

CLOSING SUBMISSION ON BEHALF OF STEPHEN BRIMSTONE**Introduction**

1. Mr Brimstone was employed as a DUP Special Adviser in various departments from June 2008 until December 2016. From May 2015 to September 2015 he was Special Adviser to Junior Minister, Michelle McIlveen and from September 2015 to December 2016 Special Adviser to the First Minister, initially Peter Robinson and, from January 2016, Arlene Foster.
2. Mr Brimstone was not involved directly in the RHI Scheme as a result of his work as Special Adviser except insofar as he became involved by virtue of having been sent information about the Scheme during a critical time period, Summer 2015. However, Mr Brimstone has a direct involvement in a personal capacity in that he is a recipient under the Non-Domestic RHI Scheme. That involvement has been the subject of particular scrutiny by the Inquiry.
3. This submission intends to deal with the main issues affecting Mr Brimstone. It is not intended to be exhaustive and, in line with the Inquiry guidance, it does not intend to rehearse the evidence.
4. As Mr Aiken explained, Mr Brimstone's installation was used as a 'case study' to examine Ofgem's practices as Administrator of the Scheme, its interpretation of the legislation, whether that interpretation was in line with the policy intent, and its auditing procedures. Ofgem's work in relation to Mr Brimstone's installation (of which Mr Brimstone was largely unaware until provided with information by the Inquiry prior to and during his oral evidence sessions) will not be examined in any depth in this submission. Similarly, Mr Brimstone's contribution to the general evidence about the appointment, role, and discipline of Special Advisers is not rehearsed.
5. Rather, the submission focuses on areas where there are issues of dispute or examination by the Inquiry of the appropriateness, or otherwise, of Mr Brimstone's actions vis-à-vis the RHI Scheme.
6. Mr Brimstone gave oral evidence to the Inquiry on days 94 and 95 - 26 and 27 September 2018, and provided two written witness statements dated 31 May 2017 and 5 September 2018.

Mr Brimstone's application

7. Stephen Brimstone installed a biomass boiler in 2015 to heat an agricultural shed on his property and his domestic dwelling house. The agricultural shed had previously been heated by gas. His domestic dwelling had had a biomass boiler installed in 2007 but this was requiring an increasing amount of maintenance.

8. Mr Brimstone applied to Ofgem in August 2015 to the Non-Domestic RHI Scheme and his installation was accredited in April 2016. As a result of an Ofgem investigation into his installation following a complaint, he did not begin to receive payments under the Scheme until September 2016, when the investigation was complete. The investigation found his installation to be compliant with the Scheme. The installation was subsequently the subject of a second complaint resulting in a second audit. Again, this investigation deemed his installation to be compliant.
9. Mr Brimstone's installation therefore properly fell, and continues to fall, within the ambit of the Non-Domestic RHI Scheme (**TRA 13883**). The load factor of Mr Brimstone's installation is less than 20% which equates to an average running time of approximately 4 hours per day. There is therefore no suggestion that Mr Brimstone ran or runs his boiler over and above what is required to heat the premises, solely to receive RHI income (**TRA 13982**). Indeed, Mr Brimstone gave evidence that he had taken the step of installing a large buffer tank to ensure efficiency of the system (**TRA 13934**).
10. The issue that Mr Brimstone's installation brought into focus for the Inquiry is whether an application with limited non-domestic use should be on the Non-Domestic Scheme. Ofgem's interpretation (which was the same as the interpretation applied under the GB Scheme until legislative changes were made) was that even if a third party used part of the property for non-domestic use for only one day a year that would render the installation eligible for the Non-Domestic Scheme (**TRA 14004**).
11. Mr Brimstone was asked whether he considered at the time if this could have been the policy intent and therefore whether, given his position within Government, he was in a position to highlight that this interpretation of a 'non-domestic' scheme was "*a bit odd*" (**TRA 13991**). Mr Brimstone explained that his understanding of the Scheme, however, was that it was in line with what was happening in GB, and that in order to reach the designated EU target, the Scheme was designed to encourage people away from fossil fuels and the Non-Domestic Scheme was designed to achieve that (**TRA 13992**). It was not possible to heat a non-domestic building such as his shed under the domestic scheme **TRA 13993**).
12. Mr Brimstone was informed at an impromptu meeting with John Robinson and Timothy Johnston in Stormont Castle in October 2016, that there had been a complaint and investigation into his boiler, but that the complaint was now closed. Mr Brimstone did not believe that his being told about this complaint was inappropriate (**TRA 14045**) and did not know until the week he gave evidence that there had been a second complaint and investigation (**TRA 14055**). He gave evidence

