



RHI Inquiry
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David Thomson

Personal information redacted by the
RHI Inquiry

9 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.

As you may be aware, the Inquiry has already required the provision of a statement setting out the respective corporate positions of both the Department for the Economy and the Department of Finance in relation to the RHI Scheme. However, the Inquiry Panel is also interested in the roles played by individual civil servants who were involved with the Scheme. Moreover, the Inquiry Panel recognise that individual officials may have a different perspective from, or may even disagree with certain aspects of, the position adopted by their Department (or former Department). The statement which is required from you pursuant to the enclosed Notice is your opportunity to explain what you did in relation to the RHI Scheme and why you did it; and also to make the Inquiry aware of any concerns you may have

about the actions of others.

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.

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.

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', written in a cursive style.

Patrick Butler

Solicitor to the RHI Inquiry

02890408928

SCHEDULE
[No 137 of 2017]

Background

1. Set out a description of your occupational history, qualifications and experience.
2. Set out a summary of your role or roles within the Department for Economy (previously the Department of Enterprise, Trade and Investment) ('the Department'). Please provide details of dates between which you held the role/s; when, how and why you were appointed to the role/s; and what the role/s entailed). 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').
3. Explain, insofar as is relevant to any involvement you had with the RHI Scheme, to whom you were accountable and/or reported in the Department and who, if anyone, was accountable to and/or reported to you.

Involvement with RHI Scheme

4. In respect of your particular role or position:
 - a. Explain what proportion or percentage of your role was devoted to work on the RHI Scheme (giving details, if applicable, of how this altered over time or at different periods);
 - b. Explain how you would have carried out your roles or responsibilities in relation to the RHI Scheme on a day-to-day basis; and
 - c. Specify whether you consider you were adequately trained and/or resourced in respect of your roles or responsibilities in relation to the RHI Scheme. (If not, please specify clearly in what respects you contend this was not so and, if applicable, what steps you took in relation to this).

5. 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 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.
6. Without prejudice to the generality of paragraph 5 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 5 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).

7. Again without prejudice to the generality of paragraph 5 above, please address the following matters:
- a. Explain why tiering of tariffs (and, in particular, the biomass tariffs) was not included in the Scheme when it was introduced, including the consideration given by relevant officials to this issue and the rationale behind any relevant decisions;
 - b. Explain why degression was not included in the Scheme when it was introduced, including the consideration given by relevant officials to this issue and the rationale behind any decision;
 - c. Explain what cost controls or other protections were used to identify and manage the risks of over-incentivisation and/or budget overspend in the Scheme;
 - d. Explain in detail how the Department monitored the Scheme from the outset (in terms of numbers of applications, progress against budget, *etc.*);
 - e. Explain how the Department assessed and monitored fuel prices (including biomass prices) in order to inform itself as to Scheme design and review;
 - f. Explain what review of the Scheme, if any, was carried out between the coming into force of the 2012 Regulations and summer 2014;
 - g. Explain why the review of the Scheme in early 2014, which was envisaged in the business case for the Scheme, was not carried out;
 - h. Explain your understanding of how funding was to be secured or dealt with after the initial funding period to April 2015 had expired;
 - i. Describe the handover and/or briefing (if any) that took place between you and your immediate successor in your post in respect of the RHI Scheme including details of any documents referred to by you, any documents made available by you to your successor, any meetings or discussions between you (including details of the date and place of each), and any key information imparted by you

to your successor (such as, for example, urgent action points in respect of the Scheme);

- i. Describe the system (if any) which was in place to ensure that important information in respect of the RHI Scheme (such as, for example, the nature of the funding arrangement for the Scheme, its budget, the assumptions and modelling underpinning its design, important dates or milestones in the life of the Scheme, important action points, etc.) was known to the officials with responsibility for the Scheme at any material time, regardless of staff turnover in Energy Division;
 - j. Describe your knowledge and awareness in 2013 and 2014 of the content of the periodic reports and/or projections provided to Energy Division by Ofgem, how same compared with the modelling and assumptions underlying the RHI Scheme, how same compared with the relevant budget for the Scheme, and any actions taken by you in respect of any significant differences identified between the periodic reports and/or projections and the said modelling, assumptions, and/or budget (including the date[s] upon which you took such actions);
 - k. Describe your precise involvement in any meetings and/or discussions with Ofgem regarding the operation of the RHI Scheme including, in particular, risks, flaws, abuses, or other issues being identified by Ofgem in respect of the Scheme (including the dates of any relevant meetings or discussions and the names of all persons who took part in same); and
 - l. Describe your knowledge (if any) of the need to seek fresh approval for the RHI Scheme from the Department of Finance (formerly Department of Finance and Personnel) for the period after 31 March 2015, including details of when and how you first became aware of the said deadline and any steps taken by you to ensure that other relevant officials were made aware of it and that it was not missed.
8. Explain your understanding of the funding arrangements for the Scheme, including how that understanding was gained; how (if at all) it developed; what steps (if any) you took or directed to clarify the funding arrangements for the Scheme; 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 (in particular, more junior officials) at any material time (identifying the approximate date and recipient of such communications) and, 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).

