



Trevor Cooper
c/o Department for Education
6th floor
Adelaide House
Adelaide Street
Belfast
BT2 8FD

31 July 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 you will already be familiar with the work of the Inquiry and its Terms of Reference from my previous correspondence with you.

The Inquiry is grateful for the witness statement you provided to it dated 19 July 2017. That statement has been considered by the Inquiry and there are a number of further matters the Inquiry wishes to ask you about arising out of it.

Therefore, please find enclosed with this letter a further Section 21 Notice requiring you to provide evidence to the RHI Inquiry Panel in the form of a written statement addressing the matters identified in the Schedule to the Section 21 Notice. Unless otherwise stated, references to paragraph numbers in the

Schedule to the enclosed Section 21 Notice are references to paragraphs in your statement of 19 July 2017.

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

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 but now no longer have access in your current post. If that applies in your case, I understand that the Department for the Economy (DfE) is making arrangements to permit such access, at least in the first instance. You should contact Terence Coyne at DfE, who is the Department's RHI Task Force Information Manager, to organise this. He is contactable at Terence.Coyne@economy-ni.gov.uk. I have informed Mr Coyne that you may be making contact with him to arrange access to documentation; but there is, of course, no obligation upon you to do so.

I also refer you to Restriction Order No 2 made by the Chairman of the RHI Inquiry on 22 June 2017, a copy of which is enclosed for your convenience. This restriction order prohibits you from publishing any documentation received from the RHI Inquiry (save that you may show it to your legal representative) unless you first obtain the consent in writing of the Inquiry Chairman.

In addition to the three restriction orders made by the Chairman of the RHI Inquiry (which you will find published on the Inquiry website) receipt of this correspondence and its enclosures also places you under a duty of confidentiality to the RHI Inquiry in respect of them. You may share the correspondence and the enclosed Notice and documents with your legal representative(s), but neither you nor they may show, communicate the contents of, nor provide this correspondence or the Notice or documents 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.

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

A handwritten signature in black ink, appearing to read 'Patrick Butler', with a long horizontal flourish extending to the right.

Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE**[No 373 of 2017]**

Paragraphs 1, 2 and 44 (WIT-18524, WIT-18525 and WIT-18550)

1. In paragraph 1 of your statement of the 19 July 2017 ('your first statement') you have described acting as Senior Finance Director between January 2012 and June 2012 and, in paragraph 44, have said that it was that in that acting capacity (acting as a Grade 3) that you came to chair the 2012 RHI Casework Committee. However, you have also said in paragraph 2 that Colin Lewis was the Grade 3 until December 2012; and you have also said that you reported directly to David Sterling (as Permanent Secretary) between January 2013 and June 2013. To avoid any confusion over the dates given, the Inquiry would be grateful if you would re-examine the issue of timings and confirm the position as clearly as possible.

Paragraph 10, subsection "2011" (WIT-18531)

2. You make reference in paragraph 10, under the subsection titled "2011", that you were involved in monitoring round bids in relation to the administration costs of the RHI Scheme. As to that please explain:
 - a. How funding for OFGEM's administration of the RHI Scheme was dealt with;
 - b. Why monitoring round funding was necessary in respect of the administration costs;
 - c. Why the necessary funding for the administration costs of the RHI Scheme was not already within the departmental DEL budget;
 - d. What impact, if any, the issue of administration costs (and from which funds they would be paid) had in relation to the Department's choice of the type of scheme to be used or the Department's consideration of

options for support for renewable heating.

Paragraph 10, subsection "2014" (WIT-18532)

3. In paragraph 10, under the subsection "2014", you make reference to being involved in the casework committee considering the business case for the domestic scheme. As to that:
 - a. Did the 2014 domestic casework committee, as part of its consideration of whether to approve the 2014 business case for the domestic scheme, look at whether assurances given to the 2012 non-domestic casework committee about the non domestic scheme (for instance, as to monitoring and/or reviews), had in fact been honoured? If not, why not?
 - b. Did the 2014 domestic casework committee remind itself that there was supposed to be a "review" of the non-domestic scheme in 2014, and ascertain the position in relation to that? If not, why not?

