



Timothy Johnston

Personal information
redacted by the RHI Inquiry

By post and email (timothyjohnston@dup.org.uk)

11 May 2017

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, from my previous correspondence, with the RHI Inquiry's Terms of Reference, which remain available on the Inquiry's website. You will also be aware that the RHI Inquiry is conducting its investigations into the matters set out in its Terms of Reference. The Inquiry is continuing with the process of gathering all of the relevant documentation from relevant departments, organisations and individuals.

In addition, the Inquiry has also now begun the process of requiring individuals who have been, or who may have been, involved in the range of matters which come within the Inquiry's Terms of Reference to provide written evidence to the Inquiry Panel.

In keeping with the approach we are taking with other individuals, the RHI Inquiry is now issuing to you a Statutory Notice (known as a 'Section 21 Notice') pursuant

to its powers to compel the provision of evidence in the form of a written statement in relation to the matters falling within its Terms of Reference.

The Section 21 Notice enclosed with this letter requires you to provide evidence to the RHI Inquiry Panel in the form of a written statement addressing the matters identified in the Schedule to the Section 21 Notice. As the text of the Section 21 Notice explains, you are required by law to comply with it.

The aim of the enclosed Notice is to require you to provide all relevant evidence you have within your knowledge, information or belief which is pertinent to the Inquiry's Terms of Reference. The Schedule to the enclosed Section 21 Notice provides further detail as to the matters which should be covered in the written evidence which is required from you. In the event that there is a category of information in respect of which you have no evidence which you can provide, please state this in your response. Where you can provide evidence, the more comprehensive your statement is, the less likely it may be that the Inquiry will have to revert to you at a later stage for clarification, although in many cases this is likely to be necessary to some degree.

It is vital that the 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.

I appreciate that you may require or desire access to some documentation in order to assist you in preparing your statement. In particular, you may wish to see documentation to which you previously had access in your position as a Special Adviser within a Department but to which you now no longer have access. If that applies in your case, I understand that the Executive Office is making arrangements to permit such access, at least in the first instance. You should contact Ms Olive Maybin, in the Office of the Head of the Civil Service, to organise this. She is contactable at Olive.Maybin@executiveoffice-ni.gov.uk. I have informed Ms Maybin that you may be making contact with her to arrange access to documentation; but there is, of course, no obligation upon you to do so.

Receipt of this correspondence and its enclosures places you under a duty of confidentiality to the RHI Inquiry in respect of them. You may share the correspondence and the enclosed Notice with your legal representative(s), but neither you nor they may show, communicate the contents of, nor provide this correspondence or the Notice to any other person or organisation without the express permission of the RHI Inquiry. Any breach of this duty of confidentiality is actionable at the suit of the Inquiry Chairman.

You will also find attached to the Section 21 Notice a Guidance Note explaining the nature of a Section 21 Notice and the procedures that the RHI Inquiry has adopted in relation to such a notice. In particular, you are asked to provide your evidence in the form of the template witness statement which is also enclosed with this correspondence.

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

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

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

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

Yours faithfully



Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE
[No 150 of 2017]

Background

1. Set out a description of your occupational history, qualifications and experience.
2. Set out a summary of your role as a Special Adviser in any such posts you have held from 2011 to date (this includes the dates between which you held the role/s, what the role/s entailed, to whom you reported, *etc.*). In each instance, describe how this role related, if at all, to the Non Domestic Renewable Heat Incentive (RHI) Scheme in Northern Ireland ('the Scheme').

Role of Special Advisers

3. Describe the role of Special Adviser, including:
 - a. the rules which governed your position;
 - b. who would give you instructions, and who was entitled to do so;
 - c. how you interacted with other Special Advisers, and whether there was an understood or accepted hierarchy within your or any team of Special Advisers;
 - d. what duties you owed (or considered yourself to owe) to the political party to which you were affiliated and how, if at all, that affected your role or your performance of it;
 - e. how you interacted with civil servants, including the procedures which operated within a Department between civil servants, the Special Adviser/s and the Minister; and

- f. the relationship between you and Ministers affiliated to the Democratic Unionist Party, including whether any Minister was expected or required (as a matter of political reality or on any other basis) to accept advice or direction provided by you, on your behalf or through you on behalf of your Minister.