9. 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.
10. 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

11. 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.
12. 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.
13. 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

14. 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.

15. 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, friend, close acquaintance, business associate or (in the case of politicians or special advisers) donor or supporter (either to or of you or your political party).

Whistle-blowing and raising of concerns

16. 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.
17. 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.
18. Without prejudice to the generality of paragraph 17 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, 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.
19. 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

20. 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.
21. 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.
22. 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.



INQUIRY INTO THE RENEWABLE HEAT INCENTIVE SCHEME

RHI REF: Notice 137 of 2017

DATE: 5 June 2017

Witness Statement of: **David Thomson**

I, David Thomson , will say as follows: -

Background

Occupational history

1. On leaving university in 1973, I joined an accountancy firm and qualified as a chartered accountant. I joined the Department for Economic Development (the predecessor body to DETI and Dept for the Economy) in 1983. I was promoted to the senior civil service, with DETI, in 1988 and held a number of posts in the department.
2. I transferred to the public expenditure division of DFP in 1993. I was promoted to Deputy Secretary, by competition, in 2002 and was responsible for financial management and accountability across the NI Civil Service. I transferred back to DETI, as a career move, in January 2010 and retired from the NICS in June 2014.
3. In September 2014, I was asked, by the Department, to take up, on part time basis, the role of interim chief executive of the then Northern Ireland Tourist Board, due to the retirement of its chief executive. I carried out that role until May 2015, when a new chief executive was appointed. The Tourist Board

Statement of Truth

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

Signed: _____ *David Thomson* _____

Dated: _____ 5 June 17 _____



was an public body under the control DETI and so I had some continuing relationship with the Department.

Roles and responsibilities

4. My responsibilities in DETI were determined in consultation with the Minister and Permanent Secretary and reflected in my annual personal responsibility plans.
 - My plan for 2010/11 contained 20 personal objectives, including "*Ensure publication of the SEF by autumn 2010*".
 - My plan for 2011/12 contained 22 key personal objectives. There were four targets relating specifically to Energy Division. Only one related to the RHI, namely "*Develop renewable heat proposals. Proposals confirmed by March 2012*".
 - My plan for 2012/13 had a fewer number of objectives with only one relating to the Energy Division, namely the extension of the gas network. There was no objective in relation to renewable heat.
 - My plan for 2013/14 included the following as an objective - "*Keep light touch overview during period when I am also covering for absences at senior level in the other group (Fiona reporting directly to David Sterling)*". This was in recognition that for a considerable period of 2013, the Head of Energy Division reported directly to the Permanent Secretary.

5. In general terms, the objectives in my personal plans covered three areas
 - General management and oversight of the department.
 - Specific personal involvement in, and oversight of, key priorities and initiatives.
 - Management and oversight of the Policy Group

Statement of Truth

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Signed: _____*David Thomson*_____

Dated: _____5 June 17_____



6. Firstly, I was part of the top management team which consisted of the Permanent Secretary and the two deputy secretaries and we had oversight of the corporate activities of the department. I was a member of the DETI board which managed the department within the strategic framework set by the Minister. The departmental governance arrangements are set out in DETI's Resource Accounts.

7. The management commentaries contained in DETI's annual resource accounts reflect the wide variety of initiatives and programmes which DETI was involved in. Many of these were high profile and took up a considerable amount of top management time. Examples include the review of industrial development, the many tourism related activities in 2012 with the Irish Open and the tourism signature projects (Titanic and the Giants Causeway), the G8 summit and the UK City of Culture in 2013 and the development of the Executive's economic and agri-food strategies.

8. The NI Executive produced a Programme for Government and DETI had a Corporate Plan. Supporting these, DETI produced an Operating Plan on an annual basis, which set out a wide number of objectives and targets. The Board had oversight of the implementation of DETI's Operating Plan.

9. The DETI Operating Plan was the key driver of performance and there was a quarterly reporting cycle to monitor achievements. The 2011/12 DETI Operating Plan had 97 distinct targets but only one in relation to the RHI, namely *"By 31 March 2012, have in place all necessary arrangements to facilitate the operation of a Renewable Heat Incentive in Northern Ireland"*. Subsequent departmental operating plans only had RHI targets in relation setting up of RHI phase 2. At departmental level therefore, the implementation and operation of the RHI, having been launched, was

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considered best handled at divisional level- it wasn't either a Programme for Government or Operating plan objective.

