



RENEWABLE HEAT  
INCENTIVE INQUIRY

**WIT-25831**

**RHI Inquiry**

Headline Building  
10-14 Victoria Street  
BELFAST, BT1 3GG

**T: 028 9040 8833**

**E: [general@rhiinquiry.org](mailto:general@rhiinquiry.org)**

**W: [www.rhiinquiry.org](http://www.rhiinquiry.org)**

Mr Sean Kerr  
DSO  
Room 3.2, Victoria Hall  
12 May Street  
Belfast  
BT1 4NL

By email to: [sean.kerr@finance-ni.gov.uk](mailto:sean.kerr@finance-ni.gov.uk)

15<sup>th</sup> November 2018

Dear Sir

**Re: The Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme**

**Provision of a Section 21 Notice requiring the provision of evidence in the form of a written statement**

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

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

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

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

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

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

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

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

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

In the event that you require or desire access to some documentation, not already in your possession, in order to assist you in preparing your statement, the Department for the Economy (DfE) can make arrangements to permit such access, at least in the first instance, and you should contact Terence Coyne at DfE, who is the Department's RHI Task Force Information Manager. Alternatively, please contact me. However, for the most part documents referred to in the attached notice are enclosed.

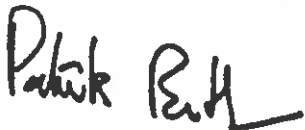
I also remind you, as before, of the restriction orders made by the Chairman of the RHI Inquiry, which affect how you may deal with this correspondence and its enclosures (which are also provided to you under a duty of confidentiality to the RHI Inquiry). You may, of course, share the correspondence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

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

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

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

Yours faithfully

A handwritten signature in black ink, appearing to read 'Patrick Butler', with a stylized flourish at the end.

**Patrick Butler**

Solicitor to the RHI Inquiry

02890408928

**SCHEDULE**  
**[No 220 of 2018]**

*Letter re appointment of Special Adviser*

1. The document at **WIT-26360/1** is a copy of a letter from Minister Bell to Dr Andrew McCormick, dated 20 May 2015, confirming the selection of Timothy Cairns as his Special Adviser. In his oral evidence to the Inquiry (at **TRA-12278 to TRA-12284**) Jonathan Bell stated that it was the Private Office in the Department which drafted this letter which was then given to him to sign. As to this, please address the following matters:
  - a. Please explain the process undertaken by officials within DETI and, to your knowledge, by the Minister himself or herself, in relation to the appointment of a Minister's Special Adviser?
  - b. To your knowledge or belief, who developed the process which was used in DETI?
  - c. To your knowledge or belief, was the process undertaken by officials within DETI in relation to the appointment of a Minister's Special Adviser the same as that in other Departments?
  - d. To your knowledge or belief, did the process which was adopted for the appointment of Timothy Cairns as Special Adviser differ from that used for the appointment of any previous or subsequent Special Adviser(s) in the Department? If so, please detail the differences, the reason(s) for those differences and the person(s) who directed the process to be different.
  - e. To your knowledge or belief, who drafted the 20 May 2015 letter from Jonathan Bell to Andrew McCormick and how, when and from whom

were they provided with, or did they come by, the statements of fact and statements of opinion contained within the letter?

- f. If a 'pro-forma' or 'template' letter was used as a basis for the 20 May 2015 letter, to your knowledge or belief, who created such a pro-forma or template letter? Was such a pro-forma or template letter used by other Departments (and, if so, when and from whom was it supplied to DETI Private Office)?

*Jonathan Bell's Email Accounts*

2. In his oral evidence to the Inquiry (at **TRA-12445**) Minister Bell made the following statement:

*"I took all my information – I said to the Inquiry yesterday – through the official processes. I didn't -. I used my official email and the private office."*

As to this, please detail each and every email address you were aware of Minister Bell using to transact departmental business.