Involvement with RHI Scheme

4. Explain in detail any involvement you had in relation to, or touching upon, the Scheme including (but not limited to) any role or involvement you had, whether by way of giving advice or otherwise, in respect of the setting up, design, implementation, operation, promotion, oversight, governance, funding, amendment (including the introduction of cost controls), suspension and/or closure of the Scheme, from its inception up to the present day.
5. Without prejudice to the generality of paragraph 4 above, explain your involvement (if any) in:
 - a. the creation and development of the Scheme in, or before, 2012;
 - b. the administration/operation of the Scheme;
 - c. any problems or difficulties which emerged in respect of the Scheme (including, but not limited to, the causing or permitting, identification, consideration and/or remediation of any such problems);
 - d. the amendment, suspension or closure of the Scheme;

in each instance providing:

- i. details of any relevant interactions with Civil Servants, Ministers, Special Advisers, MLAs, politicians, political parties and other potentially relevant persons (e.g. consultants, the renewable heating industry, actual or potential applicants for accreditation under the Scheme, journalists, etc.);

- ii. where you made any decision, or gave any advice, in respect of any of the matters set out at paragraph 4 above, the reasons for that decision or that advice (as the case may be); and
 - iii. details of any documents which are of significance or particular relevance (which should be annexed to the witness statement if you have access to the documentation which permits you to do so; or, otherwise, which is identified as clearly as you can).
6. Again without prejudice to the generality of paragraph 4 above (and the remainder of the issues addressed in this Schedule), please address the following matters:
- a. Provide a full explanation of your involvement in the decision-making processes as to (a) the introduction of costs controls into the Scheme, (b) the suspension of the Scheme to new applicants, (c) the timing of, and any delay in respect of, the above steps, and (d) any announcement or publication relating to those matters.
 - b. Provide a full account and explanation of any contact between you and Timothy Cairns in relation to the Scheme, identifying all contact made between you and Timothy Cairns about the Scheme (including so far as possible the date and time of such communication and the means of such communication) and specifying, in each instance, the nature and purpose of the contact.
 - c. In respect of any contact covered by sub-paragraph b. above, indicate whether that contact, or series of contact, was initiated by Timothy Cairns or by you.
 - d. Specify whether, in 2015, you influenced or encouraged Timothy Cairns, as Special Adviser to the DETI Minister, to seek to delay or in

any way soften or reduce the costs controls being introduced into the Scheme at that time.

- e. Specify whether you influenced or encouraged any person, or made representations to any person, at any time, to the end of delaying, softening or reducing the introduction of costs controls into the Scheme or to the end of increasing or maintaining the opportunity for applicants to the Scheme to achieve more favourable subsidies. In respect of each such instance, provide full details including who you contacted, when, by what means, for what particular purpose and with what result.
- f. In respect of any matters covered by sub-paragraphs d. or e., if there was any such influence, encouragement and/or representations, specify whether these steps were taken on your own behalf or on behalf of, or at the instigation of, any other person; and, if so, who that other person was in each instance.
- g. In respect of any matters covered by sub-paragraphs d. or e., if there was any such influence, encouragement and/or representations, specify who else (to your knowledge) was aware of any such influence, encouragement and/or representations.
- h. Provide full details of any discussion(s) or communications you had with other DUP Special Advisers in relation to the Scheme (including so far as possible the date, time and place of such discussion or communication and the means of such communication) and specifying, in each instance, the nature and purpose of the contact.
- i. Provide full details of any discussion(s) or communications you had with Minister Foster about the Scheme at any time (including so far as possible the date, time and place of such discussion or communication and the means of such communication) and specifying, in each instance, the nature and purpose of the contact.

