



David Thomson

Personal information redacted by the RHI  
Inquiry

11 September 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 with the work of the RHI Inquiry from my previous correspondence with you. I am writing further to receipt of the first substantive witness statement which you provided to the Inquiry.

The Inquiry has now had an opportunity to consider the content of that first statement. There are a number of matters dealt with within that statement, or arising from it, which the Inquiry considers require to be clarified or dealt with in further detail. There are also some further matters arising out of what others have said to the Inquiry, or from documents that the Inquiry has considered, that the Inquiry would like you to address. The Inquiry would therefore be grateful if you

would provide a second substantive witness statement addressing the questions posed in the Schedule attached to the Section 21 Notice enclosed herewith.

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

As with the previous Notice received by you, 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.

By the time of submitting your written evidence in compliance with the enclosed Notice, you will have received a copy of the Inquiry's witness statement bundle in your capacity as a witness to whom enhanced participatory rights have been granted. You may include within your further witness statement comments upon other statements which you have now seen, particularly if you take issue with important or significant points made within them. However, you should not delay the provision of the evidence required by the Inquiry in the Schedule to the attached Notice in order to facilitate you providing comments on other witnesses' statements. Correspondingly, an application for extension of time is likely only to be granted if there is a strong basis for showing that it is not reasonable to require you to deal with the matters set out in the Schedule within the time specified in the Notice. It is very unlikely that an application for an extension will be granted in order to permit you to address points which you have not been asked to address in the Schedule to the Notice.

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 before, I appreciate that you may require or desire access to some documentation in order to assist you in preparing your statement. In particular, you may wish to see documentation to which you previously had access in your position

within DETI but to which you now no longer have access. If that applies in your case, as previously advised, the Department for the Economy (DfE) has made 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](mailto:Terence.Coyne@economy-ni.gov.uk).

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, or 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. In addition, a similar restriction is contained in Restriction Order No 2 of 2017 made by the Inquiry Chairman and available on the RHI Inquiry website.

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](mailto: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 464 of 2017]**

*Paragraph 4 (WIT-13515)*

1. Please confirm that the "Fiona" to whom reference is made is Fiona Hepper.
2. Please explain why the Head of Energy Division was reporting directly to the Permanent Secretary "for a considerable period of 2013".
3. Please compare and contrast how this change in reporting mechanism differed from the normal approach, and explain its practical effect (if any).

*Paragraph 9 (WIT-13516)*

4. Please explain who at departmental level considered that the implementation and operation of the RHI Scheme was best handled at divisional level and address the following matters in relation to that decision.
5. When was this decision taken?
6. Who took it?
7. How was it recorded?
8. What was the basis for it?

*Paragraph 12 (WIT-13517)*

9. You have said that the "*Energy Group was probably the most heavily loaded division*". Please explain what you mean by that and how this came to be.

*Paragraph 38 (WIT-13523)*

10. You explain in paragraph 38 that you needed to ensure that certain steps and checks were undertaken and that you "*relied on assurances in respect of these*". As to that:
  - a. How were these assurances sought?
  - b. From whom were they sought?
  - c. What precise assurances were given and when were they given?
  - d. How were the results of this process recorded?
  
11. You explain in paragraph 38 that one of the steps and checks that you needed to make sure was undertaken related to "*revisiting assumptions in the light of comments from advisors and consultations*". As to that:
  - a. What precise assumptions or classes of assumption required to be revisited?
  - b. Why did they require to be revisited?
  - c. How did you go about doing this?
  - d. How did you ensure that assumptions were revisited?
  - e. What were the results of this re-visitation process?
  - f. How were the results of this process recorded?

*Paragraph 41 (WIT-13525)*

12. In paragraph 41 of your statement you refer to the Casework Committee as being an “*independent*” peer review. Is the use of quotation marks round the word “*independent*” intended to convey that the Casework Committee was:
- a. Not actually independent;
  - b. Not intended to be independent;
  - c. Not capable, by reason of how it was made up and/or operated, of being independent; or
  - d. Nonetheless useful for the reasons that you give;

If some meaning other than some or all of the meanings set out above was intended, please set out that meaning.

*Paragraph 75 (WIT-13532)*

13. In paragraph 75 of your statement you explain that you monitored both risks and budget on a regular basis as both Head of Policy Group and also as a member of the Departmental Board. Please explain:
- a. What form the monitoring of risks took;
  - b. What form the monitoring of budgets took;
  - c. What was the outcome of the monitoring undertaken?

*Paragraph 82 (WIT-13534)*

14. In paragraph 82 of your statement you refer to an email from HMT. Please identify that email.

15. Please explain the understanding you had of AME during your time in Head of Policy Group.
16. Did you understand any overspend of an AME budget to have consequences for DEL? Please explain the reasons for your answer.

*Paragraphs (by way of example) 44, 72, 78 and 79 (WIT-13526, WIT-13531 and WIT-13533)*

17. Please explain what you understood, at the time, to have been meant by reference to there being “*regular reviews of subsidy levels*” and that “*The NI RHI will have scheduled reviews built into the scheme to allow DETI to ensure the scheme was fit for purpose*”.
18. Please explain what you mean by “*review*” in this context, including the following matters:
  - a. Who would do it?
  - b. How long would it be likely to take?
  - c. What would it involve (including, without prejudice to the generality of the foregoing, details of its aims, its ambit, its areas of focus, etc.)?
  - d. How would the results be reported?
  - e. Who would consider them?
  - f. To what would it be likely to lead?
19. Please explain what you understood, at the time, by the claim that the reviews were “*built into the scheme*”. Practically speaking, how had this been done?