3. Attached to this Notice is a sample of emails received in evidence by the Inquiry (**INQ-64006 to INQ-64011, INQ-66001 to INQ-66008 and INQ-66031**) showing departmental business, including Ministerial submissions, being sent to Minister Bell's private email account (**jonathanbell620@hotmail.com**) by departmental officials, including yourself, and by his special adviser. Further attached to this Notice are documents (**INQ-64012, INQ-62013, WIT-21908 to WIT-21910 and WIT 21911/2**) which appear to show Minister Bell transacting departmental business, including giving his approval to a Ministerial submission, using his private email account (**johnathanbell620@hotmail.com**). As to this, please address the following issues:

- a. Insofar as not addressed above, set out each and every email address you used to communicate with Minister Bell for the purpose of

transacting departmental business, including who gave you each of those email addresses, when was each given to you and whether any limitation was placed on the circumstances under which departmental business should be sent to that email address;

- b. Why did you send emails containing departmental business to Minister Bell's private email account rather than an NICS account?
- c. How often would you have sent emails containing departmental business to Minister Bell's private email account?
- d. To your knowledge or belief, did Minister Bell ever indicate to department officials or his special adviser that departmental business could or should be sent to his private email account?
- e. To your knowledge or belief, did Minister Bell ever tell departmental officials or his special adviser not to send departmental business to his private email account and, if so, to whom, when and how did he communicate such a direction?
- f. Insofar as not addressed above, to knowledge or belief, to what email address, if any, did Minister Bell direct departmental officials to send departmental business when wishing to communicate with him?
- g. To your knowledge or belief, how often would Minister Bell have used his private email account to respond to, or transact, departmental business?
- h. Would you also have sent emails in relation to departmental business to the private email accounts of other individuals (including the Minister's special advisers and/or senior officials)? If so, please provide as full details as you can.

4. In his oral evidence to the Inquiry (at **TRA-12332 to TRA-12333**) Jonathan Bell stated in relation to his holiday during the summer of 2015:

*“And before I left to go on holidays... I had a series of meetings with all my officials, and I had asked them was there anything urgent that needed to be dealt with before I went on holiday. I think I went on holiday, I think we've agreed now, on the 10th — it was either the 10th or the 11th. Um, and I had a series of meetings with my officials, and I asked them was there anything urgent that needed to be addressed before I went and we would get all of that material done, and we got all of that material done. So, when I stepped on the plane to go on holiday, my understanding was all the urgent business of the Department had been settled. And I'd left with my private secretary that I would check in when I got back to hotel's Wi-Fi for at least an hour every evening, and anything urgent that they needed to do they could send to me by email from the government email. I would bring my work phone; I wasn't going to carry it about with me all day — I was going to take a 10-day break or whatever it was, but every evening I would take a period and check, and if anything urgent or necessary had to be done, we would do it by telephone or by email.”*

See also Mr Bell's written evidence at **WIT-22627**. As to this:

- a. Please comment on Jonathan Bell's assertion that he had told you he could be contacted on holiday regarding urgent matters. If you accept that he did give such an indication, please set out as fully as you can the details of this.
- b. Please also describe in detail whether any urgent matters were brought to your attention during the Minister's holiday; and, if so, what the urgent matter related to, whether you contacted the Minister in relation to the urgent matter and, if not, why not.

Summer 2015

5. In his oral evidence to the Inquiry (at **TRA-12734**), when asked about the 8 July 2015 submission to Minister Bell which had been marked “*Urgent*”, Timothy Cairns stated:

*“... perhaps the demarcation of urgent maybe isn’t as urgent as what officials might say it is. Certainly, that was in my mind.*

...

*Well, that would’ve been in my mind. I think I say in my evidence officials often used “desk immediate” and “urgent” at times when it may well be inappropriate. By way of an example, a desk immediate sub that the Minister and special adviser gets every day are newspaper clippings, so a —. That’s desk immediate, so the Minister should deal with this before he deals with anything else. Now, that’s clearly not a desk immediate submission, so sometimes these demarcations weren’t just quite as used with the — weren’t quite as used with the precision as you might expect.”*

See also Mr Cairns’ written evidence at **WIT-20204**. As to this, please address the following matters:

- a. Set out your understanding of what was meant by the demarcation of ‘urgent’ or ‘desk immediate’ on documents or material being submitted to the Minister, including (insofar as you can) (i) the level of urgency required for each such classification; and (ii) how quickly you would expect a submission bearing each such classification to be read and approved.
- b. Would you agree that there was an inconsistency in the way in which such classifications were used on submissions? Please give reasons for your response.