Paragraph 11 (WIT-18533)

4. You say that during the operation of the RHI Scheme DETI Finance Branch "would not have been resourced to do anything over and above very high level monitoring of expenditure on the Scheme". As to that please explain:
 - a. What the "high level of monitoring of expenditure on the Scheme" would mean in practice; and
 - b. Whether it would have been preferable to carry out some other form of monitoring within Finance Branch. If so, please explain what that would have been, what it would have entailed in practice, and why it was not possible to undertake.

Paragraph 12 (WIT-18534)

5. You indicate in paragraph 12 that Energy Division represented a number of budgetary controls to the 2012 non domestic casework committee, and then you list them. As to that:
- a. Although you explain that you were told that there would be the ability to undertake emergency tariff reviews, please address the following:
 - i. What did you understand that process to be (what would trigger it, what would the review entail, who would carry it out, etc.), and how did you come to have that understanding?
 - ii. What did you understand an emergency tariff review would consist of in practice, and how did you come to have that understanding?
 - iii. What did you understand about the mechanism that was available to execute any changes found to be necessary by the emergency tariff review, including how quickly this could be achieved, and how did you come to have that understanding?
 - b. Although, you explain that you were also told that there would be the ability to close the scheme to new applicants by Energy Division, please address the following:
 - i. What did you understand would cause that mechanism to commence and how did you come to have that understanding?
 - ii. What did you understand the mechanism to be in practice (i.e., what steps would have to be taken) and how did you come to have that understanding?
 - iii. What did you understand (if it were necessary to close the Scheme to new applicants) about how long it would take for the steps to be

taken to effect this change and how did you come to have that understanding?

Paragraph 12 (2nd page: WIT-18535)

6. In the latter part of paragraph 12 you describe an interaction, or interactions, with David Thomson in respect of a DECC plan in relation to degression. As to that:
 - a. Doing the best you can, on what date did David Thomson come to see you in your office (can you recollect was there anything else he was coming to see you about that might help date this interaction?)
 - b. Where was your office in relation to that of David Thomson?
 - c. Doing the best you can, was the document with which David Thomson presented you a business case or a consultation document?
 - d. As far as you can, please provide the full name of the document.
 - e. To the extent that you know, what were the circumstances that led to David Thomson having the document in the first place?
 - f. When David Thomson asked you for your thoughts, did he leave the document with you for you to read, and return later for a discussion about it after you had read it?
 - g. Was the document left with you after your discussion, or did David Thomson take it away?
 - h. Was the "do nothing option" to which you have referred (as indicating certainty of no budget overspend) the continuance of the interim or standby mechanism for budget management (which would suspend the RHI Scheme to new entrants until the next financial year, should

estimated spending reach a level where the budget could be breached) which was introduced by DECC in June 2012 as a temporary measure while it devised and consulted on the more sophisticated degression mechanism?

- i. You go on to indicate that it is your recollection that “David Thomson further discussed the issue” with you. As to that:
 - i. when, and in what proximity to the first discussion, did this second discussion occur?
 - ii. where did it occur?
 - iii. who was present?

7. You say that it was your “understanding that DETI had an absolute power to suspend the Scheme at any time during the year”. As to that:
 - a. Where did this understanding come from?
 - b. How did you acquire it and upon what was it based?
 - c. What mechanism did you think provided the power you believed DETI had (a legislative provision, a Regulation, etc.)?
 - d. How, in practice, did you think this power could be exercised and how quickly could it be exercised?

8. How did you come to form the view that DETI introducing degression would involve removing a power to suspend the Scheme?

9. Why was David Thomson asking for your thoughts on degression?

10. Doing the best that you can, what was your understanding of what David Thomson was engaged in that led him to have discussions with you about degression?

Paragraph 13 (2nd page: WIT-18537)

11. You refer to your involvement with the casework committee into the RHI Phase 2 consultation in June 2014. You refer to representations being made to the casework committee that, as any amendments to the non domestic scheme would require State Aid approval and advice from “European colleagues” was that it would take 6 months plus, that it made sense to launch the domestic scheme ahead of the changes to the non-domestic scheme. As to that:
- a. Who was making those representations to the committee?
 - b. Did the Committee challenge those representations? If so, please explain how.
 - c. Why was it being said that State Aid approval would be necessary? Was this in relation to any change to the non domestic scheme or only some (and, if so, which)?
 - d. Was the 2014 casework committee aware of the steps that DECC had taken in relation to RHI cost controls to:
 - i. In 2012, introduce an interim cost control pending a more detailed cost control mechanism being devised;
 - ii. In 2013, introduce a permanent cost control in the form of degression.
 - e. If so, were any enquiries made as to how these had been treated, or dealt with, for the purposes of State Aid and/or by the European Commission?
 - f. Did the Committee question what potential consequences there were (especially in the context of the various steps already taken by DECC)

of delaying the introduction of the cost controls consulted on in the RHI Phase 2 consultation? If so, please explain.

