

THE RENEWABLE HEAT INCENTIVE INQUIRY

Written Submissions on behalf of Timothy Cairns

1. Throughout these submissions initials are used in place of full names¹. Paragraphs 2- 14 cover chronologically the notable events involving TC from June 2012 to the end of February 2016. A brief summary of the evidence and comments are made in respect of each notable event. Paragraphs 15-23 make some key points from same. Paragraphs 24-28 consider the relevant aspects of the Terms of Reference. Finally, there is a brief conclusion.

TC's appointment as SpAd

June 2012 – June 2013

2. Having been involved in the DUP for a number of years to include being Head of Policy, TC was first appointed as a Special Adviser in June 2012 to Junior Minister Bell within OFMDFM. TC was informed of his appointment by PR as a replacement for Gavin Robinson and given 3 or 4 days' notice. He was not aware of there being other applicants for this role and the Minister to whom he was appointed was not present at the time.
3. Pursuant to s8 of the *Civil Service (Special Advisers) Act (Northern Ireland) 2013*, a code for appointments was laid before the Assembly on 20th August 2013, post-dating the appointment at para 2 above. S8(2) of the Act states that any appointment shall be subject to the code. S8(5) states the appointing minister must have regard to the code.

May 2015

4. TC's evidence as to how he came to be appointed in May 2015 was that PR was responsible for his appointment. It appears (i) the minister (JB) to whom TC was to be attached did not select or appoint TC, (ii) there was no competition between a pool of applicants, and (iii) there was no job description or person specification provided at the outset. The May 2015 appointment did not conform to the procedure as set out in the code. The legislation does not specifically set out the 'consequences of breach' in the legislation,² thus it is an open question as to what the effect this failure has in law.

¹ Timothy Cairns – TC Jonathan Bell – JB Andrew McCormick - AMcC
 Chris Stewart – CS John Mills – JM Seamus Hughes – SH
 Sean Kerr - SK Arlene Foster – AF Timothy Johnston - TJ
 Richard Bullick -RB Andrew Crawford – AC Stephen Brimstone – SB
 Peter Robinson - PR

² *R v Soneji* [2005] UKHL 49

5. The Code for Appointment envisages 3 types of SpAd: (i) political, (ii) technical/expert, or (iii) both. TC saw himself first and foremost as a political SpAd. Whether or not one could also describe oneself as a technical expert in any given post would depend on the particular ministry in which one was placed. It is common case that TC was not an energy expert.
6. As a prospective SpAd, TC was part of the ‘unofficial process’ he described in evidence. It would, however, be difficult to attach a substantial, or indeed any, degree of personal culpability to TC in and about his own appointment. The Code, and s8, are directed towards the appointing minister, not the appointee. As TC said himself ‘it wasn’t for me to go to party officers or the party leader of the DUP and tell them, or him, how they should go about selecting special advisers’.³
7. Insofar as the Code of Appointment is concerned with ensuring persons of the requisite calibre for the role apply, it is submitted that the failure to follow the code in May 2015 does not mean there was a concomitant failure to appoint someone suitably qualified. TC had obvious political experience within the DUP and had obtained professional qualifications. Aside from JB, there has been a dearth of evidence adduced from any other quarter, whether officialdom or the political sphere, casting aspersions on the ability of TC to perform the role of SpAd.
8. The nature of the appointment process (ie an anointing by the party leader/First Minister) also speaks to the sense of hierarchy within the DUP which TC described in his evidence. The SpAd should of course serve, report to and be answerable to his or her appointing minister. TC did describe how in some respects the lines can be blurred because as far as he was aware he was hired by PR, not the minister. The Panel no doubt will consider whether this hierarchy was in some way more entrenched by the means of appointment. That said, the realities are such that even if the code for appointment had been followed, such a hierarchy, whether express or perceived, is always likely to exist. As the Chairman noted, politics is not an easy operation and all sorts of different emphases and influences are at work⁴. One must also take account of the fact that ministers are appointed by the party leader/First Minister, and serve at his or her pleasure. To envisage hermetically sealed ministries is ultimately artificial. Equally, there is nothing illegitimate or inherently improper about hierarchy, so long as its influence does not conflict with the SpAd’s duties and obligations to his or her minister.
9. Without proposing to set out *in extenso* all the prescribed duties and obligations which attach to the role of SpAd by virtue of the contract of employment, Code of Conduct, NICS Civil Service Handbook and the Code of Ethics, a summary is as follows:

A SpAd should

- (i) Have integrity (i.e. putting obligations of public service about own personal interests) and honesty (truthful and open). One cannot allow one’s judgment or integrity to be compromised or appear to be compromised.
- (ii) Never deceive or knowingly mislead the Assembly, the Minister or the public.
- (iii) Make sure public money and other resources are used properly and efficiently.
- (iv) Serve the objectives of the administration and the department in which they work.
- (v) Liaise with the minister’s party and act as a communication channel between the party and administration in terms of issues like development of policy.

³ TRA12603 at line 27.

⁴ TRA12635 at lines 16 and 17.

TC's appointment as SpAd to Minister Jonathan Bell

10. TC's prior workplace experience of JB had led to him concluding that JB tended not to be across his papers and did not read them adequately or at all. As such, TC found that oral briefings with the Minister were particularly important. TC also gave evidence about some incidents, for example on or about St Valentine's Day 2013. He asserted that JB could act aggressively. TC's evidence was that he was not the only person who came to that view.
11. In May 2015 TC was called into PR's office and told ministers and SpAds were being reshuffled. TC was of the view that 'no one wanted to go with JB'. Other witnesses have corroborated TC's evidence as to JB's application⁵. As TJ noted in his witness statement⁶, there was not a great deal of enthusiasm for an offer of working with JB. TC describes how he was given very short notice of being appointed to Minister Bell and was 'very disappointed'. JB himself stated in his written/oral evidence that TC would not have been his first choice (although he did not tell TC that at the time). The letter recommending appointment to the Permanent Secretary thus painted a false picture in some respects.
12. The other feature of note is that May 2015 marked JB's first appointment as a 'decision making' minister as opposed to a junior minister. Neither JB nor TC had any experience of the energy sector or particular energy projects such as RHI or NIRO. In that regard, TC has stated the decision to appoint both he and JB to DETI 'defied logic'⁷. Whilst it is tempting to assume any such knowledge gap adversely contributed to the pace and substance of damage limitation with respect to RHI in 2015/16, TC was in fact liaising with AC from July 2015 in order to bridge that gap. The wealth of experience of the previous incumbents at political level, namely AF and AC, together with DETI officials, did not prevent the design and implementation of an RHI scheme which was deeply flawed.
13. Thus, as at May 2015, the position has been described as not being 'an auspicious start'⁸. Whilst 'rapport and trust'⁹ are important to the effective functioning of SpAd and Minister, the more pertinent question is identifying what impact, if any, the lack of rapport and trust had on the 2015/6 damage limitation exercise. It will be submitted such lack of 'rapport and trust' as there was did not actually lead to a worse outcome. Rather it was JB's style of transacting business (a deficiency which stood separately from the state of his relationship with TC) which was perhaps a more determinative factor. For example, as will be discussed below, the fact that oral briefings were seen as necessary contributed to the 8th July submission taking longer to sign off than might otherwise have been the case.
14. It is proposed now to identify some key events, summarise TC's evidence on those events and provide some comment on them.

⁵ WIT25822 – Sean Kerr, Private Secretary to the Minister, noted that JB read documents in a summary fashion: "he remarked to me directly that he had not read all the detail of the submission or annex, but was guided by the special adviser's comments". See paragraph 13 of TJ's witness statement: WIT74127.

⁶ WIT74108.

⁷ WIT20172.

⁸ TRA12622 *per* Donal Lunny BL.

⁹ See DOF 00592.