- c. Were you given any guidance on the use of such demarcations within DETI or the wider NICS?
  - d. Would you agree that these classifications were "*often abused*" (as Mr Cairns' suggests)? Please give reasons for your answer.
  - e. What steps were taken, or arrangements made, if any, within the DETI Private Office during the period of Minister Bell's tenure to try to ascertain the genuine level of urgency of particular submissions?
6. In his oral evidence to the Inquiry (at **TRA-12861 to TRA-12863**) Timothy Cairns said there was a build-up of Ministerial submissions while Minister Bell was on holidays during the summer of 2015; and that you and he agreed it was "*unsatisfactory*" that Minister Bell was not present for periods at this time.

Please provide your comments on this evidence by Timothy Cairns including, but not limited to, describing (a) whether you agree with Mr Cairns' evidence and (b) if so, any action you took to bring the backlog of submissions to Minister Bell's attention or any other person's attention.

7. In his written and oral evidence to the Inquiry, Mr Cairns has also indicated that he talked the Minister through the 8 July 2015 submission shortly before the Minister went on holiday in July 2015 and a further time at or about the end of July 2015 before the Minister went to his holiday house in Portstewart (see, for instance, **WIT-20071; WIT-20204 to WIT-20206; and TRA-12741 to TRA-12750**). This appears to be at odds with Minister Bell's account (see **WIT-22627/8, TRA-12353 to TRA-12357 and TRA-12403 to TRA-12406**). As to this:
- a. Are you in a position to offer any evidence as to whether or not Mr Cairns discussed the 8 July 2015 submission in detail with Mr Bell on either of the two occasions he so alleges? If so, please provide as full details as possible.

- b. In the course of your response, please also express your view, from your experience, as to whether Mr Cairns sitting beside Minister Bell in his office going through submissions in detail with him was "*the usual way in which Mr Bell was briefed*" (as Mr Cairns appears to suggest; but which Mr Bell appears to deny: see, for example, **TRA-12356**).

*'Recall' of Ministerial Approval on 19 January 2016*

8. Attached to this Notice are a series of emails sent between 19 January 2016 and 22 January 2016 regarding two Ministerial submissions relating to RHI and NIRO, respectively, sent to the DETI Private Office on 19 January 2016 (**INQ-15001, DFE-424268 to DFE-424287, INQ-15002, INQ-60002 to INQ-60005, INQ-15023, INQ-60042, INQ-60166, INQ-15084 and DFE-225180**). The document **INQ-60167** is an email from Timothy Cairns to you on 22 January 2016 stating "*Hold the subs on niro and RHI*". Please describe in detail your account of this incident and any related exchanges. Your response should include, but should not be limited to, such details as you can provide of the following of the issues:
  - a. How Minister Bell came to approve the submission;
  - b. What you took Timothy Cairns to mean when he said "*Hold the subs*";
  - c. Whether you had ever previously been (or were subsequently) directed or requested to do something similar and whether or not this was unusual;
  - d. Why Timothy Cairns was asking you to hold the submissions and how that came about;
  - e. Who else (if anyone) knew, at the time, that you had been requested to hold the submissions;
  - f. Whether, and if so when and how, Minister Bell was informed that his approval had been recalled; and

- g. What further steps, if any, were taken as a result of the approval of the submissions having been recalled.

