



# RENEWABLE HEAT INCENTIVE INQUIRY

## Chairman's statement at the RHI Inquiry Report launch, Friday 13th March 2020

13 March 2020

### Introduction

[1] Good afternoon, ladies and gentlemen. You are all very welcome to this, the launch of the Report of the Independent Public Inquiry into the Non Domestic Renewable Heat Incentive Scheme, better known as ‘the RHI Inquiry’. As you know, my name is Patrick Coghlin and I am the Chairman of the Inquiry. I am joined today by Dame Una O’Brien, the Inquiry Panel Member, and Dr Keith Maclean OBE, the Inquiry’s Assessor.

[2] I want to take this opportunity, on behalf of the Inquiry, to say a few words about the background to the Inquiry, its purpose and structure, before going on to address some of what is contained within our Report. Before doing that, however, I want to address two important and related issues: the independence of the Inquiry and the timing of the launch of our Report.

### Independence

[3] In my public statements of 9 March and 27 April 2017, I made it clear that, when I agreed to take on the complex task of chairing this Inquiry, I was promised complete independence. That was an essential requirement for me to act as Chairman. I also made it clear that I intended to insist upon that promise being honoured. Indeed, I concluded the statement I made to you on 27 April 2017 in this very room with the following words:

“I want to close this hearing by again assuring members of the public in Northern Ireland that this Inquiry will fearlessly examine the evidence relating to the RHI Scheme; and that it will do so without interference from any quarter in order to establish the facts about the Scheme and those connected to it.”

[4] Lest there be any lingering confusion or doubt about the matter, I want to reiterate again that I would not have tolerated any person or body interfering, or attempting to interfere, with the Inquiry’s work. Addressing you here today I can

confirm to you, the public, that we have been able both to conduct, and complete, our work with complete independence and without any interference.

## Timing

[5] Related to the issue of our independence is the issue of the timing of the publication and launch of the Inquiry's Report. There has been some speculation that the publication and launch of our Report has in some way been influenced by political factors such as the December 2019 General Election or the restoration of a power-sharing government in Northern Ireland. Such speculation is wrong. We are publishing our Report on the earliest date possible, in light of the work which has been required to complete it.

[6] The Inquiry was tasked to deal with novel and highly detailed subject matter, spread over a number of years, without any clear guidance as to the complexity or the likely extent of the potential documentary and oral evidence. The estimate originally given to the Panel of "about 6 months" for the Inquiry's work hardly amounted to 50% of the time required to initially collate and research the documentary evidence alone. Regrettably, the expectation engendered by the mention of such a short timescale at the commencement of the Inquiry was utterly unrealistic.

[7] When we concluded our oral hearings on 14 December 2018 I made it clear that I could not give you a date by which our Report would be published. However, I promised that 'the report will be published as soon as reasonably possible and that the public can be assured that the Inquiry will work assiduously to ensure that is the case'. We have kept that promise.

[8] Nonetheless, it is important that I explain, briefly, some of what the Inquiry has been doing since 14 December 2018.

- For several months at the beginning of 2019 we continued to gather and analyse evidence: for example, further witness statements relating to issues that had arisen in oral evidence given in late 2018 or in the closing submissions delivered in December 2018; as well as further disclosure of documents.
- The Panel then had to reconsider, weigh and assess the voluminous evidence it had received. In my concluding remarks at the end of the oral hearings I predicted that that would be a 'painstaking process in the light of the amount and complexity of the evidence and submissions that we have received'. So it has proved to be.
- Having considered the totality of the evidence, we had to draft the report which, as you can see today, is a very substantial piece of work.
- In order to ensure that I had complied with my statutory obligation of fairness, the Inquiry then had to engage in a representation process with persons likely to be criticised in express or significant terms in the Inquiry's findings. This involved furnishing those persons with a summary of the findings in respect of which they were subject to some significant criticism and giving them one final opportunity to make representations regarding those findings. The letters containing these draft findings were sent to Core and Enhanced Participants

between July and October 2019 and responses were received throughout the same period.

- The Panel then had to give detailed consideration to the representations received, taking on board points where appropriate, from a range of participants, before finalising our Report.
- Once the Report was in its final state (which was in late January 2020), the process of final editing, engaging with the printers, proof-reading, and so on meant that early to mid-March was the earliest achievable publication date.

[9] Finally on the issue of timing, I want to address the specific issue of the reason for the launch of our Report on a Friday afternoon, not least because of public speculation, all of which is wrong, that the timing of this launch has been in some way contrived in order to “bury bad news” at the start of a holiday weekend.

[10] Due to Assembly business, Friday was the only day of the week upon which this launch could properly take place in this building. We could have launched the Report elsewhere but we considered it important and appropriate that the launch occur here, at Stormont, for a number of reasons:

- All of our public hearings took place here;
- So much of our work has involved scrutiny of how the devolved government based here has operated; and
- Many, albeit not all, of those who need to read our report and secure the changes outlined in our Recommendations are based here.

[11] Some may have preferred it if we had launched the Report elsewhere. However, as I have said, we were convinced that the launch should occur in this building for the reasons I have mentioned.