10. The top management team had regular meetings with the Minister and her adviser, dealing with the many issues facing the department. The top management team had oversight of activity coming through the Minister's Private Office (formal correspondence, oral and written Assembly questions, debates, Committee hearings etc). From recollection, Energy Division had a greater percentage of this activity than any other area of DETI.
11. Secondly, as reflected in my personal plans, there were a number of issues which I gave specific priority to, and, consequently, I committed more of my time and attention to them. Most of these were in the areas of tourism, especially in relation the major tourism drive in 2012 based around the Titanic centenary, and economic development. Also in these, however, were a number of energy related issues including Gas to the West, electricity prices and the operation of the Single Electricity Market, and the structural changes within the energy industry.
12. Thirdly, I had oversight of Policy Group and managed this on the basis of both formal and informal reporting. The Group consisted of a number of divisions, each of which were in high profile areas with a large amount of activity, including tourism, telecoms, and economic development as well as energy. However, the Energy Group was probably the most heavily loaded division.
13. I had responsibility for ensuring that the divisions in the Policy Group met the key objectives which were set. A large proportion of the 90+ DETI Operating Plan targets in each of the years I was in the department fell to Policy Group to deliver. As noted above, there were some in which I took a particular interest and involvement in, as reflected in my personal responsibly plans.

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Apart from those, I delegated responsibility for delivery to my heads of division and I monitored progress through reporting mechanisms as it was not possible to be involved in the detail of everything.

14. I would have discussed the respective divisional operating plans with my heads of divisions, when they were being drawn up. Indeed the DETI Operating Plan would have been a combination of "top down" objectives - key priorities of the Executive and Minister and "bottom up" - key objectives being identified by Heads of Divisions.

15. In my discussions with the Energy Head of Division, I would have concentrated most on the objectives and targets which fed into the Programme for Government and the Departmental Operating Plan, and also those where a high risk assessment had been made. The Energy Division plan in 2013/14, for example contained 9 objectives which were carried through to the DETI Operating Plan. In support of these, there were just over 100 key actions recorded in the Energy Division Plan, which reflect the wide scope of the division and the heavy work-load.

16. The objectives, actions and risks in the Energy Division's operating plan for 2011/12 in relation to RHI related to the setting up the scheme. The 2012/13 plan also contained a number of actions and targets but the only risks identified in the plan were State Aid approval and secondary legislation being required. The RHI actions for 2013/14 concentrated on developing phase 2 of the RHI.

17. Heads of divisions were required to formally report progress against each of the targets contained in the DETI operating plan on a quarterly basis. I met with my respective heads of division at the reporting stage to review quarterly performance, before a discussion was held at the Departmental Board on

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departmental performance against the DETI Operating Plan and Programme for Government. Annually, reports were published on the achievement of targets.

18. Whilst my discussions with my heads of divisions in the operating plan context were primarily to review progress against departmental objectives and targets, they provided the opportunity to raise, and discuss, specific issues associated with any initiative. Anything of significance coming from those discussions would be taken forward.

19. This reporting mechanism also facilitated the reporting of risks. The Department's approach was to assign risks to those best placed to manage them, whilst maintaining clear accountability. On a quarterly basis, divisions reported on the key divisional risks. Those which were considered as having a high or medium impact or a high likelihood of occurrence were reported to the Departmental Board.

20. A very important aspect of the governance arrangements were the six-monthly personal assurance reports. Each of my heads of division were required to produce, and sign, an assurance statement to confirm that appropriate internal controls were in place and risks identified. There was a set template which covered

- Business Planning;
- Legislative and Other Authorities
- Business Cases (including Economic Appraisal), Post Project Evaluations;
- Consultancy;
- Monitoring of Expenditure;
- Procurement;
- Staff (including gifts and hospitality);

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- NDPBs and Third Party Organisations;
- Internal and External Audit Reports;
- Data Management
- Other Issues.

21. I received assurance statements from the Head of Energy Division and my other heads of divisions every six months. These statements were also sent directly to Finance Division and to the Audit Committee of the Department. This was one of the ways in which the Departmental Risk Register, which was kept under review by both the Audit Committee and the Departmental Board, was drawn up.

22. I discussed the individual statements with the respective divisional heads to receive assurance that internal controls were in place, that everything was operating as expected and to identify any particular issues of concern. On the basis of these discussions, I made my own statement to the Permanent Secretary to confirm the efficacy of the systems of internal control in my areas of responsibility and, where appropriate, draw the attention of the Permanent Secretary to any significant internal control issues.

23. Each year, Internal Audit would spend some time reviewing governance arrangements throughout the department, ensuring proper systems were in place to facilitate reporting and the provision of assurances. I do not recall any significant concerns arising from these which would have called into question the reporting and assurance processes.