## *General*

9. Please provide any further evidence you can give as to Private Office practice generally, or in DETI at times material to the Inquiry's investigation, which is relevant to issues which (to your knowledge) have been addressed in the course of the Inquiry's hearings. (Relevant topics might include: the taking of notes or minutes of Ministerial meetings; leaking and/or improper disclosure of information; and/or communication and relationships between Ministers, Special Advisers and senior civil servants). Please also feel free to provide the Inquiry Panel with any suggestions you may have as to possible improvements in practice and/or procedure for the future.
10. To the extent (recognising that you are not an enhanced participant in the Inquiry) that you are aware of the evidence of any other witness or participant contradicting your evidence on a significant issue, or being materially incomplete in respect of any significant issue, you should take this opportunity to address those issues by way of further written evidence (to the extent that the said issues have not already been addressed in your existing oral and written evidence). In so doing, the Inquiry would be grateful if you could familiarise yourself with the oral evidence of both Timothy Cairns and Jonathan Bell in particular.
11. Please set out any further significant evidence you have or of which you are aware, having regard to the Inquiry's Terms of Reference, which has not been addressed either adequately or at all in your previous written or oral evidence.

**NOTE:**

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

**INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME****RHI REF: Notice 220 of 2018****DATE:**

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**Witness Statement of:**

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**I, Seán Kerr, will say as follows: -*****Letter re appointment of Special Adviser***

1. The document at **WIT-26360/1** is a copy of a letter from Minister Bell to Dr Andrew McCormick, dated 20 May 2015, confirming the selection of Timothy Cairns as his Special Adviser. In his oral evidence to the Inquiry (at **TRA-12278** to **TRA-12284**) Jonathan Bell stated that it was the Private Office in the Department which drafted this letter which was then given to him to sign. As to this, please address the following matters:

- a. Please explain the process undertaken by officials within DETI and, to your knowledge, by the Minister himself or herself, in relation to the appointment of a Minister's Special Adviser?

**I have no specific knowledge of the process which officials in DETI followed in relation to the appointment of a Minister's Special Adviser.**

**I have no knowledge of the process of selecting a Special Adviser or the Minister's role in that – Mr Cairns had been selected as Special Adviser and was in post when I was appointed as Private Secretary on 12 May 2015.**



However, I was aware that paperwork had to be completed to formalise the appointment and to ensure that the Special Adviser received his salary. I had limited involvement in the relevant paperwork that was completed to formalise his appointment as explained below at response to question (e).

- b. To your knowledge or belief, who developed the process which was used in DETI?

**I have no knowledge of who developed the process in DETI. I only took up my post in DETI on 12 May 2015.**

- c. To your knowledge or belief, was the process undertaken by officials within DETI in relation to the appointment of a Minister's Special Adviser the same as that in other Departments?

**I have no direct knowledge of this but I believe the process used in DETI was, at least, very similar to that in other Departments.**

- d. To your knowledge or belief, did the process which was adopted for the appointment of Timothy Cairns as Special Adviser differ from that used for the appointment of any previous or subsequent Special Adviser(s) in the Department? If so, please detail the differences, the reason(s) for those differences and the person(s) who directed the process to be different.

**I have no knowledge of this. I did not work in DETI during the time that any previous or subsequent Special Adviser was appointed.**

- e. To your knowledge or belief, who drafted the 20 May 2015 letter from Jonathan Bell to Andrew McCormick and how, when and from whom were they provided with, or did they come by, the statements of fact and statements of opinion contained within the letter?



I do not know who drafted the original letter. To the best of my recollection, I was provided with a draft of the letter by DETI HR. I base this assumption that the letter must have come from DETI HR on the grounds that completing the formalities of appointing Mr Cairns was a HR issue. I was given a skeleton draft and was advised at the time to obtain some biographical information from Mr Cairns on his employment history and skills. He provided this and I believe I may have added this in to the draft before passing it to the Minister. I know the Minister read the draft as the salary figure contained in the final letter was at the Minister's specific request.

- f. If a 'pro-forma' or 'template' letter was used as a basis for the 20 May 2015 letter, to your knowledge or belief, who created such a pro-forma or template letter? Was such a pro-forma or template letter used by other Departments (and, if so, when and from whom was it supplied to DETI Private Office)?

I have no knowledge of whether this was a 'proforma' or 'template' letter, or who created it or whether it is used by other Departments.