Paragraph 16 (WIT-18538)

12. In relation to your understanding of the May 2011 funding position, please explain your understanding of:
 - a. How the 5% would work;
 - b. What it was of which 5% would be subject to penalty;
 - c. From what resource any 5% penalty would come;
 - d. If the 5% penalty had to come from over and above any RHI budget, how this would be managed by DETI;
 - e. Whether any 5% penalty levied could be recouped in some way, and from what.

13. In relation to the potential for a penalty to accrue against DETI's DEL budget, how was this fact recorded in DETI Finance Division records?

Paragraph 21 (WIT-18541)

14. You explain in paragraph 20 that you had not come across this type of funding before (AME but with a potential DEL effect) and you say, in paragraph 21, that the funding was unusual and did pose greater risks. As to that:
 - a. Please outline the greater risks posed to the department by this form of funding; and
 - b. Please outline the specific steps taken to deal with the greater risk posed by this specific type of funding.

Paragraph 22 (WIT-18541)

15. You say in paragraph 22 that a more formal ring fencing arrangement should

have been put in place by HMT, DFP, and DETI in relation to RHI funding. As to that, please explain what those arrangements would have consisted of in practical terms.

Paragraph 27 (WIT-18542)

16. When you discovered that Sandra Thompson's email of 26 March 2015 had not been (a) replied to, and (b) forwarded to Bernie Brankin or you, what steps did you take in relation to that situation?
17. If you and Bernie Brankin agreed the content of the response Jeff Partridge sent on 19 May 2015, why did the response not come directly from you, given that it was responding to the suggestion of an overspend occurring?
18. Were you aware of, and/or involved in, a further sequence of emails of 19 and 20 May 2015 involving Finance Division telling Energy Division to stop entering any further RHI commitments, and/or that direction being rejected by Energy Division in favour of seeking further clarifications from DFP? As to that, what should have happened within Finance Division the moment it was known that the direction given (to stop entering into RHI commitments) was not going to be followed?
19. You say that you elevated the issue to Eugene Rooney at some point that week, or the week after. As to that:
 - a. To the extent that you can, when was this done?
 - b. How was it done (including where the communication occurred)?
 - c. What did you wish Eugene Rooney to do with the information you were providing?
 - d. What did you understand he did do with it?

Paragraphs 29 to 31 (3rd page: WIT-18544)

20. You explain that in June 2015 you raised the issue of over compensation with Stuart Wightman. As to that:
- a. How had the potential issue of over compensation come to your attention?
 - b. What caused you to be concerned about the issue of over-compensation?
 - c. What assurances (if any) did you receive that Scheme members were not being over compensated (or, in the alternative, could not generate a profit from the Scheme)? Who provided these and how were they provided?

Paragraph 32 (WIT-18545)

21. In relation to the ministerial submission about RHI of 8 July 2015:
- a. Who removed the input of Finance Division from the submission "at the eleventh hour"?
 - b. If you do not know who removed the input from Finance Division, who do you understand did it, and how did you come by the understanding?
 - c. Why was it done?
 - d. If you do not know why it was done, what is your understanding as to why it was done, and how did you come by that understanding?
 - e. What reasons were you given for the removal of the input of Finance Division?

- f. Who gave you those reasons?
22. You say you raised your concerns with Eugene Rooney that the input of Finance Division had been removed. As to that:
- a. When did you do this and how was it done?
 - b. To your knowledge, what did Eugene Rooney do on foot of what you had to communicate?
23. Given that you were of the view that an inaccurate submission was being provided to the DETI Minister, at least around the funding position of the RHI Scheme, what options were there open to you, and Finance Division, to correct the inaccuracy, and/or to ensure that the Minister had full and accurate information upon which to base any decision? What steps, if any, were taken in this regard?