12/5/15	TC and JB's first day in DETI.
13/5/15	<p>First day brief with JM. RHI is mentioned in the sense of being a scheme that had not been doing well but now was. TC also had a meeting with JM on 15th May at which RHI was mentioned but was not flagged as a matter of urgency or concern.</p> <p><i>Comment</i></p> <p>There was clearly nothing in this brief that would have required any action by TC or JB at that stage.</p>
3/6/15	<p>JM had a meeting with Trevor Cooper wherein issues with approval, budget etc. are discussed. TC and JB are not present and are not at this stage informed about any RHI issues.</p>
8/6/15	<p>Issues meeting. JB present. When RHI is discussed TC recalls AMcC stating 'we've dropped the ball' with respect to DFP approval. TC accepts the budget issue was in all probability discussed. TC's impression was that there was not too much alarm from officials and there was a belief more money would be found. A submission was to be produced for JB and TC.</p> <p><i>Comment</i></p> <p>It is submitted in the circumstances it was entirely appropriate and proper for JB and TC to simply await this submission.</p>
8/6/15	<p>TC recalls meeting AF and AC in their office next door and mentioned problems with RHI to them. Given his and JB's 'zero knowledge'¹⁰ base, TC suggested a meeting with them. Both AF and AC remember a meeting (but differ as to when it may have occurred).</p> <p><i>Comment</i></p> <p>It is submitted TC's evidence as to timing fits with the issues meeting, the physical location of the parties, and the fact that one of the issues was DFP approval (AC and AF being of DFP). It demonstrates a conscientious and proactive response from TC immediately following the issues meeting. Liaising with other party members is of course not only permitted but required under the Codes of Conduct and was entirely appropriate in the circumstances.</p>
9/6/15	<p>Dinner at Indian restaurant in London. NIRO/RHI was being discussed and TC was suggesting that AF should be consulted/spoken to (which is also in keeping with the meeting he said he had with AF and AC the day before). JB did not react well to this. JB said he wanted to bring RHI under his control (i.e. under his authority).</p>

¹⁰ TRA12663 at line 10.

	<p><i>Comment</i></p> <p>JB did not state that he wanted to bring RHI 'under control'. This is what AMcC alleges TC told him JB said in his witness statement. AMcC either misheard or misinterpreted precisely what TC told him. It is worth noting that AMC makes the point in his witness statement that there was little or no awareness of problems with RHI at that time. This is to be borne in mind as confirming that as of 9th June 2015 the RHI iceberg had not fully hove into view in the eyes of the officials.</p>
10/6/15	<p>Amber Rudd was going to close NIRO. The issue was whether NI would get some leeway. There were implications for a Bombardier project. TC knew the political soundings were such that a decision by JB at that stage would result in an SL1 not surviving the Committee process. TC's reading of the runes was correct in that this is what ultimately happened on the 7th July. TC's point was that before a decision was made there needed to be soundings with and from the DUP and other politicians. JB felt that TC was trying to limit his power. The fact that JB was not listening to TC's advice led to him becoming frustrated. TC acknowledged that he acted inappropriately and that JB was right to be annoyed at him. TC left the table and when he went back the argument continued. TC said that he must have been wagging his finger and JB made a physical grab for it. TC refused to apologise to JB who then purported to fire him. TC stayed with the group in a taxi in order that SK could organise a flight home for him.</p> <p><i>Comment</i></p> <p>Whilst this was clearly an unsavoury incident, it was not directly related to RHI. It did however speak to the nature of the relationship at that stage between TC and JB.</p>
10/6/15	<p>On arrival at home, TC met RB and TJ at Stormont Castle. TJ then phoned JB to say he could not sack TC.</p> <p><i>Comment</i></p> <p>This demonstrates the existence and operation of the hierarchy, and TJ's 'chief executive' type role.</p>
11/6/15	<p>Meeting with TJ and PR. In that meeting TC admitted being in the wrong. TC perceived this admission as amounting to weakness in PR's eyes. TC felt that PR was firmly taking JB's side and was not giving any weight or taking seriously any allegations TC had about JB's behaviour, and his volatility not being an isolated incident. Events led to TC taking sick leave [REDACTED]</p> <p><i>Comment</i></p> <p>Issues re RHI are not directly in play here. This incident is relevant to the</p>

	extent of demonstrating the nature of the relationship TC and JB and the obvious hierarchy re employment of SpAds.
11/6/15 – 24/6/15	TC was on sick leave vouched by his GP. Clearly he had no involvement in any RHI issues during this period.
25/6/15	TC received a telephone call from TJ to come in the next day. In terms he was told that the only option was for him to patch matters up and come back to work with JB, otherwise he could stay on sick leave for 6 months and then would have no job. TC found being dealt with like that very upsetting.
26/6/15	<p>TC attended a meeting with JB chaired by TJ. (PR was not in attendance on TC's evidence). TC apologised to JB and expected an apology from JB but none was forthcoming. This left TC upset that his concerns were not being dealt with. JB claimed TC apologised again in the car park – TC flatly denied this. TC's text conversation with TJ after the meeting corroborates TC evidence as to what happened at the meeting as it referred to both parties being dissatisfied. RHI was discussed by TJ at the end of the meeting. <i>TC was told to liaise with AC. JB was present during this, and raised no objections. TC also says that TJ stated that there would be no tariff controls.</i> He surmised he got this detail from AC when TC was off on sick leave¹¹. TC stated that TJ would not have appreciated the gravity of this. TJ in his evidence agrees that he encouraged (as he puts it) TC to work with AC. TJ denied saying that he mentioned anything about tariff controls.</p> <p><i>Comment</i></p> <p>This meeting confirms the process that was put in place, namely that TC should liaise with AC. Importantly this occurred in front of his minister who voiced no objection ie he was in agreement with this approach. That process also came from TJ, and bearing in mind TJ's status, clearly this completely justified TC in his view of the degree of formality of the process. As to whether or not TJ made reference to there being no tariff controls, as there were in GB, the email of 17th August 2015 tends to support TC's account: 'if we are to deviate from GB policy it will require a ministerial direction.'¹² Also, one must bear in mind TC's evidence about the speaker phone call with RB, TJ and AF on 16/12/12 at which TC referred to TJ having directing the process.¹³ This was corroborated by the evidence of AF.¹⁴</p>
29/6/15	TC's first day back at work. TC requested a meeting with JM. The meeting was about NIRO, connection issues and RHI and lasted approximately 1 hour 45 mins. This was TC's first day back. JM claims this meeting was in the nature of a negotiation and led him to believe the submission which was being drafted would not be controversial. TC disputes this. No draft submission was produced at that meeting. It was his first day back, he did not have the requisite

¹¹ See TJ referring to AC as 'de facto the only person that we had that would have known about the issues in Tim's absence': TRA14739 at line 13.

¹² IND25403.

¹³ TRA12884.

¹⁴ TRA13759 at line 22.