#### *Jonathan Bell's Email Accounts*

2. In his oral evidence to the Inquiry (at TRA-12445) Minister Bell made the following statement:

*"I took all my information – I said to the Inquiry yesterday – through the official processes. I didn't -. I used my official email and the private office."*



As to this, please detail each and every email address you were aware of Minister Bell using to transact departmental business.

**As with all Ministerial Private Offices, there was a general account ([private.office@detini.gov.uk](mailto:private.office@detini.gov.uk)) which was monitored by Private Office staff. This address was a general postbox and was used by departmental officials for sending all official business to the Minister. I could access this mailbox from my laptop but not remotely from mobile devices. The Minister and Special Adviser had no direct access to this mailbox at any time. In addition, I had my personal government e-mail address ([sean.kerr@detini.gov.uk](mailto:sean.kerr@detini.gov.uk)) which was accessed exclusively by me and would have departmental e-mails for my attention, copies of e-mails which officials had sent to the general mailbox or external e-mails from the public as this address was printed on the Minister's business card. When departmental officials sent an e-mail to the general account they would almost always copy it to my personal e-mail account so that, if required, it could be brought to the attention of the Adviser or Minister at times when we were out of the office.**

**To the best of my knowledge, Minister Bell only had access to, and used, his [jonathanbell620@hotmail.com](mailto:jonathanbell620@hotmail.com) address when he needed to conduct business by e-mail.**

- 3. Attached to this Notice is a sample of emails received in evidence by the Inquiry (INQ-64006 to INQ-64011, INQ-66001 to INQ-66008 and INQ-66031) showing departmental business, including Ministerial submissions, being sent to Minister Bell's private email account ([jonathanbell620@hotmail.com](mailto:jonathanbell620@hotmail.com)) by departmental officials, including yourself, and by his special adviser. Further attached to this Notice are documents (INQ-64012, INQ-62013, WIT-21908 to WIT-21910 and WIT 21911/2) which appear to show Minister Bell transacting departmental business, including giving his approval to a Ministerial**





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submission, using his private email account ([johnathanbell620@hotmail.com](mailto:johnathanbell620@hotmail.com)).

As to this, please address the following issues:

- a. Insofar as not addressed above, set out each and every email address you used to communicate with Minister Bell for the purpose of transacting departmental business, including who gave you each of those email addresses, when was each given to you and whether any limitation was placed on the circumstances under which departmental business should be sent to that email address;

**The only transactional e-mail address I had for communicating directly with the Minister was his Hotmail address. This was the address he used in OFMDFM, prior to taking up post in DETI, use of which is borne out by INQ-66001. I was given this address by Mr Bell in February 2013 when I worked as his Private Secretary in OFMDFM, and used it as had his previous Private Secretary. No limitation was ever given to me on the use of this address. To my recollection, I had no other way to contact him by e-mail.**

- a. Why did you send emails containing departmental business to Minister Bell's private email account rather than an NICS account?

**I used this e-mail address to contact the Minister as he had instructed me to use it. I do not recall whether the Minister had his own NICS account and he had no access to the accounts described in 2 above.**

- b. How often would you have sent emails containing departmental business to Minister Bell's private email account?

**I cannot be exact on this. I used this account frequently but probably not on a daily basis. The vast majority of Departmental business was conducted via hardcopy papers.**

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- c. To your knowledge or belief, did Minister Bell ever indicate to department officials or his special adviser that departmental business could or should be sent to his private email account?

**As stated previously, I do not recall whether Minister Bell had direct access to an NICS account. He therefore instructed his Adviser to use this account. Most Departmental officials would not have used this account as they channelled their communications through the Private Office or myself and I have no knowledge that Minister Bell ever instructed officials to use this account.**

- d. To your knowledge or belief, did Minister Bell ever tell departmental officials or his special adviser not to send departmental business to his private email account and, if so, to whom, when and how did he communicate such a direction?

**I have no knowledge of this. See c above.**

- e. Insofar as not addressed above, to knowledge or belief, to what email address, if any, did Minister Bell direct departmental officials to send departmental business when wishing to communicate with him?

**I have no knowledge of Minister Bell directing officials to use any e-mail address other than those outlined in 2 above.**

- g. To your knowledge or belief, how often would Minister Bell have used his private email account to respond to, or transact, departmental business?