Paragraph 35 (WIT-18546)

24. You explain in paragraph 35 of your statement that you engaged with Eugene Rooney in relation to the lack of progress by Energy Division in respect of the business case to seek retrospective and prospective approval (which, according to your statement, was the agreed course of action coming out of the meeting of 17 June 2015). As to that:
- a. What were the circumstances that led you to engage with Eugene Rooney over this issue?
 - b. What were you told, or what did you understand the issue/problem to be, that caused you to feel you had to engage with Eugene Rooney?
 - c. Why did you consider your engagement with Eugene Rooney to be necessary?

- d. When did you go to Eugene Rooney about this issue?
 - e. What, to your understanding, did Eugene Rooney do about the issues you brought to him?
25. You explain in paragraph 35 of your statement that you engaged with Eugene Rooney on a second occasion, this time in relation to what you considered to be a lack of urgency by Energy Division around engagement with DECC on the budget issue. As to that:
- a. What was supposed to be done by Energy Division?
 - b. When was it to be done by? What, to your understanding, was the cause of the delay?
 - c. What were you told, or what did you understand the issue/problem to be, that caused you to feel you had to engage with Eugene Rooney? Why did you consider your engagement with Eugene Rooney to be necessary?
 - d. When did you go to Eugene Rooney about this issue?
 - e. What, to your understanding, did Eugene Rooney do about the issues you brought to him?

Paragraphs 29 to 31 (3rd page: WIT-18544) and paragraph 35 (2nd page: WIT-18547)

26. You explain in these paragraphs that in June 2015 you were asking DFP to engage with HMT over RHI, and that it appears that this was not done until potentially the end of October 2015. As to that, what is your understanding as to why DFP was not prepared to engage with HMT over RHI at the time you considered they should?

NOTE:

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



INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 373 of 2017

DATE: 28 August 2017

Witness Statement of: Trevor Cooper

I, Trevor Cooper, will say as follows: -

Paragraphs 1, 2 and 44 (WIT-18524, WIT-18525 and WIT-18550)

1. I acted as a Grade 3 in the period between January 2012 and June 2012. In this period I reported directly to David Sterling (Permanent Secretary). Colin Lewis was on secondment in the period January to June 2012 when I acted into the Grade 3 role. Colin Lewis returned to the Department in July 2012 and remained in the Grade 3 role until December 2012.

Paragraph 10, subsection "2011" (WIT-18531)

2.
 - a. Funding for Ofgems administration of the Scheme was dealt with as an in-year bid for Resource DEL in 2011. Administration costs score as Resource DEL, and permanent budget provision for the administration costs of the Scheme was not able to be allocated to Energy Division until the 2015-16 Budget exercise.
 - b. Monitoring round funding was necessary as no funding was received by DETI in respect of the administration costs of the Scheme.



- c. The Department's budget did not have existing unallocated budget for new initiatives.
- d. Paragraph 8.5 of the business case notes that the level of administration costs associated with a Challenge Fund were considered to be prohibitive in comparison to the costs of administering the NI RHI. This would have been one element in why a Challenge Fund was not considered to be the preferred option when compared to the option recommended.

Paragraph 10, subsection "2014" (WIT-18532)

3.

- a. The 2014 domestic casework committee did not look at whether assurances given to the 2012 non-domestic casework committee had been honoured. The committee's focus was on the separate domestic case presented for approval. There were no concerns raised in relation to the non-domestic scheme as it was operating within budget.
- b. The 2014 domestic committee's focus was on giving consideration to approval of the domestic scheme. There were no concerns raised in relation to the non-domestic scheme as it was operating within budget. As a consequence the domestic casework committee did not remind itself that there was supposed to be a review of the non domestic scheme in 2014. When DFP received the non-domestic case for consideration its focus would also appear to have been on giving consideration to approval of the domestic scheme as it did not raise the issue of the review of the non-domestic scheme.

Paragraph 11 (WIT-18533)

4.

- a. The high level monitoring of expenditure on the Scheme in practice



would involve monthly monitoring of actual and forecast spend versus budget, monitoring round exercises in relation to any pressures or easements, and co-ordination of AME forecasting exercises which is what was done.