20. Please set out any steps taken by you to ensure that a review of the RHI Scheme had been initiated in 2014.
21. If you did not take any steps to ensure that such a review had been initiated in 2014, please explain the reason(s) for this.

*6 monthly Assurance Statements (by way of example, at DFE-179692 to DFE-179893)*

22. Please explain the process for the completion of the 6 monthly assurance statements, including the following matters:
  - a. How you obtained the information;
  - b. In what form;
  - c. From whom;
  - d. How you checked the veracity of the information;
  - e. The process you went through to compile the assurance statements;
  - f. What happened to the assurance statements once you compiled them; and
  - g. What engagement there was with others over their content.

(If referring to a page from the material mentioned above, please use the 'Bates' number in the top right corner of the relevant page in order to identify the page to which you are referring.)

*You are referred to paragraph 12 of Trevor Cooper's first witness statement to the Inquiry of 19 July 2017 (at pages WIT-18535 and WIT-18536), together with Annex 13 to his first witness statement (at pages WIT-18975 to WIT-19003), as well as*

*paragraphs 6 to 10 of Trevor Cooper's second witness statement to the Inquiry of 28 August 2017 (at pages WIT-19039 to WIT-19041). As to this:*

23. Do you recognise the Annex 13 document (WIT-18975 to WIT-19003) which Trevor Cooper has produced to the Inquiry (Trevor Cooper appears to describe it as a DECC business case, although the Inquiry notes it is a DECC Impact Assessment)?
24. Did you bring this document to Trevor Cooper and engage in discussion with him in respect of degression?
25. If it is the case that you did have a discussion with Trevor Cooper about degression, but it arose around a different document, then please identify that other document.
26. How did you come to have the document (either the DECC Impact Assessment found at Annex 13 or a different document relating to degression)?
27. Who gave you the document?
28. What, if anything, were you to do with it?
29. With whom did you engage in respect of it?
30. What was the purpose of discussing it with Trevor Cooper?
31. Please give an account of your exchange(s) with Trevor Cooper in respect of degression.
32. Trevor Cooper suggests (see WIT-18535) that, at the time at which you and he were discussing degression, he observed that "*if DETI had the power to suspend the Scheme, and tariffs were under regular review in any event, would it not seem a risky approach to remove suspension which would avoid*

*overspending with a mechanism that would introduce the risk of overspending to the Scheme*". He says you concurred with his view. As to this:

- a. By what means did you (at the time of your discussion with Trevor Cooper) think the Northern Ireland RHI Scheme could be suspended?
  - b. How did you come to your view (at the time of your discussion with Trevor Cooper) as to how the Northern Ireland RHI Scheme could be suspended?
  - c. What was your view as to how "*tariffs were under regular review*"?
  - d. By what means did you (at the time of your discussion with Trevor Cooper) think the "*tariffs were under regular review*"?
  - e. How did you come to your view (at the time of your discussion with Trevor Cooper) as to how the "*tariffs were under regular review*"?
33. With whom did you discuss degression, or the contents of the document?
34. What decisions were taken in respect of the issues raised by the document?
35. What notes (if any) did you make about this issue?

*Arrangements for learning from DECC*

36. In respect of the RHI Scheme, an analogous scheme was being operated in GB through DECC. In respect of this:
- a. What arrangements, if any, were put in place in DETI to learn from what DECC was doing in relation to its analogous scheme?
  - b. What mechanism, if any, was put in place to receive any consultation document or other material produced by DECC about its RHI Scheme?

- c. What mechanism, if any, was put in place within DETI to review and learn from the material being produced by DECC about its RHI Scheme?
  
- d. What mechanism, if any, was put in place to ensure liaison and co-operation between the staff dealing with RHI in DETI and the staff dealing with RHI in DECC?

**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 464 of 2017

DATE: 22 September 2017

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Witness Statement of: **David Thomson**

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**I, David Thomson, will say as follows: -**

*Paragraph 4 (WIT - 13515)*

1. I can confirm that the "Fiona" I refer to is Mrs Fiona Hepper.
2. In about March 2013, Colin Lewis, the other Deputy Secretary and Senior Finance Director in DETI, transferred to the then Department of Finance and Personnel, leaving a vacancy in the Top Management team. At around the same time, Trevor Cooper, the Department's Finance Director, left on a period of prolonged sickness absence. In Trevor Cooper's witness statement (WIT-18525), he states that he was away from the Department between April and October 2013. These two absences left a significant gap at the top of the Department and, in particular, there was no senior civil servant involved in the finance area.
3. It is a requirement that all government departments have a qualified accountant sitting on the board. I am a chartered accountant and also spent a considerable part of my career in the public expenditure divisions of the then Department of Finance and Personnel. In April 2013, we were unclear as to how long it would take to get a replacement for Colin Lewis and for how long Trevor Cooper would be away. In discussion with David Sterling, the Permanent Secretary, we agreed that I would take responsibility for oversight of the Finance Division, especially as year-end accounts needed to be prepared. I had a new objective put into my personal responsibility plan for 2013/14, namely "*Oversee Finance Division until new finance director is in*



*post and ensure year end procedures completed including audit committees, accounts etc."* As part of this temporary re-organisation, and to facilitate some spreading of the workload, David Sterling agreed that Fiona Hepper would report directly to him and he would take oversight of Energy Division for a period. As this was intended to be a temporary arrangement, David Sterling asked that I keep broadly in touch with key issues in Energy Division, so that I would be in a position to take on responsibility when the posts were filled again.