24. The other main formal reporting process related to personal performance and discussions were held and reports produced. Whilst these focussed on personal performance and development, it was the opportunity to assess any difficulties and issues.

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25. In addition to these formal arrangements, I made an effort to have regular contact with each of my heads of division. I would have seen them several times a week to receive regular updates. In this context, there would inevitably have been discussions with the head of Energy Division about progress on the RHI scheme, but I do not recall any specific areas of major concern being raised with me.

Involvement and accountability in the scheme

26. I was the deputy secretary responsible for Policy Group, which included Energy Division, from 2010 to June 2014. The head of Energy Division reported to me and was accountable to me, along with the other heads of division in that group (apart from a period in 2013 when reporting arrangements had to be changed to reflect specific pressures at senior level in the department). I reported directly to the Permanent Secretary and ultimately to the Minister. I have summarised above the key reporting mechanisms that were in place.

Proportion of role devoted to scheme

27. I cannot be specific about the amount of time spent directly on the RHI scheme itself, but it was less than 5% in 2011/12 and probably nearer 1%, if that, in the other years. A greater proportion of my time was spent on meeting with the head of Energy Division and monitoring performance of the division, although this covered a wide range of issues, as well as the RHI.

Roles on day to day basis

28. I had no operational day to day role on the RHI scheme. I delegated the detailed design and implementation of the scheme to Energy Division and was not involved in discussions or decisions on the detail or on operational matters. I relied on high level monitoring of performance.

Statement of Truth

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Dated: _____ 5 June 17 _____



Training and resources for role

29. I consider I had sufficient training and experience to undertake my role. I had been a senior civil servant since 1998 and had extensive knowledge and experience.

30. In particular, my time in DFP with responsibility for financial management, made me very aware of the need for good governance and proper reporting, with risk assessment etc. I was familiar with the requirements for economic appraisals as set out the Northern Ireland Guide. I was also very familiar with Managing Public Money, which was the formal guidance on financial management and which issued from my group when I was in DFP. I had a good knowledge of the public expenditure budgeting and accounting processes, at both national and devolved level and I understood terms such as AME and DEL. I was familiar with the concepts of both value for money and affordability.

31. Resources in DETI at the time were stretched for a number of reasons. As a top management team we had to plan to meet the N I Executive's efficiency plans, and also deal with a number of absences and movements at senior level. That required some flexibility in reporting arrangements at top management level, depending on priorities and pressures at the time. Top management recognised the pressures on Energy Division and were able to provide some extra resources to the division in recognition of its heavy workload.

Involvement in the scheme

32. I was involved in the strategic policy decisions to set up the scheme, as part of the implementation of in the Strategic Energy Framework (SEF). This

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included discussions, along with the Head of Energy Division, with the Minister and her adviser - the Minister being responsible for policy. Once the SEF was published, an implementation plan was drawn up to outline actions and monitor progress.

33. I received reports on progress on implementation of the SEF and these were also provided to the relevant Assembly Committee.

34. I was aware of, and agreed to, the appointment of advisers for the production of an economic appraisal for the RHI in 2011 and would have seen the advice to the Minister following up on this. Likewise I was content with the proposals for a consultation.

35. I was copied into all correspondence with the Minister and the Assembly Committee, to give me a broad oversight of progress.

36. A number of specific issues were raised with me as the scheme was being implemented, for example discussions in December 13 as to whether a loan from the Carbon Trust constituted "public support". I do not recall however any issues around tariffs being raised specifically with me.

37. My involvement, as set out in my personal responsibility plan, was at the strategic direction level. In 2011/12, I was had the objective to ensure that renewable heat proposals were confirmed by March 2012.

38. I did not get involved in the detailed design of the scheme. However, I needed to ensure that certain steps and checks were undertaken and I relied on assurances in respect of these. I wanted to ensure that, at least, the following steps were undertaken

- consultation held with relevant Whitehall departments

Statement of Truth

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- consultation with public on scheme
- independent professional advisers, including legal advice, appointed
- revisiting assumptions in the light of comments from advisers and consultations
- drawing up of economic appraisal, strategic outline business case and full business case, including input from departmental economists
- Casework Committee approval
- DFP approval to both outline and full business cases

39. Some of these steps were particularly important for me in providing the assurance that, not only were matters progressing, but that proper consideration was being given to the key issues. The staff in Energy Division had all the data, had carried out a thorough analysis, had received the reports from the advisers and discussed these with them and therefore I considered they were in the best position to reach decisions on the detail of the scheme.

