

WRITTEN MINISTERIAL STATEMENT

RHI DISCIPLINARY PROCESS

9 DECEMBER 2021

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MINISTER OF FINANCE**

Written Ministerial Statement - RHI Disciplinary Process

The Public Inquiry into the Non-Domestic Renewable Heat Incentive Scheme highlighted a number of failures in relation to the Civil Service. Following publication of the Inquiry's Report an adapted disciplinary process was agreed by the NICS Board (non-conflicted members only) on the basis of the five principles of fairness, timeliness, consistency, public confidence and internal confidence. This statement updates the Assembly on the operation and the outcome of that process.

Members should know that there are legal, data protection and contractual constraints in relation to identifying individuals. I am acting on strong legal advice from the Departmental Solicitor's Office and from Senior Counsel in this regard. This statement is therefore given in relation to a breakdown of the cases by type, not by individual. I have however provided more detail to the Finance Committee, on the basis that the legal rights of individuals will be respected.

In January of 2020 the NICS Board (non-conflicted members only) agreed a two-stage disciplinary process. In the first instance an independent external panel would "*consider the content of the RHI Inquiry Report relating to NICS staff and establish if there have been potential breaches of the Standards of Conduct set out in Section 6.01 of the civil service handbook*". The external panel was required to make recommendations to an NICS internal panel (comprising three non-conflicted Permanent secretaries) and to the British Government Cabinet Office for consideration of disciplinary charges and final decisions.

In April 2020 the external panel recommended that charges of misconduct should be considered for ten individuals. Eight of the cases were within the remit of the NICS and two were within that of the British Government Cabinet Office.

Between April and June the NICS internal panel and the British Government Cabinet Office considered the external panel report. The two panels concluded that the charges should be considered of gross misconduct for six individuals and misconduct for four individuals. The higher charge of gross misconduct was recommended on the basis that the panels deemed each of the six cases to have met the test for potential gross misconduct charges based on the information contained in the external report

In May 2020 the NICS internal panel held disciplinary hearings in relation to four individuals. The panel concluded that a written warning of misconduct should be issued in relation to one individual and that there was no evidence to support misconduct allegations in the other three cases, therefore the charges were not upheld.

In June 2020 a Judicial Review was initiated against the disciplinary process and the remaining six cases were stayed.

In December 2020 the British Government Cabinet Office advised the NICS that it was standing down the disciplinary panel it had constituted to consider the two cases within its remit. The Cabinet Office appointed a senior legally qualified individual to undertake a preliminary enquiry in relation to the two cases within its remit. The British Government Cabinet Office disciplinary hearings took place in January 2021, and these hearings resulted in a finding by the Cabinet Secretary of no case to answer in each case.

In January 2021 the legal action was resolved with the internal panel offering the three remaining individuals subject to the NICS proceedings the choice of either going through the same process as the other four individuals or the disciplinary process as set out in the agreed NICS handbook. Each chose the handbook process. Each individual was therefore subject to a preliminary enquiry; in each case there was a determination of no further action. One case closed as the individual concerned was no longer employed by the Civil Service.

The fact that the adapted disciplinary process agreed by the NICS Board (non-conflicted members only) was stayed under the threat of legal action, is clearly concerning.

I have commissioned a full review of the NICS disciplinary policy. This is underway and will determine any potential improvements to the policy and its implementation across the Civil Service. I will update the Assembly accordingly.