[12] The date of publication was notified to interested parties some 6 weeks ago. The original proposed starting time was 11.00 am but that turned out to be very difficult for one of the panel members because of a prior commitment and the timing of flights. Again, interested parties were notified of the 2.00 pm start some 2-3 weeks ago. I would also add that arrangements have been made to permit the media to have access to the report today, under certain conditions of confidentiality, some hours prior to the commencement of this statement.

[13] I would like to emphasise that this launch event, the statement I am currently making, and how they might synchronise with the news cycle should not be the focus of attention. What I am about to say is just a short summary of some of the work of the Inquiry. Rather, it is the content of our Report, the evidence summarised in it, and its detailed findings and recommendations that are of central importance. They are, as I have said, the product of painstaking and forensic work by this Inquiry. They need to be considered, in detail, by our government, by those who can secure the changes that need to occur, and also by our media, performing (as it does) the essential role of fairly and accurately summarising, analysing and explaining the fruits of the Inquiry’s work to those who are unlikely to read the report for themselves. Ultimately, it is of primary importance that the Report will be available not only in hard copy but also for the public to download from the Inquiry

website. I am confident that, in the coming days, the necessary consideration and examination of the outcome of the Inquiry will be undertaken.

## **Background to the Inquiry**

**[14]** On 1 July 2016 the Comptroller and Auditor General for Northern Ireland and head of the Northern Ireland Audit Office, Kieran Donnelly, published his report dealing with the Department of Enterprise, Trade and Investment (DETI) Resource Accounts for the financial year 2015-16. That report specifically considered the development and performance of the Northern Ireland Non-Domestic Renewable Heat Incentive Scheme ('the NI RHI scheme'). After completing a detailed analysis Mr Donnelly concluded:

"This scheme has had serious systemic weaknesses from the start. The fact that the Department decided not to mirror the spending controls in Great Britain has led to a very serious ongoing impact on the NI budget and the lack of controls over the funding has meant that value for money has not been achieved and facilitated spending which was potentially vulnerable to abuse. I am very concerned about the operation of the scheme and it is an area which I expect to return to in the very near future."

**[15]** Mr Donnelly's report then listed a number of serious concerns.

**[16]** Prior to the publication of Mr Donnelly's report, the Public Accounts Committee (PAC) of the Northern Ireland Assembly, which was already aware of the emerging problem, had determined at its meeting on 22 June 2016 that it would conduct an investigation into what had gone wrong with the NI RHI scheme, using its powers to compel witnesses to attend and give evidence. A number of PAC meetings then took place during the autumn of 2016 at which the NI RHI scheme was considered.

**[17]** Mr Donnelly's report and the consequent PAC meetings stimulated public and media interest; but it was not until the broadcast of a BBC 'Spotlight' documentary on the issues on 6 December 2016 that the interest of the general public in Northern Ireland really became engaged.

**[18]** That well-presented and explained documentary by the reporter Conor Spackman simplified and re-packaged the findings of the Comptroller and Auditor General's report for easy public understanding; and focused on the absence of, first, tiering of the medium biomass subsidy and, second, cost control of the NI RHI scheme.

**[19]** Mr Spackman's documentary was followed by a series of television interviews shortly before Christmas 2016. Those interviews were conducted by the radio and television broadcaster Stephen Nolan, the first being with Jonathan Bell, who had been the DETI Minister from May 2015 to May 2016; and the second with Arlene Foster, who had been the DETI Minister during the development and implementation of the RHI schemes from 2008 to May 2015, subsequently appointed Minister for Finance and, latterly, First Minister. Mr Nolan's interview with former Minister Bell proved to be politically explosive, containing, as it did, allegations by the

former Minister that his desire to bring the RHI scheme under control had been continuously thwarted by DUP Special Advisers (SpAds) and that First Minister Foster had ordered him to keep the scheme open for an additional two weeks when he wanted to close it because of overspending.

[20] For her part, in the course of her interview with Mr Nolan, First Minister Foster took strong issue with Mr Bell's allegations and, on 19 December 2016, she made a formal statement to the Assembly about the scheme and her involvement with it. Ms Foster resolutely rejected the allegations made by Mr Bell and strongly maintained that she had never been provided with any warning during her time as DETI Minister that scheme spending was out of control or that cost controls were urgently required. As a consequence, 2016 came to an end amid a veritable firestorm of political and media allegations and counter-allegations. The one common feature appears to have been an agreed desire for an independent investigation, free from political influence, to establish the facts relating to the NI RHI scheme.

[21] On 9 January 2017 the then deputy First Minister, the late Martin McGuinness, resigned from that post, which he had held for some 10 years. The content of his letter of resignation included a reference to "the current scandal of the Renewable Heat Incentive." The late Mr McGuinness referred to "a public mood which is rightly outraged at the squandering of public money and the allegations of misconduct and corruption"; and he added that he had urged First Minister Foster to stand aside, given her involvement in the creation of the NI RHI scheme, so as to "ensure confidence in the necessary investigation and in the wider public interest." The deputy First Minister's resignation had the effect of removing the First Minister from office, given the joint nature of their appointments.

