 2) set out time scales?”²⁰²²
- 38.3 Minister Bell told the Inquiry that he did not recall seeing the submission with this added note and that he would add his signature to every submission that he received and read. Unusually, the Inquiry has been unable to find any copy of this submission signed by the Minister.²⁰²³ There is, however, an email from Mr Stewart to Mr Mills and Dr McCormick of 12 January 2016 which records that, at a meeting the day before, “the Minister accepted the advice on RHI.”²⁰²⁴
- 38.4 On 8 January 2016 Mr Mills responded to Mr Cairns’ comments by confirming that reasonable notice of the closure of the scheme to new applicants would be provided, but not yet, since the Department did not have the Minister’s policy agreement nor DSO clearance as to how suspension of the scheme might be effected. In addition, there was a need to check whether the Executive was willing to provide funding (to meet the anticipated annual shortfall between the funding provided by HMT for the NI RHI schemes and DETI’s liabilities under those schemes). Mr Mills pointed out that there was no formal statutory requirement to consult on the proposal and that it would not be appropriate in the circumstances.²⁰²⁵
- 38.5 At this point there were a number of changes in personnel at both ministerial and SpAd level: on 12 January 2016 Ms Foster became First Minister of Northern Ireland; she was replaced as DFP Minister by Mervyn Storey, with Dr Crawford continuing as his SpAd. Ms Foster’s SpAds at OFMDFM now included Timothy Johnston, Richard Bullick and Stephen Brimstone.

The submission of 19 January 2016 recommending consultation

- 38.6 Mr Bell continued as DETI Minister, and Mr Cairns as his SpAd, and on 19 January 2016 Mr Mills advanced a further submission to the Minister’s Private Office specifying the following in relation to its urgency: “Desk Immediate: timing to be cleared by 20 January to enable public and Executive consultation to begin.”
- 38.7 The submission suggested that a three-week period of consultation in relation to the proposal to close the RHI schemes was “not considered unreasonable.”²⁰²⁶ Mr Mills’ covering email emphasised the need to launch the consultation on 20 January in order to enable policies to be

2022 IND-25141 to IND-25146

2023 WIT-22635; TRA-12477

2024 IND-05881

2025 DFE-294370

2026 WIT-10662 to WIT-10682

finalised and approved and the legislation progressed before the Assembly rose in March.²⁰²⁷ The submission emphasised that a decision was needed immediately in favour of legislative change to close the scheme “as swiftly as possible” in order to minimise overspending. There was concern that the Assembly was due to rise in mid-March because of the impending election and, if the legislation was not introduced before the last day of sittings, there was a real risk that an opportunity to do so would not arise again until October.²⁰²⁸

- 38.8 On the same day, Dr McCormick emailed Mr Cairns underlining the importance of the timetable set out in the submission.²⁰²⁹ The public consultation proposed was to last for a period of three weeks to give stakeholders advance notice of closure while moving to prevent further overspend as swiftly as possible. The period of consultation was suggested to be reasonable in the circumstances, given that there had been a more substantial consultation in 2013 and this proposed consultation concerned only a single issue.²⁰³⁰ The proposal for the coming into operation of the closure regulations was early to mid-March.²⁰³¹
- 38.9 A draft consultation document was also provided along with the submission, together with an appropriate letter to the Chairman of the ETI Committee and a paper for the Executive Committee.²⁰³² Both the letter to the ETI Committee and the Executive Committee paper highlighted a surge of over 900 applications in the six weeks before passage of the 2015 amendment regulations and a forecast budget deficit of around £75 million, to be recovered from the DEL budget over the next five years, which would increase to £165 million if both the non-domestic and domestic schemes remained open to new applicants.²⁰³³ The submission confirmed that the closure/suspension and the budget position could be considered “significant or controversial and cross-cutting”; hence, in accordance with paragraph 2.4 of the Ministerial Code and the relevant provisions of the Northern Ireland Act 1998, the need to refer the submission to the Executive Committee.²⁰³⁴
- 38.10 As noted above, Dr McCormick sent a follow-up email to Mr Cairns on 19 January reminding him how pressing the matter had become.²⁰³⁵ Mr Cairns forwarded the draft submission and supporting papers to both Dr Crawford and Mr Brimstone, respectively the SpAd to the Finance Minister and a SpAd within OFMDFM.²⁰³⁶
- 38.11 Early in the afternoon of 22 January, Minister Bell cleared that submission, together with a submission relating to closure of the NIRO scheme, before leaving for a business visit to the USA on the following day with Mr Cairns and Dr McCormick.²⁰³⁷ The circumstances of this clearance, and particularly its subsequent withdrawal, were matters of considerable concern to former Minister Bell when he gave his television interview to Stephen Nolan in December 2016. They are dealt with in detail below.

2027 WIT-10662

2028 WIT-10662 to WIT-10664

2029 WIT-10662

2030 WIT-10664

2031 WIT-10665

2032 WIT-10666 to WIT-10682

2033 WIT-10666

2034 WIT-10664

2035 WIT-10662

2036 WIT-21682 to WIT-21708

2037 TRA-12498 to TRA-12499

The withdrawal of Minister Bell’s approval of the submission

38.12 Shortly after Minister Bell had cleared those submissions, Mr Cairns sent the papers relating to both submissions to Mr Johnston, SpAd to the First Minister. Mr Cairns emphasised the urgency of a decision on the submission, consistent with what he had been told about this within DETI, by stating that this was:

“Another one that needs to be out the door today. Again it’s a consultation on closing RHI. Keeping it open before Christmas has caused potentially a £27 million over-spend in this area.”²⁰³⁸

38.13 In his written evidence to the Inquiry Mr Cairns maintained:

“...I believe that on the afternoon of the 22nd January Mr Bell had tried to contact Mr Johnston without success. Mr Bell had urgent constituency business. He instructed me to email Mr Johnston, which I did, if Mr Johnston did not get back to me (or the Minister) by a certain time (I believe 4pm). [sic] The submission was to be cleared. If Mr Johnston got in contact and said the submission should not be cleared I was to hold the submission for further consideration.”²⁰³⁹

38.14 Mr Johnston did in fact respond by email just after 2.00 pm and made clear that there was no chance of clearing the submission on the Friday, since it needed to be discussed with a “wider group”. He explained that he would not be able to get “Arlene and party view until Monday” which would be 25 January.²⁰⁴⁰

38.15 However, Mr Cairns did not see Mr Johnston’s reply until after the 4.00 pm deadline but replied to Mr Johnston:

“No problem. I’ve had a lengthy conversation with Dr Crawford about them. Not sure we have much alternative but to go with officials’ advice - it’s more handling of interested parties that needs to be managed now.”²⁰⁴¹

38.16 As a result of discovering Mr Johnston’s email, Mr Cairns then realised “Goodness we shouldn’t have issued clearance”²⁰⁴² and took steps to ask Minister Bell’s Private Secretary to ‘hold’ the submission, i.e. to treat it as not yet having been approved by the Minister.

38.17 Minister Bell told the Inquiry that he believed that he had cleared the submission and that nobody informed him that it had been held or rescinded.²⁰⁴³ This contention formed part of his concern at a later stage that steps were being taken by Mr Cairns (at the behest of others within his party) without his knowledge or authority.