**I have no recollection of the frequency with which he used this, save to say that it was the address from which he corresponded with me.**

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- h. Would you also have sent emails in relation to departmental business to the private email accounts of other individuals (including the Minister's special advisers and/or senior officials)? If so, please provide as full details as you can.

**I would, on extremely rare occasions, have e-mailed the special adviser to his Hotmail and/or DUP account, if he didn't have access to his DETI account and e-mail contact was necessary.**

4. In his oral evidence to the Inquiry (at TRA-12332 to TRA-12333) Jonathan Bell stated in relation to his holiday during the summer of 2015:

*"And before I left to go on holidays... I had a series of meetings with all my officials, and I had asked them was there anything urgent that needed to be dealt with before I went on holiday. I think I went on holiday, I think we've agreed now, on the 10th — it was either the 10th or the 11th. Um, and I had a series of meetings with my officials, and I asked them was there anything urgent that needed to be addressed before I went and we would get all of that material done, and we got all of that material done. So, when I stepped on the plane to go on holiday, my understanding was all the urgent business of the Department had been settled. And I'd left with my private secretary that I would check in when I got back to hotel's Wi-Fi for at least an hour every evening, and anything urgent that they needed to do they could send to me by email from the government email. I would bring my work phone; I wasn't going to carry it about with me all day — I was going to take a 10-day break or whatever it was, but every evening I would take a period and check, and if anything urgent or necessary had to be done, we would do it by telephone or by email."*

**See also Mr Bell's written evidence at WIT-22627. As to this:**

- a. Please comment on Jonathan Bell's assertion that he had told you he could be contacted on holiday regarding urgent matters. If you accept



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that he did give such an indication, please set out as fully as you can the details of this.

**I have no specific memory of this assertion being made and I do not recall contacting him when he was on holiday.**

- b. Please also describe in detail whether any urgent matters were brought to your attention during the Minister's holiday; and, if so, what the urgent matter related to, whether you contacted the Minister in relation to the urgent matter and, if not, why not.

**I am unable to confirm whether any urgent matters were received during that period as I no longer have access to DETI material. Additionally, I was on leave for three weeks (from 23 July until 13 August) during that period and would not have been in a position to contact the Minister, even if urgent matters were sent to the Private Office.**

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5. In his oral evidence to the Inquiry (at TRA-12734), when asked about the 8 July 2015 submission to Minister Bell which had been marked "Urgent", Timothy Cairns stated:

*"... perhaps the demarcation of urgent maybe isn't as urgent as what officials might say it is. Certainly, that was in my mind.*

...

*Well, that would've been in my mind. I think I say in my evidence officials often used "desk immediate" and "urgent" at times when it may well be inappropriate. By way of an example, a desk immediate sub that the Minister and special adviser gets every day are newspaper clippings, so a —. That's desk immediate, so the Minister should deal with this before he deals with anything else. Now, that's clearly not a desk immediate submission, so sometimes these demarcations weren't just quite as*



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*used with the — weren't quite as used with the precision as you might expect."*

See also Mr Cairns' written evidence at WIT-20204. As to this, please address the following matters:

- a. Set out your understanding of what was meant by the demarcation of 'urgent' or 'desk immediate' on documents or material being submitted to the Minister, including (insofar as you can) (i) the level of urgency required for each such classification; and (ii) how quickly you would expect a submission bearing each such classification to be read and approved.

**I understood 'Immediate' or 'desk immediate' should only be used where a decision is required, or a response needs to be issued, within 24 hours. 'Urgent' should be used for cases requiring clearance within 3 working days. All other cases should be marked as 'Routine'. I would expect that, unless the submission was contentious or politically sensitive, it would be cleared within these timescales.**

- b. Would you agree that there was an inconsistency in the way in which such classifications were used on submissions? Please give reasons for your response.

**I cannot comment on this as I merely passed the communications on and did not question the classification which officials used. I accepted their judgment on such matters and prioritised the cases as per their classification.**

- c. Were you given any guidance on the use of such demarcations within DETI or the wider NICS?