[22] On 19 January 2017 the Minister then with responsibility for the Department of Finance in Northern Ireland announced his intention to establish a Public Inquiry into the Non-Domestic Renewable Heat Incentive Scheme. Minister Ó Muilleoir made a formal statement to the Northern Ireland Assembly on 24 January 2017 providing further details of the proposed inquiry. Following this, the "Independent Public Inquiry into the Non-Domestic Renewable Heat Incentive (RHI) Scheme" – this Inquiry, generally referred to as 'the RHI Inquiry' – commenced its work on 1 February 2017.

[23] The work of the Inquiry has involved considering and processing some 1.2 million pages of evidence and arranging for witnesses to provide oral evidence over a period of some 114 days of Inquiry hearings, inclusive of opening and closing statements.

### **The purpose of the Inquiry**

[24] This Inquiry was established in accordance with section 1 of the Inquiries Act 2005 (the 2005 Act). It is important to emphasise once again that section 2 of the 2005 Act prohibits the Inquiry panel from determining any person's civil or criminal liability. The Inquiry has been an inquisitorial rather than an adversarial exercise, concerned with establishing the facts rather than attributing blame.

[25] The purpose and scope of the Inquiry was defined in its Terms of Reference (TOR), a full copy of which is both available on the Inquiry's website and is included among the appendices to the Report. Paragraph 1 of the TOR defines the purpose and scope of the Inquiry as follows:

"To investigate, enquire into and report on the Non-Domestic Renewable Heat Incentive scheme ("the RHI scheme"). This includes its design, governance, implementation and operation, and efforts to control the costs of that scheme, from its conception in 2011 to the conclusion of the Inquiry."

[26] The investigation was stated to be required to restore public confidence in the workings of Government. I hope that the content of our Report which is being launched today will go some way to doing so.

[27] As I have already alluded to in my opening comments, the Inquiry panel has been particularly concerned to preserve the independence of the Inquiry, which is supported by the impartiality provisions contained in section 9 of the 2005 Act. Independence is a key feature of any inquiry established in accordance with that legislation and, while the Inquiry was established by a Minister of the Northern Ireland Executive, as required by section 1 of the Act, the Inquiry panel has also relied upon the Ministerial Statement promising full independence made at the time of setting up the Inquiry. In the event, the panel members are satisfied that they have been able to carry out their functions as they think fit, independently, without fear or favour and free from any external pressures of any kind whatsoever.

[28] By agreement, the TOR were made as broad as possible with an emphasis upon the keystones of openness and transparency and, in his statement to the Assembly on 24 January 2017, the then Minister of Finance, Mr Ó Muilleoir, confirmed that the Inquiry would extend beyond financial matters to questions of governance and probity on the basis that such wider issues would go some way towards rebuilding what was said to be the shattered public confidence in the institutions. We have focused on those matters. As I have also emphasised on a number of occasions, it was not part of our TOR to examine individual applications to the scheme or the running of individual installations which were accredited for the purposes of the scheme. Other processes exist and continue to operate for that purpose.

## **The structure of the Inquiry**

[29] I had the privilege of chairing the Inquiry panel assisted by my panel member, Dame Una O'Brien, and, as technical assessor, Dr Keith MacLean. The impressive academic qualifications and extensive professional experience of both Dame Una and Dr MacLean are set out in detail in the Report.

[30] I wish to acknowledge the invaluable benefit that both I and the Inquiry generally have derived from the respective contributions of Dame Una and Dr MacLean. The Report is a joint production of all three individuals assisted by the legal team.

[31] The senior members of the Inquiry legal team originally consisted of David Scoffield QC, Donal Lunny BL, Joseph Aiken BL, and the Inquiry Solicitor Patrick Butler. The members of the Inquiry panel are extremely grateful for the long hours of preparation and analysis, together with the high degree of forensic ability, demonstrated on a daily basis by the legal team. Testimony to the overall quality of that team was clearly provided by the recent elevation of both junior counsel to the status of Queen's Counsel.

[32] It is also important for the panel, Inquiry Counsel and Solicitor to acknowledge the high quality of the work carried out by the legal, executive and administrative support teams headed by the Inquiry Secretary Andrew Browne OBE and, later, Paula Dawson MBE. Quite simply, it would not have been possible to process, analyse and present the documentary and oral evidence, stretching over a period of some three years and more than 1.2 million pages, without the high quality of work, application and intellectual ability displayed by the Inquiry support teams.

[33] It would not be right to complete these remarks without also expressing the gratitude of the Inquiry panel for the much-appreciated support that it received from all the other providers of services to the Inquiry, including the communications, technological, administrative, joinery, catering and security staff at Parliament Buildings, both before and during the 114 days of public hearings. This was a public inquiry carried out fully in the public eye in order to restore a degree of confidence amongst the general public of Northern Ireland in the structures and arrangements by which they are governed. To that end it was the intention and hope of the Inquiry that the online streaming of its proceedings, during the taking of oral evidence, would enable each member of the viewing public to have an opportunity to see and consider for themselves the evidence of the witnesses as they gave it on a daily basis.