4. My role, as a deputy secretary, was primarily in corporate management and a strategic overview of policy development and advice to the Minister. That didn't change. However, during this interim period, I had to spend more time concentrating on financial resourcing issues and I spent less time on overseeing the development of significant policy issues and the delivery of critical projects in Energy Division.
5. In practical terms, I still met informally with Fiona Hepper and was aware, not least from my position on the Board and as part of the Top Management team, of what was happening across Energy Division. I continued to be copied into all submissions going to the Minister from Energy Division. However, I had less direct interaction with Fiona Hepper and Energy Division during that period.

*Paragraph 9 (WIT - 13516)*

6. It was normal practice that initiatives and programmes would be dealt with by the relevant division e.g. all energy related activities would be handled by Energy Division. The respective divisions and branches had the background and knowledge and were the best placed to manage and run their programmes. Occasionally, something would arise which meant that an issue would be managed differently. This was often something of a one-off nature covering different areas of the department and perhaps requiring input from a senior level. An example would be the G8 summit in 2013 and in situations like this, a different cross- departmental arrangement might be put in place.



7. There was no specific decision to allocate responsibility for the RHI scheme to Energy Division. Following normal practice, an energy project would be dealt with by Energy Division. The Executive's Programme for Government had a range of objectives and targets which were the responsibility of DETI including an energy target of 4% renewable heat by 2015. From recollection, there were delivery plans associated with each of these objectives and targets and Fiona Hepper was designated by DETI's Top Management team as the Senior Responsible Owner for that target.
  
8. In compiling the annual departmental operating plan, responsibilities for activities and their associated objectives and targets would be set out and the Departmental Board had oversight of this plan and its implementation. The Minister also signed off on the departmental operating plan. Therefore, if there had been a concern anywhere that a programme was being handled incorrectly, there would have been opportunity to address this.

*Paragraph 12 (WIT- 13517)*

9. My statement that "*Energy Division was probably the most heavily loaded division*" was based on my oversight and knowledge of the Policy Group and also my role as part of the Top Management team which gave me a knowledge of the whole department . The Policy Group covered a range of important areas, including economic development, tourism, Geological Survey and mineral rights, telecommunications and energy, as well as oversight of the policies of main public bodies we were responsible for - Invest NI and the then Northern Ireland Tourist Board, together with two North South bodies, Inter Trade Ireland and Tourism Ireland. The DETI 2013/14 Operating Plan contained 13 key objectives for the Department and 11 of these were the responsibility of Policy Group to deliver.
  
10. In order to deliver these objectives, each division in Policy Group had their own detailed operating plans and I was responsible for overseeing the achievement of what was contained in these. I therefore knew the workloads



of each division. I met regularly with my respective heads of divisions and I monitored performance in each of the divisions.

11. In my view, Energy Division probably handled more activity and business than the others. A large element of this arose as a consequence of having to deal with policy imperatives which originated elsewhere, primarily European Directives, but also developments arising in both London and Dublin. There was more legislation in Energy Division than elsewhere, and my perception is that EU directives and related regulations had a much greater impact on the energy sector, and hence Energy Division, than any other area of the Department. Many of these issues were inescapable and therefore had to be dealt with.

12. The Top Management team monitored the workload handled by the Minister's Private Office (all interaction with the Assembly went through the Private Office). From recollection, Energy Division regularly had a greater number of Assembly questions, pieces of legislation, Assembly business (Committee appearances etc.) and official correspondence than any other division in the Department. Although Energy Division had probably more staff than other divisions, I was concerned that it was at times stretched and the Top Management team did seek to provide extra resources to it at a time when the Department was facing efficiency savings.

*Paragraph 38 (WIT - 13523) - assurances*

13. As a Deputy Secretary, I had to rely on others for information and delivery. I therefore relied on assurances because, in my view, it is not possible, or necessary, for a senior manager at Grade 3 level to interrogate the full detail of all the initiatives and programmes across the department. Programme and project delivery was carried out at divisional level with the Grade 5 heads of divisions taking responsibility for that (that is common across the Civil Service). Consequently, responsibilities need to be delegated and those to whom delegation is given should report back. The assurances came from both informal and formal processes.



14. I saw Fiona Hepper, the head of Energy Division until late 2013, on an almost daily basis, not least because our offices were close together and our respective personal secretaries shared an office. These daily interactions were often just of a social nature, but they also provided the opportunity for either of us to pass on information or alert each other to a particular issue.
  
15. We also had regular stock takes (approximately monthly if I recall correctly depending on our commitments), where we chatted through all the main activities happening in the division. In these, Fiona was able to advise me if something was on track or encountering delays or difficulties. Often, as it was a stock take and my priority was oversight of the delivery of key priorities, the discussion was process related rather than a substantive discussion of an issue, and we would have concentrated on the major energy issues such as the IME 3 package, electricity prices, Gas to the West etc. These meetings would also provide the opportunity to consider resourcing issues (personnel and finance) as they affected Energy Division and we would agree actions, if necessary, for either Fiona or I to take.
  
