



Northern Ireland
Assembly

Committee for Finance

OFFICIAL REPORT (Hansard)

Renewable Heat Incentive Disciplinary Process:
Department of Finance

29 September 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Dr Steve Aiken (Chairperson)
Mr Keith Buchanan (Deputy Chairperson)
Mr Jim Allister
Mr Pat Catney
Ms Jemma Dolan
Mr Philip McGuigan
Mr Maolíosa McHugh
Mr Matthew O'Toole
Mr Jim Wells

Witnesses:

Mr Colum Boyle	Department of Finance
Ms Jill Minne	Department of Finance
Mr Hugh Widdis	Department of Finance

The Chairperson (Dr Aiken): We have Colum Boyle, the interim permanent secretary in the Department of Finance; Jill Minne, the head of the Northern Ireland Civil Service (NICS) HR and strategic HR directorate; and Hugh Widdis, the Departmental Solicitor.

In closed session, we discussed some of the issues, but there are others that we will talk about now in open session. We have determined that there were no particular issues about what was said that warranted us remaining in a confidential session. That was quite clear.

Colum, would you like to make some remarks? I will then open it up to the Committee to ask about some specific areas. When you make your remarks, one of the things I would like you to discuss is misconduct, what is meant by "misconduct" is and how it was determined, particularly for the officials who breached the rules and ended up in misconduct proceedings. I am not sure what is meant by "misconduct".

Mr Colum Boyle (Department of Finance): OK. Examples of what we define as "misconduct" are set out in the disciplinary procedure in our staff code and handbook. Jill may have a copy of that to hand, and we will cover it in a moment or two.

You have my briefing paper, so I will not slavishly read through it. We have covered a lot of the ground in it. I thank the Committee the opportunity to attend and to discuss the issues. I recognise their significant importance — they are hugely important — and we are cognisant of the terms of reference of the inquiry, which were that it should:

"Examine the role of Ministers, Special Advisors, Civil Servants, and any others who were involved in the RHI scheme (including external consultants)".

We know that the inquiry looked at their actions across a range of standards, including the Nolan principles, the ministerial code of conduct, the Civil Service code of conduct and the code of conduct for special advisers.

I came fresh to this. When I was in other Departments, I watched what was happening with the renewable heat incentive (RHI) inquiry. I watched the dispatches on the news or listened to them on the way home from work in the evenings, and I saw and heard some of the sensational stuff that was emerging from the inquiry. I also noted its tone and the way it was publicised. The disciplinary panels were not meant to look at all the details of the inquiry. What they were meant to look at and what they did look at were the findings of the inquiry. They were required to pick out from those findings what, in their view, constituted breaches of discipline in staff conduct in relation to their conditions of employment. I accept that the inquiry findings do not —

The Chairperson (Dr Aiken): Just a quick question: are degrees of misconduct looked at in the Civil Service? Is there severe misconduct, medium levels of misconduct or whatever it happens to be?

Mr Boyle: There are. There is a gradation, and what constitutes what level is given by way of examples under each category. We can give some examples, but they can vary. Things like gross misconduct, for example, would be the worst and, if proven, could warrant someone's dismissal.

The Chairperson (Dr Aiken): Were there any examples of gross misconduct? We have been told that there was misconduct, but we have not been told the levels of it. Were any examples of gross misconduct found?

Mr Boyle: I do not know. I was not involved in the disciplinary process. That disciplinary process is closed to the people who were involved in it. The people who were party to it were the investigating officers and the decision officers. Jill has covered the point that there were a number of people on the external panel and a number of people on the internal panel. It was for them, particularly the internal panel, to weigh up the evidence and any outcomes of investigations and make their judgments about the severity of the offence and the level of discipline that was warranted.

The Chairperson (Dr Aiken): It would be useful for the Committee to see a breakdown of the levels of misconduct. We presume, because we do not know, that those are all examples of gross misconduct. If we have not been informed of that, it might be useful to see it.

Mr Boyle: I do not know. I have never seen that information either, nor should I have gone to look for it. It was not pertinent to what I have been asked to do in my role.

One thing that was striking to me about Sir Patrick's findings — I am not quoting this to downplay anything that happened — perhaps captures the essence of one of the reasons why we have had the outcomes that we have.

"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 ... areas, there was a multiplicity of errors and omissions, including (but by no means limited to) those referred to in the summary. 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."

That clearly suggests that this is not about a smoking gun resulting from someone's misconduct; it is more about the generic capability of the Civil Service to manage itself, manage change and manage large, high-profile and high-risk projects. That is what that conveys to me.

I will quote from an earlier piece in paragraph 38 of the findings:

"Corrupt or malicious activity on the part of officials, Ministers or Special Advisors was not the cause of what went wrong".

In forming my view of what went wrong, I ask, "Is this a capability issue or a capacity issue? Is it a conduct issue?". If you have a disciplinary process looking at a conduct issue and when you read Sir Patrick's findings, you find that it may not, on one level, be surprising that we have outcomes of the nature that we have. For me, this is an awful lot more about the capacity and capability of the Civil Service and of a collective than it is about the failings of individuals. I accept that there were failings by individuals; I am not whitewashing anything.

The Chairperson (Dr Aiken): When you look at RHI, you see that there are three distinct chunks. One is the cultural issue of the Northern Ireland Civil Service and the interrelationship that it had with the Government of the time. That created a lot of failings. We know that. That is in the report, and it is clear.

The second issue relates to what you would call "normal checks, balances and controls". I sat on the Economy Committee and was told that the checks, balances and controls should have picked up on those systems. We know from the RHI inquiry that the normal checks, balances and controls did not happen. It is not a question only of the culture of the system; it is the fact that even the systems that were in place were not picking up on that. There was a reason for that.

There is a third issue, and this is where it comes to culpability. That is what we have not really heard about. There were real concerns about departmental officials who were contacting people in industry. That was picked up during the RHI inquiry. It is clear that particular individuals were responsible for that activity, yet, looking across the spectrum of everything that happened and bearing it in mind that this place came down for three years and that the process fundamentally undermined people's understanding and support of even the principles of democracy in Northern Ireland, we see that only one person out of the whole process has been disciplined. I hear what you say about there being a wider issue, but it has been a considerable time since the RHI report was published, and we still have not seen any of the practical outcomes of that.