[34] The Inquiry also appreciates the quality of the contemporary media coverage which the online streamed proceedings attracted which was generally fair, non-sensational and careful, with appropriate attention to detail. As we have mentioned in the Report, the transparency of the evidence-gathering process has, we believe, served an important public interest in itself.

[35] Finally the Inquiry wishes to record its sincere thanks to all those who provided evidence for its consideration and, in particular, to those who gave oral evidence; as well as their legal teams, who also provided considerable assistance to the Inquiry in its work. We appreciate that the experience of giving oral evidence in public can be daunting at the best of times and that must be particularly so when proceedings are streamed online.

## **Summary**

[36] I turn then to provide a brief summary of some of the content of the Inquiry Report. This is, of course, no substitute for reading and considering the totality of the Report, which is divided into 3 volumes containing some 55 chapters which are necessarily very detailed, containing, as they do, the Inquiry's analysis of much of the evidence that it received. The narrative set out in these chapters grounds the considerable number of findings made by the Inquiry, interspersed throughout the

Report, some of which are critical of the actions or inactions of a significant number of people and organisations in respect of the NI RHI scheme. The entirety of the Report is essential reading for anyone who wants to understand fully what occurred and the proper context in which the Inquiry has arrived at the findings it has made.

**[37]** Notwithstanding this, the Inquiry recognises the benefit of summarising, for the assistance of the public, some important points and themes which have emerged from its investigations and are reflected in its resulting findings. Therefore the Inquiry has included in the Report a summary of its findings before proceeding to list its recommendations. The Inquiry emphasises that the summary is not intended to be, nor is it, either a substitute for or a supplement to the Inquiry's findings. (In particular, it should not be seen as further or additional criticism of any individual or organisation going beyond the findings set out earlier in the Report).

**[38]** In that context, I now set out some important points and themes which emerged from the Inquiry's consideration of the evidence and its findings, as summarised in chapter 56 of the Inquiry Report:

1. The non-domestic NI RHI scheme was a 'project too far' for the Northern Ireland Government. While motivated by the laudable aim of encouraging the use of renewables rather than fossil fuels in heat production, the Northern Ireland stand-alone scheme should never have been adopted.
2. The NI RHI scheme was novel, technically complex and potentially volatile, especially because of its demand-led nature and the wide range of variables (such as fluctuating fuel costs) which could affect its operation. These features together made the scheme highly risky, yet the risks were not sufficiently understood by all those who should have understood them within the Northern Ireland Government, either at the outset or at any time during the life of the scheme.
3. Without the necessary resources and capability, DETI should never have embarked on such a novel and complicated, demand-led scheme. Like Scotland, it is likely that it would have been less exposed to risk by participating in what became the GB RHI scheme.
4. Cambridge Economic Policy Associates (CEPA), DETI's consultants, recommended a tariff for some biomass boilers which was higher than the variable cost of heat production. This should have led CEPA to recommend tiering of the subsidy to create a second, lower tariff for heat production above the threshold level set to reimburse additional up-front capital expenditure. The failure to do so by CEPA was not picked up or corrected by DETI and created a perverse incentive to produce excess heat, whether there was a need for it or not, in order to profit from subsidy payments. Officials in DETI failed properly to understand the damaging presence of the perverse incentive, which facilitated exploitation, throughout the period when the scheme was open to new applicants. It was first highlighted, as far as DETI officials were concerned, by the Northern Ireland Audit Office in July 2016. This lack of understanding was a significant failing.
5. The nature of the funding provided by HMT for what became the NI RHI scheme was very unusual in public expenditure terms: a specific form of Annually Managed Expenditure (AME). There were particular risks associated with it. Those risks were articulated by an official within HMT to

DETI in 2011. Although this was an unconventional means for communication of such matters, some officials within DETI and the Department of Finance and Personnel (DFP) did initially appreciate and understand those risks. However, not enough was then done in order to mitigate them. In addition, the actual funding position was not made clear in submissions and business cases, nor was it properly explained to the DETI Minister, until late 2015. Given the volatile and demand-led nature of the scheme, and the unusual nature of the funding, and in spite of warnings of the need to stay within set budgets, insufficient steps were taken to protect the NI RHI budget.