38.18 However, Mr Cairns did email Mr Johnston’s response to Minister Bell and his Private Secretary at about 4.45 pm, informing the Minister that he had told Mr Kerr to “hold the sub.”²⁰⁴⁴

38.19 Mr Bell maintained in his oral evidence that any communications about departmental business would always have been sent to a Government email account and that he had not received Mr

2038 INQ-15063

2039 WIT-20238

2040 INQ-15084

2041 INQ-15084

2042 TRA-12977

2043 TRA-12911

2044 INQ-60166

Cairns' email informing him that the submission had been 'held' because it had been sent to his private 'Hotmail' account.²⁰⁴⁵

38.20 However, Mr Kerr confirmed that the Hotmail address was, to the best of his knowledge as Mr Bell's Private Secretary, the only address used by the Minister to conduct business by email and that he was instructed by the Minister to use it.²⁰⁴⁶ Similarly, when asked about sending departmental business to Minister Bell, the Permanent Secretary from that time, Dr McCormick, agreed that the Hotmail account was "the only email that I ever used if I was sending things to him."²⁰⁴⁷

38.21 The Inquiry was provided with significant documentary evidence of the use of his Hotmail account by Minister Bell, including correspondence with Mr Kerr and former First Minister Robinson.²⁰⁴⁸

38.22 Mr Cairns also said that he had discussed the matter (that is to say, the rescinding of the approval of the submission of 19 January which Minister Bell had given on 22 January) with Minister Bell the next day during their travels in the USA and that both had expressed annoyance at the unprofessionalism of Mr Johnston who did not seem to prioritise a call from a DUP Minister, especially when Mr Johnston had expressly asked to be consulted. They both felt that what had happened was embarrassing and unprofessional.²⁰⁴⁹ Minister Bell denied in his oral evidence to the Inquiry that such a conversation had taken place, but he was quite unable to suggest any reason why Mr Cairns would have made it up.²⁰⁵⁰

38.23 Meanwhile, Mr Mills updated Mr Stewart and Dr McCormick on the progress of the submission by email, explaining that he had experienced:

"A slightly bizarre afternoon with efforts focused on clearance of the two submissions. The green light was given for both around half four and then rescinded around 20 minutes or so later – so neither sub has issued with serious repercussions for the timetables of both."²⁰⁵¹

38.24 Mr Stewart told the Inquiry that he had never experienced a submission being "uncleared".²⁰⁵² He contacted Mr Cairns after this seeking expedition of clearance and Mr Cairns replied on Monday 25 January confirming that the submissions were "in the hands of DUP party officers and will be dealt with by them", adding that "I have recommended officials' advice but party officers have requested time to deal with them. I have no idea if they will approve or not."²⁰⁵³ Mr Stewart told the Inquiry that he thought that this delay was to enable engagement to take place between Sinn Féin and DUP SpAds in relation to the proposed course of action.²⁰⁵⁴

2045 TRA-12503 to TRA-12507

2046 WIT-25847

2047 TRA-15431

2048 IND-29745

2049 WIT-20238

2050 TRA-12501 to TRA-12503

2051 WIT-11768

2052 TRA-11753

2053 WIT-11769 to WIT-11770

2054 TRA-11757

DUP consideration of the recommended course for closure of the scheme

- 38.25 As noted above, further to his email correspondence with Mr Johnston on 22 January, Mr Cairns told Mr Stewart by email that the submission recommending the course to be adopted to secure closure of the RHI scheme was in the hands of DUP “party officers” and would be dealt with by them. To similar effect, on 25 January at 2.57 am, during their visit to the USA with Minister Bell, Mr Cairns texted Dr McCormick informing him that “RHI and NIRO now in hands of party officers. Minister cleared but DUP party officers on Friday afternoon called papers in.”²⁰⁵⁵
- 38.26 Mr Johnston subsequently took issue with the reference by Mr Cairns to “party officers” and in an email to Dr McCormick on 1 February 2016, he said:
- “For absolute clarity and the avoidance of any doubt, no such discussion took place at any time regarding RHI or any associated matters with the party officers. Therefore, the POs did not recall approval. As a matter of course these types of issues are not brought to the attention of officers.”²⁰⁵⁶
- 38.27 Mr Stewart told the Inquiry that he understood the use of the term ‘party officers’ to refer to other DUP SpAds rather than, for example, the Party Chairman or Secretary.²⁰⁵⁷
- 38.28 In a written corporate statement provided to the Inquiry, Stephen McMurray, then head of the RHI Task Force at DETI, confirmed that Energy Division had been told by DETI Private Office that the submission had been recalled within half an hour of being approved by Minister Bell. The statement continued:
- “The First Minister’s SpAds had intervened and given that this issue had escalated so significantly, and was now explicitly for Executive consideration, that is not surprising. In a fast-developing situation, it was not unreasonable for them to seek to create an opportunity for further consideration.”²⁰⁵⁸
- 38.29 There was undoubtedly some confusion on the part of those in the United States at this point (the DETI Minister, his SpAd and the Permanent Secretary) as to precisely what was happening at home in Northern Ireland in relation to the submission of 19 January. In his evidence Mr Cairns described a “bizarre” teleconference situation, in the course of a visit to Stanford University, in which he, on one side of the quad, was being advised by Mr Johnston that the submission was not to be cleared while, on the other side, Minister Bell was speaking to Mr Stewart who, as is dealt with shortly below, had been informed by the Head of the Civil Service that the First Minister wanted the submission cleared. In a subsequent call from Mr Johnston, Mr Cairns was told that First Minister Foster and senior DUP members were being consulted.²⁰⁵⁹
- 38.30 It is clear from the exchange of relevant emails at that time that the delay in clearing the submission was causing considerable concern amongst officials with regard to the consequences of any associated significant delay in consultation and passing the necessary legislation to close the scheme. For example, on 26 January Dr McCormick emailed Mr Sterling, then Permanent Secretary at DFP to say: “Unthinkable this is delayed any longer.”²⁰⁶⁰

2055 IND-01880

2056 WIT-10686

2057 TRA-11755

2058 WIT-00127

2059 WIT-20238 to WIT-20239

2060 DFE-153056

Findings

204. The Inquiry is satisfied that Mr Bell regularly used his Hotmail account for ministerial business and that it was justifiable for Mr Cairns to believe that the Minister would read his correspondence sent to this email address on 22 January 2016.
205. The Inquiry therefore finds that Minister Bell's assertion that he had no knowledge of the reasons for holding back the submission on 22 January 2016 to be irreconcilable with the evidence from Mr Cairns (that he forwarded on that day an email to Minister Bell providing information about what had happened and why). The fact that Mr Cairns shared this information with Minister Bell by email on 22 January 2016 makes it unlikely, in the view of the Inquiry, that he would have had any reticence about discussing it with Minister Bell the following day, as he (Cairns) claimed to have done. In the circumstances, the Inquiry accepts Mr Cairns' evidence that he discussed the 'holding' of the submission with Minister Bell on 23 January 2016.
206. It is unfortunate that the process involving consideration of this submission of 19 January by the DETI Minister and by the First Minister or her SpAds was not more structured. A more structured process may have prevented the 'recall' of an apparently cleared submission.
207. The Inquiry accepts the evidence that the submission was referred to the First Minister and SpAds and not to other DUP party officials. This action was appropriate, particularly due to the cross-cutting nature of the issues.
208. The collective lack of clear leadership and of structured communication from all senior individuals involved, combined with the drawn out approvals processes, led to unnecessary delay in clearing the submissions. Nevertheless, the Inquiry accepts that the clearance process became much more difficult once it was determined that the matter was 'cross-cutting' and therefore required Executive approval.