On the second issue, how do we make sure that the checks, balances and controls that are there and should be there are followed? We have not seen that. We did not see that during RHI. There were normal accounting processes. There were people with responsibility as accounting officers and people with responsibility for finance. There were people who should have been doing the basics. That was not happening. That applies to the normal checks and balances as well.

The third point is the degree of culpability. I find it difficult, even at this stage, to be told that only one person who was deemed to be in any way from the Civil Service was disciplined in any way. That is one of the problems that I have.

We can identify those three specific areas. The cultural piece, Colum, you have already talked about. I would like some answers about the normal routine management. The other one— this is the bit I cannot understand — is how we deal with what, to be frank, sounded like insider trading. If we were in the City of London, that is precisely how it would look. If you could identify those three things, we will move to members.

Mr Boyle: When I look at the checks, balances and controls and I read not just the findings from RHI but what the Northern Ireland Audit Office (NIAO) picked up from it about capability and capacity, I see that they picked those up very well. Whenever you see teams of people changing in very short spaces of time, handover arrangements not being operated in the way we would like and an organisation, even the size of the Civil Service, where there have been significant staffing reductions, you find that maybe there has not been the development of professional expertise in specific professions in the way you would like. We know, for example, that commercial expertise, project management expertise and programme management expertise are where shortcomings have clearly been identified.

I do not believe that people were acting malevolently or in a way that intended to do the system down. There are issues about the level of competence that people have. When you work a grade-based system as we do, with people moving in and out of jobs and where there is a belief that by osmosis or by sitting by Nellie they will be able to pick up the expertise they require to do that job, you will find that that is one of the biggest lessons for us in this. Having the right people in the right jobs at the right time is a phrase that we now use virtually every day. It is about having people with the right technical skills to do those jobs.

At one stage, as a civil service, we would have been heavily criticised for our heavy reliance on consultants to do a lot of those technical-type jobs on our behalf. There is a significant challenge on our part to make sure that we balance what we do internally with what happens externally and that,

when we recruit or procure externally, we look for that knowledge transfer. We have a way to travel, Chair, to get ourselves to the place where we have full confidence that we have addressed all the issues of RHI and the challenges it presents.

You mentioned the cultural piece. The cultural piece pervades all this, but it pervades the very grade-based system that we have. There is a huge challenge of marrying off what grade-based means and the various policy jobs people do with the professional/technical roles they play. There is a sweet spot to be hit with that, and we have not quite got there yet. The capacity and capability report picks up on that very appropriately.

You mentioned insider trading. I am alive to the issue you referred to. I do not know what happened in the disciplinary process. I do not know what views the people on the external panel and internal panel took. I have a great belief in the disciplinary process. I know that the individuals on the external panel were chosen for their reputation, capability, seniority and skill set. The same was done when picking up unconflicted permanent secretaries, again with a good, solid track record, in order to make sure that people would fulfil their responsibilities to that disciplinary process.

I cannot comment on who did not get disciplined, who might have been disciplined or what mitigations the panels might have come up with. I do not know what scenario they were presenting to those decision officers. I do not know that.

The Chairperson (Dr Aiken): OK. I will come back to that.

Mr K Buchanan: Thanks, Colum, Jill and Hugh for coming along today. Maybe this is an open question, and you can all comment as you see fit. What are your thoughts on the public's opinion of one person being disciplined in such a scale of an organisation and such a scale of a mess?

Mr Boyle: It is a very good question. If members of the public —

Mr K Buchanan: I will interject for a second. Public opinion is not just about the Civil Service; it is about Stormont — that place on the hill. We all take damage from whoever's actions, let us say.

Mr Boyle: Yes. The public have been concerned by it. I have said this before: it is one of those cases where you listen for months on end to the feedback coming from the inquiry, which was quite dramatic at times, then you read the report and see its recommendations, which, for me, were — "constrained" may not be the right word — a lot more conservative than any drama that was created. Many of the public were looking for the smash ending to the bestseller. That is the view that people external to here have expressed to me.

People do not always understand the processes that have to be followed. An inquiry has the freedom to dig into issues and to look at what happened to people. I know that a lot of people were traumatised by the inquiry and found it very difficult to cope with. The public's view is that the inquiry has not, perhaps, ended up quite where they thought it might. My view is that there are different processes at play in an inquiry versus a disciplinary process or what happens with Ministers, codes of conduct and all the rest of it. Different mechanisms have dealt with different constituents.

I am not, in any way, second-guessing anything that went before. I trust the Civil Service's disciplinary policy. Sitting here today, I have also had to place a level of trust in the officers who, as decision makers, were asked to view what was in front of them in the way we do every day of the week in the Civil Service. We rely on people who sit on selection panels to pick the right people for jobs. We rely on people to sit on disciplinary panels and make the right decisions. It is the same with grievance panels and so on. That is the reality of a large organisation trying to deal with things in the right way. My view is that there were different outcomes from different parts of the process. The public will be underwhelmed, which is the term I might use.

Mr K Buchanan: What needs to happen, Colum, to build that public confidence? Obviously, we debated the other day the availability of green energy and the different forms of energy we have now, so it is all very topical and relevant. The public will have little confidence in any scheme, irrespective of what the scheme is. How do you build that confidence, irrespective of the process that is carried out to come up with the discipline? That is one part of it, but I am talking about any additional schemes in the future. That confidence is gone to a degree.

Mr Boyle: I do not accept that. I do not think that is correct, and I will give you a reason why I say that. I was talking to you about those days when I was going down the M2 in the evening listening to the news. I will also talk to you about the evenings when I sat in my house until 2.00 am or 3.00 am talking to my colleagues in other Departments as we tried to stand up services during COVID. I think people will have a huge amount of respect, trust and confidence in the same Civil Service that stood up in abundance and really addressed a huge challenge that was, for me, a damn sight greater than the challenge RHI presented to it. There were challenges of project management, commercial change management and having to show agility, react overnight and be accountable for all that, and we are being held to account for everything that has been done during that time. I know that in myself. I also know that the person on the street, the people who now talk to me about me working in the Civil Service and my friends and people in my circle take a different perspective on it. I am not saying that the lessons of RHI are forgotten or lost; they are not, and we are on it in trying to work our way through it.