16. In addition to these planned meetings, we had other interactions, depending on what was happening and what was coming up in the diary, such as Assembly questions. I was content for Fiona and her staff to take attend meetings, including meetings with the Minister and other departments. I did not regularly attend these, nor would I have been expected to. However, on occasions we would jointly attend a meeting, if either of us thought there would be merit in both of us being there.
  
17. Energy Division also produced regular Headline Points reports (such as WIT - 04412) which were useful in summarising activity in Energy Division and provided the chance for me, and other colleagues, to raise questions on any particular issues. I was also copied into all submissions going directly from Energy Division to the Minister and responses back from the Minister.
  
18. The key document driving activity in the Northern Ireland Civil Service at the time was the Executive's Programme for Government 2011 - 2015 (PFG). The



Executive's top priority was "Growing a Sustainable Economy and Investing in the Future" and most of the actions included in this priority fell to DETI, and the Policy Group. One of these was "Encourage achievement of 20% of electricity consumption and 4% renewable heat by 2015." This was reflected, in turn, in DETI's Operating Plans.

19. In order to track progress on the achievement of the various targets in the PFG and departmental operating plans, there were formal quarterly reporting mechanisms, overseen by the central co-ordination division in the Department. The processes covered both achievement of departmental targets and objectives and the risks associated with them. The Departmental Board monitored progress against departmental targets and this was reported to the Minister. Progress towards achieving specific PFG targets was reported to the Office of the First Minister and Deputy First Minister.

20. The informal meetings I had with my heads of divisions, together with the stock takes and the formal reporting on the achievement of targets and associated risks at both divisional and departmental levels, provided assurances that programmes and initiatives were proceeding.

*Paragraph 38 (WIT - 13523) - revisiting assumptions*

21. I referred in my previous statement that one check I looked for was ensuring that assumptions were revisited. With some exceptions, where an expert is recruited, civil servants are not experts in a particular policy field. It is normal practice therefore to obtain the views of others when devising policy, through consultation and by the appointment of external experts. In the case of the RHI, we (both Energy Division and myself) agreed that we needed to retain consultancy advice. We also agreed that there would be consultation process.

22. When I made the statement in my previous witness statement regarding checking that comments from advisers and consultations were used to revisit assumptions, I did not have any specific examples in mind, but was rather trying to convey the iterative nature of policy making. I was not intending to



refer to any specific assumptions which required to be revisited. Policy making, and the preparation of a business case, is not a static process. Guidance states that a business case should be kept under review and reflect significant changes which might arise. It would be normal for consultants to be asked for views on issues which arise.

23. My role as a Deputy Secretary was to oversee the implementation of major programmes and projects, but the substantial management of those was delegated to heads of division. Unless there was a specific reason to do, I did not get into detail around the development of a project or about the associated management process.
24. It was in the context of my regular meetings with Fiona Hepper that I would have sought assurances that the views of the experts were being considered, taken on board and fed back into the ongoing process. I do not recall meeting any of the consultants or advisers on the RHI project and I would not have personally checked if all the advice given was taken on board. In this context though, I noted the comments at the PAC hearing from Mark Cockburn when he stated "*Subsequent to that, DETI asked us to consider specific points that had arisen during the consultation exercise it had pursued*". This demonstrates that consultants were being asked to follow up points and consider them.
25. The Department had a formalised process of recording consultations and their outcomes. For example, the issues which arose in the initial consultation of the RHI were analysed, summarised and published (WIT- 06694) and also for the Phase 2 consultation (WIT - 07510).

*Paragraph 41 (WIT - 13525)*

26. In referring to the Casework Committee, I put the word "*independent*" into my previous witness statement in quotation marks, because members were employees of DETI i.e. they were not external to the department. Also, it was possible in the case of the Finance Director and the Chief Economist, who



attended Casework Committee hearings, that they would have been consulted at various stages by staff in divisions developing programmes and the papers for a Casework hearing. Consequently, especially in the case of the Finance Director, there might have been some limited involvement in a project under consideration prior to a Casework Committee hearing.

27. However, Casework Committee members were always independent of the divisions involved in the detailed development and management of the initiatives or programmes which they were reviewing. The Departmental Resource Accounts, in describing the Casework Committee process states *"the Head of a Division from which an expenditure proposal emanates is debarred from sitting on the Casework Committee which considers the proposed expenditure"*. In my view, Casework Committees were sufficiently independent to provide a robust challenge on proposals coming forward.

*Paragraph 75 (WIT - 13532)*

28. There were departmental wide processes for recording and reporting risks and budgets and these processes were overseen by Finance Division.

29. Each division, including Energy Division, had its own operating plan and associated risk register. Sometimes a programme within a division, depending on its nature, had its own risk register and this was the case for the RHI. These were reviewed during the year on a quarterly basis and risks assessed. Each head of division had to formally report on any significant risk which they considered to have a medium to high impact on the Department together with a high likelihood of occurrence. Any such risks were then reported to both the Audit Committee and the Board for consideration. In arriving at these quarterly assessments I met with each of my heads of division to discuss their views.

30. The Department's approach to risk management, at a corporate level, is explained in the Department's annual resource accounts. The Departmental Audit Committee considered risks and internal controls at a corporate level and advised the Board on these. DETI's resource accounts for 2013/14 state that amongst the issues reported back to the Board by the Audit Committee



were "*The Committee's views on the quality of assurances it considered during the year*" and "*The Committee's views on risk management*".

Importantly, the accounts also state, at paragraph 22, that "*The Committee was content with the quality of assurances received, the management of risk and the quality of internal and external audit*".