	<p>knowledge to negotiate on the matter. TC does recall saying do not make it any more difficult than you have to.</p> <p><i>Comment</i></p> <p>It is submitted that TC was highly unlikely to have been in a position to indicate political assent to the draft submission which he had not seen. He had little or no working knowledge and it was his first day back. In addition, the undisputed AC process had been agreed upon and thus TC would not have been in a position to convey any assent until he had followed up those enquiries.</p>
1/7/15	Issues meeting. RHI not on the agenda.
7/7/15	Issues meeting. RHI not on the agenda. The ETI Committee does not accept the SL1 from JB on NIRO.
8/7/15	<p>The 8th July submission is sent to TC. It asserts there is no direct impact on DEL and points out that applicants have risen from 200-700 in last 12 months, with uptake in the poultry industry being a central reason. TC accepts that as far as energy submissions are concerned it is straightforward.</p> <p><i>Comment</i></p> <p>The submission is only produced at this stage, a month after the initial issues meeting which highlights a lack of urgency on the part of officials. It makes no reference to the nature of the funding arrangements, describing RHI as being AME funded. This is misleading. TC described the earlier draft of the submission by comparison as being ‘arresting’¹⁵. The submission is marked ‘urgent’ but evidence to the Inquiry has established that nomenclatures such as this are often over used/abused on submissions and thus lose some of their impact. It is also the case that at this remove the difficulties with NIRO are in full swing.</p>
9/7/15	<p>TC gives evidence that he sat beside JB in his office before his holiday to China and went through the submission in detail which was the usual manner in which JB was briefed. TC stated that he would be asking AC about it (as per the process instituted on 26th June). JB was about to go off on holiday. TC says he had the submission in a folder but that he does not now think that he gave the minister a hard copy. TC also makes the important point in evidence that had JB wanted to sign the submission there and then he would have taken no issue with that.</p> <p><i>Comment</i></p> <p>In keeping with Sean Kerr’s observations as to how the Minister operated, it is submitted TC’s account is entirely consistent with same. Essentially, JB’s practice was to be guided by the Special Adviser’s comments. In this instance,</p>

¹⁵ TRA12762 at line 2.

	<p>TC indicated that he would be speaking to AC. JB was already aware of this process and took no objection to it. JB was possessed of no special knowledge re RHI that would have made it likely that he would take particular interest in that submission at that stage. As indicated by TC in evidence, had JB wanted to approve the submission at this stage and disregard the AC process, he could have done so.</p>
	<p>Annual 12th July holidays</p>
16/7/15	<p>TC emails the submission to AC and SB. The submission was sent to AC as a result of the 26th June 2015 instruction from TJ. TC saw no reason to dispute SB's account as to why he was also sent the submission¹⁶. AC also emails the submission onto TJ at the same time.</p> <p><i>Comment</i></p> <p>This is keeping with the process set out by TJ on 26th June. The fact that AC forwarded the submission to TJ is also in keeping with TJ (i) talking about RHI on 26th June and expressing a view about it, and (ii) being in the process with respect to forming views on the submission.</p>
17/7/15	<p>Sean Kerr speaks to TC about the submission. TC confirms he has read it and is currently seeking advice from others before passing to the minister. A decision is expected in the last week of July.</p> <p><i>Comment</i></p> <p>It is clear from this exchange that TC is in no way making a secret of the fact he is liaising with others. This is part of the role of a SpAd (see code of conduct) and is of course pursuant to the 26th June instruction. The fact that TC makes it clear that others will be providing advice before a final decision also underlines the degree of formality TC saw in the process set by TJ.</p>
20/7/15	<p>AC responds to TC, stating he had been off work the previous week. He refers to the fact there is likely to be a spike. He then emails TC and asks him to phone him as he has had a word with DFP. TC recollects from the phone call that the proposal in the submission was going to be controversial with industry and that 'we' (i.e. DUP) need to be able say we did what we could. The relevant backdrop here was NIRO which caused massive complaints. TC states that apart from NIRO, he personally had no view as to closure date. AC indicated that the strategy should be to ask if 1st October 2015 is the latest possible date, if it is then so be it¹⁷. TC viewed this as the party view that had arisen from conversations between TJ and AC. TC also states that he advised JB of this party view and he was aware that was the position, having relayed those instructions.¹⁸</p> <p><i>Comment</i></p>

¹⁶ WIT74525

¹⁷ See for example TC's evidence at TRA12808 Line 4.

¹⁸ The word 'instructions' clarified by TC in evidence as being in the sense of "that is the position we arrived at" See Day TRA12802 Line 20.

	<p>This is an area where there is a stark divergence in evidence. AC states inter alia that at no stage did he seek to delay the introduction of cost controls¹⁹. In resolving the evidence the Panel are invited to consider AC's justification for why, on his case, the desire to delay/seek the latest possible date came from TC. He alleged that TC was concerned about getting a consequent SL1 through the ETI Committee. In fact TC would not even have been aware of the political implications considering the Committee members. He had only just received the submission and the first thing he did was to send it to AC. AC also alleged that TC was concerned that he might lose his position as a SpAd. TC describes himself as 'bristling' at this evidence, and pithily noted 'if [AC] had wanted the job he could have it'. It is submitted both AC's reasons for his assertion that 'latest date' was TC's invention simply do not stand up to scrutiny.</p> <p>At the end of the day TC was heavily reliant on AC's responses (evidence by the queries TC took back to his officials) and had no personal involvement or history with RHI. He had no experience with agriculture and he was coming from a 'zero knowledge base'. His email forwarding the submission to AC suggests as much; there is no analysis or view given in the forwarding email. Nor of course was TC an applicant on the scheme or any of his relations. Evidence from CS and AMcC confirms that TC did not have a particular view either way and it was suspected views were coming from other quarters. AC was involved in the design and inception of the scheme, he had an agricultural background so may be seen to have his finger on the pulse of the likely reaction from that lobby. He also in his email of 20th July referred to Moy Park and suggested a meeting. Moy Park's view as to tiering was clear. Moy Park was an indirect beneficiary under the Scheme (as emerged from the complex evidence of their financing arrangements with producers). Whilst this would not have been obvious to the uninitiated at the time, the introduction of tiering was not something that benefitted them. The seeking of the 'latest possible date' would be entirely keeping with their interests.</p> <p>When one considers the two accounts in the round, the Panel are invited to prefer TC's, namely that the 'latest date possible' strategy came from AC. One also considers the 'no tariff controls' evidence re TJ and the subsequent August email which indicates in a slightly different way that all the strategy was coming from AC/TJ to TC.</p> <p>It is important to note that the 'latest date possible' strategy meant only the latest date that officials would countenance. Thus in some respects at the end of the day the officials were in a position to dictate dates. Also, at this remove, the full extent of the financial difficulties was yet to materialise.</p>
23/7/15	<p>As appears from emails between SW, CS and JM, TC had spoken to CS about the submission and had relayed on the issues raised in AC's email.</p> <p><i>Comment</i></p> <p>This demonstrates that, as TC saw it, he was a conduit for the information.²⁰ TC also gave evidence that he recalled during the conversation with CS asking</p>

¹⁹ WIT21518.

²⁰ TRA12813.

	<p>if 1st October was the latest possible date because of NIRO. SW mentions NIRO in a replying email where the initial email did not refer to it. Thus it appears SW spoke to CS who relayed this detail to him (thus leading to it appearing in his email). This seemingly minor point is strong corroborative evidence of TC's account, further demonstrating by way of example the credibility and accuracy of his account. This also demonstrates that TC is speaking to officials about RHI within a couple of days of receiving an update from AC.</p>
28/7/15	<p>TC went to see JM/CS about a different non-RHI submissions and joined a conversation about RHI for which he was not prepared. Without remembering chapter and verse, TC's clear recollection was that he was hearing 'stuff I hadn't heard before'. He informed CS and JM that he was having discussions with other people in the party and this information would need to be put in writing.</p>
30/7/15	<p>TC remembers a meeting with Ryanair (at which a lack of ministerial preparation was apparently evident). TC remembers going through the submissions and what AC had advised. TC recalls that he must have told JB about the 'latest possible date' strategy and there was no objection. At that point TC was waiting on the written communication from JM <i>et al</i> following meeting on 28th July and then he had to take that back to AC. JB conceded in evidence that such conversations may have taken place.</p> <p><i>Comment</i></p> <p>At this juncture it seems quite clear that none of the officials were escalating matters by contacting the minister directly, or threatening a ministerial direction. This is entirely in keeping with the state of affairs at the time, namely that officials in DETI were still some way off from appreciating the extent of the financial havoc on the horizon. In that context it is submitted thus far there can be no real criticism of TC and the steps he took.</p>
30/7/15	<p>JM's email documenting what was discussed on 28th July arrives after the above meeting. This email refers to AME with caveats which is clearly different in a very important way from the submission.</p> <p><i>Comment</i></p> <p>It is contended that it is not valid to describe JM's email as being a repetition of the submission. As TC had said, on the meeting on 28th July he was hearing different things (AME caveats, annual heat cap). It was to his credit that despite not having in depth knowledge he still picked up on potentially serious issues that were not in the submission and about which he requested same in writing. It is also submitted that the 30th July email does not do justice to the true funding position by describing it as 'AME with caveats'.</p>
30/7/15	<p>That very same evening, TC forwards the JM email to AC.</p> <p><i>Comment</i></p>