I think there is a level of restoration of that confidence in how we have absolutely massively stood up to what has happened during COVID, and, not only that, in what was done during the time this institution was not here. I take great pride in working in the Civil Service, and I have great pride in the colleagues I work with. I have phenomenal belief. I am coming to talk to you later about our business plan. When I look back at what was done last year, I see that that was outstanding and that outstanding leadership was shown. To colour the entire Civil Service with everything that came out of RHI and say, "Well, this blackens the whole thing" is wrong. Taking that contrast, for me, RHI absolutely pinpointed something, and I think the NIAO picked it up perfectly well in that capability and capacity piece. I have been part of something where I have felt nothing but exhilaration and pride about how we responded, particularly over the last 18 months. I think we are in a different place.

The Chairperson (Dr Aiken): Colum, from the Committee's perspective especially, we have seen from looking at your Department in particular how Land and Property Services (LPS) has reprocessed itself and done what it has had to do, and we have seen what other Departments have done. However, there is a question we are still seeing across the Assembly, and I cannot think of any MLA here who does not see it. We have seen some areas of excellence, and, particularly in the Health Department, we have seen our civil servants performing above and beyond. However, we are still seeing really significant issues with competency. We are not seeing competency in some of the areas where it is quite important to see it happen. I think that was one of the lessons that came out of RHI. It was not just a question of misconduct but of competency and the ability to do what was a fairly basic function, which was to run a heating scheme.

One of the big concerns we have is that I do not think we have been convinced yet that the lesson has been heard that we need to do something about competency. As we hear, there is definitely a skill shortage. My learned friend from South Belfast will talk about the fact that we do not have a fast stream programme and we do not have sufficient skill bases coming into the Civil Service. Those are really significant issues. For me, one of the big questions that came out of the whole RHI process is this: where was the competency? It was a basic heating scheme. It was not the cutting edge of anything. It was a very basic piece of legislation, and, time and time again, we are seeing in the Assembly, regrettably, that process where that degree of competency is not here. It is the question of the culture piece to do that as well. Keith, do you want to come back in?

Mr K Buchanan: No, I am fine. I appreciate your answer, Colum. Thank you.

Mr O'Toole: We have broadened this out into a discussion on culture and away from disciplinary procedures, so I am afraid you will have to forgive me. We now have permission, implicitly, to ask broader cultural questions. Thank you for coming. Obviously, I endorse the statements that have been made about the performance of civil servants during the pandemic in creating extremely novel schemes under extraordinary pressure. That is welcome and is acknowledged. I want to ask brief questions in two parts. The first is on the specific disciplinary issues around RHI, and the second is on the broader cultural questions that were nodded to in the Coghlin report and elaborated on in the NIAO report.

This matter has been reported already since last year, and the Chair touched on it. For the purposes of the record, the external panel, which scrutinised the Coghlin report, made recommendations, as we discussed in closed session, on 14 officials, two of whom were extremely senior officials, who were referred to the Cabinet Office for further action. The remaining 12 were subject to an internal panel, which comprised three senior permanent secretaries here in the Northern Ireland Civil Service. Is that correct?

Ms Jill Minne (Department of Finance): That is correct.

Mr O'Toole: Of those 12 — correct me if I have got the numbers wrong — the external panel recommended to the internal panel of permanent secretaries that proceedings should be continued for eight and not continued for four.

Ms Minne: There were three, and then one left. The internal panel dealt with eight cases. Essentially, it agreed with the recommendations of the external panel and progressed the eight cases.

Mr O'Toole: Of the remaining four, the panel found insufficient evidence to proceed in three cases, and one person left the Civil Service. Do we know the external panel's finding on that person? I am not suggesting that we pursue that person, but do we know what the finding was?

Ms Minne: No, because they left.

Mr O'Toole: They left before the internal panel could —

Ms Minne: — hear their cases.

Mr O'Toole: So we just do not know.

Ms Minne: Yes.

The Chairperson (Dr Aiken): Under the Civil Service rules, when you leave the Civil Service, is that it? Do all disciplinary processes stop?

Ms Minne: Yes. Essentially, the employment contract is broken. In the Cabinet Office, someone continued with it on a voluntary basis, but the employment contract is broken. If, however, you have gone through the process and been disciplined and dismissed, you cannot reapply for a job in the Civil Service.

The Chairperson (Dr Aiken): Could you be re-employed as a consultant?

Ms Minne: I do not know; I doubt it very much. I could look into that.

The Chairperson (Dr Aiken): Yes, please do. One issue is that some people who have left the Civil Service without disciplinary procedures being followed are in very senior roles in public life and on public bodies or potentially could be on public bodies.

Ms Minne: I am not aware of any case relating to the RHI. As you know, the cases of the two most senior people were dealt with by the Cabinet Secretary. The Cabinet Secretary was the decision officer in those cases, and he determined that there was no case to answer in either of them. Those cases were progressed.

Mr O'Toole: This is largely for the record: in the eight cases that the internal panel scrutinised, it decided not that there was no case to answer but that it would not proceed with disciplinary findings in all but one case, in which there was a disciplinary proceeding and the person was given a written warning.

Ms Minne: Yes. For the record, of the 12 cases managed by the internal panel, three were determined as having no evidence to support the misconduct allegations, and one was determined as having insufficient grounds to progress disciplinary action. Of the remaining eight, four progressed to disciplinary hearings in June 2020. Of those four, a formal written warning was given in one case. In the cases of the other three, the panel found that there was no evidence to support any misconduct allegation.

As we discussed in the closed session, the other cases were dealt with on foot of legal proceedings that had stayed those processes under the agreed NICS disciplinary policy. There were three such cases, and one individual left. That accounts for the 12.

Mr O'Toole: Thank you. I want to understand what is meant by "misconduct" in those cases. A lot of this — the permanent secretary alluded to it before — is about the overlap between incompetence and misconduct. I understand that sometimes — speaking as an ex-civil servant, I hope that I was never in this position myself, and no one had to say it about me — incompetence is so gross that it becomes misconduct. That, roughly speaking, is how I would have understood it. Generally speaking, you can be incompetent, and you can even be performance-managed, but, at a certain point, your incompetence becomes so bad that it is deemed misconduct. I do not know whether you are willing to talk about the case in which a formal written warning was issued, but would it be a fair depiction of the misconduct to say that it was closer to gross incompetence than to malign intent?