40. We had in DETI a team of professional economists who were there to help, and also challenge, staff in the preparation of appraisals and business cases, and other relevant initiatives, as well as providing general economic advice. Because of the importance of Energy Division, an economist was allocated to work full time on energy issues. I knew that the economist was heavily involved in reviewing the advice which Energy Division received in relation to the RHI and was also closely involved, over a period of months, with the team as they prepared the business case, asking questions and challenging assumptions. I was therefore able to rely on his statement in March 2012, that *"I'm content that this appraisal has been carried out in accordance with the NIGEAE guidance and that the approach adopted represents value for money and is the most effective way of allocating the resources provide by HMG for the purpose of a Northern Ireland RHI."*

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41. The Casework Committee and DFP approval steps were also important stages. Casework is an "independent" peer review, which I placed great importance on (the process is explained in the governance section of the DETI Resource Accounts) and its strengths are

- it ensures the person responsible for the policy has to set out, in detail in the casework papers, all the relevant aspects.
- senior civil servants, who have had no involvement in the issue, can question and ask about things which may have been overlooked.
- the Casework panel would include the finance director, who can ask any questions, but who will generally focus on budgeting and governance to ensure the Department is protected.
- the Casework panel would also include the head of the economists who can assure himself that proper process regarding appraisals etc have been followed and that economic assumptions are reasonable.

42. As I was not involved in the operational detail design, when I came to considering the business case, I did not have the detailed knowledge to assess each aspect. I read the business case and discussed it with the Head of Energy Division. I was satisfied with its content which appeared reasonable to me. The processes which I would have expected had been followed and the business case addressed each of the issues I would have expected to have seen. I was also aware of the conclusions of the departmental economist.

43. I reviewed the annexes, but would not have read through all the attached documents in detail. I was satisfied though that a thorough and proper process had taken place and there had been significant amount of work carried out in considering all aspects of the scheme. Consequently, in my minute of 2 March 2012 to the Finance Director, before the Casework Committee, I stated

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"I am content that the proposals outlined have been thoroughly researched, analysed and appraised and note the supportive comments from the DETI economist".

44. As in all projects, there were some specific issues which I would have concentrated on, including risk assessment, value for money and budgetary control. I noted that risks were identified in the Casework papers including "risk of incorrect subsidy level". I was very aware that introducing a new scheme carried such a risk, but took comfort in the statements that there had been detailed analysis in arriving at the arrangements. More importantly, an assurance was contained in the papers that it was planned to have regular reviews of the subsidy levels and that it was proposed that the first review would begin in January 2014.

45. I did not attend the Casework Committee meeting as I considered that those who were closely involved with designing the scheme were best placed to answer specific questions and address any concerns raised.

46. I received confirmation that the Casework Committee had approved the scheme, albeit with conditions.

47. Likewise, DFP, who would normally concentrate on proper process, value for money and budget affordability, also gave approval for the scheme to proceed.

Creation and development of the scheme on or before 2012

48. The SEF was being developed when I joined DETI in 2010. That document was finally published during 2010 and became a key policy document for energy and it set out DETI's response to the EU Renewable Energy Directive. Delivery of the key objectives of the SEF was one of the key actions in the

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DETI Corporate Plan 11/12 to 14/15. It stated that DETI would develop a specific heat target.

49. As head of Policy Group, I was involved in discussions with the division and also with the Minister in drawing up the SEF and the actions needed to implement it. I was also aware of the wider context including European directives and the development of schemes in GB and of the potential fines if we did not meet the requirements in EU directives.

50. I saw, and was content with, the strategic outline case for the RHI, developed in autumn 2011 and subsequently approved by DFP.

51. I knew of, and was content with, the proposal to appoint Ofgem. I welcomed this, as I was aware that we had limited expertise in DETI in this area. Following the Casework committee, the Head of Energy Davison made a formal submission to Top Management Team, (which I was member of) drawing particular attention to the budgeting issues associated with the administration of the scheme.

52. As a deputy secretary, I was copied into all submissions to the Minister, not just from those coming from my group. I saw the submissions from Fiona Hepper to the Minister during 2011 as the scheme was developed, and the one dated 16 March 2012 in which she sought approval to proceed with the RHI. I also saw subsequent submissions, including proposals for phase 2.

53. I would also have seen the submissions to the Minister in relation to legislative arrangements and the necessary regulations, although I didn't attend the Assembly Committee meetings or the Assembly hearings where these were approved.

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54. I saw the submission to the Minister in June 2013 regarding the proposed consultation document. I was aware of the consultation process later in 2013 on phase 2 of the scheme and my minute of 28 May 2014 provided support for the Casework Committee which had been scheduled for 9 June.

Administration and operation of the scheme

55. I was not involved in the detailed operation and management of the scheme, rather, as explained above, I relied on the more high level controls and reporting.

Problems and difficulties which emerged

56. The regular reviews of performance against the objectives contained in the Energy Division Operating Plan did not highlight the RHI as being a major area of concern. Likewise, RHI did not surface during the regular reviews of the departmental risk register.