	TC is acting promptly, in accordance with the TJ process and legitimately.
31/7/15 (Friday)	<p>AC tells TC to make the changes from 1st October, but then raises further issues of a technical issue, that it pays producers to heat houses when they are empty and refs once more to a spike. At that time, TC did not appreciate that AC's proposals would render the proposed changes ineffective.</p> <p><i>Comment</i></p> <p>It is submitted that although when explained one can see the 3000 hour point, it nonetheless takes a degree of focus and appreciation of the detail to arrive at this conclusion. The point has also been made that AC's emails suggest there is a perverse incentive. Whether or not that is necessarily so (AMcC asserts that his multitude of officials did not realise this until 2016), TC is clear that he reported allegations (of a general nature) to CS who at that stage treated them as hypothetical only and placed faith in the OFGEM monitoring.</p>
5/8/15	TC returns to office having been on annual leave in Donegal on 3 rd and 4 th of August ²¹ .
7/8/15	<p>SMT meeting at which TC is not present. Concerns are raised about the submission still being outstanding. AMcC emails TC and indicates that he is 'keen to have an early decision'. TC forwards this email to AC.</p> <p><i>Comment</i></p> <p>It is of note that this is the first meeting at which RHI appears to have been discussed with a degree of urgency by officials since the issues meeting on 8th June 2015. It took a full month for the submission to be distributed and no escalation or complaint, threat of ministerial direction was made at any stage in the interim period. Again, one might also view 'keen to have an early decision' as lacking in any real alarm/impetus and being in fairly gentle terms.</p>
11/8/15	<p>CS emails SW referencing a conversation with TC about the issue AC raised, namely 3000 hours instead of 1314 hours.</p> <p><i>Comment</i></p> <p>Again, in keeping with the fact that 3000 hour point above, the fact that CS has to email SW to put some flesh on the bones is demonstrative of the fact that CS was not necessarily in the position to immediately point out to TC there and then the counterproductive nature of such a suggestion. CS was an experienced official who had a reasonable knowledge of RHI. If he was not able to immediately explain why this request was outlandish, then it would certainly excuse and absolve TC from not being able to appreciate the flaw in the proposition. The conversation also once more underlines that TC is reporting back to his officials with AC's input/views, which is entirely in keeping with</p>

²¹ See Day 88 Page 83 Line 24

	the process.
11/8/15	JM sends a response back which TC again forwards immediately to AC with the sentence 'seems we have no choice but to proceed'. JM's email explains the position in fairly blunt and illuminating terms. 'Accounting officer issues' are referred to.
13/8/15	<p>CS emails TC and refers to a ministerial direction. This is the first time a direction has been referred to. It immediately provokes a response from TC who stated 'what was that about' in the sense 'that escalated quickly'.</p> <p><i>Comment</i></p> <p>The step change in language and approach immediately provokes a reaction from TC. At this remove JB is still away from the office, albeit only in Portrush. As explained TC is anxious to have an oral briefing. AMcC puts the matter on the agenda for an issues meeting on 24th August 2015. There is no obvious reason why such a meeting could not be held sooner, save for the fact that JB told SK not to arrange any meetings in the first 3 weeks of August.</p>
20/8/15	<p>AMcC spoke to TC and he said it would all be sorted at the issues meeting. TC made the point again that if the officials had wanted the meeting earlier they could have had it and that AMcC was not 'banging the door' looking for a meeting. TC confirmed that SK was 'agitating a bit' but that he felt that JB needed an oral briefing: "If we had've had another minister, I think the submission would have been cleared and out the door, given the formal and informal processes that were put in place, probably in and around the 13th August and probably before". As confirmed by SK, who kept the official ministerial diaries, the first 3 weeks of August were kept free (although JB did attend a meeting on 12/8/15).²²</p> <p><i>Comment</i></p> <p>Thus, on TC's evidence, the failure to sign the submission earlier stemmed in part from the way the minister conducted his business but also from the fact that officials did not seek to have a meeting earlier.</p>
24/8/15	SH emails SW to say that 1 st October for the Regulations is probably not realistic. He was suggesting first or second week in November ²³ . This email, although sent after the issues meeting refers to 'first or second week in November' whereas the issues meeting specifically fixed the new date as 4 th November. It appears that SH's email to SW was separate and independent from the issues meeting. Had SH been emailing SW aware of the outcome of the issues meeting, he would have surely referred to the 4 th November. The fact that he did not means that officials separately were beginning to appreciate the date of 1 st October was in potential jeopardy.

²² WIT25825

²³ DFE120924. See also SW at WIT26038

24/8/15	<p>JB was late to the issues meeting, however TC and AMcC and JM began discussing the submission (this was the ‘pre-meeting’). TC states “I just asked. Just ask for the last time, with the expectation that the answer from the officials will be no, given what [CS} has said, given ministerial directions have been raised”. He describes his approach as being a ‘softball question’ along the lines of ‘look is this the date’ there being no question that a ministerial direction would be required. On TC’s case, JM made a strange noise and then stated the 4th November. AMcC indicated that he was surprised JM agreed so readily²⁴. JM in his own evidence agreed readily to more time being afforded because he knew by that time that October would be a challenge.²⁵ When JB arrived at the meeting, TC states he asked re the new date ‘would others be happy with that’. JB in his evidence stated that TC said ‘we can clear this if we get an extra 4 weeks’. This is denied by TC. In any event the delay was longer than 4 weeks. AMcC recalls no such discussion like that.²⁶TC makes the point that as proof of the fact the specific date did not come from him, he would have had no reason to pick 4th November, which was a month and 4 days beyond the original date and fell on a Wednesday.</p> <p><i>Comment</i></p> <p>The SH email referred to above, it is strongly suggestive that officials knew the original date was in jeopardy and possibly could not be met in any event.²⁷ The Regulations had not been finalised for presentation and the DFP approvals had not been obtained. That being the case, they are likely to have considered what a new date would be, all of which aligns with TC’s evidence that he did not suggest the date. Nor did he insist on the later date. At all the times the strategy was simply to work to the latest date the officials would allow.</p> <p>Moreover, at this stage the spike had not occurred, and the officials, rightly or wrongly, were not fully aware of the financial implications. This all lends itself to TC’s assertion that the officials were not in fact ‘banging the door’ to have an earlier meeting, and were relatively relaxed about a later date.</p>
27/8/15	<p>JM emails TC and refers to the November date ‘as you suggested’. TC explains this should be understood in the sense that it was TC who asked whether 1st October was the latest date.</p>
28/8/15	<p>SW amends the submissions and it is sent again to TC.</p>
2/9/15	<p>The submission is signed by TC and JB</p> <p><i>Comment</i></p> <p>Whatever about any perceived delay up to this point, assuming the timetable is</p>

²⁴ WIT11287

²⁵ TRA11158 line 20

²⁶ WIT10522

²⁷ See also an email from SH to Katy Read (OFGEM) on 10/7/15 wherein he states “at this point in time we don’t see that an implementation date of 5th October would not cause us a difficulty *but if that changes we will let you know*”. One might consider that even at this early stage there was contemplation that there could be changes with the date. See DFE-120904.