6. Important documents prepared within DETI concerning the NI RHI scheme, ranging in time from scheme development in 2011-12 to scheme amendment and closure in 2015-16, including documents and advice provided to Ministers, were often inaccurate, incomplete or misleading in important respects. Mistakes, misleading statements and omissions which arose in such documents or in submissions were often then repeated in subsequent documents and were generally not identified by the recipients of those documents.
7. Crucial 'safety' features, the most significant of which was any form of overall budget-control mechanism, were not introduced into the NI RHI scheme. Those omissions persisted despite the fact that information about the progressive introduction of budget controls to the GB RHI scheme was available to DETI both before and after the NI RHI scheme was launched in November 2012 and in spite of DETI's stated desire for consistency of approach with GB. Although DETI did consult on a form of budget protection in 2013, as part of the then intended Phase 2 of the RHI, no steps were taken to introduce it, whether through the legislation to introduce the domestic RHI in 2014 or otherwise.
8. Having decided to embark upon the NI RHI scheme, DETI did not ensure that adequate resources and expertise were applied to its development, delivery or running. This lack of resources, and of people with the specialist skills to ensure that the scheme was robustly designed and monitored, impaired the project from the outset and was a continuing problem. Those junior civil servants responsible for the scheme day-to-day, no matter how hard-working and well-intentioned, were consistently under-resourced. They were not equipped with the necessary expertise, nor adequately supported, partly because of the inadequate understanding of risk presented by the scheme and also because of pressure on resources generally.
9. The Northern Ireland Civil Service policy, followed by DETI at the time, as to deploying generalist civil servants without having due regard for the distinctive requirements of certain roles (particularly in business areas such as Energy Division), was a contributory factor to the problems with the NI RHI scheme. In addition, it is sometimes necessary, as in this case, to employ specialists in-house, even if it is only to manage the necessary external resources such as consultants and delivery partners.
10. The absence of relevant and appropriately tailored project management processes throughout the life of the scheme also had long-term

consequences. It meant there was no systematic framework for monitoring; no adequate framework for risk management; no formal joint oversight with Ofgem; and no structured method for conveying to new staff crucial information, including about the scheme's formation and its financing.

11. DETI's internal governance systems were ineffective where the NI RHI scheme was concerned. Its systems of operational planning, internal control, risk management and internal audit together, and over time, failed to uncover important issues or to act as an appropriate conduit to deliver important information to senior management about the flaws and mounting risks of the NI RHI scheme. This failure was due to a combination of inadequate corporate response to learning from past mistakes; weak governance systems; and officials not adhering sufficiently or adequately to the multiple reporting systems which did exist.
12. In 2012, the DETI Minister, who had already been told (incorrectly) by officials that the NI RHI scheme was projected to provide the highest renewable heat output at the best value, was presented by officials with a draft Regulatory Impact Assessment to sign which, although it enumerated a number of risks presented by the scheme, did not include all the necessary costs information in respect of the scheme. While the Minister should not have been presented with a document which lacked all the necessary cost information, she equally should not have signed it in those circumstances.
13. The arrangement between DETI Minister Foster and her Special Adviser concerning the division of responsibility between them for reading, analysing and digesting important documents was ineffective and led to false reassurance on the part of the Minister, and potentially of officials, as to the level of scrutiny applied to detailed technical reports provided to the Minister.
14. Basic administration and record keeping, normally the bedrock of the Civil Service, was on too many occasions lacking within DETI. Several important meetings and discussions with Ministers were not properly recorded in writing. The requirements of DETI Private Office Guidance in respect of the minuting of meetings with the Minister were routinely not followed by officials. This contributed to uncertainty as to what discussions had actually taken place in respect of the scheme and on what basis decisions had been taken. This presented challenges for officials in terms of understanding what had previously been considered and decided in relation to the NI RHI scheme and, latterly, for the Inquiry itself.
15. The Enterprise, Trade and Investment (ETI) Committee, whose role on behalf of the elected Northern Ireland Assembly included independent scrutiny of DETI, did not operate as an effective check against departmental error in the case of the RHI scheme. Aside from limitations inherent in its role, reasons for this included its own limited resources and its dependence on the Department for information and analysis to allow it to perform its challenge function robustly – information and analysis which was not always sufficient for this purpose.

16. Many of the design flaws with the NI RHI were quickly identified outside DETI by other parts of the public sector and by the private sector. The potentially lucrative nature of the scheme was promoted by many in the private sector and brought to the attention of a number of public sector bodies. There was certainly no “conspiracy of silence” in this regard. Nevertheless, bodies such as Invest NI and Action Renewables, in light of what they appreciated about the scheme from an early stage, could and should have done more to make DETI aware of potential exploitation of the NI RHI scheme and to query with DETI whether the scheme was operating as intended.
17. Notwithstanding short-lived efforts to encourage cross-departmental working (through, for example, the Strategic Energy Inter-Departmental Working Group) there was, at least in relation to the RHI scheme, a ‘silo’ culture that inhibited co-operation and communication between Departments and departmental bodies, such as Invest NI, and potentially undermined the delivery of value for money with regard to expenditure of public funds.
18. In spite of being warned of the need to review the NI RHI scheme, and having committed to doing so when securing Casework, DFP, and ministerial approval for the scheme, DETI did not review the NI RHI scheme when it should have done. This was a significant missed opportunity to identify latent or emerging problems with the scheme at the relevant time in 2014.
19. One concerned citizen, Ms Janette O’Hagan, between 2013 and 2015, repeatedly contacted DETI to point out the risks of exploitation of the NI RHI scheme and her concerns that it was being misused. The treatment of this individual and of her attempts at communicating her concerns to the Department fell well below the standard that she was entitled to expect.
20. Officials were not encouraged sufficiently or effectively to have a questioning attitude, to escalate concerns, to pause for investigation or to suggest that developments be stopped when problems arose. Instead, a culture of ‘delivery’, although not objectionable in principle, predominated in DETI to the extent that issues that should have been escalated were not, and too often matters were presented in an unduly positive light.
21. Between late 2013 and mid 2014 the wholesale and uncoordinated changeover of staff within DETI who had experience and/or understanding of the NI RHI scheme should not have been allowed to happen.
22. When problems with the scheme were recognised within DETI in the summer of 2015, the interventions of senior civil servants were not sufficiently directed or effective to ensure that, as well as the immediate presenting problem being addressed, the root causes were investigated, identified and tackled.
23. The amendments introduced to the NI RHI scheme in November 2015, and any delay during the summer and autumn of 2015 leading up to their introduction, ultimately had no meaningful impact upon the costs of the scheme. This is because the amendments were ill-considered and, once they were implemented towards the end of 2015, the market quickly adapted,