57. I placed considerable reliance on the six-monthly assurance statements which were provided by my respective Heads of Division. The assurance statements provided personal assurances that systems were in place and no issues needed to be highlighted other than those specifically recorded. My discussions with the respective heads of division at the times these were prepared didn't alert me to anything of real concern - otherwise I would have included something in my own personal assurance statements which I provided to the Permanent Secretary.

58. In the assurance statement from the Head of Energy Division for the six months to Sept 2012, no significant internal controls weaknesses were identified and the only reference to RHI was to state that, in relation to approvals being in place, certain legislation was required. The necessary assurances were provided.

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59. The assurance statement for the six months to March 2013 confirmed everything as being in place and did not raise RHI.
60. The statement for the six month period to September 2013 identified three irregularities in connection with the RHPPS, but otherwise provided all the necessary assurances.
61. In the assurance statement which I received on 5 May 2014 in relation to the last six months of the year to March 2014, I was again given the assurance that there were not any significant weaknesses in internal control or any irregularities which needed to be drawn to my attention. In the detailed supporting papers, the only reference to RHI was to a particular case where it stated "*During a site visit a discrepancy was discovered between the submitted paperwork and the installed technology*". I was assured this was being dealt with and was content with the actions being taken.
62. Likewise, there was nothing coming through the audit process (either external or internal) which would have alerted me to the fact there were any material issues or concerns. The regular monitoring of public expenditure was indicating under spend, rather than providing any signals that demand was increasing to such an extent that it would create budget pressures.
63. Part of my responsibilities involved oversight of the business coming through the Minister's Private Office and, in that context, I was copied into all formal business. This would have included advice to the Minister on written Assembly questions and updates going to the Assembly Committee on behalf of the Minister. No difficulties were flagged up in these, as far as I recall.

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64. Likewise, in the context of Private Office business, I also was responsible for advising the Minister in advance of oral question sessions in the Assembly. I had to ensure she was prepared, not only to answer specific questions, but also any supplementary questions which might be asked and, to do this, I commissioned briefing material from relevant branches and met with those who prepared these, to ensure the Minister was provided with appropriate advice. Energy Division featured regularly and in preparation for such questions provided positive briefings on the RHI.

65. At the time I retired therefore, I was receiving assurances from a number of sources that everything was in order with the scheme and I was not aware of any significant problems or difficulties connected with the RHI being highlighted.

Amendment suspension and closure of the scheme

66. There were no discussions, as far as I can recall, with me about amending, suspending or closing the scheme at the time I retired and I was not aware of any having taken place.

Tiering of tariffs

67. I did not get involved in the detailed discussions about the design and operation of the RHI scheme and I had been content to delegate these issues to the head of Energy Division and her team, providing they were taking advice from both independent advisers and the departmental economist. I was content for the team to develop a scheme, based on that advice and information which was available, as I considered they were best placed to come to decisions.

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68. I knew, and was content with, the concept that the scheme was being changed from the GB arrangements to reflect the specific NI situation. Indeed that approach was always one I would encourage. I knew that the counter-factual in NI was oil rather than gas in GB.

69. In the business case there was a footnote at the bottom of page 17 stating that "*tiering is not included in the NI scheme because in each instance the subsidy rate is lower than the incremental fuel cost*". I do not recall having any specific discussions about tiering.

Degression

70. As with tiering, I did not get involved in the detailed design of the scheme.

71. The business case stated "*At this stage DETI does not propose to build in degression into the RHI legislation, however may consider the need to do so in the future*". It was clear that degression was not being ruled out, but it was considered that it didn't have to be introduced at that stage. It is probable that I discussed this with the head of Energy Division before I endorsed the Casework papers in my minute 2 March 2012, but I cannot recall if we did and what the outcome of any conversations on this point were.

Cost controls and protections

72. The risk of tariffs being incorrectly set was identified in a number of documents including the strategic outline case and the full business case. At the Casework Committee, the risk of hearing the tariff levels being incorrect was stated as being "*the main risk to the RHI*", but reliance was being placed on close review rather than any specific cost controls.

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73. The risk was also included in the divisional risk register and the key actions identified to manage the risk were "*liaison with the administrator to assess uptake levels and expected spend against profiled budget*" and "*planned reviews of the scheme so tariffs can be revised depending on market conditions*". The risk was not escalated to the departmental risk register. Although this was not a cost control as such, it was a protection against the risk of tariffs having being set incorrectly.

Departmental monitoring of the scheme

74. I have outlined above the formal monitoring processes, primarily the reporting of achievement of actions and targets against annual operating plans and also the assurance statement process.