	adhered to, the damage limitation exercise will not progress any faster. A public announcement has been made. DETI can do little about the magnitude of any spike.
8/9/15	Press release
In/out period ²⁸	TC stops work in DETI and went to work for Gavin Robinson. Aside from bumping into JM [redacted] on one occasion TC had no contact with officials. He returns on 21/10/15. ²⁹
4-18/11/15	<p>The date for the coming into effect of the Regulations is further delayed for two weeks 'by progressing the necessary legal and financial clearances'³⁰.</p> <p><i>Comment</i></p> <p>This further delay merely demonstrates there were other factors at play which may have prevented an the original timetable in the 8th July submission being adhered to. See further the email of CS on 12/12/16 to AMC, dealt with below.</p>
13/11/15	<p>TC called AMcC on behalf of AF to ask whether the debate of the draft Regulations could be delayed by a week.</p> <p><i>Comment</i></p> <p>TC simply was passing on a transparent and legitimate constituent request which it was widely expected would not be agreed to. TC gives evidence that it is not unusual for other MLAs or MPs to contact a particular SpAd, as it is not always practical to speak to the minister. AMcC took no issue with the manner of the approach, and of course in due course the request for an extension was not met with approval by officials and that was the end of the matter. It seems probable that officials or others when viewing matters in hindsight wrongly perceived this innocuous event as being suspicious and indicative of reluctance on the part of TC to changes to RHI when it was nothing of the sort. Such a charge was never levelled at TC at the time.</p>
18/11/15	Regulations take effect. By this stage there has been a major spike in applications. Industry have been informed throughout summer 2015 by DETI officials as to the changes that were coming in. There is no evidence at all to suggest TC was also involved in this (in fact he refused to meet anyone from Moy Park). As it transpires, tiering was in any event not an effective means of dealing with the financial problems. The perverse incentive was still there.

²⁸ See INQ15205 which gives dates of appointments/resignation of JB.

²⁹ See witness statement of Malcolm McKibbin at WIT64098.

³⁰ DFE 122029

	Suspension of the scheme
31/12/15	The first submission re closure of the RHI scheme is distributed. It does not in fact have a specific timescale for same but suggests April 2016. The submission also makes clear the issue raised therein is now 'cross cutting'.
4/1/16	<p>TC writes on the submission about consulting with UFU. TC gave evidence that consultation had been referred to in the submission and his concern was that this consultation would be done correctly (otherwise a legal challenge might actually make it harder to close the Regulations).</p> <p><i>Comment</i></p> <p>In this regard, as per TC's oral evidence, the relevant contextual backdrop is that UFU and Simple Power had just launched judicial review proceedings on NIRO in December 2016.³¹ As can be seen from the press article, consultation issues were at the heart of that challenge. With that danger made all the more clear and present, effective consultation was at the forefront of TC's mind. Effective consultation is entirely consistent with wanting to close the Regulations as quickly as possible if consultation is to take place. TC's observations were written on the submission and would have been seen by JB, who claims this was not discussed with him. The submission is approved albeit written confirmation of this does seem to appear in the papers.</p>
11/1/16	In an email CS notes that 'Tim and Minister are satisfied'.
18/1/16	A further draft submission is produced which does set out a timescale. It also refers to the 31/12/15 submission being approved albeit officials 'await written confirmation'.
19/1/16	A 'desk immediate' submission re RHI requiring consultation being launched by 20 th January and suggests a timescale of early/mid-March. An email is sent by AMcC to TC stating 'you know how pressing this is'.
20/1/16	On TC's evidence, an Executive Office meeting takes place at which JB raises the RHI issue with TJ. The First Minister's office wants input. TC forwards draft papers to AC and SB. AC sends the submission to TJ.
21/1/16	TJ emails TC and states 'Tim we need to discuss this'. TC gave evidence that TJ told him despite JB agreeing the submission, it should not be cleared until approval was received from the party leader through TJ.

³¹ <http://www.irishnews.com/business/2015/12/22/news/farmers-seek-judicial-review-over-plan-to-axe-turbine-subsidies-361831/>

	<p><i>Comment</i></p> <p>As has been noted, the ‘cross cutting’ nature of the issue has been made apparent. The financial situation is also now clear. It is submitted that it is beyond doubt that the First Minister’s office would now be focussed on RHI and have it as a top priority (along with NIRO).</p>
22/1/16	<p>TC emails TJ attaching the RHI submissions and states it ‘needs to be out the door today’ and underlines that JB has been trying to contact him.</p> <p><i>Comment</i></p> <p>This email demonstrates the urgency within which TC is trying to act in advising the minister and clearing the submission.</p>
22/1/16	<p>JB intends to approve the submission, but in light of the instruction above, TC and JB are trying to contact TJ who is notoriously difficult to get on the phone. JB tells TC to email TJ and that if nothing is heard back the submission would be cleared by 4pm. The submission was then cleared. TJ had in fact emailed TC to state that there was “no chance of getting these cleared today. Realistically subs like this that need to be discussed with a wider group would need to be pushed up by mid week if they are to be turned round. I will take a look this afternoon but won’t be in a position to get Arlene and party view until Monday.”³² TC only becomes aware of this email after 4pm.</p> <p>TC then ‘recalls’ the submission in light of TJ’s email, making no secret of the fact that this is because of other DUP politicians³³. He emails JB almost immediately forwarding him the TJ email and stating ‘I’ve told Sean to hold the sub’. JB tries to claim after the event that he never saw this email and bases that assertion on a contention that the email account to which it was sent is one which he never uses. This is contradicted in several documents³⁴ held by the Inquiry which show JB used this email account and in fact it was the only account he tended to use himself for ministerial business.</p> <p>At this time TC, JB, CS and SK were all travelling to America together, with AMcC due to join them on Sunday evening (24/1/16). TC gave evidence about how confusion the state of play was. At WIT 20238 he states that on one visit to Stanford University I was on one side of the quad talking to Mr Johnston who said the submission would not be cleared. On the other side of the quad Dr McCormick was speaking to Mr Stewart who had been informed by HOCS that the First Minister wanted the submission cleared. Mr Bell was obviously frustrated by this conflicting advice. A short time later, Mr Johnson called me and in a lengthy call said the advice had changed.”³⁵</p> <p><i>Comment</i></p> <p>There is clearly an issue as to whether, where a matter is cross cutting,</p>

³² INQ60042

³³ INQ60167

³⁴ See INQ64012, WIT21908, WIT21911.

³⁵ This evidence is corroborated by TC’s phone records.

	<p>OFMDFM (or the First Minister) should be involved as to whether or not a DETI submission should be approved or not approved by its Minister. If the submission is approved there is still a mechanism which has to be gone through to seek Executive Committee approval. However, for the OFMDFM to involve itself at an earlier stage, with the input of the DETI Minister and SpAd, might be seen as being more practical in that if informal agreement can be obtained at that stage, then one can be assured there will be no obstacles when the matter is considered at that level formally. It is also the case that in this instance JB was perfectly aware this process was in place (that the First Minister's views were to be obtained) and thus TC was operating within that context i.e. with the consent of his minister.</p> <p>In the event, of course, the involvement of the Executive actually speeded the process up. There is no suggestion whatsoever of the coming into effect of the closure Regulations being impeded improperly by other departments involving themselves at the DETI submission-clearance stage.</p>
22/1/16	TC emails TJ to tell him having spoken to AC there does not appear to be much alternative but to go with officials' advice.
25/1/16	TC emails CS to indicate what has happened, namely that he was recommending officials' advice but the submission having been cleared was pulled by party officers. TC gave evidence that what he meant by this was TJ, AF and possibly RB, however as above TJ had said he might go wider hence TC plumping for the term 'party officers'. He forward this email also to AMcC who himself notes 'seems to be doing his best'. ³⁶
26/1/16	Emails between JM, CS and AMcC show that JB and TC consider the RHI issue is now a matter for HOCS and First Minister. Further emails between RB, AC ad TJ wherein RB states "HOCS wants to speak to AF, very concerned".
27/1/16	An email is sent between TJ, RB, AC and SB wherein it is noted that 'better if AF not involved'. This view is alleged to have come from HOCS.
27/1/16	HOCS emails AMcC to indicate inter alia that the matter of the submission is a DETI matter. ³⁷
28/1/16	AMcC's email ³⁸ to HOCS mentions 'some initial reluctance to make the necessary legislative changes'. TC responds there was no reluctance and the submission was cleared in early summer (which is not in fact correct). However AMcC acknowledges ³⁹ , TC was in an airport in America without full access to emails or papers and was working from memory.