- b. In hindsight, whilst the Committee was told that Ofgem had considerable experience in forecasting expenditure, it would have been preferable to have someone with finance experience working full time within Energy Division as part of the team responsible for the Scheme. Such a person could have had responsibility for engaging with Ofgem on budget management and overseeing and monitoring actual and forecast expenditure on the Scheme. Finance Branch would not have had this level of staff resource to devote to the Scheme.

Paragraph 12 (WIT-18534)

5. My recollection from the casework is that the Scheme would be subject not only to a review in 2014 but ongoing monitoring and review.
 - a.
 - i. Fiona Hepper at the casework indicated the ability to undertake emergency reviews. I believe that I understood that an emergency review would be triggered by the potential for a budget target to be missed which would result in a budget pressure in the absence of corrective action. The casework minutes note that in the context of scheduled reviews Peter Hutchinson stated that it may be that tariff levels are too generous and hence uptake is such that there will be insufficient budget. To counteract this risk uptake and forecast expenditure would be closely monitored. I believe I understood that



emergency action could be taken to change tariffs quickly.

- ii. I believe I would have understood that such a review would look at, for each technology, issues such as uptake and forecast uptake, tariff levels, forecast rates of return, and forecast expenditure versus budget provision. I believe I took it as read that these would be issues that would be reviewed as they are the items that would require to be addressed and they are analogous to those described in the minutes for scheduled reviews (analysis of tariffs, appropriateness of technologies and assessment of effectiveness and success).
 - iii. I believe I took it as read that an emergency review could be implemented following any necessary internal approvals without delay.
- b.
- i. I believe I understood that a forecast budget breach which could not be addressed by way of an emergency review (e.g. by way of a reduction in tariffs) would cause the closure of the scheme to new applicants in order to stop any further additional expenditure from new applications and enable the Scheme to remain within budget. The minutes of the casework committee note that Peter Hutchinson stated that if necessary the scheme could be closed to new applicants mid-year if applications were higher than expected and budgets risked being overspent.
 - ii. I believe I understood that applications would be monitored closely on an ongoing basis by technology, as would actual heat usage enabling annual forecast expenditure to be updated and corrective action taken. The minutes of the casework committee note that



PH advised that meters would be read on a quarterly basis. The amount paid will be based on metered heat output and the tariff for the type of technology installed. This would allow the Department and Ofgem to calculate annual forecasts for the RHI budget. If necessary the scheme could be closed to new applicants midyear if applications were higher than expected and budgets risked being overspent.

- iii. I believe I took it as read that closure could be implemented following any necessary internal approval without delay.

Paragraph 12 (2nd page: WIT-18535)

6.

- a. I cannot recollect the date that David Thomson came to see me in my office, nor can I recollect that there was something else that he was coming to see me about.
- b. I believe that my office was in the main office block at DETI with David Thomson being in the old main house which is connected by way of stairs and a corridor. The approximate distance would be 60 to 100 metres.
- c. I believe that the document presented was titled Final Impact Assessment for Budget Management in the non-domestic Renewable Heat Incentive Scheme.



- d. I believe that the document was the titled Final Impact Assessment for Budget Management in the non-domestic Renewable Heat Incentive Scheme.
- e. I do not know the circumstances that led to David Thomson having the document in the first place. It may have been provided to him by DECC or Ofgem however this is speculation on my part.
- f. I believe that David Thomson left the document with me, and whilst not certain, believe that it was discussed in David Thomson's office within a few days.
- g. I do not recall whether the document was left with me after the discussion that happened within a few days. To clarify I believe there were two interactions with David Thomson. Firstly in my own office when I was asked for my thoughts and secondly in David Thomson's office within a few days.
- h. Yes, however I do not believe that I was aware that it had been introduced by DECC as a temporary measure.
- i.
 - i. I am not certain but I believe it would have been within a few days.
 - ii. I believe it occurred in David Thomson's office.
 - iii. David Thomson and myself were present. I do not recall if anyone else was present.

7.

- a. I believe that would have been my recollection from the casework in 2012. I refer to the verbatim quotation from Peter Hutchinson at para 5 b ii.



- b. I believe that would have been my recollection from the casework in 2012.
 - c. This would not have been something I would have considered as the implementation was a matter for others.
 - d. See 5 b i - iii.
8. The analysis presented in the paper showed the introduction of degression as having the risk of overspend. It did not provide a guarantee for budgetary control. It was on this basis that I understood it would no longer have the power to suspend the Scheme.
9. I do not recall asking him in terms , but I believe Energy Division may have been considering whether or not to introduce it to the NI Scheme.
10. See 9 above.