Ms Minne: In general terms, when dealing with employment matters relating to disciplinary processes there are all sorts of issues that need to be looked at in terms of good practice. That is underpinned by the Labour Relations Agency's code of practice. That focuses on the kind of things that you are talking about, particularly the burden of proof and determining whether there has been natural justice through a process. For example, does an individual have the right to put their case and mitigation forward or answer allegations made against them? Obviously, that process allowed for all of that.

When it comes to misconduct, it is exactly that. The kinds of tests that you look at are about intent, whether it was wilful and what the circumstances were, etc. The disciplinary panel would have listened to all the evidence. As HR professionals, it is not our job to hear the cases; it is our job to make sure that the process is right. The decision officers in those cases, and the case that you are talking about, would have listened to all those things and considered whether the person had reasonable belief after reasonable investigation.

Mr O'Toole: In that particular case, can you say that there was significant intent as opposed to simple gross incompetence? Intent towards —.

Ms Minne: I am not commenting on that particular case, because I was not privy to it. There are a number of factors, including intent, mitigation, the context in which people particularly operate, their seniority, their circumstances and their lack of —. An individual will have the allegations put to them, as is correct, and they then can explain and put forward a mitigation. I am not going to comment on the individual case, but a written warning is given where the offence is of a serious nature. Gross misconduct is normally where the employment contract has almost been broken.

Mr O'Toole: So it was not a finding of gross misconduct.

Ms Minne: As I said, a written warning is given where the offence is of a serious nature. That is the definition in the —.

Mr O'Toole: You then said that gross misconduct is where the employment contract has been broken, so you are delineating between the two.

Ms Minne: The outcome for gross misconduct would either be dismissal or a final written warning.

Mr O'Toole: So we can conclude from that that there was not a finding of gross misconduct. I will be brief, because I want to let others in.

The Chairperson (Dr Aiken): Yes.

Mr O'Toole: The permanent secretary was talking about an issue that I have corresponded with NICS HR about. I am passionate about Civil Service reform and the connected issue of Civil Service recruitment. The New Decade, New Approach agreement says that — I will try to find the exact detail. We should all have 'New Decade, New Approach' open on our devices at all times and be referring to it constantly. I am sure that we all are, and I am sure that everyone in the Civil Service is. It says:

"There will be further reform of the NI Civil Service."

When can we expect to hear more about that?

Mr Boyle: There are number of things happening already in that space. The first, and Jill can add to this, is a review of the recruitment policy that the Minister has initiated already. There is also a further review of the recruitment service's operation in relation to how we recruit staff. That is a short-term

exercise. The policy exercise should report by Christmas, and the operational one, where we are trying to short-circuit the length of time that recruitment takes us, should report by the end of financial year at the latest. There is a third piece that looks at the operating models that we use for both human resources and finance.

We are very clear that the human-resource model that we have is not working in any way that can be described as optimal. We are working in a way that is slower than we would like, and that affects a number of areas of human resources. To take that forward, we have a programme called the central government transformation programme. Essentially, we are trying to replace two large systems with one integrated system, but, as part of that, we need to re-platform how we do HR.

Mr O'Toole: I can check with the Clerk, but I think that we have a specific hearing on that matter later in the year, and I will be boring you on that then. I think I am right in saying that we are planning a specific session —.

The Chairperson (Dr Aiken): Just so you are aware, Matthew, and for the Committee's benefit, I have been in conversation with the Chair of the Executive Office Committee as well. We have been trying to work out who has specific responsibility between the head of the Civil Service and TEO —

Mr O'Toole: That was one of my questions.

The Chairperson (Dr Aiken): — who does what, what does Colum do, and where does it all interlink? We will be looking at having a joint session to discuss all of that.

Mr Boyle: In the memorandum of reply on capacity and capability there is a reference to how the two Departments — the Finance Minister, the First Minister, the deputy First Minister, TEO and DOF — work together. We are very clear on what the Ministers' statutory responsibility is, but we are also very clear that TEO and the NICS board have an important role. That process is unfolding as we go.

Mr O'Toole: You started with a statement that was very strong on the high performance of people but also the need for fundamental restructuring. I agree. However, I have a concern that those seem to be separate work streams; there does not seem to be a programme of Civil Service reform. Is there a single or connected programme of Civil Service reform, and if there is are you the senior responsible officer (SRO) or is it the new head of the Civil Service (HOCS) or even the new secretary for the Executive?

Mr Boyle: Civil Service reform is massive. I have yet to hear from someone who can define for me exactly what Civil Service reform is. It means different things to different people. There are aspects of that where I have responsibility at an official level. There are also huge aspects that HOCS will be responsible for driving at with the permanent secretaries of the Departments. There is a collaborative piece of work that has to be worked through.

Mr O'Toole: We need to do more on that. However, today is about RHI, and I am already straying into other areas.

The Chairperson (Dr Aiken): That is OK. Jill wants to come back in.

Ms Minne: Some of the things that you are interested in are in the agreed NICS People Strategy, which contains a fundamental review of our recruitment policy, which, as Colum said, is well under way. We are looking at doubling our student placements, a significant increase in apprenticeships, and developing our own graduate trainee scheme when we were not able to carry on with the GB one.

Those are all in play, so, in that regard, there is a route into the Civil Service, and there is a big community marketing outreach plan to go with it.

Mr O'Toole: I would, of course, advocate the Make Change programme. The intellectual property, including the logos, can be made available for no fee.

The Chairperson (Dr Aiken): End of party political broadcast. We know that it is election season.

Jim, over to you.

Mr Wells: Chair —.

The Chairperson (Dr Aiken): No, Jim Allister.

Mr Allister: I would like some factual information from our witnesses. How many civil servants were identified out of the Coghlin report as having been subject to criticism as to their competence or their conduct?

Mr Boyle: I will be honest with you, Jim; I have not counted them up.

Mr Allister: Why not?

Mr Boyle: Well, why would I? With the greatest respect, why would I?