- j. Provide full details of all contact you had with applicants to the Scheme, or potential applicants to the Scheme, which related to the Scheme (including so far as possible the date and time of such communication and the means of such communication) and specifying, in each instance, the nature and purpose of the contact.
 - k. Provide full details of any contact you had in relation to or touching upon the Scheme with any persons to whom you were connected, again providing so far as possible the date and time of such communication and the means of such communication and specifying, in each instance, the nature and purpose of the contact. For this purpose, a relevant connection is intended to be construed as defined at paragraph 14 below.
 - l. Without prejudice to the generality of sub-paragraphs j. and k. above, specify whether you shared information touching or relating to the Scheme which was received in the course of your employment as a Special Adviser with third parties not employed by or acting in the course of a role within the Government of Northern Ireland.
7. Explain your understanding of the funding arrangements for the Scheme, including:
 - a. how that understanding was gained;
 - b. how (if at all) that understanding developed;
 - c. what steps (if any) you took or directed to clarify the funding arrangements for the Scheme;
 - d. whether, if you misunderstood the funding arrangements for the Scheme at any material time, you consequently communicated an inaccurate description of the Scheme's funding to other persons at any material time (identifying the approximate date and recipient of such communications); and
 - e. if applicable, the steps you took to correct any misunderstanding on the part of other persons regarding the funding arrangements for the

Scheme (identifying the approximate date of each such step and the name of each relevant person).

8. Identify, in your view, any flaws or difficulties with the Scheme and/or its operation, explaining in each instance, so far as you can, how these difficulties or flaws came about and with whom (if anyone) responsibility or accountability for them lay.
9. Specify whether you promoted the Scheme and/or encouraged any third party to seek accreditation under the Scheme, assisted any third party in so doing, or provided any third party with information knowing that they might apply, or consider applying, or that they might advise, encourage, assist, or cause other persons to apply, or consider applying, for accreditation under the Scheme. In respect of any such instance, please provide full details including (but not limited to) the third party concerned and the date of any steps taken by you in that regard.

Lobbying and pressure

10. Identify any instances, to your knowledge or belief, of lobbying or encouragement of Ministers, Special Advisers, Civil Servants or other relevant persons in relation to the terms of the Scheme and/or the introduction; non-introduction, variation or delay of the introduction of cost controls into the Scheme (including, but not limited to, the amendment of tariffs, tiering, degression and Scheme suspension or closure) at any stage but, in particular, at the creation of the Scheme and in the period from mid-2015 to early 2016.
11. Identify any instances, to your knowledge or belief, where influence or pressure was exerted on you in relation to any aspect of the RHI Scheme. In respect of any such instance specify:
 - a. who provided that influence or pressure;
 - b. when it occurred;
 - c. what it consisted of and how it was conveyed;

- d. what you believed the motivation to have been (and what you now believe the motivation to have been, if different), and why you believe that; and
 - e. how you dealt with it.
12. Identify any instances, to your knowledge or belief, where influence or pressure was exerted on someone else in relation to the RHI Scheme. In respect of any such instance identify:
- a. who provided that influence or pressure;
 - b. who it was exerted on;
 - c. when it occurred;
 - d. what it consisted of and how it was conveyed;
 - e. what you believe the motivation to have been, and why you believe that;
 - f. how it was dealt with; and
 - g. how and when you came to be aware of the influence or pressure.

Standards of conduct and conflict of interest

13. Identify any instances, to your knowledge or belief, where a Minister, Special Adviser, Civil Servant or any other person involved in the RHI Scheme (including, if applicable, yourself):
- a. breached relevant standards (including, but not limited to, the Nolan Principles, the Ministerial Code of Conduct, the Civil Service Code of Conduct, the Code of Conduct for Special Advisers and/or terms or conditions of employment or service) or acted in a way incompatible with their duties (including, but not limited to, by means of making premature or unauthorised disclosures);
 - b. acted in circumstances relating to or touching upon the Scheme in any way where they had a real or perceived conflict of interest;

in respect of any such instances, providing details and specifying the basis for any belief that there has been a breach of a relevant standard or duty or that a conflict of interest arose.

14. Specify whether, to your knowledge, you have any connection to a person or body receiving payment under the Scheme or benefiting commercially from the Scheme in some other way (for instance, by supplying equipment, plant, fuel or other goods or services used by Scheme claimants). In this request, a 'connection' includes (but is not limited to) circumstances where the Scheme claimant or beneficiary is a relative (not limited to a parent, child or sibling but extending also to aunts/uncles, nephews/nieces, cousins and relatives by marriage), friend, close acquaintance, business associate. In the case of politicians or special advisers, it also includes a donor to you or your political party or a supporter of you or your political party.