³⁶ DFE225191-2

³⁷ DFE10393-6

³⁸ DFE-10440

³⁹ WIT11280

	<p><i>Comment</i></p> <p>This initial reluctance is something TC terms in his responding email as ‘revisionist history’. Whilst conceding that he was mistaken as to the date the submission was cleared, he has always made the case that this ‘reluctance’ was never discussed in plain speaking by any of the officials throughout the summer of 2015. No direction was threatened or issued. As has been previously indicated, TC has repeatedly made the point that officials could have had issues meetings much sooner than 24th August 2015. There is a dispute on the evidence here, and what cannot be left out of account is the fact that (i) the spike had not occurred until after 2/9/15, and (ii) the exposure to DEL was not appreciated until much later. Thus, the knowledge, although present in the system, had not gathered in the right place in Summer 2015 that would have led to genuine alarm/urgency from officials such as we can see in late December/January 16.</p>
29/1/16	A further submission is drawn up with 3 timelines suggested, to include consultation consecutively or concurrently or not, with Option 3 giving a mid-March closure date. In the event, because of involvement of OFMDFM Option 1 is taken (i.e. close as soon as possible).
3/2/16	Mike Brennan emails David Sterling re amendments to DFE memo to the Executive. Mike Brennan notes “AC asked me to amend this to make clear scheme would close asap with no public consultation” ⁴⁰ . CS then emails SW to indicate “I understand from Tim...that the Ministerial preference is to proceed without consultation”. ⁴¹
3/2/16	TC emails CS to ask him if he can “contact Assembly authorities to see if an emergency procedure can be put in place to bypass the whole process”. Again, this simply underlines the urgency with which people wish to act.
4/2/16	A further submission is distributed in respect of the use of the urgent procedures. TC sends it to AC and carries out amendments to it. He then sends it to TJ, AC and RB. TC removes the reference to the DETI Minister having consulted with DFP and OFMDFM. TC sends the amended submission with tracked changes to CS. He asserts ‘the minister had made the decision to dispense with notice and consultation and no advice from others played a part in that decision.’ ⁴² CS then put back in the reference to DFP, commenting in an email to AMcC and ER that “Tim was persuaded of the need to retain references to the views of Finance Minister” ⁴³ , and sent the submission to the Private Office and TC. TC by email asked SK to “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”.

⁴⁰ DFE02310-14

⁴¹ DFE153247

⁴² DFE225889

⁴³ DFE10302

	<p>TC admitted in evidence that the content of the email was ‘untrue’ as alleged by AMcC⁴⁴. TC was open with the Panel as to his motivations at that stage. He described how at that time it was emerging that his position was not totally secure. He had also just come from an DUP election strategy meeting at the Ramada Hotel where the main theme was ‘forward with Arlene’. Fired up with this message he went home that evening and in an attempt to curry favour took out reference to AF in the submission, and shared it so that others (ie TJ etc) could see what he had done.</p> <p><i>Comment</i></p> <p>It is important to note that TC sent CS the amended submissions in an email with an attachment. The attachment in the papers shows that the document sent was a ‘tracked changes’ document ie it was apparent what amendments had been made. It was his understanding therefore that this is what would be sent to JB ie he would also be able to see what amendments had been made. Thus, there was no intention to mislead or deceive JB. Although CS then sent an amended version which did not show tracked changes, having already made his contributions TC did not open that attachment and thus did not realise the version JB got did not show tracked changes. This was highly unusual and was the only occasion that TC can recall this occurring.</p> <p>It is also the case that by not referencing the First Minister specifically in the submission it did not of course mean that the submission was excluding that the First Minister had not been consulted (although the covering email from TC had that meaning, however all recipients knew this was not the case). In any event the submission was subject to executive approval. It also did not have a bearing on how quickly the closure Regulations came into effect. Without wishing to underplay the inappropriateness of TC’ actions, as recognised by him, as AMcC noted in the PAC hearing on 18th January 2017, the change to the documentation ‘was of no consequence whatsoever’.⁴⁵ CS also states in his written evidence that the amendment cannot be construed as an attempt to secretly alter the record. There was nothing secretive about TC’s actions.⁴⁶</p>
5/2/16	<p>JB makes his announcement re the closure of the RHI scheme on 15th February⁴⁷. A furore⁴⁸ ensues from stakeholders within the electorate and politicians across the board are inundated with complaints from constituents. According to TC’s evidence, the result of this is that Alliance, UUP may not</p>

⁴⁴ See Day 88 Page 179 Line 21

⁴⁵ PAC -06742

⁴⁶ See para 89 at WIT11548

⁴⁷ DFE125515

⁴⁸ Eg see Hansard Report from 9th February 2016 (INQ100044-6) and transcript of proceedings before ETI Committee (WIT10721-65)

	vote in favour of the closure Regulations. The DUP therefore need the support of SF, and their price for support is to require a 2 week extension to closure. ⁴⁹
9/2/16	At a meeting between JB and AF ⁵⁰ , it is TC's evidence that AF asked for a further 2 weeks because of the request from the DFM. AMcC's evidence accords with TC. TC says JB was angry about this because in his announcement he had said the closure date was to be 15 th February. TC does not recall JB making any statement about public finances during this meeting but does not rule out this may have been on his mind.
10/2/16	TC's evidence re the dispute with CS and JB over the amendment of the submission appears in the transcript at Day 88 Page 187 from line 5. He said that JB spoke to him and alleged that CS had said he was trying to cleanse the record. TC confronted CS. When JB went down to vote following the division bell CS told him that he had not said that. Whenever JB came back from voting, TC was expecting a further confrontation however it did not materialise. TC indicated that Ian McCrea was with SK and thinks he may have pointed out to SK that the Minister gets tracked changes. TC speculates this was relayed to JB which may have explained why the anger had dissipated. Comment Whatever about this confrontation, it had no impact on the steps taken to close RHI.
Post February 2016	There were a number of other events about which witnesses have given evidence post Scheme suspension. Largely their nature were conversations with persons as to what had occurred during the above time frame. It is not proposed to rehearse those events at length and TC simply relies on his evidence in respect of same. ⁵¹

Conclusions on the Key Events

⁴⁹ See POL00062 wherein SF portray the extension of 2 weeks as having been procured by them.

⁵⁰ See text message between TC and AMcC "we need to speak to FM" at IND 01881.