Mr Allister: I am sorry: we spent £13.5 million, if I recall correctly, on a public inquiry. There were many criticisms from Lord Justice Coghlin of the competence and conduct of civil servants. As permanent secretary, you are telling us that you do not even know how many civil servants were identified and that you are not interested in that.

Mr Boyle: No. What I am interested in are the root causes and correcting them.

Mr Allister: I am sorry; you are responsible for the civil servants. The Lord Justice of Appeal conducted an inquiry and made criticisms of the competence and conduct of a number of civil servants, yet you come to this Committee and display your lack of interest in the number of civil servants so criticised.

Mr Boyle: What I am interested in is the number of civil servants who face disciplinary procedures, what the outcomes of those procedures were and how we take that forward and make the Civil Service better and stronger and improve it.

I am sure that Sir Patrick would want us to improve how the Civil Service operates.

Mr Allister: I am sure that, if you were taking his report seriously, Sir Patrick would also want you to know and be able to tell the Committee how many civil servants he criticised.

Mr Boyle: Oh, I took his report seriously. Yes, I did. Absolutely.

Mr Allister: Well, let us look at how seriously it was taken, because I am sure that the criticisms in the Coghlin report were not made lightly. You apparently do not know or want to know how many civil servants were criticised. Of the relatively small number ultimately subjected to some sort of disciplinary proceedings, we know that one — only one — received any sanction. Is that correct?

Mr Boyle: I accept your question, but, just so that we are clear, the external panel was set up to identify the number of people who needed to face disciplinary action as a consequence of the RHI findings. That is the fact that I am interested in. I am interested in the fact that senior, well-equipped, well-experienced people were chosen for both the external panel and the internal panel, and we have to trust in that process. I cannot sit here and rerun that process with you, Jim. It is done.

Mr Allister: I am not interested in kicking up dust. I am interested in getting the facts, and the facts are that one civil servant received a level of sanction. Yes or no?

The Chairperson (Dr Aiken): Sorry, Jim, I will come in here as Chair. You have raised an interesting point, and I will let you come back in in a moment. That is a question about disciplinary process, but what other processes were put in place? Obviously, a significant number of civil servants were identified in the RHI report as having failed in some way or another. Jill, you talked about the process in the event of misconduct and the people who met the threshold for misconduct and said that that is being dealt with by the external panel, but what about all the others who were deemed to have failed in their processes? That might not have been misconduct, but they failed to do their job. Surely, we must have some indication of those numbers and what processes we have put in place either to retrain those people or to make sure that they are not allowed anywhere near renewable heating schemes or public finances. Has any work been done on that?

We are concentrating on the misconduct aspect from RHI. Jim raised a very valid point in that misconduct is one thing, but what about the other levels? Surely, there must be some information about the number of civil servants who failed, who were identified as having failed in Lord Justice Coghlin's report and what we are doing about them. Have we had any information about that process?

Mr Boyle: Given the brief that we came here with today, I have not researched that or gone across that.

The Chairperson (Dr Aiken): Colum, could you give an undertaking to do that and bring that back to the Committee?

Mr Boyle: Yes, absolutely, we will look at that.

Ms Minne: In general terms, considerable work has been done on the emerging findings from the time. Those were particularly around skills, so new training courses have been put in place. Obviously, we have reviewed the performance management policy and identified a mandatory handover so that, when people are moving from one job to another —

The Chairperson (Dr Aiken): Sorry, Jill, could you say that again? Do you mean that we are just introducing mandatory handovers now?

Ms Minne: In terms of best practice, there has always been a handover, but we did not explicitly say that it was mandatory before.

Mr Boyle: I would prefer to pick this up separately, because I know that a lot of work —

Ms Minne: A range of work has been done.

Mr Boyle: We have done a lot of work, particularly on project and programme management and commercials — those key areas. I would like to parcel that up and bring it back.

The Chairperson (Dr Aiken): I remember, earlier in the life of the Committee, that we had a discussion about which finance officers had done the finance officers' course. We realised that quite a few people in the senior Civil Service who were filling a finance officer's position had not actually done the finance officers' course. Now, we are just introducing mandatory handovers.

Ms Minne: I am happy to come back on that and explain it in a better way.

The Chairperson (Dr Aiken): No. Bear in mind the comments that we have already made.

We have seen areas in which the Civil Service is showing excellence with the COVID pandemic, but we, as MLAs, see day in and day out in the Assembly a lot of lessons that were identified in RHI that have not been learned. They are still there.

Mr Allister: What is the lowest sanction that can be imposed under the disciplinary code of the Civil Service?

Mr Boyle: An informal warning is the lowest.

Mr Allister: And, above that, written warning?

Mr Boyle: It would be a verbal warning.

Mr Allister: And then written warning?

Mr Boyle: I believe so, yes.

Mr Allister: After all that Lord Justice Coghlin had to say, that is the highest level of disciplinary sanction that we got, and that was restricted to one civil servant. Is that correct?

Mr Boyle: That is what the facts say, Jim, in terms of the numbers.

Mr Allister: What does that say about the Civil Service's acceptance of Lord Justice Coghlin's findings? He was critical of, in your case, an unspecified number of civil servants for their competence and conduct, and the outcome of that was one written warning to one civil servant. Should the public perception be that the Civil Service, effectively, does not accept the criticisms of Lord Justice Coghlin?

Mr Boyle: No. I think that the Civil Service is on record as accepting those findings absolutely. It has been trying to use its best endeavours to improve how it functions and operates.

Mr Allister: There is not much reflection of that in the disciplinary outcome, though. Is there?

Mr Boyle: The disciplinary process is a disciplinary process; it has its own protocols. People bring forward their case to be heard and any mitigations that they have. I was not in the room when the senior officers were reviewing those cases. If you are asking whether I have faith in what those senior officers were doing, I do. Do I have faith in —?

Mr Allister: Do you not find a striking contrast between the multiple criticisms of Lord Justice Coghlin of civil servants and the eventual outcome of one written warning?

Mr Boyle: Justice Coghlin's role was a very different role. A public inquiry is a very different thing from a disciplinary outcome or process regarding someone's contract of employment.

Mr Allister: Lord Justice Coghlin identified failings in the competence and conduct of civil servants. How many of them have been promoted since they appeared before the inquiry?