75. In addition, I monitored both risks and budget on a regular basis, as both head of Policy Group and also as member of the Departmental Board and I attended the Audit Committee which reviewed internal controls and risks.

Monitoring of fuel prices

76. I was not involved in any review of fuel prices. I was aware of the key assumptions behind the tariffs as set out in the various documents such as the business case, the State Aid approval and the submission to the Minister seeking her approval to proceed with the scheme.

Review of scheme

77. Setting up any new scheme or initiative always carries the risk that there will be something unexpected, that there will be perverse consequences, or actual performance will not match forecasts. Building in reviews, after a sufficient time, was a very important control.

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78. The need for reviews was included in most of the key documentation. For example, the final synopsis of the scheme prepared before the casework hearing stated "*The NI RHI will have scheduled reviews built into the scheme to allow DETI to ensure the scheme was fit for purpose.*" This was one of the few sentences in the document which was in bold type.
79. The business case also set out the objective of reviewing the scheme. At Para 7.53 and 7.54 it stated that there will be scheduled reviews to consider all aspects of the scheme and the first review is scheduled to start in 2014. At the casework hearing, the minutes show that the intention was that "*the first review of the scheme would begin in 2014*". The DFP approval also drew attention to the need of reviews.
80. I refer above to the assurance statements which I received on a six monthly basis from my heads of division. These were based on a template and question 3.2 asked for a confirmation, in the form of "yes, no or partly" to the statement "Divisions and Branches within the Group conduct post project evaluations to consider the effectiveness of expenditure. All post project evaluations have been completed on schedule".
81. In the supporting schedules to the assurance statement provided to me in May 14, in relation to the six months to March 14, the Division had ticked "partly" in relation to the question dealing with PPEs and in the comments section referred to a number of PPEs which were still outstanding, but here was no reference to the RHI. In this context, it is important however to point out that, whilst DFP in its approval letter of 27 April 2012 noted the intention to have a first review starting in 2014, it went on to state "*DFP does not require a PPE to be submitted for this project. however, suitable arrangements for a PPE must still be made i.e. a PPE must be completed by August 15*".

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Therefore the comment in the assurance statement was correct if referring only to a PPE rather than the review.

Funding after 2015

82. The business case covered affordability at Para 14.18. I recognised that additional funding would need to be secured. I was aware that there had been correspondence with HM Treasury, although I didn't see it at the time. I had a reasonable expectation that the nature of the scheme and the funding through AME would result in future spending reviews providing ongoing funding. In preparing this witness statement, I had the opportunity to read the email from HMT which included the statement "*With DECC we have agreed that they can make commitments to spending in future years (up to 20 years) for installations that are installed within the SR period...The same agreement would apply to any NI scheme...*". That confirms my understanding at the time and I also noted that DFP was copied into the email.

83. Budgetary management was also discussed at the Casework Committee hearing, with the Department's finance director in attendance. It was expected that, post 2015, DETI would continue to be eligible for a pro-rata share of DECC funding .

84. The budget situation after 2015 was also known to DFP, who approved the scheme in April 2012.

Handover to successor

85. If I recall correctly, I asked each of the Heads of Division to summarise the key issues in each of their divisions (and I assume these would have been used in the first day brief for the new permanent secretary, although at the time of preparation, that appointment was not known). The focus of those

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would have been on objectives and targets in both the Programme for Government and the DETI Operating Plan.

86. I did not have a formal handover with my successor, as he had not been appointed at the time of my retirement. I expected that the respective heads of division would have still been in place when my successor was appointed.

87. However, as I had taken on the role of acting chief executive of the Tourist Board in autumn 2014, I was able to have a number of discussions with him over a period. These would have covered all aspects of both the Department, as he was coming from another department, and also the Policy Group, together with management issues, also both at departmental and group level. I cannot recall if we had much of a discussion regarding the RHI.

Information flows

88. As noted above, there were regular formal reporting processes, along with informal discussions with the Head of Energy Policy.

Awareness of information from Ofgem

89. I did not see the periodic reports provided to Ofgem.

Meetings with Ofgem

90. I do not recall having any meetings with staff from Ofgem.

Fresh approval from DFP

91. I was aware from the DFP approval that it had stated that DETI needed to seek re-approval. I retired in June 2014 and have no knowledge of the process for, or discussions with, DFP regarding re-approval.