demand rapidly grew again and there was virtually no difference in the subsidy paid for each unit of heat before and after the changes.

24. Nonetheless, at the time of consideration of scheme amendment in the summer and autumn of 2015, it was (wrongly) thought that the proposed amendments to the NI RHI scheme would significantly improve the budget position. In that context, the period of time that elapsed between the realisation of the problem at the most senior levels in DETI in late May 2015, and the introduction of scheme amendments through the new regulations in November 2015, was excessive and there was a lack of appropriate urgency. This was particularly so in light of the known risk, and later development, of a very significant spike in applications to the scheme.
25. During 2015 too much information about proposed changes to the NI RHI scheme was shared by DETI officials with third parties, often before the proposed changes had been sanctioned by the Minister. There was no adequate and effective training or guidance for officials on how to handle relations with external commercial organisations.
26. The Northern Ireland Ministerial Code, approved by the Assembly in May 2007, and in force throughout the period covered by the Inquiry, did not include significant and helpful provisions relating to Ministerial responsibilities that had been part of the 2000 Northern Ireland Ministerial Code, including the responsibility of Ministers for the suitability and appointment of their special advisers.
27. There was a repeated failure to comply with the intent and provisions of the Civil Service (Special Advisers) Act (Northern Ireland) 2013 enacted by the Northern Ireland Assembly, and the mandatory codes introduced pursuant to that legislation, with regard to the appointment and conduct of Special Advisers. Failure to adhere carefully to these procedures, which appears to have been quite widespread, risked undermining the trust and accountability that is an essential part of the relationship between a SpAd and the Minister by whom he or she is appointed. It also had a bearing on the NI RHI scheme by undermining the trust between the DETI Minister and his SpAd between May 2015 and May 2016.
28. No effective system was in force for Special Advisers to register their interests upon a sufficiently regular basis and there was no adequate requirement or instruction specific to Special Advisers requiring them to register any actual or potential conflict of interest in writing.
29. Instances of unacceptable behaviour by Special Advisers included one Special Adviser sharing various confidential government documents, not just related to RHI, with family members and other third parties. Another, in relation to RHI, involved a number of Special Advisers, along with a Minister, discussing a plan, later put into effect, to disclose emails relating to junior civil servants in order to divert the attention of the media away from their Party.

30. The nature of the relationship established between DETI, as the owner of the NI RHI scheme, and Ofgem, as its chosen scheme administrator, was unsatisfactory.
31. The service that Ofgem provided to DETI, as the NI RHI scheme administrator, fell below the standard that DETI could reasonably have expected.
32. Ofgem did not share important documents with DETI. One such example was its Fraud Prevention Strategy. That document contained a substantive and fundamental error, indicating that the NI RHI scheme had the protection of tiering of some tariffs which it did not. A further example relates to the audit reports of NI RHI installations. Copies of these reports were not provided to DETI until many months after scheme closure.
33. Ofgem also did not properly explain to DETI interpretations that it, Ofgem, had adopted in respect of the NI RHI Regulations, or the potentially unwelcome consequences of those interpretations, even if, as Ofgem maintains, its interpretations were the legally correct ones. Ofgem's approach to the concept of 'heating system' in the context of multiple boiler installations, an area in which there was significant financial exploitation of the scheme, is an important example in this regard.
34. Early in, and throughout, the life of the NI RHI scheme Ofgem received many pieces of relevant information (particularly through its administration of the GB RHI scheme) about scheme exploitation, including from its own sub-contracted auditor. Ofgem failed to pass that important information to DETI. This further failure of communication on the part of Ofgem deprived DETI of important opportunities to be confronted with or reminded of problems with the NI RHI scheme and to consider taking steps to remedy them.
35. DETI should not have ended up in the position where an urgent suspension of the scheme was required and could only be effected by means of further legislation. In summary, while reasonably effective in its outcome, the closure process was not well managed.
36. Corrupt or malicious activity on the part of officials, Ministers or Special Advisers was not the cause of what went wrong with the NI RHI scheme (albeit the Inquiry has identified some instances where behaviour was unacceptable). Rather, the vast majority of what went wrong was due to an accumulation and compounding of errors and omissions over time and a failure of attention, on the part of all those involved in their differing roles, to identify the existence, significance or implications of those errors and omissions.
37. There is no guarantee that the weaknesses shown in governance, staffing and leadership revealed by the Inquiry's investigation of the NI RHI scheme could not combine again to undermine some future initiative. Many of the failings observed in DETI's handling of the NI RHI scheme had been observed in earlier failings within DETI in respect of the Bytel and Bioscience

Technology Institute projects, which were investigated by the Northern Ireland Audit Office. Such evidence suggests that important lessons had not been acted on with sufficient impact, despite the assurances given by senior civil servants.