Whistle-blowing and raising of concerns

15. Identify any instances of which you are aware of whistle-blowing in relation to the Scheme, or disclosures made in the public interest raising concerns about the Scheme, setting out details of when this occurred, to whom and by whom any relevant disclosure was made and how it was dealt with.
16. In particular, provide an account of how you dealt with any disclosures raising concerns about the Scheme made or communicated to you at any time. In relation to each such instance, identify precisely how the concerns were communicated to you.
17. Without prejudice to the generality of paragraph 16 above, provide a full account of the following matters in particular:
 - a. When you first became aware of communications from Janette O'Hagan to the Department of Enterprise, Trade and Investment (DETI), its Minister, and Departmental officials, commencing in 2013

and continuing until 2015, seeking to draw the Department's attention to alleged flaws in and/or abuses of the RHI Scheme;

- b. How you became aware of the said communications and/or the issues being raised by Ms O'Hagan;
 - c. Every action you took to ensure that the concerns raised by Ms O'Hagan were investigated and addressed;
 - d. How, if at all, her concerns were investigated and addressed; and
 - e. Any steps which you consider ought properly to have been taken in response to Ms O'Hagan's communications but which were not taken either in time or at all.
18. Specify when you first became aware that subsidies payable under the Scheme exceeded the cost of biomass fuel used to produce heat (so that there was an incentive in some cases to produce heat merely to make profit from the Scheme) and how you so became aware.

General

19. Considering the RHI Inquiry's Terms of Reference, please identify any representations made to you about the RHI Scheme (which you regard as significant and about which you consider the RHI Inquiry should be aware), whether those representations were made by colleagues, or otherwise. In respect of any such representations please indicate when they occurred, where they occurred, who was involved, and what was said or communicated to you.
20. Considering the RHI Inquiry's Terms of Reference, please identify any conversations or discussions you had about the RHI Scheme (which you regard as significant and about which you consider the RHI Inquiry should be aware), whether those conversations or discussions involved colleagues, or otherwise. In respect of any such conversations or discussions please

indicate when they occurred, where they occurred, who was involved, and what was said to you.

21. Provide any further evidence within your knowledge or belief which is relevant to the matters which the RHI Inquiry is investigating as set out in the RHI Inquiry's Terms of Reference.

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.

GUIDANCE NOTES FOR THE SECTION 21 NOTICE

1. The Independent Public Inquiry into the Non Domestic Renewable Heat Incentive (RHI) Scheme ('the RHI Inquiry') was set up under the Inquiries Act 2005 ('the Act').
2. These Guidance Notes are not part of the Chairman's Notice served under Section 21 of the Act, but are designed to assist those who receive such a Notice.
3. It is very important that a Notice served under Section 21 of the Act is complied with in full. Failure to comply has potentially very serious consequences. Failure to comply may result in you being prosecuted and convicted of a criminal offence that may result in you being fined and/or imprisoned; or being certified to the High Court where you may face contempt of court proceedings.
4. You should consult your solicitor, or your organisation's legal advisor, about the Notice as soon as possible. They will be able to assist you as to how to deal with it.
5. If you feel the content of the Notice is somehow unclear, and you wish something to be clarified, you may contact Patrick Butler, Solicitor to the RHI Inquiry, by email at Patrick.Butler@rhiinquiry.org, who will endeavour to assist with your query and will discuss it with the Chairman of the RHI Inquiry, as necessary.
6. Compliance with the Notice requires you, in the case of producing documents, to have the documents with the RHI Inquiry by the date and time set out in the Notice. Where the Notice requires you to produce a witness statement, the statement should be produced to the RHI Inquiry by the date and time set out in the Notice.
7. "Document" is defined in section 43 of the Act as information recorded in any form.