⁵¹ Save to refer to one aspect of TC's evidence with respect to his phone call with AMcC on or about 18th January 2017 after AMcC had named AC to the PAC. TC had said that he was of the belief that AMcC was at a half way point in his evidence before the PAC (see TRA12886 from line 21). It transpires that AMcC was in fact before a committee on RHI on 19th January 2017, namely the Committee for the Economy, at which the RHI suspension regulations were discussed. Whilst there may not necessarily have been an opportunity to name others as being involved in the process (i.e. TJ), it is reasonable to assume at the time that AMcC may have mentioned to TC that he was also due to appear before another committee, which has led to TC's somewhat imperfect recollection almost two years later that AMcC was at the 'half way point' in his evidence. Whilst a minor point, if nothing else it is another piece of objective evidence which corroborates if not in whole, in part, TC's recollections and evidence. See <http://www.niassembly.gov.uk/globalassets/documents/economy/minutes-of-proceedings/minutes-19.01.2017.pdf>

15. It is submitted that a number of features emerge from a close analysis of the events of Summer 2015:
- (i) From the issues meeting on 8th June, it took officials a month to produce a submission.
 - (ii) Officials provided an arguably misleading submission.
 - (iii) TC's case is that the urgency, professed to exist in hindsight by the officials, was not in fact there in summer 2015 as there was still doubt/ignorance about the true funding position and perverse incentive.
 - (iv) None of the officials recognised the existence of the perverse incentive until June 2016 when the NIAO report was issued.⁵²
 - (v) DETI officials were extensively discussing the proposed changes with industry, with the overwhelmingly probability that this led to a larger spike.
 - (vi) Officials could have insisted on an earlier issues meeting (than 24th August 2015) and could have threatened a direction. There are little in the way of contemporaneous complaints to TC or JB throughout summer 2015 in respect of the charge of delaying tactics or reluctance.
 - (vii) On TC's case, officials acquiesced with ease on the extension of the deadline. It was within the gift of officials in the circumstances to decide whether to accept a delay or not (they could ask for a direction).
 - (viii) There was a further delay of two weeks in November 2015, the blame for which cannot be said to have any attachment to TC.
 - (ix) As it happens, the measure brought into effect in November 2015 (i.e. tiering) did not in fact minimise financial risk under the scheme; the perverse incentive persisted.
 - (x) There may likely have been delays in any event in 2015 (see below).
 - (xi) From late December '15 into January '16, officials and politicians were proceeding as fast as possible. Although there was the unusual situation where cleared submissions were 'recalled', the intervention of the First Minister's office actually shortened the timescale for closure.
16. It is also the case that the process implemented by TJ whereby TC would liaise with AC was agreed by JB who was present when this request was made. Such a liaison was also in keeping with a SpAd's duties and obligations and was perfectly legitimate. It was also perfectly logical given the lack of knowledge of TC and JB re energy matters and RHI particularly. Officials did not appear to appreciate the full extent of the financial position, thus the political sphere was similarly ill informed. Politicians (rightly) relied on officials in this regard. Whilst some have sought to allege that the queries raised by AC, which TC passed on to his officials with JB's consent, amounted to filibustering or 'rehashing', it is submitted that this, if true, which is not admitted, was not obvious or clear to the uninitiated i.e. TC. TC relied heavily on AC with respect to how the 8th July submission was dealt with, and had no particular expertise in this field. It was entirely reasonable and legitimate for TC to pass these queries along. The strategy that TC was told to explore, i.e. the 'latest possible date officials could live with', was not necessarily an improper or illegitimate one at the time given the lack of knowledge about budgetary and funding issues. The hierarchy point (i.e. to whom did TC really answer) was in any event largely an irrelevant consideration in the circumstances as JB had full knowledge of TC's engagement with AC and consented to same. Thus TC was not 'rowing his own boat'.

⁵² Per AMcC: DFE 10723 at para 27

17. Many aspects of JB's evidence in key respects have been shown to be inaccurate, such as the email address he uses⁵³, the conflating of events in 2015 with 2016, and making allegations that were simply wrong (e.g. that TC kept RHI off the agenda). Contemporaneous documents (email from CS following 8th June meeting⁵⁴) show the 'agenda' claim to be inaccurate. It is respectfully submitted that where the evidence of JB and TC conflict, these inaccuracies of JB's evidence must be borne in mind in assessing the credibility of his evidence as a whole. TC accepts that his text message about telling his story to fit the party narrative could be viewed as being 'grubby'⁵⁵, but within that TC was offering to tell the truth about his views of JB.
18. As can be seen from the timeline above, notwithstanding the 'latest date strategy', TC moved with reasonable haste in the circumstances. He took the Minister through the 8th July submission on the 9th July. He forwarded that submission on to AC within a week. In any event AC had been on annual leave so would probably not have been in a position to respond any sooner than the 20th July. TC has spoken to CS within a day or two of AC response to relay his queries. On the 28th July he found himself at an RHI meeting between officials by coincidence; he had not been invited to it. Upon hearing details which seemed new to him, and bearing in mind he was having discussions with others and had no particular expertise himself, he requested an update in writing. On the 30th July TC again discusses the submission with the minister although he has not had the written update requested from the meeting on the 28th July. When it is received, that evening, TC forwards it without delay to AC upon whose advice he is relying, with his minister's knowledge and consent. On the 31st July AC responds and indicates the changes should be made from 1st October, but raises other queries (3000 hours etc). TC was in Donegal on annual leave on the 3rd and 4th August. A SMT meeting takes place on the 7th August at which TC is not present. AMcC's email to TC states 'keen to have an early decision'. TC then has a further conversation with CS during which he relays the additional queries raised by AC (ie the 3000 hours). When the response to this is received from JM, TC can clearly see that those queries are non-starters and thus the submission needs cleared. This is precisely what he conveys to AC in an email when JM's response is received. Again there is no delay and he forwards JM's email to AC on the same day. On 13th August, this is the first time there is any escalation and a ministerial direction is referred to by CS (although 'accounting officer issues' had been mentioned in an email on 11th August). TC is anxious to have an oral briefing with JB (that is the way he usually briefs him) and AMcC organise an issues meeting for 24th August. That date is not picked or suggested by TC. It could have been held much sooner. That date may have been picked because the Minister was not in the office and had asked his private secretary SK to keep the diary free for the first 3 weeks of August. The issues meeting then takes place, TC asks once more 'is this the latest date' not expecting officials to agree to a later one. However, JM readily agrees and on TC's case selects a new date of 4th November. The submission is cleared within a few days, after it is reworked to include the amended date. It is submitted that at every remove, TC acted promptly and reasonably.
19. It is true that TC indicated that there was a delay inherent in the way he usually briefed JB, ie verbally. On his own evidence, if this was not the *modus operandi*, the submission could have been cleared sooner. However, it remains the case that the officials could have arranged and/or insisted on an earlier date, or gone to Portstewart where JB was staying. It was also the

⁵³ It is noted that in a further witness statement dated 21/11/18, JB now states at WIT22676 para 4(b) that one of the email accounts on which he expected to receive departmental business from TC while he was in Portstewart was indeed his Hotmail address.

⁵⁴ WIT27553.

⁵⁵ TRA12588 at line 18.

officials who selected the 24th August 2018. That aspect of TC's working relationship with JB (i.e. the need for oral briefings) existed separately from their personal difficulties with each other. Put another way, even if TC and JB had not fallen out, oral briefings would still have been the way business was transacted. Thus, the lack of 'rapport and trust', whilst far from ideal, did not actually have any material impact on the RHI damage limitation exercise in 2015. TC and AMcC did both recognise that ministerial absence was a factor in having the submission cleared quicker, but there is no suggestion JB's absence was as a result of the lack of rapport with TC – the minister was simply on summer holidays.