[39] It will be evident from this summary that the Inquiry has considered a broad range of failures relating to the NI RHI scheme from its inception and throughout its life. I reiterate again that those who wish to focus on any particular aspect of evidence which the Inquiry heard (for instance, the allegations made by former Minister Bell to which I referred in setting out the background to this Inquiry) should consider the detailed discussion and specific findings made about that evidence in the relevant chapter of the Report; although we have also indicated that it has not been necessary, in many instances, for the Inquiry to reach specific findings of fact on particular disputes which have arisen on the evidence in order for the Inquiry to comply with its TOR.

[40] During the course of its investigations, in fulfilment of its Terms of Reference, the Inquiry considered where responsibility lay for a variety of failures relating to the NI RHI scheme. As will be clear from the detailed narrative and findings made throughout the Inquiry Report, responsibility for what went wrong lay not just with one individual or group but with a broad range of persons and organisations involved, across a variety of areas relating to the design, approval, management and administration of the NI RHI scheme throughout its life. Across those different areas, there was a multiplicity of errors and omissions, including (but by no means limited to) those referred to in the summary I have just given. In addition, there were repeated missed opportunities to identify and correct, or seek to have others correct, the flaws in the scheme. The sad reality is that, in addition to a significant number of individual shortcomings, the very governance, management and communication systems, which in these circumstances should have provided early warning of impending problems and fail-safes against such problems, proved inadequate.

## **Recommendations**

[41] The Inquiry's Terms of Reference, at paragraph 1(n), enjoined it not merely to make findings of fact but also to report on the matters within its Terms of Reference and "make such other observations and recommendations as the Inquiry considers appropriate".

[42] It is a principal function of any public inquiry, such inquiries invariably being established to address issues of pressing public concern, to make recommendations for the future. Such recommendations are usually designed, chiefly, to seek to remove or reduce the risk of similar failures to those which gave rise to the inquiry in the first place, occurring in the future. They can also present an opportunity for progress, for improvements in policy and practice, and perhaps also for innovative thinking. In short, such recommendations are aimed at ensuring that some good comes from whatever upheaval has given rise to the public inquiry. Inquiries are not merely about establishing responsibility for past failure, but also promoting responsible action and future improvement.

**[43]** I do not intend to rehearse all of the Inquiry's recommendations in this statement. They may be found, in full, in chapter 56 of the Report. They flow mainly from the systemic shortcomings identified in the Inquiry's findings throughout the Report. Although not directly related to any particular finding, it is hoped that each recommendation can be seen to be clearly grounded in the issues examined by the Inquiry and discussed in the Report. The recommendations also seek to address, in some instances, wider issues of poor governance or practice which go beyond the narrow bounds of the NI RHI scheme but which were thrown into sharp relief in the evidence which the Inquiry received.

**[44]** It is not within the remit or the Terms of Reference of the Inquiry to make recommendations with regard to Her Majesty's Treasury (HMT), a UK Government Department, or the general functions and operations of Ofgem beyond its role as administrator of the NI RHI scheme, although the Inquiry's full report will be drawn to the attention of both bodies. It will be a matter for any Northern Ireland Executive to pursue such actions as it may deem appropriate with regard to its future relationship with HMT and Ofgem.

**[45]** It is hoped that the Inquiry's work, and the recommendations contained in our Report, may make at least a modest contribution towards the establishment of more transparent and effective government in this jurisdiction. The recommendations set out in the Report are offered in a constructive spirit and represent the Inquiry's view as to what needs to change to give Northern Ireland's devolved administration the best chance of avoiding any repeat of the failings of the RHI scheme. Insofar as a recommendation relates to political structures or arrangements, the Inquiry acknowledges that the degree of weight which it may attract is a matter for the devolved administration.

**[46]** As with our findings, there is no substitute for a careful reading of the full recommendations made by the Inquiry panel in our Report. However, the recommendations made by the Inquiry extend to the following areas of work considered by the Inquiry and cover the following basic points:

- New criteria should be applied, and a rigorous process adopted, in determining, at the earliest stage, whether a new, potentially volatile policy should be delivered by the Northern Ireland devolved administration. In the case of policies driven by unpredictable demand careful consideration should always be given, prior to implementation, to the inclusion of powers of suspension and/or closure and Ministers should be informed of the operation of such powers at the outset.
- Consideration should be given to changing the guidelines and practices on the use of external consultants by the Northern Ireland Civil Service; and the concerned department should retain overall control and project management where consultants are used. Arrangements are required to ensure that this oversight and control remains effective.
- Best practice project and risk management should become the default practice in the Northern Ireland Civil Service when developing novel and complex projects and managing their administration. Project Boards should be considered as an essential element of oversight.