8. There is no restriction in the Act on the number of times a Section 21 Notice may be served upon a person or organisation. The RHI Inquiry reserves the right to issue further such notices in future to any recipient, as appropriate in the judgment of the Chairman.
9. The RHI Inquiry prefers that documents, including statements, are received by it in electronic form – preferably as a PDF document – and would be grateful if you could furnish, wherever possible, the documents required of you in that form. The documents should be sent to Patrick.Butler@rhiinquiry.org.
10. Where it is not possible for you to send documents in electronic form you should engage with the Solicitor to the RHI Inquiry to find a suitable solution for provision of the documents to the RHI Inquiry. The RHI Inquiry is keen to ensure that documents are received by it in a manner which is as conducive as possible to the effective and efficient conduct of the RHI Inquiry's work. Where documents can be provided in chronological order, this is particularly helpful.
11. Where it is necessary to send hard copy documents, these should be sent to the RHI Inquiry by post or courier to **RHI Inquiry, 1st Floor, Waterfront Plaza, 8 Laganbank Road, Belfast, BT1 3LR**. If there is a need to hand deliver the documents then contact should be made with the Solicitor to the RHI Inquiry to make suitable arrangements.
12. It may be that you consider that some of the documents you are providing to the RHI Inquiry should be redacted in some way for some reason, bearing mind that the RHI Inquiry may decide to publish the documents in due course. If you do feel documents you are providing should be redacted in some way, then you should provide the documents to the RHI Inquiry in provisionally redacted form (using a grey redaction if possible) so that the proposed redacted material can be read by the Inquiry team. You should also set out in writing the reasons why you consider the redactions should be made by the Inquiry. The RHI Inquiry will then deal with the material in accordance with its Procedural Protocol.
13. If, for some reason, you wish to make a claim to the Chairman of the RHI Inquiry, under Section 21(4) of the Act, to the effect that you are unable to

comply with the requirements of the Notice, or that it is not reasonable to require you to comply with the Notice, then that claim should be made in writing and addressed to the **Chairman of the RHI Inquiry, RHI Inquiry, 1st Floor, Waterfront Plaza, 8 Laganbank Road, Belfast, BT1 3LR.**

14. Any such claim should be made as soon as possible after receiving the Notice, and no later than the deadline for making a claim set out in the Notice.
15. The claim should set out the grounds on which it is made, and the reasons why it is said that you cannot, or it is not reasonable for you to, comply. The claim should be as comprehensive and detailed as possible.
16. If you are making a claim for a variation of the Notice in order to give you further time to comply, then you should set out why you need more time and indicate a date by which you say you will be able to comply, and why you say that date will be sufficient. If you can provide some of the information required within time but contend that you cannot provide all of the required information in time, this should be clearly stated and, again, detailed reasons for your contention should be put forward.
17. The Chairman will determine whether to revoke or vary any Notice. In considering your claim he will take into account, amongst other things, the public interest in the information in question being obtained by the RHI Inquiry, having regard to the likely importance of the information. His decision will be communicated to the person making the claim as soon as is reasonably practicable.
18. A Section 21 Notice, by reason of the matters set out in section 22 of the Act, cannot require you to give, produce, or provide any evidence or document to the RHI Inquiry if you could not be required to provide them in civil proceedings in Northern Ireland, or the requirement is incompatible with an EU obligation, or the documents are covered by public interest immunity. If you are withholding evidence or documents from the RHI Inquiry for one of these reasons then you should notify the Solicitor to the RHI Inquiry in writing, immediately the decision

to withhold is taken, of what the material is that you are withholding and why you are claiming that that material is not required to be provided by the Section 21 Notice.

19. Section 40 of the Act provides the Chairman with power to make awards for expenses, including for legal representation, incurred in complying with requirements imposed by the RHI Inquiry. In determining whether an award should be made, the Chairman will have regard to the financial resources of the applicant and whether making any award is in the public interest. The Chairman does not expect to receive requests for funding from Northern Ireland Government Departments or other public bodies. If you are affected by the issue you can discuss it with the Solicitor to the RHI Inquiry.

INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME**RHI REF: Notice 150 of 2017****DATE:****Witness Statement of: TIMOTHY JOHNSTON**

I, Timothy Johnston, will say as follows: -

Background

1. From September 1999- September 2002 I worked with PricewaterhouseCoopers in auditing and accounts completing a number of accounting exams. September 2002 Policy Consultant for the Democratic Unionist Party, Oct 2002-March 2007 Director of Communications DUP, May 2007-June 2008 Special Adviser to First Minister Rt Hon IRK Paisley, June 2008-Jan 2016 Special Adviser to First Minister Rt Hon Peter Robinson, Jan 2016-Jan2017 Special Adviser to First Minister Rt Hon Arlene Foster. Jan 2017-present DUP Policy Adviser. LL.B (QUB), Prof 2 ICAI Accounts.
2. From 2011 to Jan 2017 I was a Special Adviser in the Office of the First and Deputy First Minister, advising and reporting to Peter Robinson and latterly Arlene Foster. In Jan 2016 I provided advice in relation to the suspension/closure of the scheme and later in 2016 and through to Jan 2017 in relation to the subsequent handling of these matters in a political context.

Role of Special Advisers

3. The role of the Special Adviser is to offer advice to the Minister. Advice is provided from a standpoint that is more politically committed and politically aware than would be available to a Minister from the civil service. This distinguishes the role from that of the permanent civil service and its political neutrality. The rules governing the position are set out in the Special Advisers'

contract and the Code of Conduct for Special Advisers, which is attached to the contract.

I was only answerable to the First Minister, as my appointing authority.

During my period as adviser I worked alongside other colleagues who were also advisers to the First Minister. We worked as a team unit for the First Minister. All had access to the First Minister. I interacted with advisers from other departments both from the same, as well as other parties. Within the group of advisers who worked for DUP Ministers, I had no sense that there was an understood or recognised hierarchy of advisers, indeed it was recognised we were answerable to our individual Ministers who themselves regularly interacted.

The main purpose of informal contact between DUP advisers was for internal communication and to ensure that Ministers, and the First Minister, delivered on DUP policy and manifesto commitments as well as having a consistency of message.

DUP advisers at Stormont Castle spent substantial time liaising with advisers from Sinn Fein around the business of agreeing Executive priorities and advancing work for the First and Deputy First Minister

I did not owe any duties, or considered myself to owe any duties, to the political party with which I was, and remain, affiliated, save that which was owed to the Minister who appointed me. It is a matter of record that the First Minister was also the leader of the party.

I interacted with all civil servant colleagues in a professional and constructive manner. We worked collectively to secure objectives and outcomes set by Ministers.

My relationships with other DUP Ministers were good. Most contact would have taken place on days when NI Executive meetings would be held. No Minister was expected, required, or in my experience would have tolerated, taking direction from an adviser. From time to time general opinion would have been sought but it was always understood that ultimately decisions are for Ministers.

Only the First Minister, who appointed DUP Ministers, would have been recognised as having authority to give instruction to other Ministers.

Involvement with RHI Scheme

4. I had no role in the setting up, design, implementation, operation, promotion, oversight, governance, funding or amendment (including the introduction of cost controls) of the Non-Domestic RHI scheme. As an adviser I gave advice to FM Foster in relation to the suspension/closure of the scheme in Jan 2016. I gave advice on the handling of the issues relating to the scheme following its closure to new applicants, including during the time of the publication of the Northern Ireland Audit Office report in June 2016, and in the period leading up to and subsequent to the BBC Spotlight and Nolan Show outputs. This included discussions with the then Deputy First Minister and his team of advisers including Mark Mullan and Senior Sinn Fein adviser Aidan McAteer.
5. My involvement was at the point of suspension/closure of the scheme. I was consulted by the First Minister following her becoming aware of problems with the scheme in early 2016. In so far as I can recollect, and with the aid of reviewing the documents submitted to the Inquiry, I was present at meetings between DUP and Sinn Fein advisers in Jan and Feb 2016 about how to close the scheme to new applicants, present for meetings between FM and DFM and between FM and Minister Bell. I believe both

Malcolm McKibben (Head of Civil Service) and Andrew McCormick were present for several meetings although I cannot recall dates. I gave advice to reduce the time it took to close the scheme to new applicants in 2016 as it appeared that there would be an overspend on the scheme and there were allegations of it not being used for genuine purposes.