Paragraph 13 (2nd page: WIT-18537)

- 11.
- a. I believe it was John Mills, Grade 5 Energy Division.
 - b. To my recollection the Committee did not challenge the representations.
 - c. I believe that as the original Scheme required state aid approval, changes to the Scheme would also require state aid approval. I do not know whether this was in relation to some or all of the changes in the non-domestic scheme.



- d.
- i. This was not in the casework paperwork and I do not recall it being raised in the meeting.
 - ii. This was not in the casework paperwork although Eugene Rooney, who chaired the committee, and I would have seen the inter-Ministerial correspondence from December 2013. Paragraph 11 of the minutes do possibly touch upon the matter where Eugene Rooney asked why GB tariffs had changed so much between the consultants report and the casework papers and would this not make the tariffs difficult to set. Davina McCay stated that there will be a provision to be included to ensure that an emergency review can be undertaken at any stage.
- e. No, the focus of the committee was on the domestic scheme.
- f. I do not believe that the committee formed an impression that there would be a delay in taking forward changes, consequently it would not have considered the potential consequences of delay. Please refer to paragraph e) in the synopsis document which does not say that work will not be taken forward on changes to the non-domestic scheme , rather that it will take six months plus.

Paragraph 16 (WIT-18538)

12.

- a. I believed that the 5% penalty would apply to the total overspend in any



given year to future year budgets until the Scheme got back within budget.

- b. The amount of overspend against the RHI Programme budget. For example, with a spend of 110 against a budget of 100, the amount subject to a penalty would be 10.
 - c. The 5% would have to come from the DETI Resource DEL budget.
 - d. Depending on the amount of overspending, a 5% penalty would be difficult to manage from future year Resource DEL budgets.
 - e. I believe I did not consider that the penalty could be recouped.
13. I do not know how it was recorded in Finance Branch records. The emails between finance branch and dfp and finance branch and energy division were saved by my PS.

Paragraph 21 (WIT-18541)

- 14.
- a. The greater risk posed by the funding related to the potential for a Resource DEL budget penalty for overspending without the ability to move budget from other AME budget areas into the RHI budget line .
 - b. The Finance Branch Grade 7 would have communicated the nature of the funding to the finance staff monitoring the expenditure. However the monitoring templates did not separately ring-fence the RHI funding to flag the greater risk attaching to the expenditure. In addition the casework committee was given assurances around the budgetary management framework including close and ongoing monitoring of expenditure and forecast expenditure, and the ability to carry out emergency reviews and also to suspend the scheme in-year.



Paragraph 22 (WIT-18541)

15. The funding would have been separately highlighted in the budgeting guidelines issued by Treasury and DFP as being ring-fenced with a description of how it would be managed in practice. Treasury do not permit movement of resources into or out of ring-fenced categories. Therefore overspending in such budgets cannot be offset by the movement of unspent resources from a budget that was underspending.

Paragraph 27 (WIT-18542)

16. I believe that I spoke to Bernie Brankin about the issue and that Jeff Partridge would issue a response.
17. The response was issued by Jeff Partridge as the original email had been received by him and his response was deemed as appropriate.
18. I was aware of, and involved in, the further sequence of emails of 19 and 20 May 2015. The moment it was known that Energy Division was not going to follow the direction to stop spending the issue should have been escalated.
19.
 - a. I do not know when this was done. I can only reiterate my earlier response that I believe it was done at some point in that week or the following week.
 - b. I believe that the communication occurred in Eugene Rooney's office. It was done verbally. I believe I indicated that there was a problem with a forecast AME budget overspend in Energy Division in relation to RHI, the extent of the forecast overspend as communicated by Energy Division, and the potential for penalties. I believe that I also indicated that Finance Branch was undertaking further work to verify the forecast position.



- c. The issue was elevated to Eugene Rooney as my direct line manager and I wanted him to be aware of the issue. I do not recollect what consideration I may have given consideration to the further steps that he might take.

- d. He took receipt of it, and I am not aware of what he did with it.

Paragraphs 29 to 31 (3rd page: WIT-18544)

20.

- a. & b.