31. The focus for me, as the Policy Group Deputy Secretary and member of the Board, was on "residual risk", which is the remaining risk after controls and additional actions, current or proposed, were taken into account. We also considered the corporate impact, which is the impact on the Department, rather than a single project or programme.
32. The outcome of this process was that the Departmental Board assessed and managed departmental risks (the Audit Committee was non-executive) and the Board had to be satisfied that risks were being managed within the risk appetite which the Board had agreed. In turn, the Permanent Secretary, as Accounting Officer, had to be personally satisfied on risks and internal controls and he would have relied heavily on the Audit Committee and Board in assuring himself.
33. On the issue of budgets, at the start of each year, funding was allocated in line with the overall Budget decided by the NI Executive. Once a total was determined for a division and allocated across relevant programmes, detailed monthly forecasts of spend were prepared by the respective divisions and compiled by Finance Division.
34. Finance Division provided detailed reports on expenditure on a monthly basis, comparing actual expenditure with forecasts. I received a report for the Policy Group which showed each of the spending areas in each of the divisions within the Group. That would have highlighted, amongst other things, the AME spend on RHI, showing actual expenditure against budget profile. More detailed expenditure reports would be provided to divisions and branches, but the Group expenditure reports provided me the relevant information to discuss expenditure with my heads of divisions and raise any concerns.



35. The Departmental Board also received a finance report for each of its meetings (there were 10 meetings each year). This provided summaries of key figures together with an assessment by the Finance Director. The Board would discuss this and agree any particular actions which should be taken. A more detailed explanation of the financial processes and outcomes is contained in the Departments' annual resource accounts.
36. The outcome was that the Board was satisfied that proper financial management was taking place and that resources were being spent as intended. The Board would have authorised internal transfers which were in DETI's remit to carry out, or approved requests for additional funding to go to the Minister and DFP. In the event that extra financial resources were not, or likely to become, available, then the Board would have approved the necessary action to deal with the situation.

*Paragraph 82 (WIT- 13534)*

37. The email from HMT to which I referred was in April 2011 and is included in the information you hold (*WIT - 02719*).
38. I spent a large proportion of my career in the then Department of Finance and Personnel and, amongst other things, I was responsible for the publication of *Managing Public Money Northern Ireland* in 2006 (*WIT - 04123*). I had a full understanding of AME and DEL and how they are split between revenue and capital. AME is spent on programmes which are unpredictable or not easily controlled, particularly large demand led programmes such as welfare, tax credits or public sector pensions. Whereas the annual DEL allocation to Northern Ireland came as the result of the population based Barnett formula, normally AME funding was not so restrained and was not part of this formulaic funding mechanism.
39. The letter from the Chief Secretary to the First and Deputy First Ministers in October 2010, which I saw, stated that AME funding of "*£ 2/4/12 million will be available over the SR period based on a population based share of the GB*



*scheme.*" This was unusual and implied that, instead of having an open ended AME budget, which would be the normal position for AME, the AME funding was limited with a cap on the budget. I do not recall seeing the email exchanges in April and May 2011 at that time (I stated in my previous witness statement that I had come across them in preparing it) and I was not involved in any detailed discussions at the time with either DECC, DFP or HMT. Regular contact between DETI and DFP would be through DETI's Finance Division. I do not recall being made aware of any risk sharing arrangement, and I assumed that we would carry the full risk of any overspend.

40. The email from HMT in April 2011 also includes the wording "*The other key point it is necessary to let you know is that the DECC RHI spending is not being treated as standard AME, where the Exchequer takes on all the risk of overspend. Instead there is a risk sharing arrangement.*" This supports the view that the AME funding was not open ended and that there could be an implication for DEL. The emails also support my assumption, based on the ministerial letters in October 2010, that the purpose of this arrangement was to ring fence expenditure on RHI and not to permit under spends to be used for other departmental purposes.

41. For the period I was in the Department, RHI expenditure was monitored closely, by myself as Head of Policy Group and by the Departmental Board, but expenditure on the RHI was significantly below the AME allocations provided, and the risk of a significant overspend was not evident from the finance figures. As it was AME, expenditure on RHI was separately identified in DETI's annual accounts.

*Paragraphs 44,72,78 and 79 (WIT - 13526, WIT- 13531, WIT - 13533)*

42. The HMT Green Book (guide to appraisal) is core guidance and it refers to the appraisal and evaluation cycle. It is normal practice to build in post project evaluations to assess what happened and learn lessons.



43. However, post project evaluations are inclined to be carried out when a project or process is substantially complete. In the case of the RHI, it was considered necessary to have some interim reviews and, throughout the development of the RHI, it was clearly stated that the scheme would be reviewed. This was important because the scheme was new and novel. There was very little experience of renewable heat in Northern Ireland, and so no local knowledge to draw on.
44. I was not involved in the detail of drawing up the scheme. However, I was very aware that, in such a scheme, there were risks that something may not be right or that there would be unintended consequences, which often happens when new initiatives are being introduced by the public sector. Indeed the key risk identified in the risk register was that the tariff may not be right. I was therefore pleased, when I reviewed the scheme before it went to Casework Committee (WIT - 08398) that, rather than wait for a full post project evaluation, it was intended that more regular monitoring and reviews would be carried out. I noted that conducting a review was a condition of both the Casework Committee and DFP in giving approval.
45. I did not have any fixed views on who would have undertaken such a review or what would be in the terms of reference for it. The Casework papers and the DPF approval stated that DETI would carry out the review, and, in my view, that was right as it meant ownership would be with the Department. That would not have ruled out DETI retaining external consultants to assist in its preparation.
46. I did not give any detailed consideration to how long such a review would take to conduct and this would ultimately depend of the terms of reference which would be drawn up. A review could be comprehensive, which might require a longer time, or be split up into discreet areas, each of which might require a considerably less time period. Formal reviews can be time consuming, as they require careful analysis and consultation and also interaction with external bodies including DFP and the Assembly Committee. I was not aware whether if, at the time of preparation of the business case, any detailed thought had



been given by Energy Division to the methodology for the review and I do not recall any specific discussion with me on this.