20. Finally, it seems highly likely that there would have been delays in 2015 in any event. DETI officials were attempting to carry out a number of tasks at once. As DFP approval for the RHI scheme had lapsed, they were having to design a business case to secure retrospective and prospective approval. DETI were seemingly unsure as to the position with funding, and had hopes money would be provided from HMT/DECC budget or that in a worst case scenario there would only be a 5% penalty to DEL budget. This matter was not ultimately clarified, insofar as it needed to be, until late December 2015. There was no point passing legislation amending the scheme if DFP approval was not going to be in place in any event. The legislation however was required to address budgetary and financial problems. Central to all of this were the regulations themselves. These had to be drafted and approved by DSO. As far as legislative processes were concerned, the Assembly did not sit in the summer and there was a Halloween recess. The in/out period following the McGuigan murder also impacted on Assembly business in September and October.⁵⁶

21. In an email to AMcC from CS on 12/12/16⁵⁷, CS stated as follows:

By way of background, in addition to the tariff changes, the draft regulations address Phase 2 of the Non-domestic RHI, adding to their complexity. The first draft of the Regulations was sent to DSO on 22 July 2015 (ie even before Ministerial agreement to the policy of introducing cost control was achieved – proposed in a submission of 8 July, agreed in September). You will see from the email of 24 August from SW to JM (attached) that the timescale already appeared very challenging by that point.

It took 5 iterations before DSO clearance of the draft regulations was obtained on 28 October. Strenuous efforts were made to expedite approval by the Examiner of Statutory Rules (who helpfully gave prior informal consideration) – this required some further changes, with DSO approval of the final draft on 3 November.

Ministerial approval for the draft regulations was sought in a submission of 6 November and obtained 10 November. That is, Minister Bell was never in a position to approve the draft regulations in time for debate on 4 November.

This timescale meant that the earliest date for Committee consideration was 17 November. The motion in the Assembly was the same day.

⁵⁶ DFE228889

⁵⁷ WIT11731

In summary, it appears to me that the primary cause of delay was the time taken to draft and clear the regulations. With hindsight, we ought to have de-coupled the tariff changes and pursued them separately, in order to minimise the risk of such delay. The need to do so may not have been as clearly understood in July as it was later. Nevertheless, this was a missed opportunity”

22. From a consequences perspective, as can be seen from the above email, the alleged ‘delay’ in signing the submission did not impact on the steps taken by officials to have a set of Regulations approved. The ball began to roll in this regard shortly after the 8th July. Thus the speed or otherwise with which that process proceeded seems to have been entirely independent from the issue about clearance of the submissions. There was toing and froing between DETI and the DSO, such that the Regulations themselves were not cleared until 28th October 2015. Thus one has to seriously question whether ultimately the Regulations could have come into effect on 1st October 2015 regardless of when the submission was cleared. The further extension of 2 weeks was related to these factors.
23. One also has to consider what impact the extension from 1st October to 4th November, and then until 18th November actually had on the spike that occurred. Industry were being briefed weeks if not months in advance about changes in October. It is noted that the vast majority of additional applications were received in the period of extension. However, given the way accreditation occurred, namely that one installed and commissioned the equipment in advance, then applied to be a member of the scheme with backdating occurring if successful, the deadline inherent in the commencement of tiering was in terms simply a date by which your paper application had to be lodged in advance of. It may well be the case that the fact the apex of the spike fell in the extension period was simply because the public were informed when the deadline was going to be and were reacting to that. Put differently, perhaps a proportion, even a large proportion of applicants who put in their applications the period after 1st October 2015 would in any event have been able to lodge their applications by the 1st October, had that been the date that was announced.

Terms of Reference

24. As far as TC is concerned, the relevant elements of the TOR are obviously the “operation and efforts to control the costs of the [RHI] scheme’. Within that, paragraphs 1(b), (c), (e), (f), (g), (h) and (i) are the most relevant.
25. TC’s appointment as a SpAd has been dealt with above and it is accepted it appears to have occurred without the Code of Appointment being followed. However, that code is not directed at the applicant and in any event any such breaches here were not, it is submitted, operative in any of issues that arose with the RHI scheme.
26. TC accepts failings in losing his temper with JB at breakfast in London on 10th June, amending a submission on 3rd February 2016 and writing a covering email which was untrue, and his willingness to leave out references to PR in giving his otherwise truthful account to the media about JB. However, dealing with each in turn, it is submitted that the first incident was representative of a clash of personalities and was simply an argument which happens from time to time in all walks of life. There was nothing in same that unethical or unlawful. Nor did it relate to RHI. The issue at hand then was NIRO. With respect to the second incident, TC did not try to mask what he had done, in fact he sent a document with tracked changes and assumed this was what the Minister was get and that he would be fully aware of

the position. Thus there was absolutely no intention to knowingly deceive or mislead his minister. The other recipients of the email of course knew only too well that DFP and FM had been consulted. As such there was no suggestion those persons could have been deceived or that that was TC's intention. Rather the whole purpose in same was simply an attempt to curry favour with his party colleagues in circumstances where his position felt vulnerable. As for TC's willingness to 'fit the narrative' the content of his story were true. At the time of the offer, TC was no longer working for JB or indeed the DUP, thus he was not at that stage a SpAd and under the obligations and duties of that position. It also related to a period in time considerably after the RHI scheme had closed.

27. TC did his best in 2015 to serve the objectives of the administration and the department in which they work, and was legitimately, properly and reasonably liaising with AC being a member of the minister's party, with his minister's knowledge and consent. Thus there were no 'conflicts of interest'. TC was not aware of the financial issues when pursuing what was otherwise an entirely legitimate strategy of pursuing the latest date that officials could live with⁵⁸. As AMcC stated in the PAC hearing on 18th January 2017 :

“I think it is highly understandable that the Ministerial position was to avoid rushed action when the underlying policy objective was good (hence its place in the PFG), and popular, and (as far as we believed up to the Chancellor's Statement in December) not creating an opportunity cost for other DETI or NI Executive programmes.

28. The implementation of cost controls and any delay with same is dealt with above. It is submitted that TC acted ethically, within the law and in compliance with the relevant standards. TC was neither lobbied nor lobbied himself. In 2016 TC acted swiftly to close the RHI scheme. There is no suggestion TC prematurely disclosed any information, or intentionally or dishonestly sought gain from the RHI scheme or the supply chain for himself or others. At the end of the day, as per AMcC at PAC on 18/1/17⁵⁹, the vast majority of what went wrong was down to a small number of civil service errors.

Conclusion

29. The RHI scheme itself had within it inherent flaws which to a large degree led to the financial losses. The fact the process for the appointment of SpAds does not appear to have been followed at the time of TC's appointment is a matter for those appointing him and the Minister. For the reasons set out above, the fact that there were difficulties in the relationship between JB and TC, whilst not ideal, did not in fact impact on tiering or suspension of the RHI scheme. TC was not involved, nor was aware of any lobbying of industry at the time tiering was being considered. A close consideration of the time line demonstrates that in fact TC acted promptly, reasonably and legitimately in accordance with the process set up by TJ, namely liaising with AC. He did so with the consent and knowledge of his minister. The minister absence through summer 2015 and the need for oral briefings contributed to the

⁵⁸ The AME confusion - "that was the false foundation for the SpAds view that there was no great harm in continuing with the high tariffs for another month." see DFE 10725"

⁵⁹ PAC 06681

submission not being signed sooner. Owing to a lack of knowledge as to the full budgetary/financial picture, officials during summer 2015 did not have the sense of urgency that with hindsight may have been appropriate. Suggestions of 'reluctance' were not levelled at the time. It was, without the knowledge of financial problems with the scheme, a legitimate and understandable strategy to seek a later date. Officials always had the power of seeking a direction at all times and could have dictated what the date for the coming into effect of the Regulations must be. Instead a later date was willingly agreed to. The documentation demonstrates that quite aside from the clearing of the 8th July submission, there were a number of other factors that would in all probability have led to a later date for the commencement of the Regulations, not least because they were not finalised until 28th October 2015. It transpired that tiering was not actually effective in reducing exposure and with hindsight it can be seen that the scheme should have been suspended in 2015, not 2016. There may have been a similar spike had the relevant date remained as at 1st October 2015 given the level of engagement with industry by officials. For the reasons set out at paras 24-28 above it is submitted that TC did not breach any duty on him as a SpAd during his time dealing with RHI.

Richard Smyth BL

27th November 2018