Chapter 39 – Continuing discussions on scheme closure

Rising concern at the delay in closure

39.1 On 26 January 2016 Mr Brennan emailed Dr Crawford and Mr Sterling within DFP expressing concern at the continuing rising costs of the scheme stating:

“Andrew – in the discussions with the Minister recently on the Chief Secretary letter, we discussed the lack of action by DETI on RHI. You mentioned that you would take forward the issue at a political level.”²⁰⁶¹

39.2 Mr Brennan pointed out that DETI’s decision to recommend going out to consultation would only delay closure and generate further cost increases.²⁰⁶² Dr Crawford told the Inquiry that he believed that this was a request for him to engage other SpAds and, while he was happy to discuss the financial implications with Mr Brennan, his emailed response clearly stated that: “The DETI Minister is responsible for the policy decisions on both of these matters.”²⁰⁶³ Mr Sterling, in turn, emailed Mr Stewart urging him to do “all that is possible to close the existing scheme as a matter of extreme urgency...”.²⁰⁶⁴

39.3 That same evening Dr McCormick stated that he had received a clear message from Mr Cairns and Minister Bell that the matter was now one for the First Minister and the Head of the Civil Service. This was consistent with the fact that the 19 January submission to Minister Bell had been referred to Mr Johnston for consideration by him and others, including the First Minister. Dr McCormick’s impression, he said, was that their focus was on seeking a better outcome from HMT and his information was that there would not be a decision until the following Tuesday (2 February 2016).²⁰⁶⁵

39.4 However, on the following day, 27 January 2016, Sir Malcom McKibbin, then Head of the Civil Service, wrote to Dr McCormick expressing his extreme concern over the escalating costs of the scheme and the potential impact on the 2016-17 budget as well as on subsequent budgets.²⁰⁶⁶ Sir Malcolm also referred to the ongoing engagement between DETI and DFP and noted that DETI was looking at options to close the scheme as soon as possible. He continued:

“Given the seriousness of the situation, I would ask you to let me know what actions *you* are going to take to expedite this matter so that ***I can keep the First Minister and deputy First Minister informed....I have spoken to the First Minister who has made it quite clear that it is the responsibility of DETI to mitigate costs and to urgently cease accruing further liabilities from this scheme for the NI Block in 2016/2017 and beyond.***”²⁰⁶⁷ (the Inquiry’s emphasis)

39.5 The Inquiry has considerable difficulty in reconciling this email with any suggestion (if indeed this is to be inferred) that the First Minister’s SpAds had not familiarised her with the draft

2061 DOF-42048

2062 WIT-30831

2063 TRA-13227 to TRA-13228; WIT-30831

2064 DFE-153053

2065 DOF-42045

2066 DFE-10394 to DFE-10396

2067 DFE-10394 to DFE-10395

submission to Minister Bell which had been cleared by him but recalled as a result of one of those SpAds (Mr Johnston) on Friday 22 January.

- 39.6 Dr McCormick replied to Sir Malcolm on 27 January pointing out that Minister Bell had approved the proposals for urgent action to close the scheme, but that approval had been recalled by “Party Officers”. He explained that DETI required ministerial authority in order to bear down on the cost pressure, implicitly emphasising that this authority had not been provided in light of the fact that the DETI Minister and his SpAd were awaiting further input from Mr Johnston.²⁰⁶⁸
- 39.7 The Inquiry notes that this elicited the following message sent from Mr Bullick’s iPhone to Mr Johnston: “This is quite a dangerous email to be in the system!”.²⁰⁶⁹ When asked about this by the Inquiry during 2018 Mr Bullick stated that he had no specific recollection of the matter. However, he agreed it was possible that he was referring to Dr McCormick’s email and he further stated that he did recall “being concerned about the reference around this time to party officer involvement not least because it was untrue.”²⁰⁷⁰ During his oral evidence on the issue Mr Johnston stated that it was his understanding, at the time, that it was the reference to “Party Officers” which was considered to be dangerous “because it wasn’t actually factually the case”²⁰⁷¹
- 39.8 On 27 January Sir Malcolm met with Mr Sterling and Mr Brennan and he was advised that the unfunded spend for the scheme in 2016-17 could be as high as £33 million, although there was still uncertainty about that figure.²⁰⁷² On the same day Sir Malcolm met the deputy First Minister, Martin McGuinness, to brief him with regard to the RHI scheme.
- 39.9 In the course of that briefing, he dealt with the purpose of the scheme, the sudden spike in the autumn of 2015, the increasing costs and the approximate scale of the impact on the DEL budget in-year and in future years, the difficulties associated with quick closure and the view of the First Minister that, while DETI was primarily responsible for securing closure, it was now also an Executive issue. The deputy First Minister was most concerned about the impact upon the DEL budget and undertook to discuss the matter further with his SpAds.²⁰⁷³
- 39.10 Later on 27 January Sir Malcolm wrote to Dr McCormick again expressing extreme concern about the escalating costs and the potential impact on the DEL budget. On this occasion, he enclosed an anonymous letter from a constituent, which had been handed to him by First Minister Foster on 26 January, claiming that the non-domestic RHI scheme was being “seriously abused” by many businesses.
- 39.11 The allegations by the author of the anonymous letter included that the scheme was not being properly monitored and that it was being used by many people who had not previously required heating. Large factories which were said not to have had previous heating were alleged to have had installed three biomass boilers which they intended to run all year round. A local farmer with no need for heat was said to be intending to install biomass boilers in order to heat an empty shed over the next 20 years.²⁰⁷⁴ These allegations of widespread abuse, although at

2068 DFE-10397

2069 IND-28911

2070 WIT-75153

2071 TRA-14793

2072 WIT-64139

2073 WIT-64872

2074 TEO-00014 to TEO-00016

that point untested, would likely have added to the concern that the decision which had been taken to close the scheme should now be expedited.