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**I do not recall formal guidance. I worked on the basis set out above which was probably by convention rather than rule.**

- d. Would you agree that these classifications were "*often abused*" (as Mr Cairns' suggests)? Please give reasons for your answer.

**See b above. I was aware that Mr Cairns felt this to be the case as he told me so.**

- e. What steps were taken, or arrangements made, if any, within the DETI Private Office during the period of Minister Bell's tenure to try to ascertain the genuine level of urgency of particular submissions?

**None that I can recall. The issue was mentioned by Mr Cairns but never to the point where I felt a need for Private Office to question officials on their classifications.**

6. In his oral evidence to the Inquiry (at TRA-12861 to TRA-12863) Timothy Cairns said there was a build-up of Ministerial submissions while Minister Bell was on holidays during the summer of 2015; and that you and he agreed it was "*unsatisfactory*" that Minister Bell was not present for periods at this time.

Please provide your comments on this evidence by Timothy Cairns including, but not limited to, describing (a) whether you agree with Mr Cairns' evidence and (b) if so, any action you took to bring the backlog of submissions to Minister Bell's attention or any other person's attention.

**Clearly, any long absence by a Minister will lead to a build up of papers. Although I do not have figures for the number of submissions and correspondence cases received during this period, I imagine that I would have felt a sense of frustration that a backlog had developed and would therefore have agreed with Mr Cairns at that time. I would have raised the issue with the Adviser.**



7. In his written and oral evidence to the Inquiry, Mr Cairns has also indicated that he talked the Minister through the 8 July 2015 submission shortly before the Minister went on holiday in July 2015 and a further time at or about the end of July 2015 before the Minister went to his holiday house in Portstewart (see, for instance, WIT-20071; WIT-20204 to WIT-20206; and TRA-12741 to TRA-12750). This appears to be at odds with Minister Bell's account (see WIT-22627/8, TRA-12353 to TRA-12357 and TRA-12403 to TRA-12406). As to this:

- a. Are you in a position to offer any evidence as to whether or not Mr Cairns discussed the 8 July 2015 submission in detail with Mr Bell on either of the two occasions he so alleges? If so, please provide as full details as possible.

**I have no direct knowledge of this. Such discussions were sometimes private (if there was a party political element to them) or at times happened without me present.**

- b. In the course of your response, please also express your view, from your experience, as to whether Mr Cairns sitting beside Minister Bell in his office going through submissions in detail with him was "*the usual way in which Mr Bell was briefed*" (as Mr Cairns appears to suggest; but which Mr Bell appears to deny: see, for example, TRA-12356).

**The majority of submissions required no formal briefing or discussion with the Minister. If cleared by the Adviser, these were passed directly to the Minister who would clear them alone. However, where the Adviser thought that a submission was for example of such technical complexity or political sensitivity that he needed to speak to or brief the Minister about it before a decision was reached, then Mr Cairns sitting with Minister Bell was how this was done. Such briefings would have taken place in one of the Minister's offices (Netherleigh or Parliament Buildings) or in the Ministerial car during long journeys.**



*'Recall' of Ministerial Approval on 19 January 2016*

8. Attached to this Notice are a series of emails sent between 19 January 2016 and 22 January 2016 regarding two Ministerial submissions relating to RHI and NIRO, respectively, sent to the DETI Private Office on 19 January 2016 (INQ-15001, DFE-424268 to DFE-424287, INQ-15002, INQ-60002 to INQ-60005, INQ-15023, INQ-60042, INQ-60166, INQ-15084 and DFE-225180). The document INQ-60167 is an email from Timothy Cairns to you on 22 January 2016 stating "*Hold the subs on niro and RHI*". Please describe in detail your account of this incident and any related exchanges. Your response should include, but should not be limited to, such details as you can provide of the following of the issues:

a. How Minister Bell came to approve the submission;

**I do not remember the specifics of this submission but I have no reason to believe that it was not approved in any other way than was normal. If the Special Adviser was content, he returned the submission to me. I would have given it to the Minister who, if satisfied, would have signed off his decision and returned the papers to me for processing.**

b. What you took Timothy Cairns to mean when he said "*Hold the subs*";