that while his flock number was reactivated in the months following his having been made aware of a complaint, this was not done to fortify the agricultural use aspect of his application but rather was due to a change in his circumstances. He had by then left his post as Special Adviser, and his young sons were keen to have their own flock number to rear lambs for sale (TRA 14048-9).

Perceived/Potential Conflict of Interest

13. Mr Brimstone accepts that it was inappropriate, in light of his application, for him to have given advice or been involved in any way with RHI Scheme policy. As such, he has given evidence that he regrets that he did not withdraw from the initial conversation with Timothy Cairns and Dr Crawford that led to him being sent the 8 July 2015 submission by Mr Cairns (TRA 13940). He also regrets his involvement thereafter in terms of replying to the email and failing to indicate to Mr Cairns and Dr Crawford that he was intending to apply to the Scheme (TRA 14010). Indeed, it is Mr Brimstone's evidence that in the past he was pedantic about perceived conflicts and it was his practice to approach Permanent Secretaries about invitations to events and offers of tickets etc. (TRA 14013).
14. Mr Brimstone explained that he had separated out in his mind his professional role in terms of looking at the submission and providing help to a colleague, with his personal position as a person intending to apply to the Scheme (TRA 14020-1). He stated there was simply no red flag raised in his mind that he should not be dealing with the issue (TRA 14023).
15. In any event, having received the submission from Mr Cairns, Mr Brimstone replied stating: "*hard to argue with in light of the suggested changes reflecting GB position*" (IND 25559) i.e. his brief advice, was that the submission should be proceeded with without amendment.
16. Mr Brimstone also gave evidence that he did not inform anyone outside of government about the proposed changes (TRA 14025), and there has been no suggestion made to the Inquiry by any other witness that he did so. Further, in terms of his own installation, when he received the submission, he had already planned to have his own boiler installed during the first week of August, and, not realising at that time there was a series of things that needed to be done between installation and application (TRA 14023), he was not concerned that his installation could be affected by changes that were due to be implemented in October 2015.
17. In January 2016, shortly after Mrs Foster took up post as First Minister, and in the context of discussion about Scheme closure and the timing

of that, Mr Brimstone's evidence is that he informed Mrs Foster orally that he was an applicant to the Scheme (**TRA 14028**).

18. In or around the end of January, Mr Brimstone was sent emails about RHI (**WIT 21682 and WIT 21763**). He did not respond due to the pressures of his own workload. Mr Brimstone was also recorded as having been in attendance on 9 February 2016 at a meeting between OFMdfM and the Head of the Civil Service where RHI was the first item on the agenda. Mr Brimstone has no recollection of this meeting whatsoever (**TRA 14041**). However, he was unequivocal that he should have been clear upon seeing or hearing any mention of RHI that he had declared his interest to the Minister and could not be involved (**TRA 14038**).

Conclusion

19. Mr Brimstone was involved by virtue of having been, in his words, "*in the wrong place at the wrong time*" (**TRA 14014**) and therefore party to a discussion between Mr Cairns and Dr Crawford resulting in him being sent the 8 July 2015 submission. He accepts that there was a potential for a conflict of interest to arise as a result of his intention to install a biomass boiler and apply to the Scheme.
20. However, it is submitted there is no evidence to suggest that he modified his plans or otherwise benefitted himself or anyone else as a result of having received that submission. Mr Brimstone further accepts he missed other opportunities to step back from communications about the Scheme to avoid any perceived conflict of interest. He regrets not having done so.
21. In relation to Mr Brimstone's own installation, it bears repeating that two audits have found that Mr Brimstone's installation is compliant. Nevertheless, Mr Brimstone regrets ever having applied to the Scheme.

Julie Ellison BL

27 November 2018