- 39.12 Dr McCormick replied to Sir Malcolm on 28 January with some initial comments, indicating that Minister Bell would confirm approval of the DETI submission to close the scheme as soon as possible and that they were seeking to reduce the time required for the procedures.²⁰⁷⁵

Discussions between SpAds to seek to expedite closure

- 39.13 On the same date, 28 January, there was a meeting called at short notice at Stormont Castle between DUP and Sinn Féin SpAds, which (unusually) Mr Stewart was invited to attend. While Mr Stewart was unable to recall the identities of all attendees, he told the Inquiry that there had been a clear shared view that closure was urgently required without public consultation.²⁰⁷⁶ He felt that there was consensus that the extent of the financial crisis justified the decision not to proceed with consultation and to close as soon as possible.
- 39.14 Mr Stewart gave evidence to the Inquiry that he was quite satisfied that there was no desire on behalf of the DUP advisers to delay closure and, if anything, Sinn Féin advisers were even more keen to adopt that course of action.²⁰⁷⁷ Mr Stewart noted that officials would not normally attend such political meetings and suggested that his invitation might have been issued in the absence of Mr Cairns, who was still in the United States at this point.²⁰⁷⁸

The submission of 29 January 2016 still recommending consultation

- 39.15 Discussions continued between Departments, with concerns expressed by both the First Minister and the Finance Minister, and on 29 January Mr Mills advanced a further draft submission to Minister Bell recording those concerns; seeking to balance the risk of increasing financial loss with that of potential legal challenge if there was no consultation in relation to the proposal to close the scheme; and advising that the use of the Urgent Procedure was necessary to secure Executive approval for Tuesday 2 February.²⁰⁷⁹ The Urgent Procedure is a process set out in the Ministerial Code by which, where Executive discussion and approval of a matter is required (by reason of its significant, controversial or cross-cutting nature) but the urgency is such that this cannot await full discussion at the next Executive meeting, such approval can be given by means of agreement between the First Minister and deputy First Minister.
- 39.16 The submission set out three options: firstly, dispensing with consultation and substituting an announcement of scheme closure at the end of February, which carried a significant risk of legal challenge; secondly, holding a consultation contemporaneously with securing ETI Committee agreement, which would see closure by 7 March but would also be vulnerable to legal challenge on the basis of the consultation not being genuine; thirdly, a reduced period of two weeks' consultation about closure of the scheme before enacting legislation – which was the recommended option.²⁰⁸⁰ This recommendation seems designed to try to expedite the process to some degree (including making up for time thought to have been lost by the withholding of clearance of the submission of 19 January) but without abandoning consultation

2075 TEO-00019

2076 WIT-27547 to WIT-27548

2077 TRA-11775

2078 TRA-11783 to TRA-11784

2079 DFE-153094 to DFE-153105

2080 DFE-153095

on scheme closure altogether, in light of concerns that this would lead to a successful challenge to the decision to close the scheme by way of judicial review.

- 39.17 In dealing with presentational issues, the submission also advised that consultation seemed better than announcement alone.²⁰⁸¹ In practice option 3, which was the option that would take the most time, seems to have been the same as the recommendation contained in the draft of 19 January, save for the reduction of the consultation period by one week.²⁰⁸²
- 39.18 Having obtained the agreement of the Minister to option 3, later on the same date Mr Mills forwarded a further submission to Minister Bell requesting his consent for a draft letter seeking the views of the Finance Minister in order to comply with paragraphs 2.4 and 2.14 of the Ministerial Code, which require “the views of any other Ministers with a relevant interest” to be consulted.²⁰⁸³

DFP input to the proposed course and amendment of the draft Urgent Procedure letter

- 39.19 A draft of the letter of request to be sent by Minister Bell to the First and deputy First Ministers to effect closure of the RHI scheme by way of the Urgent Procedure was sent by DETI to DFP for comment on 1 February 2016 in order to comply with the DETI Minister’s obligation under the Ministerial Code to consult the DFP Minister, since DFP clearly had a relevant interest in the financial implications of the continuation of the scheme.²⁰⁸⁴
- 39.20 On 3 February Mr Brennan returned the paper to Dr McCormick at DETI with a series of proposed amendments including removal of the reference to public consultation.²⁰⁸⁵ This appears to have been the formal means by which the preference between DUP and Sinn Féin SpAds for closure without consultation was introduced into the decision-making process.
- 39.21 On 3 February 2016 Mr Stewart sent a submission to Minister Bell marked “Desk Immediate” in order to enable a letter to be sent to OFMDFM invoking the Urgent Procedure to close the NI RHI scheme. Annexed to the submission was a draft letter from Minister Bell to OFMDFM confirming that he had consulted the Finance Minister and had secured agreement to dispense with consultation.²⁰⁸⁶
- 39.22 The reference to public consultation was not the only thing which had been removed from the draft letter of request. On 1 February Mr Brennan had emailed the DFP Private Office and Mr Sterling saying “...we have significant concerns about this DETI draft. We will get tracked changes back to you in next hour or so.”²⁰⁸⁷ That draft with tracked changes then appears to have been discussed by Minister Storey, Mr Brennan and Dr Crawford.²⁰⁸⁸ As a consequence, it was proposed that the reference to the role played by the poultry industry in causing or contributing to the surge in RHI applications during 2015 contained in paragraph 5 of the draft should be removed.²⁰⁸⁹

2081 DFE-153096

2082 DFE-424268 to DFE-424287

2083 DFE-153090; DFE-153106 to DFE-153114

2084 DOF-02296; DFE-125280 to DFE-125284

2085 WIT-11825 to WIT-11830

2086 WIT-11863 to WIT-11873

2087 DOF-02296

2088 DOF-02300

2089 WIT-43252; DOF-02300 to DOF-02304

- 39.23 Dr Crawford accepted that he had been responsible for asking for its removal, explaining that it was his belief, and remained his belief, that the use of biomass for heating in other industries was contributory to the spike and overspend and not just the poultry industry.²⁰⁹⁰ He said that he was concerned that singling out Moy Park and the poultry industry was unfair.²⁰⁹¹ When further questioned by the Inquiry he accepted that use of biomass by the poultry industry was responsible for the most significant increase in numbers of applications and that by removing the words the First Minister and deputy First Minister were being deprived of accurate information.²⁰⁹²
- 39.24 Dr Crawford stated that withholding information had not crossed his mind and that, looking at it now, he probably should not have removed the reference, but that he was concerned about the implications “in terms of what narrative was being created.”²⁰⁹³ He informed the Inquiry that it was not uncommon for SpAds to make changes to the papers of other Departments in certain circumstances (for instance where the SpAd’s own Department had a legitimate interest in the subject matter).²⁰⁹⁴
- 39.25 The fact is that Dr Crawford had been, on his own admission, “one of the key people”²⁰⁹⁵ in DETI with whom Moy Park had dealt over seven years and also, by January 2016, an individual with three family members operating, between them, 11 biomass boilers that were accredited on the NI non-domestic RHI scheme. In this particular regard, Dr Crawford said to the Inquiry that, in or around October/November 2015, he verbally informed David Sterling and Mike Brennan in DFP that he had family members on the RHI scheme and asked whether he needed to put it in writing. Dr Crawford said to the Inquiry that he was told, by the then DFP Permanent Secretary David Sterling, that he did not have to do so.²⁰⁹⁶ Mr Sterling was asked about this in his own evidence to the Inquiry and he indicated he had no recollection of such a conversation, and it was something he considered he would have remembered had it occurred.²⁰⁹⁷ It is the case that at the time of these events there was no established mechanism specifically for the reporting by SpAds of potential conflicts of this nature. However, as this Report will later consider in the chapter dealing specifically with the role of SpAds, and as is clear from the main terms and conditions of their employment,²⁰⁹⁸ they were at all material times subject to Section 6.01 of the Employee Relations part of the NICS Handbook.²⁰⁹⁹ In his evidence to the Inquiry regarding SpAds²¹⁰⁰ Sir Malcolm McKibbin specifically referred to the obligations laid down in paragraph 2.1.g of Section 6.01, which provided as follows:

“g. you must not misuse your official position, or information acquired in the course of your official duties, to further your private interests or those of others. Conflicts of interest may arise from financial interests and more broadly from official dealings with, or decisions in respect of, individuals who share private interests (for

2090 WIT-21900; TRA-13238

2091 TRA-13239 to TRA-13240

2092 TRA-13240 to TRA-13241

2093 TRA-13242

2094 TRA-13244

2095 TRA-13263

2096 TRA-13219 to TRA-13222

2097 WIT-05187 to WIT-05188; TRA-16503

2098 DOF-00567 to DOF-00575 and in particular DOF-00572 to DOF-00573

2099 DOF-00021 to DOF-00108

2100 WIT-64012

example, freemasonry, membership of societies, clubs or other organisations and family). Where a conflict of interest arises, you must declare the interest to your Establishment/Personnel Division so that a decision can be made on the best way to proceed.”²¹⁰¹

- 39.26 Returning to what happened to the draft letter from the DETI Minister to OFMDFM on which the DFP Minister had been asked to comment, the amended draft was forwarded by DFP to DETI, where Dr McCormick referred it to Mr Stewart.²¹⁰² On 2 February Mr Stewart replied that he could see no difficulty with most of the suggested changes, adding “However, I do not see any reason to remove wording from para 5 (which is factually correct)...”.²¹⁰³ The reference to the poultry industry and Moy Park was then reinstated²¹⁰⁴ but removed again from the final document²¹⁰⁵ on the same day at the direction of Mr Sterling. Mr Sterling told the Inquiry that he “didn’t think it was worth having a major set-to with Dr Crawford about it” and his approach was “If he (Dr Crawford) wants it removed then let it go.”²¹⁰⁶ Mr Sterling conceded that he had not sought to discuss with Dr Crawford why he wanted the sentence to be removed and, at the time, he did not consider it to be significant in the context of a particularly intense period.²¹⁰⁷
- 39.27 Also, on 2 February an email exchange took place between Dr McCormick, Mr Stewart, Mr Wightman and Mr Mills which confirmed the continuing lack of understanding amongst officials about the original funding for the non-domestic RHI scheme.²¹⁰⁸ The only correspondence discussed was Mr Parker’s email of 15 April 2011 to Ms Clydesdale.

2101 DOF-00026

2102 WIT-11816

2103 WIT-11816

2104 DOF-36771 to DOF-36775

2105 DOF-36776 to DOF-36780

2106 TRA-16538

2107 TRA-16538 to TRA-16539

2108 DFE-225579 to DFE-225580

Findings

209. The Inquiry acknowledges that there was a difficult balance to be struck between expedition and the risk of legal challenge when deciding whether to dispense with consultation.
210. In the circumstances the Inquiry accepts that it was appropriate for OFMDFM SpAds and DFP to seek to dispense with consultation in order to expedite scheme closure.
211. Dr Crawford sought to remove an accurate statement of explanatory fact concerning the poultry industry's contributory role in the autumn of 2015 to the surge in non-domestic RHI applications from the draft "Urgent Procedure" document sent to DFP on 1 February 2016.
212. It appears that, in 2015 and 2016, there may have been no well-understood formal mechanism, other than informing the Establishment/Personnel Division (about which there was no specific training or instruction), for the declaration of conflicts of interest by SpAds. Nevertheless, Dr Crawford should have ensured, at the time when he was asked to engage in matters relating to problems with the RHI scheme in his role as DFP SpAd, that he had formally reported to the DFP Permanent Secretary, in writing, the fact he had family members with boilers on the RHI scheme and that he had close links to the poultry industry.
213. There should have been, at the time of these events, a clear formal procedure in operation within Departments for the periodic recording of interests and the declaration of conflicts of interest as and when they arose.
214. In view of the conflict of interest that Dr Crawford had, which had not been formally declared, he should not have been involved in advising on DETI's Urgent Procedure document relating to RHI. He also should not have caused the removal of relevant information from the Urgent Procedure document relating to the fact of the poultry industry's significant contribution to the overspend on the RHI scheme.

Chapter 40 – The submission to close the scheme without consultation and the changes made to it

Decision to proceed with closure as quickly as possible

- 40.1 As noted in the previous chapter, on 3 February Mr Brennan of DFP returned the draft Urgent Procedure letter from the DETI Minister to OFMDFM to Dr McCormick at DETI with a series of proposed amendments which were suggested by DFP. These included the removal of the reference to public consultation on the proposal to close the NI RHI schemes.²¹⁰⁹ From that date, this appears to have been adopted as the joint position of DFP and DETI.
- 40.2 On the same date, 3 February 2016, Mr Cairns emailed Mr Stewart enquiring in the following terms:
- “Can someone urgently contact the Assembly authorities to see if an emergency procedure can be put in place to bypass the whole process – a suspension of standing orders or something like that to enable this to be stopped asap.”²¹¹⁰
- 40.3 Although this suggestion was not able to be pursued – by reason of the need for further regulations and the requirements of the enabling legislation as to how these must be made – it gives some indication of the urgency which was now being felt and, therefore, the expedition which was now being sought.
- 40.4 Also on the same date Mr Stewart appears to have received a telephone call, presumably from Mr Cairns, confirming that OFMDFM agreed to proceeding without consultation and without the conventional consideration of the draft regulations by the Assembly Committee.²¹¹¹ Mr Stewart therefore prepared another draft submission, revised by Mr Wightman, to be sent to Minister Bell seeking immediate clearance for a letter to be sent on the following day to OFMDFM to approve an urgent decision on closure of the NI RHI scheme.²¹¹²

Changes to the draft submission of 3 February 2016

- 40.5 The draft submission recorded that the DETI Minister had previously agreed to close the scheme to new applicants, subject to public consultation. Paragraph 4 referred to proceeding without consideration and approval by the ETI Committee, and accepted that such a decision was “likely to attract strong criticism from the Committee”. It recorded that to meet existing RHI commitments around £95 million would have to be found from resource DEL budget for the next five years and that if both RHI schemes remained open the deficit would increase to £185 million.²¹¹³
- 40.6 At paragraph 5 the submission stated as follows:
- “Assuming prompt Executive approval the shortest feasible timescale would involve consideration by the Business Committee next Tuesday (9 February), with a proposal to schedule the debate for Monday 15 February. The scheme would close on 16 February (with less than 2 weeks public notice).”²¹¹⁴

2109 WIT-11825 to WIT-11830

2110 WIT-11831

2111 TRA-11794

2112 WIT-11833 to WIT-11845

2113 WIT-11836

2114 WIT-11836

The Inquiry notes that a number of significant amendments were made before the documents were finalised.