- The system by which advice on policy is tendered to Ministers should be improved; as should the processes to ensure that Ministers effectively discharge their role in testing and challenging such advice prior to policy decisions.
- There is a need to clarify, and ensure compliance with, a duty to ensure that clear and accurate minutes and records of meetings with senior officials and ministers, particularly those affecting expenditure and decision-making, are recorded, preserved and retained in easily accessible form. Ministers' responses to submissions should be formally and timeously recorded.
- Senior managers in the Civil Service must take responsibility for guiding and, where necessary, sequencing staff changes so that continuity of business is secured. In addition, a fundamental review of the policy of recruitment and selection for government jobs is required in order to better match the necessary skills to the role.
- Re-design of departmental systems for approving new expenditure and business cases is required, with particular regard to a proactive and challenging approach to public expenditure value for money and ensuring that Ministers are kept aware of any relevant conditions attached to approvals. Ministers should be given training on their role in the consideration of public expenditure and value for money. Ministers, SpAds and the Northern Ireland Civil Service all share responsibility for ensuring best practice in the use of taxpayers' money.
- Improvement of commercial and business awareness amongst policy officials is necessary. Officials responsible for holding budgets should have an understanding of the operation of public spending and the core guidance relating thereto. There should be encouragement of recruitment of commercial and technical expertise. Inter-governmental information exchange should also be utilised much more effectively.
- There should be a thorough review of the internal departmental systems for identifying risks and the early identification of potential problems. Better systems are needed for identifying early warnings and concerns from the public and business sources.
- There should be clear agreement between the parties engaged in the devolved administration that departmental 'silos' are not in the interest of Northern Ireland public expenditure; and positive encouragement should be given to inter-departmental communication and collaboration in the interests of the whole Northern Ireland community.
- The relationship between Ministers and Special Advisors (SpAds) should be reconsidered and clarified. There should be a process of induction for SpAds which should be shared by the appointing Minister and relevant Permanent Secretary. The relevant Employment, Contract and Conduct Codes for SpAds must be reconsidered and the Code of Conduct revised. There should be a clear system for SpAds to register interests and potential conflicts of interest.
- The Inquiry also recommends revision of the Code of Conduct applicable to Ministers as a priority. Codes of Conduct applicable to SpAds and to Ministers should be periodically reviewed for compliance by an independent mechanism reporting to the public in keeping with principles of independence and transparency.
- Consideration should be given to strengthening the scrutiny role of Assembly Committees, including increasing their resources.

- Ministers presenting the Assembly with legislation for approval should familiarise themselves with it and ensure that there is publicly available evidence to demonstrate that the benefits outweigh the costs.
- Ministerial decisions should be taken by Ministers, in conjunction with other Ministerial colleagues (where appropriate), and by no else.

[47] The recommendations for change made in the Report, to the extent they are adopted, will take time to implement; they may indeed not even be sufficient to address the range of shortcomings revealed by the Inquiry. The Inquiry therefore recommends a role in future for the Northern Ireland Audit Office in assessing and validating the extent of progress in implementing the lessons learned from the NI RHI scheme and implementing these recommendations, including reporting on such progress periodically to the Northern Ireland Assembly and the people of Northern Ireland. The Inquiry further recommends that the Northern Ireland Audit Office is provided with sufficient additional resources so as to enable it to perform such a role. The Inquiry has asked the Comptroller and Auditor General for Northern Ireland to monitor and, as necessary, pursue the effective implementation of this Inquiry's Recommendations. The Inquiry records that it is very grateful that the NIAO has agreed to undertake this task.

[48] As noted in the Introduction to Report, the Inquiry's belief is that, if its recommendations are followed, both in letter and spirit, it will be much more difficult for the types of general problems discovered in respect of the NI RHI scheme to re-occur. Hopefully that will, in turn, lead to a better functioning Northern Ireland Civil Service, and provide for a much healthier devolved administration in Northern Ireland. The Inquiry is aware that work has already progressed within the Northern Ireland Civil Service with regard to a number of matters which are covered by the Inquiry's Recommendations. That said, the Inquiry would again counsel against any tendency to conclude that some of the necessary changes have already been fully achieved. The Recommendations set out in the Report require sustained, system-wide change and will take time to implement effectively.

## **Conclusion**

[49] The Inquiry's work is now drawing to a close. Shortly, before the Inquiry closes down and in fulfilment of the Inquiry's commitment to transparency and disclosure, it will publish on its website the residual documentary evidence received by it, which it considered relevant to its work but which has not been significant enough to be referred to or relied upon in its oral hearings or Report, and which therefore has not yet been published.

[50] I trust that the Inquiry's hearings and the extensive evidence it has published will not only have been of interest to the public but also have served the public interest. The most important product of the Inquiry's work, however, is the Report which is being launched today. We commend it to you for careful reading and consideration. As well as being available in hard copy, it is also now available on the Inquiry's website, along with the documents received in evidence which are referred to in the many footnotes within the Inquiry Report. I hope this will facilitate ease of access and understanding for all those who wish to read the Report in detail.

**[51]** Finally, thank you again to all those who have attended today, or who are following these proceedings, for your interest in the work of the Inquiry.