Mr Boyle: Again, it has never been my concern to follow that up.

Mr Allister: Oh.

The Chairperson (Dr Aiken): Sorry, Jim. Colum, when you report back to us on the numbers who were not disciplined for misconduct but were dealt with in other forms of the administration process, it would be useful if we could see whether any of those who were specifically mentioned in Lord Coghlin's report have been promoted and in what areas. That would be useful for the Committee to know.

Mr Boyle: I am just checking the legals on that.

Mr Hugh Widdis (Department of Finance): We can take it away and have a look at it.

The Chairperson (Dr Aiken): You do not have to give us the names. You can report on the number at certain grades, whether they are still in those grades or whether they have been demoted. Has anybody been demoted?

Ms Minne: Demotion is one of the things that you could do but only if there were a substantive reason for demotion. That would be linked to the disciplinary process.

Mr Allister: I think that the answer is no. No demotions, one written warning and no knowledge not only of how many people were criticised by Lord Justice Coghlin but how many of them have since been promoted. Are we real about trying to rebuild confidence after the RHI fiasco?

Mr Boyle: Yes, we are real. We are very real, Jim. I gave my answer to another member a wee while ago: the Civil Service cannot be defined by what happened with RHI. The Civil Service has —.

Mr Allister: Yes, I know.

Mr Boyle: It cannot.

Mr Allister: I appreciate that, but we are dealing with the most singular spotlight that there probably has ever been on the Civil Service, yet you as permanent secretary come to the Committee and tell us

that you do not know how many civil servants are criticised by Lord Justice Coghlin. All that you can tell us is that one got a written warning, and you cannot tell us how many, even though they were criticised, have been promoted since. That is a reflection of just how casually the Civil Service seems to have taken the Coghlin report.

Mr Boyle: Jim, if you knew me at all, you would know that I do not take things casually. I have been well prepared to come here today to talk about things that we need to talk about, as much as I can.

Mr Allister: I would suggest that being well prepared —

The Chairperson (Dr Aiken): Jim, through the Chair, please.

Mr Allister: — means that you would be able to tell us how many were mentioned and how many have since been promoted.

Mr Boyle: I do not *[Inaudible]* —.

Mr Allister: I would regard that as being well prepared.

The Chairperson (Dr Aiken): Colum and Jim, through the Chair. The point has been made by Jim and Colum, and we will move on to the next questioner, who is Mr —.

Mr Allister: I did want to ask one other thing, if I might.

The Chairperson (Dr Aiken): If we have time, Jim, I will let you in at the end.

Mr McHugh: Thank you for your evidence. Much of what you covered, Jill, we have in our papers. It is incumbent on everyone to make sure that they read the papers. That might save us quite a bit of time when we come to these inquiries and so on.

A comment that you made, Colum, similar to what Mr Buchanan was saying, implied that there was a systematic failure in the Civil Service itself over RHI, as opposed to individuals taking on responsibility, or anyone identifying any individual's responsibility. It is a wee bit like someone blaming the app instead of blaming the designer: the app fails, but you do not blame the guy who constructed it.

When that kind of systematic failure is used as the reason for many of the problems, it is then quite easy for the general public to arrive at that conclusion as well. You are not pointing the finger at any individual or allocating responsibility as well as blame to individuals. It is therefore a bit of a cover-up to say that it was a systematic failure. In addition, we find that we get a legal opinion that is closing down information coming into the public domain, and that again sends out the wrong message.

I agree with you entirely that, in many respects, the Civil Service has been admirable in the way in which it has dealt with the whole COVID crisis. Its reputation does not hinge on just RHI, but, in many respects, that reputation has been tarnished as a result of RHI, as has that of MLAs, because people view us as being the people who were responsible for RHI, given that we are here in Stormont and should be scrutinising such things in Committees. I will come back to that.

I made the suggestion earlier that, given the current position, we should get external legal advice on some of the issues. As far as RHI is concerned, all of us are in danger of falling into disrepute and being part and parcel of a cover-up.

Mr Boyle: On the question of RHI being a cover-up, I say that we work to a very high ethical standard. We know that mistakes were made in RHI. We know that mistakes were made because the report clearly sets all of that out.

You use the term "cover-up". For coming here today, I focused on the disciplinary process. I have been fascinated by the disciplinary process, because I came to this from outside, after it had happened. I was interested in the dynamics of setting up an external panel and in the calibre of the people on that panel. I was interested in the fact that they were entrusted with reviewing all the mentions of all the individuals referred to in Sir Patrick's findings. They were tasked with making a judgement about how many of those people should face a disciplinary process. I was therefore interested in that group of people. When I saw the make-up of the panel, I said to myself, "OK. We

have very highly qualified, professional people at very senior levels. What interest would they have in covering up anything here?". None. From memory, they were from not just our jurisdiction but outside our jurisdiction. I was also looking at an internal panel of three permanent secretaries of the highest integrity, including Sue Gray, ex-Cabinet Office, who is now back in GB. If I recall correctly, her role was in and around all the stuff to do with ethics in the Cabinet Office.

The Chairperson (Dr Aiken): Yes.

Mr Boyle: What would possess Sue Gray to be involved in some kind of cover-up of RHI?

I therefore place my faith in those groups and believe that the external panel harvested from the findings of the RHI report those who, in its view, should face a potential disciplinary process. I also have faith in the other people who made the decisions about whether disciplinary action was required.

I have been a civil servant since 2005. To give you part of my professional background, I did human resources jobs for many years. I have not done them in a long time, but I have a lot of experience of doing them. From sitting on panels, I therefore know that I am looking at very senior officers. I know how they prepare, including the evidence that they weigh up and the mitigations that they take on board from people who come forward with questions such as "Why did certain things happen? Why did you perform or, more importantly, behave in a particular way?". I have faith in the panels. I have faith in the Civil Service selecting the correct people to sit on them and in their judgements being fine. On that basis, I would never accept that there was a cover-up. I accept that there are differences between what Sir Patrick can say, do and find and what will come out of a disciplinary process. That is the point that I am really trying to get across today.

Ms Minne: Two of those cases were also heard by the Cabinet Secretary, so the Cabinet Secretary's decision —.