40.7 Paragraph 1 of the original draft dealt with the background to the scheme and recorded the earlier decision to close it subject to public consultation. It then contained the following sentence:

“However, following discussion with DFP and OFMDFM, you have agreed to proceed with legislation to close the schemes without public consultation.”²¹¹⁵

40.8 The reference to OFMDFM was subsequently removed and ultimately replaced by the following reference to consultation with other Ministers:

“You have consulted the Finance Minister on these issues and he concurs with your concerns and desire to minimise the exposure of the NI Block DEL.”²¹¹⁶

40.9 Paragraph 4, which dealt with proceeding without prior consideration and approval of the ETI Committee, was amended to remove the words:

“Informal advice from OFMDFM officials is that this is feasible, but highly unusual.”²¹¹⁷

40.10 It appears that those amendments to the original draft, which had also included a request to remove any reference to the Finance Minister, were made by Mr Cairns without the knowledge of Minister Bell.²¹¹⁸ Mr Cairns did, however, copy the draft with suggested changes tracked to Dr Crawford, Mr Bullick and Mr Johnston on 4 February.²¹¹⁹ Shortly afterwards, on the same day, he forwarded the amended draft to Mr Stewart.²¹²⁰ Mr Cairns wrote:

“The Minister made the decision to dispense with notice and consultation and no advice from other ministers or departments played a part in that decision.”²¹²¹

40.11 However, Mr Stewart was aware that there had been consultation with the Finance Minister, and he had been present at a meeting of OFMDFM SpAds on 28 January.²¹²² He persuaded Mr Cairns to reinstate the reference to the Finance Minister (quoted earlier) as being required in order to demonstrate compliance with paragraph 2.14 of the Ministerial Code, which requires that when a decision is to be made by the Executive using the Urgent Procedure the responsible Minister must set out in writing, so far as practicable, the views of any other Ministers with a relevant interest (which would require, in this case, engagement with the DFP Minister to ascertain his view).²¹²³

40.12 Mr Stewart assumed that the amendments proposed by Mr Cairns had been approved by Minister Bell and, for his part, Mr Cairns gave evidence that he believed his draft with tracked changes would have gone to Minister Bell’s Private Office from which it would have been referred to the Minister.²¹²⁴ In the course of his oral evidence to the Inquiry, Mr Cairns accepted

2115 WIT-11836

2116 WIT-11864

2117 WIT-11836; WIT-11864

2118 TRA-12944 to TRA-12946

2119 DFE-293206

2120 WIT-11850 to WIT-11861

2121 WIT-11850

2122 WIT-27548

2123 WIT-27548; TRA-11808

2124 WIT-11548; TRA-12945

that the assertion that the Minister had made the decision without consulting other Ministers or Departments was “simply untrue”.²¹²⁵

- 40.13 Mr Stewart, in giving oral evidence about this exchange, agreed that he had told Mr Cairns that the proposed amendment was “just wrong”.²¹²⁶ Mr Cairns had said that he was not denying that contacts had taken place but that they had not played any part in the Minister’s change of view.²¹²⁷ His attention was drawn to his written evidence, in which he had accepted that he had not been asked by anyone else to make the changes and explained that:

“The prevailing view within the DUP was to defend the First Minister/Party Leader as much as possible in this matter, notwithstanding that it was believed within the party that she had done nothing wrong as regards setting up the Scheme, as she had acted on the advice of officials. This makes political sense and as a political adviser appointed by the party I endeavoured to do that.”²¹²⁸

- 40.14 Mr Cairns told the Inquiry that an election was coming up and the amendments would give the First Minister the full gamut of options depending on whether the proposed course of action with the RHI scheme turned out to be popular or unpopular.²¹²⁹ He rejected the suggestion made by Dr McCormick that it was part of a strategy to make Minister Bell solely responsible for closing the scheme and asserted that, on the contrary, it gave him credit for doing so.²¹³⁰

- 40.15 When the final submission, without the changes tracked, was sent to Mr Cairns by Mr Kerr of the Minister’s Private Office, Mr Cairns replied by email:

“Have the Minister read it, I have cleared it and he should and then I await the voice on high to tell me when it can be issued.”²¹³¹

- 40.16 Mr Cairns told the Inquiry that the “voice on high” was a reference to Mr Johnston, a SpAd of the First Minister.²¹³² His email to Mr Johnston and Mr Bullick read:

“Please see attached latest RHI paper. I have taken out references to other departments and have agreed a line on consultation.”²¹³³

“Whistle-blower” allegations

- 40.17 On the evening of 15 December 2016 former Minister Bell’s interview by the BBC journalist Stephen Nolan, was broadcast on television, in the course of which he stated that:

“The Deputy Permanent Secretary of my department, Chris Stewart, asked for something that was highly unusual and only done once in five years that I sat in the Executive, he asked to meet the minister, as he is entitled to do, to whistle-blow on a one to one basis.”²¹³⁴

2125 TRA-12944

2126 TRA-11801

2127 TRA-11802

2128 WIT-20073

2129 TRA-12945 to TRA-12946

2130 TRA-12946

2131 DFE-293218

2132 TRA-12950

2133 IND-28845

2134 DFE-228969

40.18 Minister Bell then proceeded to describe how he had been told by Mr Stewart that, without his knowledge, his SpAd Mr Cairns had been asked by other SpAds to remove references to the First Minister and DFP from the submission seeking Executive approval to close the scheme by Urgent Procedure. Minister Bell told Mr Nolan that he had subsequently spoken to the Permanent Secretary who verified this account and was prepared to put it formally on record for an inquiry.²¹³⁵

40.19 Subsequent to the broadcast of Mr Nolan’s interview with Minister Bell, Mr Stewart forwarded an explanatory submission to the then DfE Minister, Mr Hamilton, on 18 December 2016.²¹³⁶ That submission was seen and agreed by Dr McCormick as a true record of events as far as he was concerned.²¹³⁷ The submission contained the following paragraphs:

“6. On 3 February, DETI officials were told that the decision agreed by both sides in OFMDFM was the most urgent available option, which would leave out consultation on the proposals and also the conventional consideration of draft regulations by the Assembly Committee.

7. On 3 February 2016, I put a submission to Minister Bell, via his political advisor, Mr Cairns. The subject matter of the submission was the seeking of Executive approval to the proposed closure of the RHI schemes, by means of the ‘urgent procedure’, i.e. to take forward formally the approach that we knew had been agreed.

8. Paragraph 1 of the submission notes that the Minister had previously agreed to close the schemes to new applicants, subject to the outcome of public consultation. The original draft goes on to say that: ‘however, **further to discussion with DFP and OFMdFM** (emphasis added by Mr Stewart), you have decided to proceed... without public consultation.’

9. In the final version of the submission, as presented to Minister Bell, the corresponding sentence in paragraph 1 read ‘**following further consideration** (emphasis added by Mr Stewart) you have decided to proceed...without public consultation.’

10. The revision of the draft was requested by Timothy Cairns. I challenged the request on the grounds that there had indeed been a consultation with OFMdFM. However, Mr Cairns continued to press for the change to be made, and I agreed. I assumed that the request had been made at the behest of Minister Bell, or at least with his knowledge. The submission was finalised and issued on that basis and the Urgent Procedure paper issued to the FM and dFM on 5 February. Paragraph 16 of that paper confirms that the recommendation was to proceed without consultation or a Committee stage.

11. The submission as finalised was wholly factual: the omission of the reference to the engagement with OFMdFM in no way altered the actions to be taken. ...