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*Funding arrangements*

92. I saw the letter from the Chief Secretary to the Treasury to the First and Deputy First Ministers in October 2010 which contained the reference to RHI, namely "*If NIE chooses to introduce an NI Renewable Heat Incentive Scheme, then AME funding of £2/4/7/12 million will be available over the SR period based on a population based share of the GB scheme*". I saw, and was content with, the advice provided to the Minister going back to the First and Deputy First Ministers advising that we agree to the offer.
93. The business case included a funding profile containing some large numbers. I knew this would need to be kept under review, but I did not consider that it was something to stop the scheme proceeding. But it reinforced the need to monitor very closely the take up of the scheme and the consequent budget implications. As Head of Policy Group, I received monthly budget statements for the group, so that I could monitor spend. Budget performance was also considered at most, if not all, meetings of the Departmental Board, and the Finance Director was a member of the Board. Consequently expenditure was closely monitored and the RHI AME would have been separately identified (rather than being absorbed in a total somewhere).
94. As there had been general concerns about under spends across the public sector, any expenditure below budget had to be shown in the annual accounts, and separate reports on under spend were given to the Assembly. DETI's Resource Accounts for 2012/13 indicated that there had been quite a number of applications to the RHI but there was still a lower than anticipated uptake and expenditure for the year was around £0.5m..

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95. At the end of 2013/14, expenditure had risen to only around £1.6m and this was reported in the DETI Resource Accounts. Even though there is an inevitable time lag before full expenditure will come through, this was still considerably below the budget allocations.

Flaws and difficulties with the scheme

96. At the time I retired, I was not aware of any significant flaws or difficulties related to the scheme and there were no signals coming to me to alert me of potential difficulties.

97. Having retired from the Civil Service in 2014, I have not followed, with any closeness, developments relating to my former department. I didn't follow the PAC hearings on the RHI or read any of the transcripts, and neither did I pay much attention to the media reports of the RHI, except when alerted by the BBC to the Spotlight programme. Until the preparation of this written statement, I had not looked at any documentation regarding the RHI. I do not consider therefore that I have the evidence to come to a clear view as to what the flaws or difficulties in the scheme were.

Promotion of the Scheme

98. I was not involved in any promotion of the scheme.

Lobbying and pressure

99. As part of regular departmental business, all major policies would be discussed with the Minister and her adviser as part of the process in arriving at the final outcome, as ultimately the Minister is responsible for policy and her civil servants work under her control. I am not aware of any undue lobbying or encouragement being made in relation to the scheme.

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Attempted Influence on self

100. I received no influence or pressure in relation to the scheme.

Attempted influence on others

101. As a routine part of departmental business, there were many representations made, correspondence received and or questions asked about the wide range of DETI policy issues as part of official departmental business. These would all have been dealt with in an open and transparent manner. Outside of this, I am not aware of any specific influence or pressure being applied on someone in relation to the RHI scheme.

Breaches of conduct

102. I am not aware of any situation where a minister, special adviser or civil servant either breached standards, or had a conflict of interest. We had formal processes in place in DETI for the registering and reporting of any interests.

Connection to persons receiving payment

103. I have no connections to anyone receiving payment under the scheme.

Awareness of whistle blowing

104. I do not recall being made aware of any whistle blowing in relation to the scheme. I may have seen any emails forwarded directly from the Minister's office, as I would normally have been copied into all formal correspondence, but do not recall being made aware of a whistleblower.

Disclosures raising concerns

105. I did not handle any disclosures.

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Specific awareness of comments by JO'H

106. I have no further information to add to the points covered above.

Subsidies exceeding costs of biomass

107. I had no awareness of how the subsidies relating to the scheme compared to biomass fuel, other than what was contained in the initial papers setting up the scheme such as the business case.

Representations made to me

108. I have received no representations in relation to the scheme.

Conversations or discussion with me

109. Recently, in order to prepare this statement and get sight of documents, to refresh my memory, I have had contact with the RHI Task Force and Departmental Solicitors. I have had no other discussions with any persons relating to the RHI scheme, apart from

- a couple of telephone conversations with the Permanent Secretary in autumn 2016, when he alerted me to the issues and advised that I may be contacted by either the BBC, PriceWaterhouseCoopers, or both
- in advance of the Spotlight programme, I was "door-stepped" by the BBC, at my home, where, by necessity, I spoke for a while but declined to make a statement.
- an interview in January with PriceWaterhouseCoopers in connection with the internal review commissioned by DETI.
- discussions with my solicitor in relation to the above events

Further evidence

110. I have no other further evidence which I consider would be relevant to the inquiry

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General Statement

111. I retired from the NI Civil Service in May 2014. Until I received the letter from the Solicitor to the RHI Inquiry dated 9 May requesting a written statement, I had not seen any papers in relation the RHI since retiring or had any discussions with anyone about it. I contacted the Department and was sent a file of key papers to refresh my memory. I also visited the Department to look through some documents, but it was not practically possible in that short period to go through everything. I have had to rely considerably on recollection of events and discussions which occurred between 3 and 6 years ago in making this statement.

112. I will, of course, be happy to respond to any specific documents which are made available to me and I will be happy to clarify anything stated above.

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