6.

- a. I had no involvement in the decision-making processes on the introduction of cost controls in 2015. I was unaware of the detail of any discussions, meetings, communications and final decisions on cost controls at the time. I gave advice during the Jan/Feb 2016 period relating to the closing of the scheme to new applicants as this matter was discussed within OFMDFM by FM and DFM and their respective teams. DETI had proposed a suspension process including consultation, which would have resulted in the scheme closing to new applicants in Mar 2016. Collectively we believed this was a longer process than necessary and alongside DFM advisers proposed a shorter process to close the scheme.

The announcement to close was made by Minister Bell. He was subsequently asked to delay the closure date by one/two weeks following representations from Sinn Fein and a wide range of MLAs that there needed to be a further short period before closure, to take account of the fact applicants had already ordered equipment and were likely to be financially impacted by sudden closure.

It was agreed by FM and DFM that the Minister of Enterprise would be asked to inform the Assembly that the scheme closure date would be two weeks later than previously announced. I have a clear recollection that Jonathan Bell was outraged at being asked to make a second statement to the Assembly moving the final closure date of

the scheme. At the time he indicated that he felt it make him look foolish and was initially resistant to the suggestion.

- b. On a general level I would have had regular contact with Timothy Cairns as part of the DUP Adviser team where he would have kept DUP adviser colleagues updated on the work in DETI and, vice versa where he would have been updated on what was happening in other Departments by other DUP advisers.

In relation to the RHI scheme I worked with him in early 2016 on the closure of the scheme in relation to a paper that required Executive approval. This included work on getting FM/DFM agreement on the Executive paper and the timescale on closing the scheme as well as the announcement of same. Contact was conducted via email or discussion with myself and Richard Bullick.

- c. Generally likely to have been from Timothy Cairns and email documentation supplied may assist in this respect.
- d. I was not involved in any decision- making or detailed discussions in the summer of 2015. At no time did I seek to influence or encourage Timothy Cairns, or anyone else, to delay, soften or reduce cost controls. I was not in possession of any detailed knowledge about the scheme, its financing or operation at that time and had no reason to be so.
- e. I did not.
- f. As indicated I did not seek to delay, soften or influence the introduction of cost controls.
- g. There was no such influence, encouragement or representations.

- h. In Jan and Feb 2016 there would have been discussions about the suspension/closure of the scheme between myself, Richard Bullick, and Stephen Brimstone in the context that we were all advisers to FM Foster. This would have taken place at Stormont. Some of those discussions would have also involved Timothy Cairns (as detailed above) and Andrew Crawford, the then DFP adviser. The purpose of the contact was discussion relating to the best way to bring about the closure of the scheme to new applicants and the need for the NI Executive to approve a decision and a process for that purpose.
 - i. My discussions with First Minister Arlene Foster were in the period Jan 2016 –Feb 2016 and subsequent to the closure of the scheme in June 2016 at the time of the audit office report and then in Autumn 2016 onwards from the time the BBC wrote to the First Minister seeking answers to questions for BBC Spotlight. These would have been discussions at the office at Stormont Castle or Parliament Buildings. Any email correspondence will be included in the material supplied. The purpose of the discussions in Jan 2016 was about the closure of the scheme. Thereafter discussions focused on establishing, as far as possible, the facts of what happened in response to the wider political situation.
 - j. To my knowledge none whatsoever.
 - k. To my knowledge none whatsoever.
 - l. I did not, and have not, shared any such information with any third parties.
7. My understanding of the funding arrangements was limited in early 2016 to the fact that this was a scheme funded from Annually Managed Expenditure. In early 2016 there appeared to be a concern our share of that funding had been exceeded. The minute

from Andrew McCormick to Malcolm McKibben in January 2016 was the first sense I had that budget pressures were a significant issue.

Any knowledge gained in this area was through OFMDFM/DFP/DETI. I spoke with Malcolm McKibben regarding this issue at the time.

I sought to gather information at this point rather than transmit information to others. Those who I spoke to including HoCs and other advisers were more across the day-to-day detail of these matters.