Mr McHugh: I am not suggesting that there is a cover-up.

Mr Boyle: I know that you are not.

Mr McHugh: Like you, I know the name Sue Gray. I have met Sue Gray personally and have the highest respect for all the work that she has done and that she, I am sure, continues to do in England. The general public, however, may not know Sue Gray or anything about her.

Mr Boyle: No, they do not.

Mr McHugh: It is therefore also about the general public's perception. I go back to my conclusion, which is that we have a responsibility to regain the public's confidence, and the way in which one does that is through total and absolute transparency about whether the system can accommodate dealing with those people who were referred for disciplinary matters and all the rest of it when only one of them ended up incurring a warning as such. That is one thing, but the general public will look at that and be given the impression that some information has been kept from them, through injunctions or something similar. That then leaves a question mark hanging over the system that, in many respects, sullies all of us. Are you also of the opinion that one should aspire to have complete and absolute transparency in every aspect, even in this conversation?

Mr Boyle: I said at the very start that our Minister's default position is to provide whatever information is asked of us. That is his default position. I share that aim always to be open, but we have legal advice that says that we cannot do that. If the Committee wishes to write to the Department to ask us to look again at that legal advice, that is fine. We can do that.

Mr McHugh: I would appreciate it if the Committee could decide on that. I recommend that it does.

Mr Widdis: I beg your pardon, Chair, but may I add a little bit of legal to that? It is not that the Minister is not trying to assist, because the Minister is trying to assist and to be as transparent as possible. Like the rest of us, however, Ministers operate under legal constraints. One of the legal constraints on the very specific matter of discipline is that there is an employment contract with each individual and that the details of that employment contract and of the disciplinary process in the employment contract are to be kept confidential. That is therefore a constraint on the Minister and the Department. It is not the legal opinion imposing that. Rather, it is the fact that those contractual relationships exist as normal.

The Chairperson (Dr Aiken): Perhaps —.

Mr Widdis: The Minister has consistently tried to assist by balancing those two things.

The Chairperson (Dr Aiken): I will interject there, Hugh, on behalf of Maolíosa as well.

Earlier on, Colum, you talked about a findings list that was made of the names that came from the RHI report that went to the external panel to decide what —.

Mr Boyle: The names would have been taken from the review findings themselves.

The Chairperson (Dr Aiken): That list of names therefore exists somewhere.

Mr Boyle: It must do, yes.

The Chairperson (Dr Aiken): OK. From that, we could probably extract who has been promoted, who has left the service and what other actions have been taken. Considering Hugh's view as well, there is no reason that that could not be provided to us confidentially so that we can review to where those people have gone. The Committee could therefore have that information, but we would agree to hold it confidentially, in much the same way as we have dealt previously with confidential issues with the Department. If we could get an overview of what has happened to all the people who were involved in the situation, that would answer Maolíosa's question and probably Jim Allister's as well. Based on the confidentiality grounds that we used previously, I cannot think of any reason that the Department would not be happy with that. Are you happy with that, Maolíosa?

Mr McHugh: I would be happy with an external legal opinion.

The Chairperson (Dr Aiken): OK. Jim? The other Jim.

Mr Wells: Mr Boyle: if, owing to a lack of attention to detail paid or the incompetence of its staff, a company collapses, ceases trading and is not resurrected for three years, do you think that, of the staff responsible for that, one of them would have got a warning and that would have been that?

Mr Boyle: I am sorry, but I missed the start of your comment. I could not hear you.

Mr Wells: A company collapses as a result of the incompetence of its staff. It ceases trading for three years but eventually dusts itself down and gets back on its feet. Do you think that the only action taken against its employees would be that one of them would get a warning?

Mr Boyle: I am sorry. What company are you talking about? I do not understand your point.

Mr Wells: It is obvious that you do not understand, Mr Boyle, because you do not want to.

The Chairperson (Dr Aiken): I am sorry, Jim. Through the Chair.

Mr Boyle: No, I genuinely do not understand your point. I genuinely do not understand it.

Mr Wells: Clearly, then, you have not been following the line of enquiry. What I am saying to you is that this institution collapsed as a direct result of the incompetence of staff who were dealing with RHI. RHI brought this whole institution into total disrepute. It collapsed, and its activities were suspended for three years. If that were to happen in the private sector, would the only punishment meted out to the people responsible be one warning?

Mr Boyle: I think that the judge came up with something different from that. The report stated:

"responsibility for what went wrong lay not just with one individual or group but with a broad range of persons and organisations involved".

It was not just the Civil Service.

Mr Wells: Yes, but do you think that, in a major component of a company in which that happened, you would have one written warning?

Mr Boyle: That is a failed analogy, with respect.

Mr Wells: I think that a lot of the public would take a different view, Mr Boyle.

What on earth does one need to do to get sacked from the Civil Service in Northern Ireland? That is what many people who are listening to this hearing today must be asking themselves. At what level do you need to be totally incompetent before you are removed permanently from your post? What is the threshold for being sacked from the Civil Service in Northern Ireland?

Mr Boyle: As my colleague mentioned earlier — I will draw her in if she wants to come in on this point — we are talking about proving gross misconduct.

Mr Wells: Out of the whole RHI inquiry, no one — no one — was charged with, or deemed to have been responsible for, gross misconduct. No one. In all of that calamitous situation, which brought this institution and public confidence in civil servants to its knees, no one was guilty of gross misconduct. Is that what you are saying?

Mr Boyle: It is not what I am saying. It is what the disciplinary process yielded.

Mr Wells: Yes, the disciplinary process, which clearly has such a high hurdle that needs to be cleared before someone is sacked that it is almost impossible for anyone in the Civil Service to reach it. Is not that the truth?

Mr Boyle: No. We have a disciplinary process that reflects similar disciplinary processes and procedures that exist elsewhere in these islands.

Mr Wells: That is interesting. Have you come across the concept of "It happened on my watch"? Have you ever heard that phrase used?

Mr Boyle: I have, yes.

Mr Wells: What do you take from that phrase?

Mr Boyle: I assume that its origins have a naval connotation.

Mr Wells: It means that, when the staff are totally incompetent, senior officers take the hit and are disciplined and court-martialled, not because they were directly responsible for the decision that led to the ship hitting the iceberg or whatever but because it happened on their watch and they had overall responsibility for their staff's competence. Is there any concept of "It happened on my watch" in the Civil Service?