12. Some days later (almost certainly 10 February), I attended a meeting with Minister Bell, initially only with Ian McCrea MLA (the Minister’s Assembly Private

2135 DFE-228970

2136 WIT-12168 to WIT-12172

2137 WIT-12165 to WIT-12166; WIT-12170

Secretary) present. I did not seek a meeting with the Minister as a whistleblower. The Minister asked why the submission of 4 February made no reference to discussion with OFMDFM. I explained that in finalising the submission I had accepted some changes requested by Mr Cairns. The Minister indicated that he had not had prior knowledge of this, and expressed concern that it had been done without his knowledge. I explained that I had assumed that he was aware of, or had requested the change.

13. Mr Cairns and the Permanent Secretary (Andrew McCormick) joined the meeting. Minister Bell asked Mr Cairns for an explanation of what had happened. After a brief exchange, Dr McCormick and I were asked to leave the meeting, to allow for a private discussion between the Minister and Mr Cairns.

14. Shortly thereafter, the Minister left to attend another matter, and there was further discussion involving me, Dr McCormick and Mr Cairns. Mr Cairns expressed the view that I had misrepresented the position to the Minister. Through discussion (which was initially heated, but which ended amicably) agreement was reached that this was not the case. The Minister later returned and advised that he had dealt with the matter to his satisfaction elsewhere, and that it was closed.”²¹³⁸

40.20 In the course of giving oral evidence to the Inquiry, Mr Stewart confirmed the account provided in this contemporaneous submission.²¹³⁹ Mr Stewart continued:

“The decision was likely to be a matter of some controversy and sensitivity. For whatever reason, a conclusion appears to have been drawn that it was desirable to have Minister Bell being seen as the person solely responsible for taking that decision.”²¹⁴⁰

40.21 In his oral evidence to the Inquiry, Mr Stewart also said that his assumption was that Minister Bell had requested the change.²¹⁴¹ Furthermore, in his written evidence he rejected Minister Bell’s assertion that he had approached the Minister as a ‘whistle-blower’ on 10 February 2016 and said that their exchange had taken place during a standard Issues Meeting when he was asked why he had made the change. He then realised that Minister Bell had not been aware of the change and was obviously angry. When Mr Cairns arrived, it seems that he, Mr Cairns, told the Minister that he had been lied to by Mr Stewart, an allegation that Mr Cairns then withdrew.²¹⁴²

40.22 Mr Stewart described the amendment as “purely presentational”, but he also agreed that it effectively removed any reference to the involvement of the OFMDFM SpAds.²¹⁴³

40.23 This amendment of the draft was the only potential basis seen by the Inquiry for the “cleanse the record” allegation made by Minister Bell during his interview at the end of 2016 with Mr Nolan of the BBC.²¹⁴⁴

2138 WIT-12169 to WIT-12170

2139 TRA-11802

2140 TRA-11803

2141 TRA-11807

2142 WIT-27549 to WIT-27550

2143 TRA-11803; TRA-11813

2144 DFE-228977

40.24 From this episode, Dr McCormick drew a clear inference that the DUP SpAds “were focussed on where responsibility and blame would lie as well as on the substance of the actions needed.” He thought that, with hindsight and reconstruction, the motive had been to seek to build a narrative that the full responsibility for the scheme lay with Minister Bell.²¹⁴⁵

Minister Bell’s deteriorating relationships

40.25 Whatever the position may have been as to the motivation of Mr Cairns in making the alterations to the text of the draft submission of 3 February 2016 in order to remove reference to any involvement on the part of OFMDFM, or the motivation of any others aware of these changes being proposed or made, it is clear from evidence which the Inquiry has seen that from February/ March 2016 Minister Bell’s relationship with senior DUP members, including First Minister Foster, seriously deteriorated.

40.26 An email exchange on 8 March 2016 culminated in Mr Johnston requesting Minister Bell to “Come down and have a meeting and stop sending emails as if you never had a conversation with any of us in your life. Hardly very gracious jb. Let’s get sensible.”²¹⁴⁶ In a further email exchange commencing at 22.37 on 25 March 2016 and directed to First Minister Foster, Nigel Dodds MP and Party Chairman Lord Morrow, Minister Bell stated “It is no secret that I have been extremely hurt by the manner in which I have been treated which has made it very difficult for me to do my job” and he then set out a long list of complaints, which included an allegation of keeping the RHI scheme open contrary to his public decision (discussed in further detail later in this Report) and removal of the reference to OFMDFM from the submission, which is discussed above.

2145 TRA-16624

2146 IND-29554 to IND-29557

Findings

- 215.** The Inquiry does not consider the “whistle-blower” description given by Minister Bell to Mr Nolan of Minister Bell’s conversation with Mr Stewart about changes to the closure submission to be an appropriate description of the nature of the disclosure made by Mr Stewart.
- 216.** The closure submission abandoned the need for public consultation and reduced the time for closure. This represented a significant alteration to the course Minister Bell had previously approved. Although all reference to the fact that OFMDFM officials had been consulted was removed from the submission, the Inquiry finds that this amendment in itself did not result in any incorrect factual statement or any change to the substance of the submission as a whole.
- 217.** The Inquiry agrees with Mr Stewart that the amendments proposed by Mr Cairns of his own volition were designed to distance any other DUP Ministers from a decision that was bound to prove unpopular, even though the Urgent Procedure required the support of OFMDFM in any event.

Chapter 41 – Scheme closure

The decision to close the scheme

- 41.1 On 4 February Mr Stewart delivered the final draft of the closure submission to Minister Bell advising, as noted earlier, that the closure/suspension of the scheme and the associated DEL budgetary risk could qualify for the Urgent Procedure. The submission also noted that the intention was to lay the draft regulations to effect scheme closure, and table the relevant motion for Assembly approval of those regulations, at the earliest possible juncture without prior consideration and approval by the ETI Committee.²¹⁴⁷
- 41.2 The closure submission was duly signed off by the Minister and submitted to OFMDFM on Friday 5 February.²¹⁴⁸ An indication was received on the same date at about 5.25pm that the paper had been approved by OFMDFM which, pursuant to the Urgent Procedure, provided Executive authority for the Minister's decision.
- 41.3 DETI then issued a press release, signed by Minister Bell, confirming that the scheme would close at the earliest possible juncture, indicating that the draft regulations had been laid and the Assembly Business Committee would be asked to schedule the necessary debate for 15 February.²¹⁴⁹ That press release was to stimulate widespread dissatisfaction on behalf of potential applicants to the scheme, as well as those involved commercially in the renewable heat industry, and their Assembly representatives over the weekend.