8. I do not believe I can yet make detailed comment on this save to say that it would appear from the early days of this scheme that there was not a proper understanding of its financing, its administration appeared uncoordinated, and there was not a sufficiently joined up approach across government (and particularly from DETI to DFP), to understand or recognise its flaws at an early stage. The fact the subsidy payment was greater than the cost of wood pellets was a major flaw and this imbalance was not understood until very late.
9. I did not promote the scheme or encourage anyone to seek to join it. I did not assist any third parties in doing so nor did I provide any third parties with information knowing they might apply etc. Until early 2016 I had little knowledge about the scheme and only became more acquainted with detail after the publication of the NI Audit Office Report in June 2016.

Lobbying and Pressure

10. I am not aware of any instances of lobbying or encouragement of Ministers, Special Advisers, Civil Servants or other relevant persons in relation to the terms of the Scheme and/or the

introduction, non-introduction, variation or delay of the introduction of cost controls into the Scheme (including, but not limited to, the amendment of tariffs, tiering, degression and Scheme suspension or closure) at any state but, in particular, at the creation of the Scheme and in the period from mid-2015 to early 2016.

11. I am not aware of any occasion when I was influenced or pressured in relation to RHI.
12. I am not aware of any such instances.

Standards of Conduct and conflict of interest

13. I am not aware of any standards being breached. In respect of anyone acting in circumstances relating to or touching upon the Scheme in any way where they had a real or perceived conflict of interest I was not aware of any such conflicts at the time but subsequent to the closure of the scheme it is a matter of public record that several adviser colleagues had either family members who were beneficiaries of the scheme or were direct applicants.
14. To my knowledge I have no connection to a person or body receiving payment under the Scheme or benefiting commercially from the Scheme in some other way (for instance, by supplying equipment, plant, fuel or other goods or services used by Scheme claimants).

All such claims made by Mr Jonathan Bell in the Northern Ireland Assembly and during his interview on the BBC Nolan show that I had connections to those benefiting from the scheme or that family members had benefited in any respect whatsoever were false.

Whistle-blowing and raising of concerns

15. In January 2016 a constituent of FM Foster's reported concerns to the First Minister about the operation of the scheme and the potential for fraudulent activity. This concern was in the form of a typed letter given to the First Minister. Mrs Foster informed me about this after the meeting in a phone call and I advised that she meet with the Head of the Civil Service Malcolm McKibben and ask him to investigate the reported concerns. The First Minister did pass the typed document to Mr McKibben. I don't recall the name of the individual but Mrs Foster will be familiar with the details.

I am not aware of any other instances prior to the suspension/closure of the scheme. I became aware of another whistle-blower instance subsequent to the closure of the scheme – Janette O'Hagan - in or around later 2016.

16. With reference to concern expressed directly to me there was only the one instance, as outlined above, by the First Minister. I advised this be reported and investigated by Head of the Civil Service and this was done.
17. I became aware of the Janette O'Hagan communications in late 2016. I asked Andrew McCormick about these issues in Dec 2016. I was not aware of any communications with DETI prior to that point.
18. To the best of my knowledge around the time of the publication of the Northern Ireland Audit Office Report in 2016.

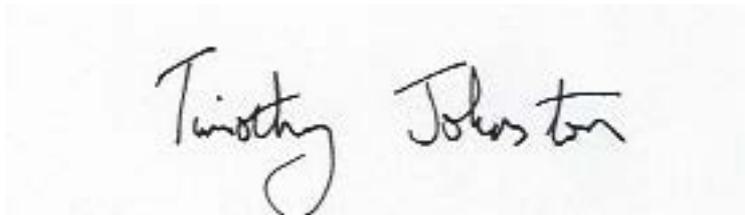
General

19. None save the material I have submitted to the Inquiry.
20. None save the material I have submitted to the Inquiry.

21. To the best of my knowledge I have provided the Inquiry with all relevant information.

Statement of Truth

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

A photograph of a handwritten signature in black ink on a light-colored background. The signature reads "Timothy Johnston" in a cursive script.

Signed:

Dated:....31st May 2017.....