47. As regards what the review would cover, I would certainly have expected it to address tariff levels and cost controls. My expectation was that the coverage would have been quite wide and not concentrated solely on tariffs. The Casework papers, at paragraph 7.53 (WIT- 04986) gave an indication of what the review might cover and, during the Casework Committee hearing, Fiona Hepper discussed the possible scope of the review. Following that, in her submission to the Minister seeking approval to proceed with the RHI scheme in March 2012 (WIT - 07315) she stated "*The NI RHI will have scheduled reviews built in to the scheme to allow DETI to ensure that the scheme remains fit for purpose and value for money for the duration. The scope of these reviews will include analyses of tariffs (either reduced or increased), the appropriateness of technologies and the assessment of effectiveness and success*"
48. In her letter to the DECC Minister in December 2013 (WIT - 18703), the DETI Minister, on advice from Energy Division, stated "*My Department has recently consulted on similar proposals to expand the Northern Ireland non domestic RHI scheme and to introduce new tariffs for more innovative technologies. In addition, consideration has been given to issues such as enhanced preliminary accreditation, biomass sustainability and cost control. Final decisions are still to be taken on the agreed policy position...*" This also provides some indication of the issues which might be considered in a review.
49. As regards the timing of such reviews, it was intended that these would be carried out in a shorter time frame than a full post project evaluation but, on the other hand, it was necessary to have a sufficient length of time between the launch of the scheme and carrying out a review to enable evidence to be collected and to assess how it was operating. Although earlier papers referred to a January 2014 date to commence the review, this was based on an approximate 18 month period after implementation to allow for sufficient time to gather evidence. Originally it had been expected that the RHI scheme



would be implemented in summer 2012, whereas in practice it was towards the end of that year. The Casework papers stated that the review was intended to start (WIT - 04986) in 2014 and the DFP approval (WIT - 05000) also noted the intention to start the review in 2014, with no specific month mentioned.

50. The phrase "*reviews were built into the scheme*" reflected that all the core documentation (business case and Casework papers, advice to the Minister, DFP approval etc.) stated that reviews would be carried out.
51. One way to ensure that something is taken forward, or at least is given attention, is to include it in the divisional operating plan and perhaps also in the departmental operating plan. A task does not have to be in an operating plan for it to be carried out, but operating plans are monitored and achievements reported on, ensuring they get attention.
52. Operating plans are produced on an iterative basis, with discussions taking place over a period of months. I would have seen the Energy Division plan in draft stages as it was being compiled during the spring of 2014. I did not spot that a review of the RHI was not included. The review in itself was important, and it was also a condition of approval from the Casework Committee and DFP. Had this omission registered with me, I would have asked for a specific reference to be included. The Energy Division Operating Plan for 2014/15 was completed in June 2014, just as I was retiring.
53. The phase two consultation on the introduction of the domestic RHI and changes to the non-domestic RHI finished in the autumn of 2013. The next main step in the process was to provide follow up policy advice to the Minister. This required a comprehensive review of responses and consideration of the next steps. Energy Division was to produce the advice to the Minister and I expected this to be comprehensive and to cover the changes to tariff, as this was referred to in the consultation document.



54. John Mills joined Energy Division in December 2013 and, not unreasonably, needed time to settle in and understand the many key issues which his new division was dealing with. As well as RHI, there was a number of other important energy matters to be dealt with. In particular, we were facing pressures on implementing EU directives with the very significant risk of infraction fines from the EU. There were other major issues requiring attention such as infrastructure (Gas to the West), security of supply, and electricity prices.
55. I was also aware that the Minister had said she wanted to launch the domestic RHI and I was content that some priority was given to determining how and when this was to be done. Energy Division provided advice to the Minister in December 2013 (WIT -18703) for her to reply to the DECC minister and advised her to state that "*Consideration has been given .....and cost controls. Final decisions are still to be taken...*"
56. Energy Division also provided advice to the Minister the next month in January 2014 (WIT -14832) in preparation for an oral question session. It advised the Minister that proposals in the policy consultation were complex with a wide range of stakeholders responding to the consultation process. It also advised the Minister that, if pressed, she could state "*I hope to make an announcement shortly on the introduction of a domestic RHI scheme in NI as well as some changes to the non domestic scheme*".
57. In preparing for an oral question session, I and the other Deputy Secretary, and often the Special Adviser, would meet with the teams who had prepared the briefing and discuss the suggested answers and lines to take. The briefing provided by Energy Division on that occasion in January 2014, and those discussions, confirmed my understanding that, in developing the policy proposals for the next phase, Energy Division was addressing issues with the non domestic RHI. It was my expectation that the advice to the Minister, when ready, would address the tariff position,.