Decision to provide further time in light of the adverse reaction

- 41.4 On the following Tuesday, Sir Malcolm McKibbin met with the First Minister and deputy First Minister and it appears that the view was then taken that the scheme should be left open until a date to be determined to allow for the “completion of applications already in process (to be further defined).”²¹⁵⁰
- 41.5 Later in the afternoon of 9 February a meeting of the Assembly's ETI Committee took place. Mr McGlone MLA chaired the meeting, which was attended by, amongst others, Conor Murphy MLA, Máirtín Ó Muilleoir MLA, Dr McCormick, Mr Stewart, Mr Mills and Mr Wightman.²¹⁵¹ The case for the proposed early suspension of the scheme was presented by Dr McCormick, who displayed a graph demonstrating the substantial surge in applications prior to the passage of the 2015 amending legislation in November. He pointed out that in that period of six weeks there had been some 900 applications, which almost equalled the number of applications that had been made from the introduction of the scheme in 2012 up to that point. He explained that such a development had to be seen in the context of an overall reduction in the funding available and confirmation by HMT that, for the financial year 2016-17 and thereafter, any overspending on the NI RHI scheme would have to be repaid out of the block grant. He forecast that the RHI expenditure for 2015-16 would be in the region of £30 million and estimated spend for 2016-17 would be in the region of £45 million. On that basis Dr McCormick thought

2147 TEO-02368 to TEO-02378

2148 TEO-00049 to TEO-00053

2149 TEO-03453; TRA-12521 to TRA-12522; DFE-226514 to DFE-226516

2150 TEO-00191

2151 WIT-134295 to WIT-134299

that the impact on the block grant could be in the region of £27 million to £33 million. He also informed the Committee that allegations of scheme abuse had been made and required to be investigated.²¹⁵²

- 41.6 The Committee was very critical of the announcement of the proposed suspension by the Minister late on a Friday afternoon and confirmed that, since the announcement, a flood of emails had been received from individuals and organisations complaining that loans had been taken out and equipment ordered on the assumption that the scheme would continue; and drawing attention to the fact that regulation 10 of the amending regulations of November 2015 had provided for the continuation of the amended tariffs until at least 31 March 2016.²¹⁵³ Mr Stewart confirmed that the Department had received similar representations, which the Minister had taken into account but weighed against the very substantial risk to the NI block expenditure.²¹⁵⁴
- 41.7 Mr Stewart does not seem to have drawn attention to the information received by Energy Efficiency Branch in January that Moy Park had instructed suppliers that the RHI scheme would close to new applicants at the end of March and that there was a need to ensure speed with applications.²¹⁵⁵ Mr Stewart told the Inquiry that that information had both surprised and dismayed him and Mr Mills.²¹⁵⁶
- 41.8 The Inquiry notes that, during the course of the meeting, Mr Mills again stated (erroneously) that the Minister had decided to prioritise the introduction of the domestic scheme over cost control for both schemes, adding that at that point:
- “The Northern Ireland scheme was under performing and therefore we were not using up what you might say was free money in terms of AME.”²¹⁵⁷
- 41.9 In answer to a question from the ETI Committee Chair as to whether Ofgem had ever suggested some sort of demand-led management or control, Dr McCormick said that would not have been part of their remit and that he did not think that had ever happened. That did not provide the Committee with the full picture since, as discussed earlier in this Report, Ofgem had in fact advised DETI in June 2012 to copy the budget controls due to be implemented in the GB RHI scheme in July 2012 – although the Inquiry notes that there is nothing to suggest that Dr McCormick would have been aware of that information at the time of his Committee appearance.²¹⁵⁸

Decision to postpone closure by two weeks

- 41.10 A postponement of the closure of the scheme for two weeks to 29 February was subsequently reached by “collective agreement”.²¹⁵⁹ That agreement seems to have been reached as a compromise with MLAs whose constituents were making impassioned representations as to the adverse financial consequences that closure would be likely to bring.

2152 WIT-10727 to WIT-10729

2153 WIT-10730 to WIT-10731

2154 WIT-10732

2155 IND-05881

2156 TRA-11828

2157 WIT-10749

2158 WIT-10757

2159 DFE-293257

- 41.11 Some witnesses, including Mr Cairns, Minister Foster, and to an extent Mr Johnston, referred to the postponement of scheme closure as the ‘price’ that the DUP would have to pay for Sinn Féin support for the necessary regulations, without which Assembly approval could not be obtained as every other political party opposed scheme closure at that point.²¹⁶⁰ Other witnesses did not support the reference to such a ‘price’. For his part, Sir Malcolm McKibbin believed there was a consensus from both parties to keep the scheme open for a “short period”.²¹⁶¹
- 41.12 Significantly, it does not appear that any cost estimate or financial analysis was provided at the time when this decision was taken of the potential cost of the two-week extension, as had been the case with the figures quoted in response to Minister Foster’s enquiry about a possible delay to the introduction of the tiered scheme in November 2015.²¹⁶² Nor does any attempt appear to have been made to provide any monetary estimate of the likely impact upon participants with significant financial commitments, jobs lost, cost to businesses, etc.
- 41.13 Subsequent investigation by the RHI Taskforce within DfE has revealed to the Inquiry that a further spike of 298 applications took place during the two week extension, of which some 280 were entitled to the medium biomass tariff in accordance with the 2015 amendment regulations. That gave rise to an additional expenditure of approximately £7.8 million to the end of March 2018 and totalled about £91.5 million over the 20 years of accreditations.²¹⁶³ It is of course accepted that such detail would not have been available when the decision to extend the period for two further weeks was made and the figures referred to above take no account of the impact of the amendment regulations passed in 2018. However, some further enquiry into the likely cost of accreditations secured within that two week period could certainly have been undertaken.

The suspension of the scheme from 29 February 2016

- 41.14 The Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2016 were made on 16 February 2016 and came into operation on the following day in accordance with regulation 1. Regulation 4 afforded DETI the power to issue a notice of suspension of the non-domestic NI RHI scheme when it did not have or was not likely to have sufficient funds available to it to meet the total costs of payments under the schemes. A similar power was provided in respect of the domestic scheme.²¹⁶⁴ A Notice of Suspension of both schemes was then issued to take effect from 29 February 2016.²¹⁶⁵ As it happens, at the time of writing, the scheme has never been re-opened to further applications.

2160 TRA-13261; TRA-13721 to TRA-13722; TRA-12967; TRA-14808 to TRA-14809

2161 TRA-16759 to TRA-16765

2162 TRA-13731 to TRA-13732

2163 WIT-23970

2164 LEG-00102 to LEG-00105

2165 DFE-128339 to DFE-128340

Findings

- 218.** After a decision had initially been made to close the NI RHI scheme to new applications as expeditiously as possible, a two week reprieve was provided. This was the result of a DUP and SF consensus and appears to have been motivated by a concern on the part of both parties about the need to be fair and about the risk of legal challenge to closure following a large number of representations received from persons who were planning to install renewable heat systems, some of whom had already paid for those systems. The 2016 regulations permitting scheme suspension were, in fact, opposed by many of the other parties in the Assembly at that time for similar reasons.
- 219.** The financial impact of the two week reprieve was not assessed at the time. However, even if it had been, the cost was something that had to be weighed in the balance in assessing the risk of legal challenge if the scheme was closed too abruptly. Any such challenge, if successful, might have led to the scheme remaining open for much longer.
- 220.** The initial decision to seek to close the scheme as expeditiously as possible was understandable in light of the financial risks which were then apparent. The later two-week delay in closure still resulted in an earlier closure of the scheme than if consultation and standard Assembly procedures had been followed before scheme closure, albeit it permitted a further significant spike in applications before scheme suspension.
- 221.** The Inquiry considers that the decision eventually reached to grant the two week reprieve was within the reasonable range of responses available to the Executive at the time, in light of the risk of legal challenge and strong public opposition to the decision to suspend the scheme.
- 222.** For reasons addressed earlier in this Report, DETI should not have found itself in the position where an urgent suspension of the scheme required further legislation.