**I took this to mean that the submissions were not cleared, that no decision notices should issue on them, and they should be either held by me or returned to him.**

c. Whether you had ever previously been (or were subsequently) directed or requested to do something similar and whether or not this was unusual;

**While not frequent, it was not unusual for such a direction to be**





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**given to me by the Adviser in the course of him considering a submission. Reasons for doing so may have included the need to gather further information from officials, the need to consult others or the need to brief the Minister. What was unusual was for this direction to have come after the Minister had also cleared the submission. I do not recall another instance of this happening when I worked with Minister Bell, or indeed when I worked for any other Minister.**

- d. Why Timothy Cairns was asking you to hold the submissions and how that came about;**

**I do not know specifically why I was asked to hold the submissions. No reason was given to me on the e-mail I received.**

- e. Who else (if anyone) knew, at the time, that you had been requested to hold the submissions;**

**When I received clearance on any submissions from the Minister, I passed them back to members of the Private Office staff who processed the Minister's decision and notified the Departmental officials through a computer programme called Knowledge Network. From documentation now made available to me, I know that I had already passed these submissions to the team for processing. As such, I can confirm that I asked the Assistant Private Secretary to not let the submissions get processed and ensure no decision was issued.**

- f. Whether, and if so when and how, Minister Bell was informed that his approval had been recalled; and**

**I do not know whether the Special Adviser or I advised the Minister, although I can only assume that one of us did.**

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- g. What further steps, if any, were taken as a result of the approval of the submissions having been recalled.

**No further steps were taken by me in relation to this matter.**

*General*

9. Please provide any further evidence you can give as to Private Office practice generally, or in DETI at times material to the Inquiry's investigation, which is relevant to issues which (to your knowledge) have been addressed in the course of the Inquiry's hearings. (Relevant topics might include: the taking of notes or minutes of Ministerial meetings; leaking and/or improper disclosure of information; and/or communication and relationships between Ministers, Special Advisers and senior civil servants). Please also feel free to provide the Inquiry Panel with any suggestions you may have as to possible improvements in practice and/or procedure for the future.

**I have nothing further to add.**

10. To the extent (recognising that you are not an enhanced participant in the Inquiry) that you are aware of the evidence of any other witness or participant contradicting your evidence on a significant issue, or being materially incomplete in respect of any significant issue, you should take this opportunity to address those issues by way of further written evidence (to the extent that the said issues have not already been addressed in your existing oral and written evidence). In so doing, the Inquiry would be grateful if you could familiarise yourself with the oral evidence of both Timothy Cairns and Jonathan Bell in particular.

**The Inquiry has asked for any comments I may have on Mr Bell's witness statement (Notice 216 of 2018) dated 21 November 2016 and there are a few points of clarification I would make.**



In paragraph 1 of the statement, Mr Bell states “..my understanding is that all emails would go through the TRIM system.” and “My official email address when I was Minister was sean.kerr@detini.gov.uk.”

For the purposes of clarity I would explain that the TRIM system was an information storage and retrieval system only, in which documents (including e-mails) could be stored. It was not linked to the e-mail system nor did e-mails come to us through this system.

The sean.kerr@detini.gov.uk address was my NICS e-mail account, not the Minister’s. He had no access to this mailbox from any device nor could he send e-mails from this address. It was given as the contact e-mail address on the Minister’s business card so that e-mails were routed through me rather than directly to the Minister. This was done to ensure that the Private Office had sight of all official correspondence received.

In paragraph 5b Mr Bell states “Departmental business ought not to have gone to my personal account”. As explained elsewhere in my response, I do not believe that he had access to an NICS e-mail account and therefore I had no government e-mail address at which to contact him.

11. Please set out any further significant evidence you have or of which you are aware, having regard to the Inquiry’s Terms of Reference, which has not been addressed either adequately or at all in your previous written or oral evidence.

**I have nothing further to add.**

**Statement of Truth**

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

Signed: 

Dated: 26/11/18