58. I was also monitoring regularly the expenditure on RHI and it was still relatively low. Total expenditure in 2013/14 on RHI was about £1.6m and considerably below the original AME allocation of £4m. The risk, in January 2014, of an overspend materialising looked very unlikely. The briefing on oral questions in January to the Minister also did not suggest that there was a critical issue which required immediate attention. Therefore it did not seem unreasonable to me at the time, bearing in mind the other pressures in Energy Division and the respective risk profiles, to plan for the advice on the way forward to be presented to the Minister later in 2014.

59. In my last few months in the Department before my retirement, as well as undertaking the normal corporate management role, especially around year end performance and accounts, I concentrated, with the knowledge of the Permanent Secretary, on key projects and priorities, especially those where I had been personally involved. I did seek to keep updated on progress and during the spring of 2014 Energy Division kept me informed and I knew that there was a business case being prepared. As I state above, I did not spot that a review was not included in the operating plan being drawn up for 2014/15.

*6 monthly assurance statements (example DFE - 179692 to DFE- 179893)*

60. The six monthly assurance statements are an important part of the governance arrangements. The departmental resource accounts include the following statement "*Each Deputy Secretary and the NDPB Chief Executive is required to provide six monthly assurance statements to the Permanent Secretary as Departmental Accounting Officer. These six monthly statements confirm the efficacy of the systems of internal control in their areas of responsibility and, where appropriate, draw the attention of the Permanent Secretary to any significant control issues.*"

61. The Accountably and Casework branch of DETI's Finance Division undertook the assurance statement process. They commissioned personal statements from each of the Grade 5 Senior Civil Servants (heads of divisions) on a pro



forma basis, every six months. Once these forms had been completed, they were sent directly to the Accountability Branch of Finance Division and also copied to me, as the Deputy Secretary. In turn each of my Heads of Division sent me a signed covering minute. I discussed these returns with my respective heads of division and, on the basis of the returns and discussions, together with any other information I may have e.g. from the Departmental Board, I compiled my personal statement to the Accounting Officer.

62. The statements I received from my heads of division were personally signed statements and a degree of trust had to be placed on them. The purpose of discussing them before I signed my own statement was to identify any particular issues and allow me probe where I considered necessary. I did not check the veracity of statements, but I also did not consider them in isolation. As I explain above, I had regular formal and informal meetings through the year with my heads of divisions, which provided an overview of what was happening and the key issues. I was therefore able to assess what was contained in the formal assurance statements in the context of what had been considered during the previous six months and discuss anything which appeared unusual or unexpected, before the statements were finalised.

63. Also as noted above, the Audit Committee had oversight of this process, saw the assurance statements and provided its views to the Departmental Board. In addition, Internal Audit did periodic checks on the governance arrangements within divisions and branches. I don't recall any Internal Audit report identifying significant issues as regards reporting systems in Energy Division.

*You are referred to paragraph 12 of Trevor Coopers first witness statement to the Inquiry of 19 July 2017 (at pages WIT-18535 and WIT- 18536), together with Annex 13 to his first witness statement (at pages WIT - 18975 to WIT 19003), as well as paragraphs 6 to 10 of Trevor Cooper's second witness statement to the Inquiry of 28 August 2017 (at pages WIT - 19039 to WIT 19041). as to this*



64. I do not specifically recall this particular document, although that doesn't mean I didn't see it. The Department has been unable to identify a TRIM or other documentary reference, which would identify when I received this document, although it was filed within Energy Division. It is included as a link to the DECC document in February 2013 outlining the outcome of the GB consultation.
65. Whilst I do not recall the discussions with Trevor Cooper on the DECC document, I have no reason to suppose that they did not take place. It was normal practice for me to scribble notes of any such discussions, and follow up actions, in my notebook but, as I advised the Inquiry at an earlier date, I shredded my notebooks about a year after I retired (and before the RHI difficulties became public knowledge). I therefore cannot check back.
66. I consider, as a general principle, that the Finance Director should be aware of significant issues which might have a financial implication for the Department and if I saw something which I considered he should know, or might have a view on, and noticed that he wasn't copied into the issue, I would alert him to it. I would either send him an email or, as his office was close to mine, call down to see him. I consulted Trevor Cooper on a wide range of issues.
67. In searching for the DECC document, DETI sent me an email dated 4 April 2012, from Fiona Hepper to Trevor Cooper, which I attach as an annex. This is not related to the DECC document, but rather reflects discussions on the respective risks and responsibilities of DETI and Ofgem. This is an illustration of the type of engagement I would have had with both Fiona and Trevor, when it was considered necessary. Following any discussion between just Trevor and I, it would have been my practice to reflect any views which he provided back to the Division or, if necessary, raise them in another forum e.g. the Departmental Board.
68. The DECC document in 2013 was referring to budgetary control and therefore the sort of thing I would have sent to Trevor. As I have no precise recall of the



document, I cannot provide greater clarity as to the circumstances in which it may have come into my possession. I was not in direct contact with DECC officials and therefore it is unlikely it was sent directly to me. I would have been routinely copied into all correspondence received by the Minister's Private Office and it may be that the document was received by the Minister's Private Office and passed to me. That happened regularly if Private Office was perhaps unsure who to send a document to.

69. We had a practice that neither the Minister's Private Office or members of the Top Management Team formally retained any documents and indeed this was stated at the bottom of emails sent from my office. Therefore any document which I received was forwarded to the relevant branch or division for consideration, necessary action and filing. This document would therefore have been sent to Energy Division and DETI's records show that Energy Division filed it onto the records management system.