Mr Boyle: I am not sure. It is not a phrase that I have heard mentioned very often in the Civil Service, but I will say this: whenever leaders have had to stand up in the Civil Service, particularly in the past two or three years, they have stood up, led from the front and taken us through very difficult circumstances.

Mr Wells: We are not going to be led into the trap of criticising those civil servants in any way, because we all agree with you. My point, however, was that, during the whole RHI debacle, not one senior civil servant fell on his sword, not because he was directly implicated but because people for whom he, or she, of course, had responsibility had been utterly incompetent. Surely heads should have rolled on that basis alone rather than deliberately pinpointing any fault as being the senior officers'. It happened on their watch, and they should have gone.

Mr Boyle: Again, I trust a disciplinary process to yield the outcomes that it needs to yield. I mentioned earlier the questions that have come thus far. We have a solid disciplinary process that reflects good practice elsewhere. We had good people on those panels. What more can be done to assess people's misdemeanours and misconduct?

Mr Wells: It is a disciplinary process that many out there believe had as its ultimate punishment a slap on the wrist with a wet lettuce leaf. That is the honest view of people who are watching at home and think that a standard that would never be tolerated in private industry and many other organisations is tolerated in the Civil Service. Heads should have rolled for no other reason than to set an example and to show how serious the issue was and that it would never be tolerated again. That did not happen.

Mr Allister asked a very pertinent question. If it transpires that not only was adequate disciplinary action not taken against those who were responsible but some of them have been promoted, that will be the ultimate insult. We are awaiting that information with great interest.

The Chairperson (Dr Aiken): Thank you very much indeed, Jim.

On the concept of accountability and responsibility, many of us who have served in the military have a different view. I tend to understand what is meant by the phrase "The captain has the ship". I have been in that situation and know what it is like to carry the can. You do it for the entire team. I take your point, Jim. It is a very clear issue.

Jim Allister, a very quick one, please, before we bring things to a close.

Mr Allister: On that same theme, Mr Boyle acknowledged that Sir Patrick found systemic failures across the Civil Service in management etc, yet his evidence to us today is that, when one permanent secretary and one head of the Civil Service were sought to be made amenable, they were vindicated.

Again, how can you say that lessons have been learned about systemic failures in the Civil Service if those on whose watch it happened have walked away untouched with their pensions intact, as if nothing adverse had happened? Where is the credibility in that?

Mr Boyle: You make an interesting point, and I understand it. People went through a disciplinary process that did not even involve on the panel people from here. Those people were sufficiently senior, had a broad perspective and had the capability to decide what did and what did not merit disciplinary action. I do not believe that I am in a position to second-guess a panel in that scenario. The disciplinary —.

Mr Allister: Do you not think that the public might think that the Civil Service was looking after its own?

Mr Boyle: I do not know why civil servants from, for example, the Cabinet Office would feel particularly compelled to look after civil servants here or whether people with absolutely no axe to grind who sat on an external panel would feel any particular loyalty to do the same. There —.

Mr Allister: Was there an external panel for the permanent secretaries?

Mr Boyle: No. There was an external panel for the other 12.

Mr Allister: Yes. We are into the ultimate irony here, in which RHI happened, cost tens of millions of pounds, yet politicians and civil servants walked away in the smoke, while hapless individuals — a few farmers who followed the advice of the Minister for the Economy and their banks and availed themselves of the system — are now being made the scapegoats. Something reeks about that.

The Chairperson (Dr Aiken): OK. Thanks.

Finally, I have a technical question. Jim, can you stay on the line? One of the things that we wanted to see being addressed was the role of special advisers, who are deemed to be civil servants. What came out of the RHI inquiry was how those special advisers were dealt with. What also came out of RHI and, indeed, the Bills that Jim has been involved in and other Bills was how, in their role as temporary civil servants, special advisers would come under the disciplinary process. If we had circumstances in which the RHI recommendations were acted on all the way through — we had hoped that that would happen with special advisers — would they be subject to gross misconduct proceedings through an external panel, or is it still within the realms of a Minister's powers to discipline them?

Ms Minne: It is within the remit of a Minister to do that.

The Chairperson (Dr Aiken): Even though they are deemed to be temporary civil servants, they cannot be charged with misconduct or anything else.

Ms Minne: My understanding is that the Minister manages all aspects of their performance and conduct. Is that correct, Hugh?

Mr Widdis: Yes. There was a bit of legislation about that recently. If the person is a civil servant, and there is misconduct, it is the case that disciplinary proceedings can be taken. In that instance, however, it would be led by the Minister and not by, for example, the line manager in the Civil Service.

The Chairperson (Dr Aiken): OK. Jim?

Mr Allister: Some people should perhaps revisit the Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021 to remind themselves that spads are now subject to the Civil Service code of conduct and its disciplinary processes.

The Chairperson (Dr Aiken): Yes. OK.

Everybody, thank you very much indeed. This has been a particularly important evidence session. There is nobody in Northern Ireland who does not accept that many in the Civil Service have really come to the fore and done particular roles during COVID, particularly those in the Health Department and, indeed, in the Department of Finance. RHI, however, fundamentally undermined people's confidence in this Building, not just in the political system but in the entire Civil Service system.

Colum, quite honestly, we cannot come out of here thinking that people consider RHI to have gone away. As a politician who is knocking on the doors, I get asked about RHI day in and day out. I am asked about the incompetence, how it is going, what we are doing about it and why we have got to this stage but it is still here. There are many out there with real concerns. For the Committee and, indeed, many other elected representatives, the concern is that there has to be accountability and responsibility. Regrettably, we are not seeing that. We would like to see the evidence that we requested be put in front of the Committee as swiftly as possible, please.

Thank you very much, indeed. Colum. I am sorry that we are discussing RHI the first time that you have come before the Committee. From looking at today's agenda, I see that we were due to receive some evidence from you later about the Department's business plan. With the Committee's acceptance, we will postpone that meeting until a later date and will be in contact with you and the rest of the team about that. Thank you very much indeed, Hugh, Jill and Colum.

Mr Boyle: Thank you.