I believed that the potential for overcompensation was a possibility or likelihood for the following reasons:-

There had been no changes in tariffs or review of tariffs since the start of the Scheme;

Given previous budget releases on foot of underspending, including in November 2014, demand for the Scheme appeared to have risen in the space of six months to a point where it was around twice the budget available to the Scheme.

The absence of a tiered tariff in the local Scheme.

The question in my mind was whether the increase in demand was as a result of successful promotion of the Scheme or was it that overcompensation had been a driver behind the increased uptake. At the time I raised the matter I believed that the business case seeking retrospective and prospective approval would encompass a review of tariffs across the Scheme. I raised the potential for overcompensation



in the context of State Aid breaches in the meeting of 16 June 2015 held to agree a way forward on the approach to the business case. Andrew McCormick, Eugene Rooney, John Mills, Shane Murphy, and Stuart Wightman were present at this meeting and the option for a quick review of the whole Scheme including tariffs was put forward by Shane Murphy. Unfortunately this option was not adopted.

- c. I received a verbal assurance from Stuart Wightman that scheme applicants could not generate a profit from the scheme. I believe he indicated that the price of oil had fallen making overcompensation less likely to be an issue and that Ofgem closely monitored Scheme usage. At this time he did not indicate that Ofgem had raised the potential for overcompensation with DETI as per the handover note from Peter Hutchinson in June 2014. As noted above I expected that the business case to be prepared by Energy Division would have addressed the point around tariffs across the whole Scheme.

Paragraph 32 (WIT-18545)

21.
 - a. John Mills of Energy Division changed the input.
 - b. n/a
 - c. I am unclear why the submission was amended in the way it was.
 - d. I do not know. This is a matter for John Mills.
 - e. I was not given reasons for its removal.



f. n/a

22.

- a. I believe that I did this the next day verbally.
- b. I do not know what he did. I believe that he did indicate to me that it was Energy Divisions submission and they were having problems.

23.

I had relayed the matter to my immediate superior. I did not take any further action on foot of my interaction with Eugene Rooney.

Paragraph 35 (WIT-18546)

24.

- a. The circumstances were my frustration at the lack of progress and priority being given to RHI by Energy Division and lack of progress on the progression of the business case.
- b. The problem was that Energy Division was not giving the case the urgent priority that I believed it required to be given.
- c. I believed that intervention was required at Grade 3 level.
- d. I believe I went to Eugene Rooney at some point in July.
- e. I believe that Eugene Rooney raised the matter with Chris Stewart, Grade 3 with responsibility for Energy Division.



25.

- a. John Mills, Grade 5 Energy Division, was to seek a direct DECC contact for Finance Division.
- b. From a Finance Division perspective this was an urgent priority matter. I am not privy to the cause of the delay.
- c. DFP had indicated they wished to receive further information from DECC prior to any engagement with Treasury.
- d. I believe I went to Eugene Rooney with the issue at some point in September 2015.
- e. I believe that Eugene Rooney raised the matter with Chris Stewart although I cannot be sure.

Paragraphs 29 to 31 (3rd page: WIT-18544) and paragraph 35 (2nd page: WIT-18547)

26.

To clarify, I believe that DFP engaged with HMT at the start of October on foot of a lack of direct engagement between DETI and DECC. I believe that DFP wanted further clarity around the funding arrangements from DECCs perspective prior to engaging with HMT.



Statement in regard to notice 147 of 2017

27. Having reviewed papers in regard to these questions I wish to add to my response to question 73 a) of notice 147 of 2017. Engagement with the industry was referred to in an email of 20 August 2015 from John Mills to Andrew McCormick and Chris Stewart. The email was copied to Stuart Wightman, Linda McIlwrath, Janice Hill and Seamus Hughes. This was part of an email chain in an email of 24 August from Bernie Brankin to John Mills (Annex 32 to witness statement 147 of 2017). I was on leave when this email was sent. It is also part of an email chain in emails of 4 September from Bernie Brankin to John Mills and from John Mills to Bernie Brankin of 5 October (both Annex 32 to witness statement 147 of 2017) in respect of engagement with DECC. I do not recall that I picked up on the point on informal engagement with Moypark which was included in the final email in the chain of emails, my focus would have been on the DECC interaction, which was the subject of the 4 September and 5 October emails, at this time.

Statement of Truth

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

Signed: Trevor Cooper

Dated: 28 August 2017