70. The RHI Inquiry has referred me to Trevor Copper's observation that *"if DETI has the power to suspend the Scheme, and tariffs were under regular review in any event, would it not seem a risky approach to remove suspension which would avoid overspending with a mechanism that would introduce the risk of overspending to the Scheme"*.

71. I cannot recall giving any consideration to suspending the scheme and I do not remember anyone bringing proposals to that effect to me. The consultation document in summer 2013 on phase 2 (WIT-07502), and which was published after this DECC document, stated at paragraph 4.14 *"DETI must retain the right to suspend the scheme if budget limits could be breached: however this will only happen as a last resort and, at this stage, is not envisioned to happen"*. I was not involved in the detailed implementation arrangements for the scheme, including the preparation and approval of the legal regulations and the head of Energy Division dealt directly with the Minister and Assembly Committee on these. Therefore I did not have a detailed knowledge of, or view on, the powers or otherwise of DETI to suspend the scheme.



72. As to the matter of reviews, both Trevor Cooper and myself would have known that, as described earlier in this reply, the key documents referred to the intention to carry out reviews and that this was a condition of both the Casework Committee approval (which he chaired) and DFP approval.

73. Degression was considered at points during the life of the RHI. The original business case and papers which went to Casework, which Trevor chaired, stated that, at that stage, DETI did not propose to include degression, although may need to do so in the future. The phase two consultation in July 2013 stated at paragraph 4.17 (WIT-16359) that DETI does not propose to introduce degression until 2014/15 at the earliest. Other than in discussing and signing off on the Casework papers, I do not recall discussing degression with anyone.

74. I would have reflected any discussions I had with the Finance Director back to Energy Division, as was my normal practice. I do not recall precisely who that might have been and my notes of that time are no longer available.

75. At a corporate level, the Departmental Board, which both Trevor Cooper and attended, reviewed expenditure regularly and also the year end accounts. Expenditure on RHI, being AME, would have been separately highlighted and discussed. If anything by way of concern had been raised in such discussions, then further action would have been taken, but I don't recall that happening.

*Arrangements for learning from DECC*

76. It was common practice for Northern Ireland civil servants to keep in touch with their counterparts in Whitehall departments. This was particularly the case in energy where decisions taken at Whitehall often had implications for us, even though energy policy was devolved. Energy policy was also heavily influenced by European directives and regulations which affected the UK as a whole, and we had to ensure that we were taking the necessary action to ensure compliance.



77. I expected that staff in all my divisions would consult with the relevant Whitehall departments. I was aware that Fiona Hepper and her colleagues in Energy Division were in regular contact with their counterparts in DECC on a wide range of energy policy matters. I had no direct ongoing contacts with DECC officials on the RHI or other energy related policies. I do not recall meeting any DECC officials on the RHI, although I may have been introduced to some if they were visiting Fiona and her team. I recall meeting the DECC minister on occasions with the DETI minister, although I am almost sure this related to other energy issues, including the implications of electricity market reforms in GB.
78. The main contact between DETI and DECC was within Energy Division itself and documents would have been shared between DECC and staff in the Division. I met with the Head of Energy Division to discuss progress and it would have been in this context that I would have discussed engagement with DECC. I cannot comment though on the detail, or regularity, of engagement with DECC.
79. Normally, as well as routine engagement at official level, Whitehall Ministers would write to their counterparts in the devolved regions to alert them to major issues which might have an implication for them. Correspondence was received from DECC ministers on RHI and other matters, such as the exchange of letters in December 2013 and January 2014. Such correspondence would be sent directly to Energy Division who would consider it and provide advice for the Minister. The correspondence would normally have been copied to me.

Statement of Truth

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

Signed: David Thomson

Dated: 22 September 2017

**David Thomson**

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**From:** "Cooper, Trevor" <Trevor.Cooper@economy-ni.gov.uk>  
**Date:** 04 April 2012 18:22  
**To:** "Cooper, Trevor" <Trevor.Cooper@economy-ni.gov.uk>  
**Subject:** FW: RHI : follow up to meeting on 3rd April

**Trevor Cooper**

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[www.ni2012.com](http://www.ni2012.com)

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**From:** Hepper, Fiona  
**Sent:** 04 April 2012 15:32  
**To:** Cooper, Trevor; Thomson, David  
**Cc:** McCutcheon, Joanne; Hutchinson, Peter; Hepper, Fiona  
**Subject:** RHI : follow up to meeting on 3rd April

Trevor  
David

At our meeting yesterday (3rd April) we covered the outstanding points in relation to risks - and particularly those relevant to policy and administration.

In relation to policy - it was noted and agreed that DETI, as with any other policy, carries the associated risks and manages these appropriately.

In relation to administration, 2 points were raised - if an Ofgem member of staff defrauded the scheme, or, if incorrect payments were made what would happen.

Peter spoke to Ofgem and enquired about their internal fraud policy and the specific point above. The key point is that, Ogem have a Fraud and Audit Strategy in place and the issue (s) we have raised will be considered in the context of this Strategy in advance of the launch of the scheme. This work will identify potential risks or opportunities within the administration for internal fraud and would implement mitigating factors where required - this could include additional oversight for specific roles or functions.

In terms of suing accredited installations that have been overpaid but monies cannot be recouped, it will be up to DETI to carry out legal action as enforcement power will remain with us.

I hope this is helpful  
Fiona

**Fiona Hepper**

Head of Energy Division